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Case Comments: Miscellaneous

Fourth Circuit's decision is in accord with a majority of the other circuits and the fact that the decision supports the general rule of collateral estoppel that before an issue can be given preclusive effect it must be actually litigated, the majority's approach is the most reasonable. The effect of *Raynor* is that, in the Fourth Circuit, default judgments will not be given preclusive effect in discharge determinations in bankruptcy proceedings.

MISCELLANEOUS

Section 2053 of the Internal Revenue Code, 26 U.S.C. § 2053 (1988) (section 2053),[77] determines the expenditures that an administrator of a decedent's estate may deduct from the gross estate for federal estate tax purposes. Section 2053 states that the administrator may deduct from the gross estate all expenses qualifying as "administrative expenses." In Treasury Regulation section 20.2053-3, Treas. Reg. § 20.2053-3 (as amended in 1979) (Regulation 20.2053-3), the Treasury Department stated its official position on section 2053, and interpreted "administrative expenses" as including expenditures for managing the estate or distributing value to the beneficiaries.

Despite the Treasury's interpretation of section 2053, the circuit courts are split over whether courts should apply the Regulation as federal law, or apply the law of the taxpayer's state to determine what qualifies as an "administrative expense" under section 2053.[78] The Supreme Court has yet to interpret section 2053, but the Court has stated that federal courts are not bound by state court determinations of property interests in cases where federal estate tax liability turns on the character of a property interest held

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court could not invoke its equitable power to permit it to disregard preclusive effect of state court default judgment where judgment was obtained by creditor without fraud or collusion, but with strong dissent which follows reasoning of majority in *Raynor*).

77. Estate of Love, 923 F.2d 335 (4th Cir. 1991). *Love* was decided under the Internal Revenue Code of 1954 because it was in effect at the time of Ms. Love's death in 1983. *Id.* No change, however, has been made to section 2053(a) since 1954. Therefore it is appropriate to refer to section 2053(a) of the current enactment, the Internal Revenue Code of 1986.

78. For circuits holding that federal law controls interpretation of section 2053, see Hivernia Bank v. United States, 581 F.2d 741, 744 (9th Cir. 1978) (holding deference to state law cannot justify deduction of expenses which are not administration expenses under federal law); Estate of Smith v. Commissioner, 510 F.2d 479, 482 (2nd Cir.) (holding proper Tax Court's *de novo* examination of factual basis of claims because federal interest in revenue will not be completely reflected in state's interest to supervise executor), *cert. denied*, 423 U.S. 827 (1975); Pitner v. United States, 388 F.2d 651, 659 (5th Cir. 1967) (holding that deduction must be within limits set by federal law in addition to any requirement that the deduction be allowable under state law).

For circuits holding that state law controls interpretation of section 2053, see Estate of Jenner v. Commissioner, 577 F.2d 1100, 1106 (7th Cir. 1978) (holding that state court approval of deductibility of expenses controls); Estate of Park v. Commissioner, 475 F.2d 673, 676 (6th Cir. 1973) (holding that literal language of statute leaves to state law determination of deductible expenses).

and transferred by the decedent.[79] The federal courts, therefore, are free either to accept a state court's determination of an expenditure as an administrative expense, or to explore the issues *de novo*. Against this background, the Fourth Circuit decided in *Estate of Love*, 923 F.2d 335 (4th Cir. 1991), whether state or federal law should control the determination of deductibility.

In *Love*, the decedent, Margaret Love, died testate on March 22, 1983. During her lifetime, Ms. Love was involved in the business of breeding and racing thoroughbred horses. On January 6, 1983, Ms. Love entered into an agreement with an Irish breeder, Coolmore Stud, to breed one of her mares, located in France, with the breeder's stallion in Ireland. The agreement provided that each party would own a one-half interest in the resulting foal and would split the profits from the sale of the foal as a yearling. The agreement also provided that in the event of a "disaster" such as Ms. Love's death, her estate would buy Coolmore's share to enable the estate to sell the foal free of encumbrances. Fifteen days after the decedent's death, the mare became pregnant. In September of 1983, pursuant to the agreement between Ms. Love and Coolmore, Ms. Love's administrator paid Coolmore Stud $147,000, thereby extinguishing the foal sharing agreement and acquiring full ownership of the unborn foal. Ms. Love's will directed the administrator of her estate to liquidate her French operations, including the pregnant mare. Accordingly, the estate auctioned the pregnant mare in November of 1983 for $1,220,406.

