

Eleventh Circuit Reverses District Court on Application of Noneconomic Damages Cap

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Yesterday, the Eleventh Circuit issued an [order](#) in *Estate of McCall v. USA* reversing the district court's order applying the noneconomic damages cap. The Eleventh Circuit remanded the case for further proceedings consistent with the Florida Supreme Court's [opinion](#) in the case, and with the Eleventh Circuit's [previous opinion](#). In its order, the Eleventh Circuit noted that the Florida Supreme Court's decision only applied to wrongful death cases. The underlying case in *McCall* involved a wrongful death suit filed under the Federal Tort Claims Act. The district court determined noneconomic losses from the death to be \$2 million, comprised of \$500,000 for the son and \$750,000 for each parent. Under section 766.118(2), Florida Statutes, the aggregate cap served to limit the parents' and son's recovery to \$1 million. Given the Florida Supreme Court's ruling that the aggregate cap is unconstitutional, the district court will have to decide whether to apply the per person cap of \$500,000 under section 766.118(2)(a) to limit each survivor's recovery to \$500,000 each.

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