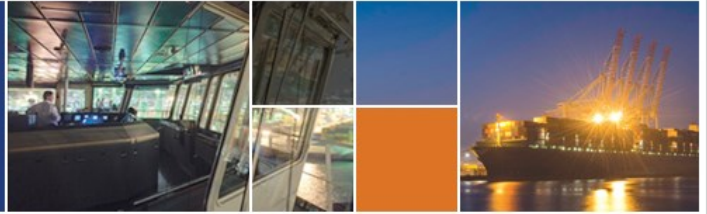




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Increased Exposure for Shipowners in Medical Malpractice Cases

September 2017

On 8th June 2017, in a close 4-3 opinion, the Florida Supreme Court found that non-economic damages caps in medical malpractice personal injury cases are unconstitutional.

The claimant, Susan Kalitan, brought suit against North Broward District Hospital (the *Hospital*) having been left severely injured as a result of complications arising during her carpal tunnel surgery.

The claimant was receiving outpatient treatment at the *Hospital* for her symptoms and her treatment required she undergo surgery and be placed under general anaesthesia. During preparation for the surgery intubation was necessary. Unfortunately, this procedure caused a perforation of the claimant's esophagus which ultimately resulted in life saving care being required.

A medical negligence claim was filed and the trial court jury concluded that the claimant had suffered a catastrophic injury in the form of a severe brain injury, awarding US \$4,718,011 in damages; with the non-economic portion of this equating to US \$4,000,000.

However, Florida Statute 766.118 provides for a US \$500,000 cap on non-economic damages in a cause of action for personal injury arising from the medical negligence of practitioners, although there is an exception in cases resulting in catastrophic injury, death or a permanent vegetative state. In such scenarios the damages may be increased.

By way of some background, the purpose of the Florida Legislature in enacting this statute was due to increases in medical malpractice insurance premiums which the Legislature believed was causing physicians to leave Florida, or to retire early, or simply to refuse to carry out high risk procedures. The consequent knock on effect being that the availability of health care in the State was deteriorating.

In light of this statute the court adjusted the judgement but applied the increased cap rule, for catastrophic injury, and reduced the award by close to US \$2M.

The claimant then brought an appeal before Florida's Fourth District Court of Appeal arguing that the application of such a cap was in violation of the right to equal protection as guaranteed by article 1, section 2 of the Florida Constitution. In other words they argued that it is unconstitutional to cap one person's damages but not that of another, in claims being pursued under an identical cause of action; this being medical malpractice.

The Florida Constitution declares that "*all natural persons, female and male alike, are equal before the law.*" Art. 1, § 2, Fla. Const. "*The constitutional right of equal protection of the laws means that everyone is entitled to stand before the law on equal terms with, to enjoy the same rights as belong to, and to bear the same burden as are imposed upon others in a like situation.*"

It goes on to say that "*Unless a suspect class [a class of individuals that have been historically subject to discrimination] or fundamental right protected by the Florida Constitution is implicated by the challenged provision, the rational basis test will apply to evaluate an equal protection challenge.*" To satisfy this "*rational basis test*" a statute must bear a rational and reasonable relationship to a legitimate state objective.

For guidance the court looked to the wrongful death action brought in the case of the *Estate of McCall v United States (McCall)*, where the Florida Supreme Court found that caps were unconstitutional in wrongful death medical malpractice claims. The Fourth District Court of Appeal applied the rationale in *McCall* to the personal injury context and directed the trial court to reinstate the total damages award as handed down by the jury.

An appeal by the *Hospital* to the Florida Supreme Court followed and they too examined the *McCall* case with reference to the "*rational basis test*" required to satisfy a challenge under the Florida Constitution.

In *McCall* the court had held there was no data to support the findings of the Legislature that a medical malpractice crisis was developing, or would remain, due to increased insurance premiums. The court stated that "*.....to reduce damages in this fashion is not only arbitrary, but irrational, and we conclude that it offends the fundamental notion of equal justice under law*" and "*...serves no purpose other than to arbitrarily punish the most grievously injured.....*" This being on the basis that those claimants suffering minor injuries would likely make full recovery of losses whereas those suffering severe injuries may not.

Having reviewed the *McCall* case the court then considered its applicability to the personal injury context.

The *Hospital* argued that the statutory caps in single claimant personal injury actions are constitutional and that the Fourth District erred in determining that the reasoning in *McCall* controls. However, the Florida Supreme Court disagreed stating that the cap was a violation of "*equal protection*" under the "*rational basis test*" because the arbitrary reduction of compensation without regard to the severity of the injury does not bear a rational relationship to the Legislature's stated interest in addressing the medical malpractice crisis.

The court further found that there was no evidence of a continuing medical malpractice crisis such that would justify the arbitrary application of the statutory cap and that it is irrational to single out the most seriously harmed medical malpractice claimants; especially given there is no mechanism in place to ensure that any savings are passed on from insurance companies to doctors by way of premium reductions.

Accordingly, the court concluded that the statutory caps under section 766.118 of the Florida Statute unreasonably and arbitrarily limit recovery of those most grievously injured by medical negligence, and that there was no longer a "*legitimate state objective*" to which the cap could "*rationality and reasonably*" relate. It further held that it was unconstitutional that the cap discriminates between different classes of claimants resulting in those with little non-economic damage being awarded their entire claim, whereas those claimants who need help the most, because their injuries are serious, life changing and disabling, see their awards reduced to the level of the cap.



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