In *Love*, the administrator of the estate claimed that although the obligation to purchase the one-half interest in the foal did not exist before the decedent's death because the mare was not yet pregnant, the court should allow $147,000 payment as a deduction for an administrative expense under section 2053(a)(2). Applying Maryland law, the Orphan's court for Baltimore County approved the deduction as an administrative expense. The Commissioner of Internal Revenue, however, disallowed the claimed deduction reasoning that purchase of the one-half interest in the foal was an improvement to the estate, not an administrative expense. To contest the Commissioner's decision, the administrator of the estate filed a petition in Tax Court seeking a redetermination of the $48,886 deficiency in estate tax. The Tax Court agreed with the Commissioner reasoning that the $147,000 payment was taxable because it was an expenditure for an improvement in the estate, not an expense required for administration. The Administrator then appealed to the Fourth Circuit.

The Fourth Circuit first addressed whether state or federal law controls the determination of an administrative expense under section 2053(a)(2). Although the Fourth Circuit's past cases had not directly addressed this issue, in *Commercial National Bank of Charlotte v. United States*, 196 F.2d

79. *See* Commissioner v. Estate of Bosch, 387 U.S. 456, 457 (1967) (holding that for federal income tax purposes federal courts are not bound by state court determination of property interest for federal income tax purposes).

182 (4th Cir. 1952), the Fourth Circuit stated in dicta that Congress' intent for application of the federal standard to section 2053 was uncertain because a court could construe the language of the section to mean that only state law controls. As a result of the lack of precedent, the *Love* court looked to other Circuits' resolutions of the issue. The *Love* court noted that the Sixth and Seventh Circuits hold state law controls,[80] while the Second, Fifth, and Ninth Circuits hold that policy considerations require that federal regulations controls interpretation of section 2053.[81] Faced with this conflict among circuits, the *Love* court followed the decisions of the Fifth and Ninth Circuits and held that federal law controls.

The *Love* court found persuasive the reasoning of the Fifth Circuit in *Pitner v. United States*, 388 F.2d 651 (5th Cir. 1967), that a state law determination that an expense is deductible is not dispositive. The deduction also must qualify as an administrative expense within the meaning of section 2053 and as reasonable under the circumstances. The *Pitner* court further stated that federal law must establish the outside limits as to whether an expense may be considered an allowable deduction under section 2053(a).

The Ninth Circuit expanded the policy of the Fifth Circuit in *Hibernia Bank v. United States*, 581 F.2d 741 (9th Cir. 1978), stating that federal estate tax applies to the transfer of property rather than the property itself. The taxable estate should consist of the value of all the assets that actually pass to the heirs. Accordingly, courts should allow deductions only for true administrative expenses, expenses incurred in the management of the estate. Because the Ninth Circuit rule requires taxation of all property transferred to heirs, the rule upholds the Congressional intent to tax transfers under section 2053. In *Hibernia*, the Ninth Circuit concluded that to allow the deduction of expenditures not necessary to the estate is unfair, and that courts uphold the intent of the statute most effectively by following the Treasury's interpretation of section 2053 in Regulation 20.2053-3. Regulation 20.2053-3(a) states that the amounts deductible from a decedent's gross estate as administrative expenses are limited to those expenses "actually and necessarily incurred in the administration of the decedent's estate." Deductible expenses include: costs incurred in the collection of assets, payment of debts, and the distribution of property to the beneficiaries. The Treasury intended that this definition of administrative expense exclude expenditures that are for the purpose of managing the assets of the estate or distributingvalue to the heirs.

