



Update from AAJ Linda A. Lipsen

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The end of forced arbitration for sexual assault and harassment

ALSO: NEW LIEN RULE FOR MEDICARE REIMBURSEMENT FOLLOWING A SETTLEMENT

WASHINGTON UPDATE

President Biden signed a bill into law on March 3, 2022, that will improve accountability for survivors of sexual assault and sexual harassment. This action came just three weeks after overwhelmingly bipartisan votes in the House and then Senate to pass the Ending Forced Arbitration of Sexual Assault & Sexual Harassment Act.

For far too long, countless survivors, workers, and consumers have been silenced by forced arbitration. This new law will restore survivors' rights to hold their perpetrators and the corporations who enable them accountable in court, instead of being forced into arbitration.

For decades, AAJ has fought to end forced arbitration for all workers, consumers, and survivors. AAJ has worked with victims and survivors to make their voices heard on Capitol Hill and in the media. We published research reports, participated in amicus curiae in significant cases, and directed a public information campaign about how corporations use forced arbitration to strip Americans of their fundamental rights to seek justice and accountability under the Seventh Amendment of the Constitution.

The courage of the survivors and advocates who came forward at great personal risk to tell their stories to Congress was critical to the success of this legislation. The new law is another significant step forward in the fight to restore the rights of all Americans to seek justice.

AAJ will continue the fight to end forced arbitration in all its forms, and we will do it by empowering all consumers', workers', and survivors' voices to be heard. Thank you for your ongoing support of AAJ's advocacy to protect your clients' rights.

CMS-proposed "future medicals" rule

I would like to inform you of regulatory developments that may impact your practice.

The Centers for Medicare and Medicaid Services (CMS) are poised to

publish a new proposed rule to govern how and how much Medicare beneficiaries need to reimburse CMS for medical care received after a settlement that is related to that settlement. As many of you know, CMS tried to propose a similar rule during the Obama Administration, and AAJ successfully opposed it.

We anticipate that this new proposed rule will be similar to what CMS has proposed previously. There is a lengthy regulatory process before any rule becomes effective, and we will advocate for you and your clients every step of the way.

We are committed to ensuring that any rule that becomes effective in this area provides for fair and efficient reimbursement. If you have any questions, please contact advocacy@justice.org.

Advocacy in the Courts: Addressing arbitration in the U.S. Supreme Court

This Term, the U.S. Supreme Court will hear arguments in a number of cases dealing with forced arbitration under the Federal Arbitration Act ("FAA"). AAJ has filed amicus curiae briefs in three of these cases, advocating for AAJ members and their clients.

Morgan v. Sundance, Inc. (U.S. 21-328): This case deals with whether a party forfeits the right to arbitration when it fails to exercise that right at the earliest available opportunity. AAJ's amicus brief (<https://www.justice.org/resources/research/morgan-v-sundance>), filed January 6, 2022, addresses the Defendant's unfair tactic of spending months allowing litigation to proceed before moving to compel arbitration. The brief explains that enforcement of the arbitration provision would effectively allow gamesmanship by defendants, who could bounce between participating in litigation and making belated requests for arbitration in order to gain a strategic advantage, resulting in inefficiency and unnecessary delay. The amicus brief was authored by AAJ members Gerson Smoger of Smoger Law firm and David Arbogast of Arbogast Law.

Southwest Airlines Co. v. Saxon (U.S. 21-309): On March 3, 2022, AAJ filed an amicus brief in this case dealing with the meaning of "workers engaged in foreign or interstate commerce," whose employment contracts to arbitrate are exempt from enforcement under the FAA. The airline contends that workers who load or unload goods from vehicles that travel in interstate commerce but do not physically cross state lines themselves fall within that definition. AAJ's amicus brief (<https://www.justice.org/resources/research/southwest-v-saxon>), authored by AAJ member Gerson Smoger, examines the textual structure and legislative history to show that Congress did not intend the FAA to apply to employment contracts generally or to the contracts of transportation workers like Ms. Saxon in particular.

Viking River Cruises, Inc. v. Moriana (U.S. 20-1573): On March 9, 2022, AAJ filed an amicus brief in this case, which asks whether the FAA preempts California's rule prohibiting the prospective waiver of statutory right – here, claims under the California Private Attorneys General Act (PAGA). AAJ's brief explains how the fundamental principles of implied preemption of state law must be grounded in the text of the FAA and not based on federal objectives invented by judges. In this instance, the California PAGA does not "stand as an obstacle" to the enforceability of arbitration agreements. Nor does the FAA require enforcement of prospective waivers of statutory rights in *any* forum. The amicus brief was authored by AAJ member Matt Wessler of Gupta Wessler, PLLC.

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

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. 📧