



Update from Washington

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Holding bad actors accountable for killing and injuring Americans

WE'RE FIGHTING FEDERAL PREEMPTION, SEEKING REFORM IN TRUCK ACCIDENT LITIGATION, AND VIGOROUSLY SUPPORTING THE RIGHT TO A JURY TRIAL

AAJ's righteous work serves people, not power. Every day, we strive to hold bad actors accountable for killing and injuring Americans. Whether you're a single-event case lawyer or a mass-tort lawyer, we're advocating for issues that affect your practices, such as Medicare Secondary Payer and access to electronic medical records. And we monitor over 1,000 bills each year so that we can fight attempts to preempt your state tort-law remedies.

We won't stand by as our corporate opponents dismantle your clients' rights. AAJ will continue to fight in D.C. for the lives destroyed by those who place profit before human life.

Fighting preemption and protecting communities

AAJ is currently fighting efforts by pesticide manufacturers, such as Bayer's Monsanto, to block failure to warn claims by preemption. Preemption of state and local authority could remove protections for communities nationwide, potentially limiting accountability for manufacturers who fail to adequately warn consumers about the hazards from high-risk pesticides.

We are part of a coalition urging members of the U.S. House to sign on to a bipartisan letter that voices opposition to pesticide manufacturers' efforts. As of this writing, we have secured 123 lawmakers' signatures. Agreement on this issue is significant, given the current climate in Congress. AAJ and allied organizations also cosigned a letter to U.S. House lawmakers voicing opposition to these attempts to preempt state and local law.

We will continue to fight so that your state remedies are preserved. This issue is critical to protecting people and saving future lives.

Fighting for the rights of truck accident victims

As the end of the year approaches, industries are signaling their priorities for when state legislatures convene for the 2024 sessions. The trucking industry has been vocal about their intent to reduce accountability. American Trucking

Associations (ATA) President Chris Spear recently said, "There have now been over a dozen reform bills passed since ATA declared lawsuit abuse a tier one priority in 2019, and there are now a dozen more states lining up to do the same."

Trucking industry tort reform efforts include caps on noneconomic damages, bifurcation of punitive damages, various immunity provisions, and exhibit restrictions. There are also more general tort law changes being pushed, including reforming joint and several liability rules, collateral source reform, and restrictions on medical care for crash victims.

Though many measures have been watered down from initial proposals, they still pose a threat to the rights of truck accident victims. Trucking interests continue to push for liability limitations despite increased big truck crash fatalities over the past decade and low and stable trucking insurance rates. AAJ State Affairs will work closely with the state trial lawyer associations to track and fight these bills and protect your clients' cases.

Legal Affairs amicus curiae program

AAJ amicus curiae briefs rigorously support access to justice and the right to trial by jury in state and federal courts, including the U.S. Supreme Court. Visit www.justice.org/amicusbriefs to view recently filed AAJ amicus briefs on a variety of access to justice issues, including:

- The discoverability and production of hospital incident reports under state and federal law – *Wiles v. Tallahassee Memorial Healthcare, Inc.* (Fla. SC23-0018) (filed Sept. 18, 2023).
- The retroactivity of statutes of limitations for civil child sexual abuse actions in light of recent reforms – *Dupuis v. Roman Cath. Bishop of Portland* (Me. No. BCD-23-122) (filed Sept. 18, 2023).
- Whether Death on the High Seas Act claims should be allowed to proceed to a jury trial – *In re: Lion Air Flight JT 610 Crash* (7th 23-2358, 23-2359) (filed Aug. 28, 2023).

For more information about AAJ's legal affairs program, please email legalaffairs@justice.org.

Federal rules update: What you need to know

New rules

There are several rules amendments effective as of December 1, 2023, including amendments to FRE 702 (applies the preponderance standard to admissibility determination by the court to expert witnesses); FRE 615 (clarifies that only one employee or officer may be designated a party-entirety to be present in the courtroom); and FRE 106 (broadens the scope of the rule of completeness to all statements, including oral ones) as well as a new rule of civil procedure – Rule 87 – for declared emergencies, such as a pandemic or other event that results in the closing of some or all courts.

Important rule changes in public comment

Two important rule changes are in public comment period: proposed Rule 16.1 on multidistrict litigation (MDLs) and amendments to Rule 16(b) and 26(f) on privilege logs. Proposed Rule 16.1 would be the first rule directly addressing MDLs and would require an initial management conference and report to address over 12 topics. The amendments to Rule 16(b) and Rule 26(f) direct producing parties to address how they will address claims of privilege or protection as trial preparation materials in their discovery plan and prompt the court to include provisions about complying with claims of privilege in scheduling or case management orders. Comments on the proposed rules must be submitted by February 16, 2024.

What to watch

In June 2023, a new rule, FRE 107 on illustrative aids was approved, which is expected to take effect December 1, 2024. Currently, only one state has a rule on illustrative aids – Maine. AAJ anticipates that more states will consider adopting an illustrative aids rule since many states follow and implement federal changes. *Importantly, the notice requirement was removed from the rule during formal rulemaking. It is imperative that states remain vigilant and be ready to oppose a notice provision to use an illustrative aid.* A notice requirement would make it more difficult to respond to illustrative aids developed on the fly to question an opposing party's expert witness or other emerging matter during trial.