



Update from AAJ

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WASHINGTON UPDATE

As we begin the new year, I would like to thank you for your continued support. AAJ values its partnerships with the state TLAs, and we look forward to strengthening those relationships in 2020.

While geopolitical events and impeachment currently consume Congress, AAJ remains committed to fighting for your clients' rights and is pushing ahead with a proactive legislative agenda in the coming year. With you by our side, I am confident that a bright future is on the horizon for your practices, your clients' rights, and our civil justice system.

Below, you'll find some recent highlights of AAJ's advocacy on behalf of you and your clients.

New Military Claims Act right for servicemembers

AAJ has been fighting for years to overturn the *Feres* doctrine, a 1950 Supreme Court decision which prohibits active-duty military personnel from bringing claims under the Federal Tort Claims Act (FTCA). I am pleased to report that the National Defense Authorization Act became law in late December 2019 and included a provision that allows active-duty military to seek redress from the Department of Defense (DOD) when they are injured and killed – not from wounds on the battlefield – but when they are medically malpracticed on in military hospitals. Under this provision, a new statutory section under the Military Claims Act allows active-duty servicemembers to bring personal injury claims (or their surviving family to bring wrongful death claims) through an administrative claims process against the DOD for medical malpractice by a DOD healthcare employee (uniformed or civilian) if committed at a military treatment facility. There will be a rulemaking to fill in the details of how the administrative claims process will work.

While we were advocating for a complete repeal of *Feres*, we have obtained a provision which is a good start toward fixing the problem and a significant step forward for servicemembers and their families. Active-duty military can now seek economic and non-economic damages for their injuries from medical malpractice. It is clearly indicated in the provision that servicemembers will not lose their benefits if they decide to pursue a claim. In addition – for the first time in almost 70 years – Congress recognizes that medical malpractice is a problem at military medical facilities, and increased reporting requirements on these new claims will bring more transparency to military healthcare. Finally, the government is conceding medical malpractice claims are not “incident to service” and are therefore recoverable. The new provision opens the door on claims – and on the *Feres* doctrine – by finally questioning the reasoning of claims “incident to service.”

House passes PFAS legislation

Robust legislation that includes a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) designation has been a longstanding priority for AAJ and members of Congress on both sides of the aisle representing districts deeply impacted by “forever chemicals,” Per- and Polyfluoroalkyl Substances (PFAS). H.R. 535, the PFAS Action Act of 2019, was voted out of the House on January 10, 2020, by a vote of 247 to 159. House Democrats were joined by 24 House

Republicans, sending the bill to the Senate for final approval. However, it is uncertain whether the Senate will take action at this time.

PFAS chemicals have been used in a variety of industries in the United States since the 1940s. The chemicals pose serious risks to human health and can be found in food, commercial household products, and drinking water. Regulating these chemicals as toxic substances under CERCLA will allow the EPA to require parties responsible for PFAS contamination to undertake cleanup efforts or to release federal funding to the agency to pay for cleanup efforts when responsible parties either no longer exist or are incapable of taking on remediation efforts. An amendment by Republican Congressman Burgess (TX), that intended to strip the legislation of the CERCLA designation was voted down, with 22 Republicans voting against the amendment.

House hearing on asbestos in talc-based products

On December 10, 2019, the House Oversight Subcommittee on Consumer Products held its second hearing on the issue of asbestos in talc-based products and focused on the best methods for asbestos testing in cosmetic products. The committee heard from three doctors and a pastor who is dying of mesothelioma – which was the result of baby powder usage. All the witnesses advocated for a ban on talc in cosmetic products.

AAJ is working to educate the committee and members of Congress about the dangers of asbestos in talc as well as ensuring that cosmetic products are safe.

Rules update

We've also included an update on federal rule changes, as the same rules often are adopted at the state level.

Rulemaking on disclosure statements

As you may recall, the Advisory Committee on Civil Rules (Advisory Committee) has issued a formal rulemaking on disclosure statements in Rule 7.1 of the Federal Rules of Civil Procedure (FRCP). The disclosure statements rule would require parties in cases brought or removed under diversity jurisdiction to disclose the citizenship of owners/members of any entity whose citizenship can be attributed to that entity, such as an LLC, a limited partnership, or joint venture. Such disclosure will allow for early determination of whether the court can properly exercise diversity jurisdiction. We believe it may be helpful to your cases to determine early on the owners of LLCs, limited partnerships, joint ventures, and other business structures.

The comment period runs through February 19, 2020. The time to request to testify has passed, but members can still file comments. The docket for filing comments can be found at <https://bit.ly/36GEjvU>. For additional information, please contact Susan Steinman at susan.steinman@justice.org.

Fighting for you and your clients

AAJ continues to fight all attempts to deny access to justice. We look forward to keeping you in the loop on important developments. We welcome your input. You can reach me at advocacy@justice.org.