Following the lead of the Fifth and Ninth Circuits, the *Love* court held that any state court decision regarding the classification of expenses, whether based on federal or state law, does not bind a federal court. The *Love*

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80. *See* Estate of Jenner v. Commissioner, 577 F.2d 1100, 1106 (7th Cir. 1978) (holding that state law controls determinating of whether expenses are administrative expenses under § 2053).

81. *See* Hivernia Bank v. United States, 581 F.2d 741, 744 (9th Cir. 1978) (holding that federal law controls determination of whether expenses are administrative expenses under § 2053); Estate of Smith v. Commissioner, 510 F.2d 479, 479 (2d Cir.) (same), *cert. denied*, 423 U.S. 827 (1975); Pitner v. United States, 388 F.2d 651, 659 (5th Cir. 1967) (same).

court, therefore, decided that federal law, specifically Regulation 20.2053-3(a), controls a court's determination of whether an expense is deductible from the decedent's gross estate. The *Love* court next applied Regulation 20.2053-3 to the facts of the case.

The *Love* court found that of the three categories of "administrative expenses" outlined in Regulation 20.2053-3(a), the $147,000 payment fell into the "miscellaneous expense" category rather than "attorney fees" or "executor's commissions" categories. The *Love* court also found that expenditures that other courts generally have considered to be "miscellaneous expenses" include court costs, surrogates' fees, accountants' fees, and appraisers' fees. Furthermore, expenses necessarily incurred in preserving and distributing the estate are deductible, but expenses incurred in improving or enhancing the estate are not. To be deductible, therefore, the $147,000 paid for the half interest in the foal would need to be similar to other expenditures classified as "miscellaneous expenses".

The *Love* court found that the payment the Estate was attempting to deduct clearly was not the sort of expense contemplated by the statute or the regulation as a miscellaneous expense. Specifically, payment for the foal was not in the nature of a fee payable to persons who help to administrate the estate. Rather, the acquisition of a half interest in the foal constituted an addition to the estate. The payment, therefore, was no more of an expense than the acquisition of any other asset by the estate. The $147,000 payment was an exchange merely for an additional half interest in the foal, not a reduction of the value of the gross estate. The *Love* court found that taxation under section 2053 is inappropriate when the estate spends money, but is appropriate when the estate passes value to the beneficiaries. The court concluded that the purchase of the half interest in the foal was an acquisition whose value was to be passed on to the beneficiaries and, therefore, taxation of the $147,000 was appropriate pursuant to section 2053 and Regulation 20.2053-3. The *Love* court affirmed the order of the Tax Court that the Estate pay a $48,886 deficiency in estate taxes.

The *Love* opinion brings the Fourth Circuit into accord with the Second, Fifth, and Ninth Circuits holding that federal law controls the determination of whether an expenditure may be classified as an administrative expense. This result is consistent with federal policy of equal application of the tax laws. To eliminate the present split in the Circuits, the decision whether courts should interpret section 2053 according to federal or state law must be resolved by Congress or the United States Supreme Court.

In *St. Paul Fire & Marine Insurance Co. v. Vigilant Insurance Co.*, 919 F.2d 235 (4th Cir. 1990), the Fourth Circuit considered whether Vigilant Insurance Co. breached its duty to defend by refusing to defend its insured against a suit wherein the plaintiff pleaded actionable conduct during the term of Vigilant's policy. Vigilant argued that its refusal to defend was justified because there was substantial evidence indicating that the conduct actually had occurred after the policy had terminated. The Fourth Circuit also considered whether, assuming Vigilant breached its duty to defend, Vigilant nevertheless could contest issues of liability and apportionment. In 1975, James E. Collins, M.D., contracted with Vigilant Insurance Co. for coverage under an "occurrence" professional liability policy which was in effect from May 1, 1975 to May 1, 1976. After the policy with Vigilant terminated, St. Paul Fire & Marine Insurance Co. insured Dr. Collins from May 1, 1976 to March 1, 1980 under a professional liability policy. Mrs. Bonnie Carol Gwyn began consulting with Dr. Collins in 1976 and continued treatment with Dr. Collins into 1977. In her pleadings, Mrs. Gwyn did not specify the exact date on which the tortious conduct began. In her deposition, however, Mrs. Gwyn stated that her first physical contact with Dr. Collins was a hug in May of 1976 (although Mrs. Gwyn later signed an affidavit that the first sexual contact had occurred in April of 1976).

