Update from AAJ
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AAJ leads fight to remove tort reform section from COVID-19 relief package

PROPOSED LANGUAGE WOULD HAVE IMPACTED ANY MED-MAL OR PUBLIC-NUISANCE ACTION EVEN TANGENTIALLY RELATED TO COVID-19

WASHINGTON UPDATE

As of this writing, Congress has passed (December 20) a long overdue $900 billion COVID-19 relief package. ***The entire liability section has been dropped from the bill,*** despite relentless demands and threats from Republican Leadership, the U.S. Chamber of Commerce, and a deluge of business entities.

Since the beginning of the pandemic, Senator Mitch McConnell (R-KY) sought to exploit this crisis to get what he has long wanted: corporate immunity. Rather than engaging in serious conversations about what the American public needs to survive this pandemic, the Senate Majority Leader has, since May, threatened that no future relief would be granted unless Congress stripped workers, consumers, patients, and nursing home residents of their rights to seek justice and accountability.

Over the summer and early fall, there were multiple proposals put forward by Republican Leadership, all of which deprived Americans of their rights and left them more vulnerable to contracting COVID-19. These proposals included the most extreme version of tort reform AAJ has seen in the last 30 years. The impact would have been *much larger than just COVID injury or death cases*. The most recent proposals would:

- Eliminate pending and future medical-malpractice actions for any injury even tangentially related to COVID-19, eliminate the ability to bring a public nuisance claim on behalf of workers or others that is even marginally related to COVID-19, and eliminate the ability to bring claims on behalf of nursing home residents and others;
    - o These cases would be eliminated because the proposed legislation would have required plaintiffs meet a *heightened gross negligence standard* at the time of filing a claim and would have covered all claims that are arguably "related" to COVID-19. For example, it would have covered a medical malpractice claim for treatment that was not for COVID-19 but occurred in a hospital that was treating patients for COVID-19;
- Bar OSHA from enforcing workplace protections and wipe out protections that states have passed specifically to address the pandemic;
- Limit the next administration's ability to protect workers through OSHA; and
- Allow corporations to evade accountability for certain violations of federal civil rights and anti-discrimination laws.

The right side of history

While relatively few COVID injury or death cases have been filed, the cases trial lawyers are filing raise critical issues of health and safety, implicating millions of lives. These lawsuits are vital because they are often the only mechanism by which patterns of unsafe, irresponsible corporate decisions are uncovered. Without these cases, the public and policy makers would never know how some of the largest corporations in the world cut corners and costs at the expense of people's health.

AAJ will continue to stand proudly on the side of workers, patients, and nursing home residents to fight Senator McConnell's immunity demands. We expect that the country will need more relief after the new year. We anticipate this issue will continue to be part of the debate, and we will continue to fight on.

Federal rules in effect December 1, 2020

Each year, approved rules changes become effective on December 1. There are two approved changes that AAJ and its members shaped. Additional information, including final approved text, can be found at www.uscourts.gov.

- **FRCP (30)(b)(6):** After starting with a very broad proposed rule, the final rule imposes a simple meet and confer requirement on the serving party and the organization. The meet and confer must occur before or promptly after the notice of subpoena is served, must be in good faith, and is limited to the matters for examination. The following conferral requirements were *removed* from the adopted rule: (1) the requirement to confer regarding witness identity; (2) the requirement that conferral "continue as necessary"; and (3) the requirement to confer about "the number and description" of the matters for examination.
- **FRE 404(b):** This rule governs the admissibility of evidence of other crimes, wrongs, or acts. The amendment makes several changes, including clarifying prohibited and permitted uses of evidence of other crimes by the prosecution. Further, the pretrial notice of use of this evidence must be provided in writing. Notice must be provided in time to allow the defendant a fair opportunity to meet the evidence, unless the court excuses the requirement for good cause. The good cause exception applies not only to the timing of the notice, but also to the articulation requirements for the evidence.