Update from Washington
Linda A. Lipsen
CEO, AMERICAN ASSOCIATION FOR JUSTICE

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We won another round in the fight against asbestos K

AND WE CONTINUE TO FIGHT AGAINST FEDERAL PREEMPTION AND FORCED ARBITRATION

I have wonderful news to share. On March 28, the United States Environmental Protection Agency (EPA) published its rule banning many uses of chrysotile asbestos within two years, finding that it poses an unreasonable risk of mesothelioma. This has been an AAJ priority since the asbestos industry overturned EPA's 1989 asbestos ban – leading to the unnecessary deaths of thousands of consumers and workers.

AAJ submitted comments supporting the proposed ban, and we applaud the EPA and the Biden Administration for this major step forward. Industry may challenge the rule in the courts. However, the EPA's unequivocal finding should put decades-old industry denials to rest. While this rule gives the industry years to comply, we hope the industry will quickly comply with the new rule and limit all future exposures.

The EPA released a draft risk evaluation of legacy asbestos on April 15. As we continue to review the evaluation, we will keep our members updated. AAJ will work with our members to submit comments due by June 16 to the EPA draft risk evaluation.

Fighting preemption

AAJ is fighting efforts by pesticide manufacturers, such as Bayer's Monsanto, to block failure-to-warn claims through preemption. Bayer is advocating for federal legislation that would preempt state statutory and common law with respect to pesticide use or labeling, including carcinogenicity classification.

Preemption could remove protections for communities nationwide, potentially limiting accountability for manufacturers who fail to adequately warn consumers about the hazards from high-risk pesticides.

Corporations are also trying to get their way by lobbying state legislatures (see next page). AAJ was recently featured in several articles about states that are considering shielding pesticide manufacturers from lawsuits.

Senate judiciary hearing on forced arbitration

On April 9, the Senate Judiciary Committee held a Congressional hearing on forced arbitration. The hearing included testimony from former Fox News journalist, Gretchen Carlson; Professor Myriam Gilles; Victor Schwartz; and age-discrimination victim, Joanne Grace.

This consensus hearing sent a powerful message that ending forced arbitration remains an important bipartisan priority. Judiciary Chair Dick Durbin (D-IL) and Ranking Member Lindsey Graham (R-SC) reiterated that Congress must continue working towards restoring an individual's liberty to choose whether to proceed in court or arbitration when they are hurt.

Two years ago, Congress overwhelmingly voted to pass the Ending Forced Arbitration for Sexual Harassment and Sexual Assault Act, restoring sexual assault and harassment survivors' right to access the courts. But everywhere else, from nursing home contracts, to credit card paperwork, to workplace employment agreements, individuals are still forced into arbitration by hidden language they had no idea existed.

AAJ applauds the Senate Judiciary Committee's continued commitment to shining a light on the injustices of forced arbitration. AAJ will continue to fight to restore your clients' rights.

AAJ Legal Affairs

AAJ's amicus curiae briefs help to ensure that access to justice is rigorously defended in federal and state courts. Below are some recent highlights

California affirms nursing facility arbitration agreements are not healthcare decisions

The Supreme Court of California unanimously held that a statutory "power of attorney for health care" does not confer authority to agree to arbitration of claims against a skilled nursing facility, *Harrod v. Country Oaks Partners,LLC* (Cal. Mar. 28, 2024) No. S276545, 2024 WL 1319134. The high court held that the decision regarding the resolution of legal disputes "is not a health care decision," and the advanced healthcare directive at issue only authorized the durable power of attorney to make decisions affecting the plaintiff's physical health and well-being. AAJ, Consumer Attorneys of California (CAOC), Public Justice, and Compassion & Choices filed a joint amici curiae brief urging the high court to interpret advance healthcare directives narrowly to preserve the personal autonomy of skilled nursing facility residents.

Recent amicus brief highlights

- ***Painters & Allied Trades Dist. Council 82 Health v. Takeda Pharm. Co. Ltd.*** (9th Cir. No. 23-55742) – On April 11, AAJ filed an amicus curiae brief authored by Matthew Wessler and Linent Davis-Stermitz, Gupta Wessler LLP, in a first-of-its-kind national civil RICO class action brought by third-party payors against two manufacturers of purportedly carcinogenic type II diabetes drugs. AAJ's brief urges the Ninth Circuit to hold that the use of aggregate – rather than individualized – evidence to establish the existence of a class-wide issue for certification is a common and irreplaceable aspect of class action litigation.
- ***Argentine Republic v. Petersen Energia Inversora, S.A.U.*** (2d Cir. No. 23-7370) – On April 1, AAJ filed an amicus curiae brief authored by Robert S. Peck, Center for Constitutional Litigation PC (Washington, D.C.), in a breach-of-contract action brought on behalf of shareholders in Argentina's flagship oil and gas company. AAJ's brief urges the Second Circuit to hold that companies who solicit investment from U.S. investors on the NYSE should be held to their representations that they will act in accordance with U.S. securities regulations.
- ***In Re: Nissan North America, Inc. Litigation*** (6th Cir. No. 23-5950) – On April 3, AAJ filed an amicus curiae brief authored by Senior Associate General Counsel Jeffrey R. White, urging the Sixth Circuit to reject an extreme defense bar proposal that would upend the commonality requirement under Rule 23 by requiring district courts to assess the sufficiency of individual plaintiffs' evidence before certifying a class.

Earlier this year, Bayer advocated for legislation in Idaho that would provide immunity for failure to warn claims for products approved under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). If enacted into law, this bill would have provided complete immunity for products using glyphosate, which includes Bayer/Monsanto's Roundup.

The deck was immediately stacked against the Idaho Trial Lawyers Association (ITLA). Bayer/Monsanto operates a phosphate mining and processing plant in Soda Springs, Idaho. In fact, the senator for that district was the sponsor of the bill. It was clear from watching the proceedings and introduction of the bill that Bayer had written it for the senator and handed it to him.

At a later hearing, the same senator turned to a Bayer lobbyist and invited him to the podium to field questions from committee members.

AAJ's State Affairs department worked with ITLA to build a plan to oppose the legislation. ITLA and AAJ members and advocates in Idaho worked to inform legislators about the impact of this legislation on farmworkers, those exposed to dangerous products, and crops.

ITLA has done an incredible job going up against a major multinational corporation. AAJ is proud to partner with them in their efforts. AAJ State Affairs Senior Counsel for Policy and State Affairs Daniel Hinkle testified at an Idaho senate hearing, and our Communications department educated the media on the impact of this bill. Their combined work paid off.

We saw legislators express concerns that immunity would harm their constituents and communities. There were multiple times where we thought the bill was dead only for it to come back to life under pressure from Bayer.

On April 3, the Idaho senate held its last hearing of the session and recessed until next week when they will come back for final votes and adjourn sine die. The Bayer immunity bill will likely not become law in Idaho this year. Bayer is also pushing this legislation in Iowa and Missouri.

We hope the strategic partnering with ITLA will lead to successful battles in other states to protect access to justice.