Mrs. Gwyn filed suit in North Carolina state court on December 17, 1984 and alleged that Dr. Collins had abused their doctor-patient relationship and thereby caused her mental, physical and emotional trauma as well as damage to her marital relationship. The Fourth Circuit voluntarily dismissed on September 19, 1985 and Mrs. Gwyn later re-instituted the suit on the same grounds in October of 1985. The complaint alleged that during Mrs. Gwyn's treatment with Dr. Collins in 1976 and thereafter, Dr. Collins abused their physician-patient relationship and induced the plaintiff to engage in a sexual relationship with him. The plaintiff's husband, Mr. Gwyn, filed a separate suit against Dr. Collins on April 22, 1987 for criminal conversion, alienation of affection, malpractice, and intentional infliction of emotional distress arising out of the same conduct.

Because of the confusion surrounding the date that the tortious conduct began, Vigilant agreed to participate in the defense of Dr. Collins in the suit filed by Mrs. Gwyn, but did not contribute to the settlement. With respect to Mr. Gwyn's suit against Dr. Collins, Vigilant offered to participate in defense of Dr. Collins, but only if Dr. Collins and St. Paul agreed to a full reservation of Vigilant's right to deny coverage. Dr. Collins and St. Paul refused and, consequently, Vigilant refused to participate in the defense.

On May 25, 1987, St. Paul brought against Vigilant an action for contibution in district court for the expenses incurred in the defense and settlement of the Gwyns' claims against Dr. Collins. Vigilant counterclaimed for a declaratory judgment absolving the Vigilant of any such obligations. The district court granted summary judgment in favor of St. Paul and ordered Vigilant to pay one-half of the defense costs and the full amount of its policy limits. The district court did not, however, find in favor of St. Paul on its claim for prejudgment interest.

Vigilant appealed to the Fourth Circuit, arguing that Vigilant did not breach its duty to defend because the allegations of the underlying complaints indicated that the tortious conduct occurred after its policy expired. Following the North Carolina Supreme Court's ruling in *Waste Management of Carolinas v. Peerless Insurance Company*, 340 S.E.2d 374 (N.C. 1986), the Fourth Circuit stated that the insurer's duty to defend is gauged by the facts as alleged in the pleadings. The insurer is absolved of its duty to defend only if the facts are indisputable that conduct is not covered by the policy. The Fourth Circuit relied on the "comparison test" as outlined in *Waste Management* whereby "the pleadings are read side-by-side with the policy to determine whether the events alleged are covered or excluded." Accordingly, the Fourth Circuit found that, because the pleadings did not specify the dates on which the tortious acts occurred, Vigilant could not indisputably assert that none of the tortious conduct occurred during the term of its policy. Additionally, the Fourth Circuit found that the action could have arisen out of the Dr. Collin's abuse of the entire physician-patient relationship beginning with the first visit.

Vigilant also argued that, even if Vigilant did breach its duty to defend, Vigilant should not be prohibited from contesting the extent of its liability, which was contingent upon the quantity of tortious conduct that occurred prior to the expiration of the Vigilant policy. In addressing the quantity of conduct issue, the Fourth Circuit analogized this case to *Ames v. Continental Casualty Company*, 340 S.E.2d 479 (N.C. 1986), wherein an insurer breached its duty to defend and later argued that part of the claim occurred outside its policy coverage. Relying on *Ames*, the Fourth Circuit held that once an insurer breaches its duty to defend, the insurer is estopped from denying coverage and obligated to compensate the insured for any good faith settlement with the plaintiff. Vigilant further argued that estoppel could not be used to create insurance coverage extending beyond the scope of the policy contract. The Fourth Circuit rejected this argument because of the factual similarity between the case under consideration and *Ames* and uphold the district court's ruling that Vigilant, by breaching its duty to defend, had waived its right to contest liability.

