



Update from AAJ Linda A. Lipsen

CEO, AMERICAN ASSOCIATION FOR JUSTICE

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The impact of proposed cyber security bills on private litigation

ALSO: CORPORATE ABUSE OF THE BANKRUPTCY SYSTEM TO DETRIMENT OF CORPORATE WRONGDOING VICTIMS

WASHINGTON UPDATE

By the time you read this at the CAALA Convention, The U.S. Congress will have started its summer recess the second week of August. While the news has been filled with the final tweaks on a major infrastructure bill, there are significant bills percolating on issues affecting trial lawyers and their clients. Below, I've shared with you some recent highlights of AAJ's advocacy.

Cybersecurity

We anticipate that the House and Senate will introduce bills that create voluntary sharing programs for private companies to provide government agencies with information about cyber vulnerabilities. The government, which needs this information to help protect the public from major data breaches, would provide various confidentiality protections to companies that choose to participate in these programs.

AAJ is working to ensure that private litigation is not impacted either explicitly or through judicial interpretation when companies voluntarily provide information to federal agencies.

Bankruptcy legislation and corporate wrongdoing

On July 28, the House Judiciary Subcommittee held a hearing to examine corporations' exploitation and abuse of the bankruptcy system to the severe detriment of the victims and survivors of corporate wrongdoing. The three major threats to victims' rights in this space are: 1) divisive mergers; 2) non-consensual

third-party releases; and 3) non-consensual third-party stays.

On that same day, legislation was introduced in the House and Senate to eliminate abusive practices in bankruptcy proceedings. In the House, Rep. Jerrold Nadler (D-NY) and Rep. Carolyn Maloney (D-NY) introduced the Non-debtor Release Prohibition Act of 2021. The Senate version of the legislation was introduced by Sen. Elizabeth Warren (D-MA), Sen. Dick Durbin (D-IL), and Sen. Richard Blumenthal (D-CT).

The legislation and the House Judiciary Committee hearing help to shine a light on the corporate misuse of Chapter 11 bankruptcy laws to avoid accountability. We will keep you updated on this legislation as it progresses.

Federal rules update

We will continue to provide updates on federal rule changes, as the same rules often are adopted at the state level.

Federal rulemaking on FRE 702 – Expert witnesses

The Evidence Rules Committee is moving to a formal comment period on proposed amendments to FRE 702 related to expert witnesses. The proposed changes would add a preponderance of the evidence standard to the rule and modify subsection (d) of the rule to limit "overstatements" by expert witnesses. It is important for the plaintiffs' bar to participate in the formal comment period, which is scheduled to begin in August 2021 and run for six months, and will include two public hearings. I encourage you to review the proposed

changes and submit a short comment about the effect of the amendments on your practice. AAJ will circulate more information about the public comment period when it becomes available.

Additional federal public comment on emergency rulemaking

There will also be a public formal comment period on whether the Federal Rules of Civil Procedure should be amended to add a new proposed emergency rule, Rule 87, which focuses on service of process and appeals. Congress directed the rules committees to determine whether emergency rules are necessary to deal with emergencies such as the pandemic, as well as other emergencies such as the shutting down of a court or courts. This public comment period will also begin in August 2021 and run for six months, and AAJ will circulate more information as it becomes available.

If you have questions pertaining to federal rules, please contact Sue Steinman at susan.steinman@justice.org or Amy Brogioli at amy.brogioli@justice.org.

Fighting for you and your clients

Thank you for your continued support as we continue to make our way forward after a difficult 18 months of the pandemic. AAJ will continue fighting to block attempts to deny your clients access to justice. We will keep you informed about important developments and welcome your input. You can reach me at advocacy@justice.org.

