



Update from AAJ Linda A. Lipsen

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Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
May 2021

Looking forward with optimism; pursuing an affirmative agenda

LEGISLATIVE EFFORTS INCLUDE ENDING FORCED ARBITRATION, LAWS FOR AUTOMATED DRIVING, ELIMINATING QUALIFIED IMMUNITY, AND RAISING TRUCKING INSURANCE MINIMUMS

WASHINGTON UPDATE

I hope you all are well. At AAJ, we value our partnerships with state and regional TLAs and want to strengthen those relationships in the coming years. With courts beginning to reopen and vaccinations proceeding at pace, we are looking forward with optimism to the future.

AAJ is pursuing an affirmative agenda, including ending forced arbitration, eliminating qualified immunity, and raising trucking insurance minimums. However, pro-civil-justice majorities in the House and Senate are slim. We must play the long game to ensure that these majorities will hold – and increase – so that we can continue to make gains in our work to ensure access to justice for all.

I know how hard you fight for your clients in the courts; and AAJ will continue to advocate for you in D.C., to make sure state remedies are preserved.

Below are some recent highlights of how AAJ is fighting for your practices and your clients' rights.

Proposed rulemaking on automated driving system safety

The key to promoting the safe and equitable development of safe automated driving system-equipped vehicles (ADS vehicles) is accountability.

AAJ recently submitted comments in response to the National Highway Traffic and Safety Administration's (NHTSA) notice of proposed rulemaking on a "Framework for Automated Driving System Safety." There is a common theme in all of NHTSA's proposed regulatory approaches in the Advance Notice of Proposed Rulemaking (ANPRM): The ADS manufacturer must be held accountable for the performance of the ADS. AAJ believes that upon the bedrock principle of accountability, an efficient and effective regulatory framework can be built.

Here is an overview of AAJ's comments:

- The ADS manufacturer must take accountability for safely driving an ADS-equipped vehicle. NHTSA must identify the ADS manufacturer as the entity responsible for the safe operation of an automated vehicle when their ADS is engaged.
- NHTSA must begin gathering information on ADS-equipped vehicles and make such information publicly available. Prior to more formal rulemaking, NHTSA must mandate the registration of ADS manufacturers and build a database of each vehicle equipped with that manufacturer's ADS.
- NHTSA must scrupulously avoid preempting state tort law holding drivers and manufacturers accountable. State tort law has always played a critical role in driving safety and will continue to play an outsized role in pushing automated vehicle safety forward into the future.

Ultimately, AAJ hopes that automated vehicles can significantly reduce collisions by eliminating common causes of crashes today. But this will only be possible if ADS manufacturers are held fully accountable for the driving behavior of their Automated Driving System.

AAJ State Affairs

AAJ State Affairs is tracking an aggressive push by the trucking industry to limit the liability of trucking companies when they cause devastating crashes. Iowa and Texas TLAs are fighting legislation that would limit direct liability in cases where the trucking company admits vicarious liability. In addition, Iowa's bill would cap damages in trucking cases and

delay and limit punitive damage discovery; Texas's bill would also mandate bifurcated trials for punitive damages at the defendant's choice, limit what evidence and visual depictions are admissible in a claim and require periodic payments for future damages that revert to the defendant if the plaintiff dies prematurely. State Affairs is working with the TLAs to fight this legislation.

Since March 2020, AAJ State Affairs has been actively tracking state legislation granting immunity for negligence to businesses, schools, and healthcare providers during the COVID-19 pandemic. We are tracking two types of bills:

- Healthcare immunity (which provides immunity to healthcare workers and entities during the pandemic)
- Transmission immunity (which provides immunity to businesses, schools, and other entities negligently exposing workers, students, and customers to COVID-19)

As of March 31, 2021, 23 states have passed some form of transmission immunity legislation, and 39 states have passed healthcare immunity or activated an existing statute that provides immunity for healthcare providers during a state of emergency. State Affairs has been working with the TLAs to provide bill tracking, bill analysis, and COVID-19 litigation statistics.

Two Supreme Court victories

On March 25, 2021, the U.S. Supreme Court issued two favorable decisions in the areas of personal jurisdiction and police misconduct.

In *Ford Motor Co. v. Montana Eighth Judicial District* (consolidated with *Ford Motor Co. v. Bandemer*), in an opinion written by Justice Kagan, the Court held 8-0 that the connection between the plaintiffs' claims and Ford's activities in the forum states is close enough to support specific jurisdiction. Justice Kagan wrote: "When a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit." AAJ congratulates members Deepak Gupta and Matt Wessler of Gupta Wessler PLLC, who represented the plaintiffs. AAJ filed an amicus brief in the case jointly with Public Justice.

In addition to Ford, the Court also issued a favorable decision in *Torres v. Madrid*, written by Chief Justice Roberts. The issue was whether the definition of a "seizure" should be expanded to include instances when law enforcement makes physical contact with a suspect with the intent to restrain them, regardless of whether the officer succeeds in restraining the person. The Court held 5-3 that that "[t]he application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued." AAJ signed on to a joint amicus brief in Torres with many other groups.

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

Fighting for you and your clients

Thank you for your continued support. Despite the ongoing pandemic, AAJ continues to fight all attempts to deny access to justice. We will keep you informed about important developments and welcome your input. You can reach me at advocacy@justice.org.