



## Update from Washington

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**ADVOCATE**

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# Working for you and your clients, from expense deductions on taxes to fighting forced arbitration

ALSO: MEDICARE/MEDICAID REIMBURSEMENTS FROM SETTLEMENTS FOR FUTURE MED COSTS

## WASHINGTON UPDATE

As you know, trial lawyers representing clients on a contingency-fee basis cannot deduct expenses until a case resolves, which can take many years. AAJ has been fighting tirelessly so that *you* can deduct related expenses *like any other business*. A provision to do just that was included in President Biden's Build Back Better proposal last year. Unfortunately, it did not become law, but AAJ is continuing the fight to make this change. We will keep you posted as this effort progresses. As always, AAJ continues to battle for *all trial lawyers*, their practices, and their clients' rights.

## Medicare and Medicaid

AAJ is also working on legislation that would address both Medicare and Medicaid reimbursements post-*Gallardo*. The U.S. Supreme Court held in *Gallardo v. Marstiller* that the Medicaid Act allows a state to seek reimbursement from settlement payments that are allocated for victims' future medical care. We believe that the government should only be reimbursed a fair and proportionate amount from settlements, judgments, or other awards. I will keep you informed as we persevere on this crucial issue.

## AAJ publishes new forced arbitration report

AAJ Research recently published a new analysis of how consumers fare in forced arbitration when they try to hold banks and financial services accountable. The report, "Forced Arbitration and Big Banks: When Consumers Pay to Be Ripped Off," found that only 237 consumers out of 13,179 won monetary awards against banks and other financial services companies in forced arbitration at the American Arbitration Association (AAA) – the largest arbitration provider in the country – during the five years from 2017 to 2021, making for a win rate of just 1.8%.

In more than 100 cases, consumers brought a forced arbitration case against a bank, only to be ordered to pay the bank. Those consumers ended up being ordered to pay an average of approximately \$24,000 each to the banks against which they had filed cases. Consumers brought \$2.8 billion worth of claims against banks and financial services corporations but won only 0.5% of that (approximately \$13 million) during the same five-year period.

In conjunction with our new report's release, AAJ joined a coalition of over 100 consumer and civil rights organizations to send a joint letter to the Consumer Financial Protection Bureau (CFPB), urging the agency to take action to protect consumers from abusive practices by financial services corporations.

The CFPB previously studied the effects of forced arbitration and class waivers in consumer financial services products. The agency found that only a small number of defrauded consumers ever tried to hold banks accountable in secretive forced arbitration proceedings and that only a very small percentage of those cheated consumers won their claims. AAJ's new research found that since Congress and the Trump administration blocked the CFPB from protecting consumers from abusive forced arbitration, access to justice has only gotten worse. *Axios* wrote about these findings.

AAJ State Affairs continues to monitor similar legislation involving these issues and provide TLAs with background information, talking points, and other assistance as requested.

## New law expands access to justice for minor victims of human trafficking or federal sex offenses

I would like to share some good news. On September 16, President Biden signed the Eliminating Limits to Justice for Child Sex Abuse Victims Act of 2022 into law. This law, sponsored by Sen. Dick Durbin (D-IL), eliminates federal statutes of limitations for minor victims of human trafficking offenses or federal sex offenses. AAJ advocated strongly for this important legislation.

This law will provide child sexual abuse survivors unlimited time to file a claim or action against their attacker in federal court and recover damages provided under federal law. Child sexual abuse survivors often come forward about their abuse years after it has occurred, and the Eliminating Limits to Justice for Child Sex Abuse Victims Act of 2022 allows them to seek justice without time constraints.

This law also applies to any claim or action that would have been barred by section 2255(b) of title 18 of the United States Code, which only allowed a complaint to be filed within 10 years after the right of action first accrued or within 10 years after the date of the victim's 18th birthday.

As always, we continue to fight for the victims of sex crimes. In addition to this crucial bill, AAJ played a key role this year in the enactment of a law to eliminate forced arbitration for victims of sexual assault and harassment. We also worked hard to provide a remedy for victims whose intimate images were shared without their consent.

## AAJ supports repealing gun immunity bill

In 2005, Congress wiped out state laws by enacting sweeping, unprecedented federal immunity for the manufacturers, distributors, dealers, and importers of firearms and ammunition with the passage of the Protection of Lawful Commerce in Arms Act (PLCAA). No other industry enjoys this level of broad immunity and receives a pass to brazenly bypass Americans' rights.

The Equal Access to Justice for Victims of Gun Violence Act (H.R.2814), introduced by Rep. Adam Schiff (CA), would repeal PLCAA to return the question of whether a gun maker is responsible for an injury or death caused by its weapon back to the states and to juries of American citizens. The bill gives families impacted by gun violence the right to file a case in court against a gun manufacturer if the gun manufacturer violates any state laws.

This legislation would not only provide access to justice for families devastated by gun violence, but could save future lives by deterring companies from bad conduct. H.R. 2814 passed out of the House Judiciary Committee earlier this year, and we are pressing for a floor vote.

## 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](mailto:advocacy@justice.org).