



Update from Washington

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Priorities in the new year

AI AND FEDERAL PRIVACY LEGISLATION MUST PRIORITIZE THE RIGHTS AND SAFETY OF THE AMERICAN PEOPLE OVER THE CORPORATE PROFITS OF BIG TECH

As the new year begins, AAJ continues to advocate on issues that directly affect your personal-injury practice such as Medicare Secondary Payer and accessing your clients' medical records. In 2024, we'll once again hold corporations accountable for injuring and killing Americans.

AAJ supports AI and Section 230 legislation

As the development and use of artificial intelligence (AI) becomes more prevalent, AAJ remains committed to ensuring that federal privacy law preserves Americans' right to justice.

On November 9, AAJ President Sean Domnick participated in Senator Chuck Schumer's bipartisan AI Insight Forum to discuss the intersection of AI, privacy, and liability. For this discussion, AAJ developed a framework for potential privacy legislation to protect state privacy laws, preserve a citizen's right of action, and prohibit Section 230 immunity for AI.

For nearly 30 years, Section 230 immunity has allowed Big Tech to avoid responsibility for massive and systemic harm. Meaningful AI legislation must prioritize the rights and safety of the American people over the corporate profits of Big Tech.

Congress is currently considering multiple proposals for AI and Section 230 legislation. We strongly support legislation authored by Senators Hawley and Blumenthal to repeal blanket immunity for AI. AAJ will continue to fight for consumers, ensuring that their needs are addressed.

Petitions to end forced arbitration in consumer finance

AAJ continues to urge the Consumer Financial Protection Bureau (CFPB) for a rule to end forced arbitration in consumer finance. In response to a joint AAJ consumer coalition petition urging the bureau to curb forced arbitration, 17 military organizations and more than 100 federal, state, and local consumer advocacy, racial justice, and labor groups went on record to support bureau action on forced arbitration.

Importantly, nearly 170 law professors submitted a joint letter to the CFPB, reiterating the bureau's authority and mandate to issue a forced arbitration rulemaking, which was

covered by Reuters. The professors pointed out the urgency of regulating forced arbitration clauses, pointing to a University of Michigan study released over the summer, which found that 99% of consumers have no understanding or awareness of forced arbitration clauses.

AAJ State Affairs update

AAJ State Affairs had a productive year in 2023, with staff assisting 46 state trial lawyer associations (TLAs) and the District of Columbia with nearly 300 requests covering dozens of topics. Transportation issues dominated our workload, with states tackling policy proposals on auto insurance, trucking, automated vehicles, transportation delivery companies (TNCs) and delivery network companies (DNCs), and peer-to-peer car-sharing liability. And many states tackled civil procedure issues, including caps on damages, reforming wrongful death statutes, and joint and several liability.

AAJ State Affairs is preparing for the upcoming 2024 state legislative sessions. We anticipate that state legislatures will have an intense interest in technology issues, including data privacy and the rapid development of AI products. In addition, we predict there will be an aggressive push by corporations, insurance companies, and tort-reform proponents to limit access to the courts for injured consumers, employees, and patients. There is already a coordinated push at the state and federal levels to add unnecessary regulations on litigation financing, and the trucking industry has communicated that it will target multiple states with legislation to limit the rights of truck crash victims. And we anticipate that model policy to place restrictions on the use of public-nuisance statutes in litigation, which was considered in three states in 2023, will spread to others in 2024.

AAJ Legal Affairs update

AAJ's amicus curiae program helps develop good law through filing amicus briefs nationwide. Often filed with state TLAs, AAJ's briefs ensure that access to justice, right to trial by jury, and public policy arguments are rigorously supported in federal and state courts. Below are some recent highlights.

Second Circuit shuts down preemption defense in aviation products liability case

Last month, the Second Circuit vacated summary judgment in favor of defendants in *Jones v. Goodrich Pump & Engine Control Systems, Inc.*, a product liability action brought by the families of two U.S. Army pilots killed during a helicopter training exercise. Remanding the case back to the District of Connecticut, the Circuit Court held that neither field nor conflict preemption can shield defendants from liability because the Federal Arbitration Act does not regulate military aircraft. AAJ filed an amicus brief in support of the plaintiffs in December 2020, cautioning that affirmation would "grant unprecedented immunity to [aircraft] manufacturers." The brief was authored by AAJ member Justin T. Green of Kriendler & Kriendler LLP in New York City.

Recent amicus brief highlights

- *Bissonnette, et al. v. LePage Bakeries Park St., LLC, et al.* (SCOTUS, No. 23-51) (filed Nov. 20, 2023) – AAJ filed an amicus brief urging the U.S. Supreme Court to overturn *Circuit City Stores, Inc. v. Adams* and hold that all workers are excluded from the Federal Arbitration Act, or in the alternative, define the scope of exempted transportation broadly to include drivers like the petitioners in this case. The brief was authored by AAJ member Gerson H. Smoger of Smoger & Associates in Dallas, Texas. Read more about this case and AAJ's brief at Law360.

- *Olivieri v. Stifel, Nicolaus & Co., Inc.* (2d Cir., No. 23-658) (filed Nov. 7, 2023) – AAJ joined Public Justice and the New York Chapter of the National Employment Lawyers Association (NELA-NY) in an amicus curiae brief urging the Second Circuit to affirm a lower court's refusal to compel arbitration on the ground that plaintiff's claims continued to accrue after the Ending Forced Arbitration of Sexual Harassment and Sexual Assault Act of 2021. AAJ's brief was authored by Public Justice's Ellen Noble. AAJ previously joined Public Justice and NELA-NY in a brief in support of Olivieri before the Eastern District of New York in August 2022.

All AAJ amicus curiae briefs are available at www.justice.org/amicusbriefs. For more information about AAJ's legal affairs program, please email legalaffairs@justice.org.