

Last Thursday, the Florida Supreme Court issued an opinion overturning the caps limiting damages recoverable against healthcare providers and nonpractitioners in medical negligence cases not involving wrongful death. These caps were enacted by the Florida legislature in 2003. Specifically, the court stated in its North Broward Hospital District v. Susan Kalitan decision:

We conclude that the caps on noneconomic damages in sections 766.118(2) and (3) arbitrarily reduce damage awards for plaintiffs who suffer the most drastic injuries. We further conclude that because there is no evidence of a continuing medical malpractice insurance crisis justifying the arbitrary and invidious discrimination between medical malpractice victims, there is no rational relationship between the personal injury noneconomic damage caps in section 766.118 and alleviating this purported crisis. Therefore, we hold that the caps on personal injury noneconomic damages provided in section 766.118 violate the Equal Protection Clause of the Florida Constitution.



Eric Clark
Regional Vice President

This decision is not a surprise given the Florida Supreme Court's March 2014 decision to overturn the caps on non-economic damages in a wrongful death case. In the Estate of Michelle Evette McCall vs. U.S.A., the court used the same reasoning as found in Kalitan, finding that the provision in section 766.118 imposing a cap on wrongful death noneconomic damages also violated the Equal Protection Clause of the Florida Constitution.

We've been asked to comment on what changes we might see in the Florida market in light of this new decision, including anticipated tort liability trends and whether liability insurance pricing or availability will be affected. First of all, it's important to note that since the 2014 McCall decision, the Florida healthcare community has already seen an increase in both the frequency and severity of malpractice cases. This has contributed to reduced profitability in the Florida medical malpractice insurance industry, as well as the first filed rate increases in over a decade. Now, with the most recent decision, there have been questions as to whether this trend will continue and/or worsen. Given that this new decision has been expected, we are hopeful that a substantial percentage of the changes that have already developed in the market resulted not just from the McCall decision, but also the expectation that all of the 766.118 caps would be declared unconstitutional in the near future.

Nonetheless, there is no way to predict the effects this case will have on the market, so we will be proactively observing developing trends carefully. If we see significant changes, we will let our Distribution Partners know. We also hope that our partners and clients will have the peace of mind that MedPro Group, as a Berkshire Hathaway company, is committed for the long-term, and has the financial stability to weather this or any storm that may arise in the future.

Thanks again for your continued partnership,



ERIC CLARK
Regional Vice President