



Update from Washington

Linda A. Lipsen

CEO, AMERICAN ASSOCIATION FOR JUSTICE

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Kudos to Consumer Attorneys of California on MICRA reform

ALSO: AUTOMATED-VEHICLES LEGISLATION CONTINUES TO ADVANCE IN MANY STATES

WASHINGTON UPDATE

Thanks to a deal negotiated by the Consumer Attorneys of California, the California legislature has passed a bill that will raise the state's MICRA cap on medical-malpractice damages for pain and suffering for the first time in 47 years. This is a historic achievement and a reversal of one of the first major tort reform attacks on civil justice. I commend the CAOC staff, leaders, members, and their clients who have worked so hard over many decades to get to this point.

Caps undermine justice and remove the crucial deterrent factor underpinning the work of trial lawyers. AAJ has worked for nearly 50 years to challenge medical malpractice damage caps in the courts, to oppose caps at the federal level, and to assist state TLAs in their efforts to prevent implementation of caps. We will continue to fight fiercely on this critical issue.

Automated vehicles legislation continues to advance

West Virginia and Oklahoma join the ranks of states with legislation authorizing the deployment of automated vehicles. At this point, 24 states have legislation addressing the operation of automated vehicles on the books. While a handful keep automated driving restricted to testing the readiness of this technology, the vast majority have authorized automated driving companies to deploy vehicles on public highways as they see fit. West Virginia and Oklahoma join the latter group while protecting consumers by requiring that any automated vehicle be covered by \$1 million in liability insurance prior to being operated.

AAJ State Affairs continues to track this legislation and advise state trial lawyer associations on relevant precedents and talking points regarding this emerging technology.

Recent amicus briefs

McKnight v. Uber Techs., Inc. (N.D. Cal. 14-cv-05615-JST) (filed Apr. 29, 2022) – At the court's invitation, AAJ filed an amicus brief in this case addressing "whether Rule 23(e)(5)(B) of the Federal Rules of Civil Procedure applies to an objection to Class Counsel's fee request or an appeal of the amount of attorney's fees only." Rule 23(e)(5)(B) was added in 2018 to require that any payment to objectors to a class action settlement in connection with dropping their objection must be reviewed by the district court. AAJ's amicus brief explained that the rule exists to deter "objector blackmail" by requiring judicial review of payments made to objectors in exchange for dropping objections, and there is no reason to carve out an exception to the rule for those objecting only to awards of attorney fees.

AAJ amicus briefs are available at www.justice.org/legalaffairs.

Update on FRE 702 – Expert witnesses

Once again, thanks so much to our state presidents and trial lawyer association partners and to members who submitted comments! All 50 states plus D.C. and Los Angeles submitted a joint comment on the FRE 702 (expert witnesses) rulemaking. As previously reported, the proposed rule would enhance the gatekeeping function of federal judges and make it more difficult for juries to hear expert testimony. The state letter urged the Advisory Committee

on Evidence Rules to consider the impact the rulemaking would have on state courts, especially those that follow FRE 702 and those that may not have a committee note to explain the reason for the textual change.

The public comment period ended with 531 comments on the docket with a majority of filers expressing concerns with the rule change. AAJ submitted a lengthy comment documenting concerns with the proposed rule and offering suggestions to revise the language. In January 2022, AAJ's President Navan Ward and eight other AAJ members testified at the public hearing held on the rule.

The Evidence Rules Committee met on May 6, 2022, to discuss their response to public comments and vote on potential amendments to the draft rule. The committee approved the rule with amendments, which moves the proposed amendment forward for review on June 7, 2022, by the Committee on Rules of Practice and Procedure – the committee that reviews rules changes from all five advisory committees (including the Evidence Rules Committee). The proposed amendment still has several review steps, so stay tuned for more information.

Fighting for you and your clients

Thank you for your continued support. AAJ remains committed to fighting for access to justice for your clients. We will keep you informed about important developments and welcome your input. You can reach me at advocacy@justice.org.

