



Update from Washington

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Federal legislation offered to prohibit arbitration in cases of race discrimination

ALSO: MASSACHUSETTS STATUTORY INTEREST RATES DECLARED CONSTITUTIONAL IN \$37M JUDGMENT AGAINST PHILIP MORRIS

AAJ works hard every day for all trial lawyers in all practice areas. As always, we continue to educate lawmakers and fight for the issues that matter to you all, such as preserving your state common law remedies; Medicare Secondary Payer; raising the federal trucking insurance minimum; and deducting your business expenses in the year they are incurred. Whether you're a single-event case lawyer or a mass tort lawyer, AAJ is here to support your practices and fight for your clients' rights – delivering real results and real change. Below are some recent advocacy highlights.

Forced arbitration and race discrimination

AAJ held a press conference to highlight legislation introduced on May 2 by U.S. Senator Cory Booker and U.S. Representatives Colin Allred and Hank Johnson. The bill would prohibit forced arbitration in cases of race discrimination. AAJ released a press statement on the legislation.

AAJ Treasurer John Bey moderated the virtual press conference, which was well attended and featured victim advocates who told their stories of hostilities, pay disparities, and denial of advancement opportunities in work environments. Media coverage has been excellent and includes a report which has aired on various FOX affiliates.

AAJ Communications created a Take Justice Back action item (visit <https://p2a.co/ZpMtnZK>) so that you and anyone in your network can urge Congress to pass this legislation.

Forced arbitration clauses buried in the fine print of contracts and agreements deny injured people their right to trial by jury. Last year, AAJ supported bipartisan legislation, which President Biden signed into law, that restored the rights of Americans to decide for themselves whether to file their sexual assault and harassment cases in a public court of law rather than be forced into arbitration.

AAJ State Affairs

There is encouraging news emerging from state legislative sessions. Attempts to narrow the scope of public nuisance claims have largely failed to gain traction,

as have efforts to replicate the 2021 Texas bill to create a bifurcated trial process in trucking cases. Notably, AAJ State Affairs assisted the Indiana Trial Lawyers Association in opposing legislation identical to the Texas trucking bill, which was ultimately defeated in committee.

We've seen some positive legislative activity in civil sexual assault litigation. North Dakota has followed seven states in enacting legislation to create civil remedies for "revenge porn" and similar activities. And identical legislation has been introduced in Washington and South Carolina. Additionally, legislation has been introduced in over a dozen states to extend or eliminate statutes of limitations for civil sexual assault claims or to create revival windows for those claims. AAJ State Affairs has provided states with assistance in advancing these bills and outlining the constitutionality of revival window provisions.

As legislative sessions continue, we will watch these issues closely, along with other areas of likely activity such as litigation funding and asbestos legislation. As always, we are in close contact with state TLAs to respond quickly to any issues that arise.

AAJ Legal Affairs

Massachusetts statutory interest rates declared constitutional

This month, the Massachusetts Supreme Judicial Court affirmed a \$37M judgment against Philip Morris for conspiring with other companies and the tobacco industry to conceal the health risks and addictive nature associated with smoking cigarettes in *Greene v. Philip Morris USA*, No. SJC-13330, 2023 WL 3311415 (Mass. May 9, 2023). The plaintiff, who developed lung cancer after smoking Marlboro cigarettes for decades, sued the manufacturer for civil conspiracy in 2015. Last year, Philip Morris appealed the judgment – which included \$7M in pre-judgment interest and \$4M per annum post-judgment interest – insisting that the trial court failed to instruct the jury on but-for causation and challenging the constitutionality of Massachusetts's statutory 12% interest rate.

On May 9, 2023, the state's high court affirmed the judgment, concluding

that the evidence supporting plaintiff's conspiracy claims was sufficient and finding that Philip Morris waived its right to appeal the "substantial contributing factor" instruction for those claims. The Court also upheld the constitutionality of the statutory interest rate, which "ensures that plaintiffs who have won in the trial court are fully compensated for the loss of the time value of their money during often lengthy periods of appeal."

AAJ joined a brief authored by the Massachusetts Academy of Trial Attorneys in support of the plaintiff in December 2022. Congratulations to AAJ members Michael B. Bogdanow and Robert F. Foster of Meehan, Boyle, Black & Bogdanow, who represented the plaintiff.

Recent amicus brief highlights

Schaffner v. Monsanto (3d Circuit, No. 22-3075) (filed Apr. 18, 2023) – AAJ filed a joint brief with Public Justice in support of David Schaffner, a landscape worker who developed non-Hodgkin's lymphoma after prolonged exposure to Roundup. Schaffner and his wife are among thousands of cancer victims who have sued Monsanto in state and federal courts against Roundup's manufacturer, Monsanto, for its failure to warn consumers of the dangerous risks associated with use of the toxic herbicide. In our brief filed April 18, AAJ and Public Justice urged the Third Circuit to affirm a lower court judgment and hold that plaintiffs' state law failure-to-warn claims are neither expressly nor impliedly preempted by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). *Logan v. Country Oaks Partners, LLC, et al.* (California, No. S276545) (to be filed June 5, 2023) – AAJ will join the Consumer Attorneys of California, Compassion & Choices, and Public Justice to file an amici curiae brief on the authority of healthcare agents to bind nursing home residents to arbitration under California law.

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