



Update from Washington

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The advocacy you need in Washington

PROGRESS MADE ON TRUCKING INSURANCE, FORCED ARBITRATION AND MEDICAL MALPRACTICE AWARD LIMITS

Advocacy

AAJ's advocacy on behalf of trial lawyers and their clients supports our members' practice areas. We are on the front line of issues that affect your practice such as Medicare Secondary Payer and access to electronic medical records. We're working to stop laws that would preempt your state law remedies, to introduce proactive legislation to protect and restore rights, and to encourage pro-consumer regulations to keep people safe.

We also have joined with many of our allies in advocating for demographically and professionally diverse federal judges. As of June 15, President Biden and the U.S. Senate have confirmed 134 district and appellate judges. Of those confirmed, roughly 53% are professionally diverse, 66% are people of color, and 64% are women. This group of 134 includes 23 trial lawyers and 13 other pro-civil justice judges.

Trucking insurance minimums, safety, and ending forced arbitration

AAJ has advocated for increased trucking insurance minimums to increase safety on the roads, and earlier in June, Frontline ran an in-depth report on truck override crashes which featured two AAJ members.

Our fight to end forced arbitration in all contexts continues with support for a newly introduced bipartisan bill to protect older Americans from age discrimination. This proactive bill joins two others that AAJ supports – the FAIR Act, to end *all* forced arbitration, and the Ending Forced Arbitration in Race Discrimination Act.

Amicus curiae and favorable decisions

Our advocacy extends to the courts with an indispensable method for protecting and developing good law nationwide – our amicus curiae program.

AAJ's "friend of the court" briefs are often filed in collaboration with state trial lawyer associations. These briefs help ensure that access to justice, the right to

trial by jury, and public policy arguments are rigorously supported in federal and state courts.

Last year, AAJ filed 30 briefs nationwide, including in the U.S. Supreme Court. In 2023, AAJ has continued to track court opinions in those cases and file new briefs on issues affecting plaintiffs' rights.

AAJ filed briefs in three recent favorable decisions for the plaintiff trial bar:

- *Health and Hosp. Corp. of Marion County, et al. v. Talevski*, No. 21-806 (June 8, 2023) (filed with Pennsylvania Association for Justice) in which SCOTUS upheld a private right of action for FNHRA violations;
- *In re: Aearo Techs. LLC*, 2023 WL 393846 (Bankr. S.D. Ind. June 9, 2023), in which a bankruptcy court rejects 3M subsidiary's Texas Two-Step maneuver in Combat Earplug MDL; and
- *Doucet v. FCA US, LLC*, No. SJC-13354 (Mass. June 8, 2023) (filed with Massachusetts Academy of Trial Attorneys), which resulted in a victory in a personal jurisdiction product liability case.

AAJ amicus curiae briefs are available online at www.justice.org/amicusbriefs.

Progress in medical malpractice award limits

In recent years, we've seen a trend of state legislatures realizing that arbitrary, artificially low caps on noneconomic damages in medical malpractice cases cause harm to injured patients while doing nothing to improve access to quality care or to lower physicians' liability insurance premiums. Recently, several states have raised their caps, including some of the oldest caps on the books.

In 2021, the New Mexico Trial Lawyers Association (NMTLA) was able to raise caps on noneconomic damages that had been in place since 1976. This year, the health care industry asked the legislature to roll back the changes.

NMTLA was able to usher through a compromise, which was signed into law and will likely avoid a protracted fight, while also allowing for injured patients to exercise their rights.

The Consumer Attorneys of California (CAOC) worked for decades to restore the rights of patients injured by medical malpractice. In 2022, CAOC was able to raise caps on noneconomic damages, which had been set at \$250,000 since 1975. MICRA was the first medical malpractice-specific cap enacted in the country and this acknowledgement that such low limits are patently unfair is a huge step in making injured patients whole and preventing future instances of malpractice.

The Nevada Justice Association (NJA) built on this trend in 2023 when they launched a successful legislative campaign to raise the state's cap on noneconomic damages in medical malpractice cases from \$350,000 to \$750,000. Like other states that have recently raised their caps, NJA was also able to ensure that the cap will regularly be adjusted for inflation.

The New Hampshire Association for Justice (NHAJ) also achieved a huge victory for victims of medical malpractice in 2023 when the governor signed a law repealing screening panels in these cases. The state senate originally issued a proposal to study the effects of screening panels. Due to the hard work of NHAJ, that proposal was amended to a full repeal.

AAJ State Affairs is proud to have supported these associations in their efforts and looks forward to each opportunity to partner with state trial lawyer associations in their legislative work. If you have any questions about our programs, please contact state.affairs@justice.org.

The only way we can effectively fight back is through close collaboration between AAJ and TLA partners, and that's exactly what we're doing.