The Fourth Circuit next addressed the issue of apportionment of liability and held that Vigilant should compensate St. Paul for one-half of the defense costs. The Fourth Circuit also agreed with the district court's finding that Vigilant and St. Paul were liable equally for the costs of the settlement and, therefore, Vigilant should pay one-half of the settlement costs to St. Paul. The Fourth Circuit, however, disagreed with the district court's methodology in arriving at the settlement ruling. The district court, in following the procedure utilized in *Ames*, was guided in this question by the language of the "other insurance" clause of the breaching insurer's policy. This clause establishes the insuror's liability on claims that are also covered by other insurance policies. The district court utilized the "other insurance" clause of Vigilant's policy to determine Vigilant's liability given that the claim was also covered by the St. Paul policy. The Fourth Circuit found, on the other hand, that *Ames* depended on the "other insurance" clause only to determine the limits of the breaching insurer's policy limits and nothing more. The Fourth Circuit reasoned that the district court was inconsistent when it denied a breaching insurer from disputing liability based on the terms and conditions of its policy and then used these same clauses to award damages. Furthermore, the Fourth Circuit relied on two North Carolina cases, *The City of Greensboro v. Reserve Insurance Co.*, 321 S.E.2d 232, 237-8 (N.C. 1984), and *Horace Mann Insurance Co. v. Con-*

tinental Casualty Co., 284 S.E.2d 211, 212 (N.C. 1981), both of which held that in those situations where two policies overlap or are concurrent in term the "other insurance" clauses would be at issue. The Fourth Circuit inferred from these cases that because St. Paul and Vigilant's policies were not concurrent, the "other insurance" clauses were not applicable in this case.

The Fourth Circuit held that, as a matter of equity, Vigilant should be required to pay one-half of the defense and settlement costs to St. Paul. The Fourth Circuit reasoned that had Dr. Collins not been insured with St. Paul, Vigilant would have been required to pay the full amount of the defense and settlement. In addition, the Fourth Circuit stated that for Vigilant to pay less than St. Paul when St. Paul fulfilled its duties and Vigilant had not would be unjust.

The Virginia General Assembly enacted the Virginia Medical Malpractice Act (VMMA) in 1976. Codified in part as section 8.01-581.15 of the Virginia Code, the VMMA establishes a $750,000 damage cap on medical malpractice claims against a health care provider licensed by the Commonwealth of Virginia. In *Starns v. United States*, 923 F.2d 34 (4th Cir. 1991), *cert. denied*, 110 S. Ct. 54 (1991), the United States Court of Appeals for the Fourth Circuit considered whether the VMMA statutory cap applies to federally operated hospitals not licensed by the State of Virginia.

The plaintiffs in *Starns* filed a medical malpractice action in the United States District Court for the Eastern District of Virginia against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680 (1988), for the negligent care administered to their infant son, Jeffrey, at the DeWitt Army Community Hospital (DeWitt) after his birth. The day following Jeffrey's discharge from DeWitt, he was rushed to Walter Reed Army Medical Center where emergency surgery was performed to arrest an intercranial hemorrhage. Jeffrey suffered severe, permanent mental and physical injuries as a result of the medical treatment he received at DeWitt, including: loss of capacity to reason; permanently reduced intelligence quotient; hydrocephalus (water on the brain); poor coordination; seizures; reduced visual capacity; and a probable inability to obtain competitive employment. The United States conceded that the staff at DeWitt acted negligently in failing to diagnose and treat Jeffrey's intercranial bleeding and that the staff's negligence caused his injuries. In addition, the parties stipulated to calculations of Jeffrey's projected costs for future medical treatment, education, therapy, care, housing, and pain and suffering in the amount of $4.6 million. The United States contended that DeWitt was entitled to the benefit of the VMMA cap. The plaintiffs, Mr. and Mrs. Starns, argued that the cap should not be applied to limit the liability of the federal government.

