



## Update from AAJ Linda A. Lipsen

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**ADVOCATE**

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# Forced arbitration

## NEW AAJ REPORT EXAMINES LACK OF DIVERSITY AMONG ARBITRATORS

### WASHINGTON UPDATE

AAJ has released a new report ([www.justice.org/forcedarbitration](http://www.justice.org/forcedarbitration)) examining the lack of diversity among arbitrators at the American Arbitration Association, Financial Regulatory Authority, and JAMS (formerly known as Judicial Arbitration and Mediation Services). CNBC published an exclusive article about the report and the lack of diversity faced by people forced into arbitration.

#### Among the findings in AAJ's report

- Arbitrators are mostly male and overwhelmingly white. Women and minorities are more likely than white men to be forced into arbitration.
- Roughly 60 million workers are subject to forced arbitration provisions at their place of employment, whether they realize it or not.
- Corporate defendants disfavor female and minority arbitrators.
- Female arbitrators rule in favor of consumers and employees more often than male arbitrators.
- Significant difference in median damage awards from top male and female arbitrators at AAA.

AAJ made great strides in the last Congress supporting the passage of the Forced Arbitration Injustice Repeal (FAIR) Act in the U.S. House of Representatives to eliminate forced arbitration and restore the rights of workers, consumers, and patients. Bills have now been reintroduced in both the House and Senate. Please contact your members of Congress today at <https://p2a.co/61QaKae> to urge that they support the bill.

Additionally, AAJ is seeking bipartisan support for smaller issue-specific forced arbitration bills. These bills include prohibiting the use of forced arbitration in military servicemember claims, sexual assault and harassment claims, and nursing home cases.

#### Raising the federal trucking insurance minimum

AAJ has been working hard to achieve justice for crash victims and their families and continues to advocate for increasing the federal trucking insurance minimum this Congress. The federal trucking insurance minimum was set in 1980 at \$750,000 per crash and has not been increased in over 40 years – not even to keep pace with inflation.

This Congress, Rep. Chuy Garcia reintroduced the stand-alone bill (the INSURANCE Act) to increase the federal insurance minimum to \$5 million to reflect medical-cost inflation. AAJ is continuing to advocate for additional co-sponsors.

Also, a provision to raise the federal trucking insurance minimum to \$2 million was included in the base text of the House surface transportation bill. AAJ is now fighting to keep that provision in the bill. Industry stakeholders, such as the independent owner-operators, have made it a top priority to keep the insurance minimums the same. To support our advocacy, we have released our new report – *Raise Trucking Insurance Minimums to Raise Safety* – a searing indictment of this ill-conceived policymaking that continues to wreck lives. View that report at [www.justice.org/advocacy/our-issues/trucking-insurance](http://www.justice.org/advocacy/our-issues/trucking-insurance).

This is a top priority for AAJ. Raising the federal trucking insurance minimum will provide true justice for your clients and an economic incentive for trucking companies to operate safely.

#### Qualified immunity

The AAJ Police Misconduct/Civil Rights Taskforce is working on garnering support in the Senate for the George Floyd Justice in Policing Act,

which was introduced by Rep. Karen Bass (D-CA) last year after the murder of George Floyd. That bill passed the House in the last Congress but did not pass the Senate. It was reintroduced in this Congress and passed the House in early March.

The George Floyd Justice in Policing Act contains many important policing reforms, such as a federal ban on chokeholds and no-knock warrants. It also provides for a national police registry of officers, making it more difficult for officers with performance issues to move to other departments. Importantly, the bill would eliminate qualified immunity for police officers, providing accountability for families of police violence. Negotiations are ongoing in the Senate, and many of our taskforce members have been involved with the discussions.

We will keep you informed as this important work progresses.

#### AAJ Legal Affairs

##### Major win in Ninth Circuit preemption case

On May 14, the Ninth Circuit rejected Monsanto's "impossibility" preemption defense under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) in suits by victims of the herbicide Roundup.

The case, *Hardeman v. Monsanto*, on Defendant's appeal of a verdict for failure to warn of dangers of Roundup, dealt with whether the district court erred in finding that Plaintiff's claims are not preempted by FIFRA. The Ninth Circuit affirmed the district court on all grounds (including preemption, the admissibility of causation testimony by plaintiff's expert, and the constitutionality of the award of punitive damages).

AAJ's amicus brief, authored by Matt Wessler of Gupta Wessler, PLLC, urged the court to maintain the narrow scope of "impossibility" preemption. In this case, Monsanto failed to make a clear showing that it was not possible to satisfy both state failure-to-warn requirements and FIFRA regulations.

On the preemption issue, the court acknowledged that FIFRA expressly prohibits states from imposing requirements "in addition to or different from those" required by FIFRA. However, EPA registration is only prima facie evidence that the product is in compliance with FIFRA regulations. EPA can cancel registration and impose penalties if it finds the product misbranded with respect to hazards not adequately warned of. The court observed that FIFRA's warning requirements were even broader than California's tort law duty to warn. Thus, because *Hardeman's* failure-to-warn claims were consistent with FIFRA, they were not expressly preempted nor were his claims impliedly preempted because, under FIFRA and unlike FDA's labeling regulations, Monsanto was responsible for drafting its own product labels and under a continuing duty to amend the label to reflect known dangers.

AAJ congratulates members Leslie Brueckner of Public Justice, Jennifer Moore of Moore Law Group, PLLC, and Aimee Wagstaff and David Wool of Andrus Wagstaff, who represented plaintiff.

#### Fighting for you and your clients

Thank you for your continued support. Despite these difficult times, AAJ continues to fight all attempts to deny access to justice. We will keep you informed about important developments and welcome your input. You can reach me at [advocacy@justice.org](mailto:advocacy@justice.org).