



Update from Washington

Linda A. Lipsen

CEO, AMERICAN ASSOCIATION FOR JUSTICE

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE

June 2024

Tort reform is again called for by insurers

ALSO: A RUNDOWN OF STATE SUPREME COURT RULINGS ON PUNITIVE DAMAGE CAPS

On May 7, the insurance industry threw down the gauntlet, calling for a prolonged tort-reform campaign. The chairman and CEO of Chubb Ltd., Evan Greenberg, during the RISKWORLD conference in San Diego, described how he'd like to handle inflation, jury verdicts, and settlements: "Corporations should prepare to fund, with support from insurers, a long-term tort reform campaign to halt the trend [of rising verdicts and settlements] ... It's going to take money. It's going to take talent. It's going to have to be approached like a long-term political campaign."

This call for tort reform is the biggest threat that trial lawyers have faced since the George W. Bush administration. Our opponents are determined to obliterate your clients' rights and shut down your practices. We must be united so we can fend off these outrageous attacks.

AAJ State Affairs

Multiple state supreme courts have declared caps on damages unconstitutional. AAJ's Legal Affairs team has partnered with many of these state TLAs to bring these challenges. And AAJ State Affairs continues to work with TLAs to fight caps in legislatures. In the past three years, New Mexico, California, and Nevada have raised their caps on noneconomic damages in medical malpractice cases. Several other TLAs are attempting to raise or overturn caps through legislative or judicial means or through ballot initiatives.

And just this month, the Colorado Trial Lawyers Association (CTLA) achieved a major victory with a legislative compromise that will raise that state's noneconomic damage caps in general liability cases to \$1.5 million, which will be adjusted for inflation every two years starting in 2028. It will also increase the wrongful death cap in general liability claims to \$2.125 million, which will be adjusted for inflation every two years starting in 2028. Siblings and siblings' heirs will be allowed to file these wrongful-death claims. It will raise noneconomic damages caps in medical malpractice cases to \$875,000, which will be adjusted for inflation every two years starting in 2030, and increase the wrongful death cap in medical malpractice cases to \$1.575 million, which will be adjusted for inflation every two years, starting in 2030. Siblings and siblings' heirs will be allowed to file these med-mal claims.

While the tide has turned against caps on damages, and voters strongly oppose them, wrongdoers and their insurers are still attempting to enact them. The trucking industry is pushing state legislation that would cap damages in truck-crash cases. The Iowa Association for Justice heavily modified the bill that the trucking industry proposed in 2023, but it was enacted into law. Another modified trucking-caps bill was enacted in West Virginia in 2024, and the governor vetoed a similar bill in Wisconsin. Washington, D.C. recently defeated a proposal that would cap damages in dram shop cases, and Florida defeated an amendment that would have capped noneconomic damages in medical malpractice cases at \$500,000.

Age discrimination forced-arbitration bill passes out of committee

I'm pleased to report that the Senate Judiciary Committee favorably reported out S. 1979, the Protecting Older Americans Act (POAA), legislation that would end forced arbitration for age-discrimination cases.

POAA passed out of the Senate Judiciary Committee on a bipartisan basis by a 15-6 vote. Chair Dick Durbin (D-IL) and Ranking Member Lindsey Graham (R-SC), along with Senators Whitehouse (D-RI), Klobuchar (D-MN), Coons (D-DE), Blumenthal (D-CT), Hirono (D-HI), Booker (D-NJ), Padilla (D-CA), Ossoff (D-GA), Welch (D-VT), Butler (D-CA), Grassley (R-IA), Hawley (R-MO), and Kennedy (R-LA), all voted in favor of POAA.

This bipartisan, bicameral legislation is modeled after the Ending Forced Arbitration for Sexual Assault and Sexual Harassment Act, legislation that passed last Congress, amending the Federal Arbitration Act to preclude forced arbitration for sexual harassment and sexual assault cases.

AAJ Legal Affairs

SCOTUS rejects defense calls for FAA exemption limitations

The U.S. Supreme Court unanimously expanded the "class of workers engaged in foreign interstate commerce" that are exempt from employment arbitration agreements, *Bissonnette v. LePage Bakeries Park St., LLC* (2024) 601 U.S. 246. The opinion, authored by Chief Justice Roberts, expands upon the Court's holdings in *Southwest Airlines Co. v. Saxon* and *New Prime Inc. v. Oliveira*, and affirms that the exempt "class of workers" is defined by the work they perform, rather than the industry of their employer. The brief closely aligns with AAJ's amicus curiae brief, which was authored by Gerson H. Smoger, Smoger & Associates (Dallas, TX).

Recent amicus brief highlights

- ***Speerly v. Gen. Motors, LLC*** (6th Cir. No. 23-01940) – On April 25, AAJ filed an amicus 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. AAJ also filed a companion brief on a similar issue in the 6th Circuit last month.
- ***Columbia Legal Servs. v. Stemilt AG Servs., LLC*** (9th Cir. No. 23-358) – On May 8, AAJ filed a joint brief with Public Justice and the ACLU of Washington in support of a class of farmworkers and the public interest law firm that represents them, urging the Ninth Circuit to vacate a blanket protective order that required court authorization before any discovery in their case could be used in other advocacy.

Federal Rules Update

Revised versions of two significant proposed changes to the Federal Rules of Civil Procedure are set for final approval this June, including a new rule on the initial management of MDLs, and amendments that would encourage early consideration of privilege-log issues by courts and parties.

Throughout the six-month formal public comment period, AAJ members provided exceptional comments and testimony to the Advisory Committee on Civil Rules, giving important information and unique perspectives on the real-world implications of the proposed rule changes. The hard work of plaintiff attorneys paid off – the revised proposals reject extreme defense proposals and adopt many of the recommendations suggested by AAJ members. If the approval process continues uninterrupted, the new rules will take effect December 1, 2025.