Finding no controlling precedent in the Virginia courts on whether the Virginia statutory cap applied to the federal government to limit the plaintiffs' recovery, the Eastern District certified to the Supreme Court of Virginia the following questions: First, whether the medical malpractice cap set forth in section 8.01-581.15 of the Virginia Code violates either the Virginia or the United States Constitution, or both; second, whether the medical malpractice cap applies to all three plaintiffs collectively or to each of the plaintiffs individually; third, whether the VMMA cap applies to this case, given that the DeWitt hospital is federally operated and not licensed by the Commonwealth of Virginia. In an unpublished per curiam opinion, the Virginia Supreme Court (1) found the VMMA cap constitutional under both the Virginia and federal constitutions, (2) refrained from answering whether the statutory cap applies to all the plaintiffs collectively or to each plaintiff individually, and (3) held that the malpractice cap did not apply to federally operated hospitals not licensed by the Commonwealth of Virginia.

Despite the Virginia Supreme Court's ruling that the statutory cap does not apply to federal hospitals not licensed by the Commonwealth, the federal district court applied the cap to the plaintiffs' action. The court reasoned that the intent of the Virginia legislature not to apply the VMMA cap to federal hospitals is irrelevant to the issue of the federal government's liability in an FTCA suit. The district court then applied the cap to Jeffrey and his parents separately, resulting in an award of $750,000 to Jeffrey and, in addition, $295,780 to Mr. and Mrs. Starns for the value of their past services rendered to Jeffrey, their lost wages, and hospital, doctor and travel expenses incurred on their child's behalf. The court also awarded post-judgment interest to the Starnses running from the date of the district court's judgment. The Starnses appealed to the United States Court of Appeals for the Fourth Circuit, alleging error in the district court's determination that the VMMA cap limits the liability of the federal government. The United States also appealed, challenging the district court's application of the cap to the plaintiffs individually and the court's calculation of post-judgment interest.

In determining whether the district court correctly held the VMMA cap applicable to federal hospitals, the Fourth Circuit began its analysis by noting that the VMMA cap applies to malpractice actions against health care providers licensed by the Commonwealth of Virginia. The plaintiffs argued that because the definition of health care provider includes only facilities licensed by Virginia, the cap does not apply to limit the liability of federally operated hospitals not licensed by the commonwealth.[82] The Fourth Circuit, following *Lucas v. United States*, 807 F.2d 414 (5th Cir. 1986), reasoned that the Starnses' argument overlooked the fact that the FTCA, not the VMMA statutory cap, provided the source of the government's liability. The Fourth Circuit then noted that in a suit brought pursuant to the FTCA, a plaintiff may recover only to the extent the federal government has waived its sovereign immunity. While Virginia law informs how a private party is treated, Virginia law cannot decide the extent to which the federal government has waived its sovereign immunity. By in-

82. *See* VA. CODE ANN. § 8.01-581.1(1) (Michie 1984 & Supp. 1991) (defining "health care provider" as "a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services").

cluding only Commonwealth-licensed institutions under the coverage of the VMMA liability limit, Virginia was simply acknowledging the limit of the Commonwealth's legislative power. However, the FTCA assures the federal government of the same treatment accorded private parties within a state.[83] Accordingly, the Fourth Circuit concluded that because private health care providers licensed in Virginia are entitled to the benefit of the VMMA cap, a federally operated hospital must be accorded precisely the same treatment.

Although the Fourth Circuit agreed with the lower court's decision to apply the cap, the court concluded that the Eastern District of Virginia had erroneously applied the VMMA cap to the claims of Jeffrey and his parents. The district court had applied the cap to Jeffrey and his parents separately, resulting in awards of $750,000 and $295,780, respectively, for a total of $1,045,780. The Fourth Circuit cited its decision in *Boyd v. Bulala*, 905 F.2d 764 (4th Cir. 1990), which determined that the VMMA cap establishes a limit on the total damages recoverable from any single patient's injury regardless of the number of derivative claims and claimants. Based on *Boyd* the court held that because the $295,780 in damages awarded by the district court to Mr. and Mrs. Starns were derivative of Jeffrey's claim, the Starnses' claims must be included within Jeffrey's cap. By deciding that all claims arising out of Jeffrey's injuries were subject to one statutory cap, the Fourth Circuit limited both the Starnses' recovery and the government's liability under the VMMA to $750,000. The Fourth Circuit then addressed how to reduce the aggregate trial award to reach the cap level where, as in *Starns*, the aggregate award exceeded the statutory cap. Again following *Boyd*, the court determined that damages awards in excess of a liability cap should be abated in the following order: first, awards based on derivative claims of others; next, punitive damages awarded to the patient; and last, compensatory damages awarded to the patient. Applying this order of abatement to the claims of Jeffrey and his parents, the Fourth Circuit simply annulled the derivative claims of Mr. and Mrs. Starns because the compensatory claims of Jeffrey alone exceeded the VMMA cap of $750,000.

The final issue that the Fourth Circuit addressed concerned the contention by the United States that the district court further erred in its calculation by awarding post-judgment interest running from the date of judgment. The Fourth Circuit noted that just as liability cannot be imposed on the federal government without a waiver of statutory immunity, a court cannot award interest against the government in an FTCA suit in the absence of express statutory authority. The section authorizing payment of interest against the United States in an FTCA action is 38 U.S.C. section 1304(b)(1)(A), which provides that interest may be paid on a judgment of a district court only when the judgment becomes final after review on

83. *See* 28 U.S.C. § 2674 (1988) (providing that federal government "shall be liable, . . . in the same manner and to the same extent as a private individual under like circumstances"); 28 U.S.C. § 1346(b) (1988) (measuring government's liability "in accordance with the law of the place where the [negligent] act or omission occurred").

appeal. Accordingly, the Fourth Circuit reversed the district court's calculation of post-judgment interest and remanded for a recalculation consistent with section 1304(b)(1)(A).

By affirming the district court's determination that federal hospitals are entitled to the benefit of the VMMA liability cap, the *Starns* decision brings the Fourth Circuit in line with other circuits that have found similar limitations on recovery which purport to apply only to state-licensed health care providers to apply to the United States in suits under the Federal Tort Claims Act.[84] By doing so, these cases potentially prevent a much broader class of malpractice victims from receiving full recovery. Indeed, in extreme cases legislatively imposed damage limitations arguably effect an abrogation of a victim's constitutionally guaranteed right of redress. Recognizing, however, that excessive amounts paid out in malpractice judgments to a few individuals tend to have the effect of making medical and health care both less affordable and less accessible to the average citizen, the Fourth Circuit in *Starns* justifiably viewed the extension of Virginia's liability cap to federally operated hospitals as a restrained response to an acute problem in medical care.

84. *See* Reilly v. United States, 863 F.2d 149, 161-63 (1st Cir. 1988) (holding Rhode Island statute limiting liability applicable to federal government in FTCA action); Taylor v. United States, 821 F.2d 1428, 1431 (9th Cir. 1987) (allowing federal government to avail itself of California statute limiting damages), *cert. denied*, 485 U.S. 992 (1988); Lucas v. United States, 807 F.2d 414, 417 (5th. Cir. 1986) (extending analogous Texas statute limiting patients nonmedical damages in medical malpractice action to federal government); Scheib v. Florida Sanitarium & Benev. Ass'n, 759 F.2d 859, 861 (11th Cir. 1985) (applying similar Florida statute deducting amounts received by plaintiffs in medical malpractice actions from collateral sources to reduce federal sovereign's liability); *see also* Carter v. United States, 768 F. Supp. 670, 673 (N.D. Ind. 1991) (citing *Starns* line of cases with approval).