

ALR Federal

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From the editor

The Federal Tort Claims Act (28 U.S.C.A. §§ 1346(b), 2671-2680) waives the immunity of the United States from suit, providing that the United States shall be liable for tort claims in the same manner as a private individual under similar circumstances. An exception to this waiver of immunity is the “discretionary function or duty,” which excludes from the Act’s application any claim based on the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or government employee, whether or not the discretion is abused. Whether the discretionary duty exception relieves the federal government of liability in certain instances is addressed by annotations in this and the next volume of ALR Federal. This volume of ALR Federal contains an annotation dealing with whether the discretionary duty exception applies when dangerous persons are released or have escaped from custody. The next volume of ALR Federal contains an annotation dealing with whether the discretionary duty exception may be used as a defense to FTCA liability for allegedly negligent acts of medical professionals in giving or failing to give medical care. Other interesting issues addressed in these volumes of ALR Fed are when attorney’s fees can be awarded, who is a confidential source, and what constitutes obscene materials.

Amy P. Bunk, J.D.

Highlights

CRIMINAL LAW

RICO—Supreme Court Cases

Chapter 96 of Title 18 of the United States Code (18 U.S.C.A. §§1961-1968), entitled Racketeer Influenced and Corrupt Organizations (RICO), was added to Title 18 by Title IX of the Organized Crime Control Act of 1970, Pub.L. 91-452, 84 Stat. 941. Congress enacted RICO in response to a growing concern over organized crime’s infiltration into American business and trade. RICO provides both criminal penalties and civil remedies for



violations of its provisions, and a civil RICO defendant can be subject to treble damages and attorney’s fees. Applicable to a wide range of scenarios beyond those involving traditional organized crime, RICO has become a formidable weapon for plaintiffs in civil litigation. As defined in 18

U.S.C.A. § 1962, RICO punishes three types of conduct: (1) acquisition of an “enterprise” with money derived from a “pattern of racketeering activity”; (2) acquisition of an “enterprise” through a “pattern of racketeering”; and (3) operation of an enterprise

through a “pattern of racketeering.” As discussed in this article, the Supreme Court of the United States has frequently discussed the validity, construction, and application of RICO. Check the Related Annotations section of the annotation for references to additional articles dealing with RICO. [171 ALR Fed 1](#)

EVIDENCE

Other Crimes, Wrongs, or Acts

In a personal injury action arising from a two vehicle collision, may the plaintiff’s attorney have evidence of the defendant’s prior and subsequent car accidents admitted into evidence? In federal court, the rule governing this issue is Federal Rule of Evidence 404(b). Rule 404(b) aims to prevent the trier of fact from inferring that, because a person engaged in misconduct on another occasion, that person possesses a bad character and acted in conformity therewith on the occasion at issue. Counsel who wishes to introduce evidence of other crimes or bad acts in a civil case must show that the purpose of this evidence is not to prove the bad character of the opposing party and conformity therewith in the present case, but instead to prove a contested issue, such as whether the opposing party had a certain intent or plan, or particular knowledge. This annotation illustrates the wide array of civil cases in which questions about the admissibility of other act evidence can arise. For additional information on the admissibility of other act evidence ([21 Am Jur Proof of Facts 3d 629](#)), and relevancy rules ([64 Am Jur Trials 54](#)), be sure to check the Practice Aids section of this annotation. [171 ALR Fed 483](#)

TORTS

Discretionary Duty: Release of Dangerous Persons

Whenever an escaped prisoner goes on a crime spree it is cause for alarm, but does it also give rise to a cause of action against the federal government for failure to warn the unsuspecting public? Liability may lie under the Federal Tort Claims Act (28 U.S.C.A. §§ 1346(b),

2671-2680), which waives the immunity of the United States from suit and provides that the United States shall generally be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances. However, the “discretionary function or duty” exception contained in 28 U.S.C.A. § 2680(a) excludes from the Act’s application any claim based on the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of a federal agency or government employee, whether or not the discretion is abused. As indicated in this annotation, on occasion, the question arises as to whether the discretionary function exception saves the federal government from liability when it is alleged that the government failed to warn local police or individuals of the discharge, release, or escape of a person deemed dangerous to the public. Check the Related Annotations section of the annotation for additional articles dealing with other aspects of the Federal Tort Claims Act. [170 ALR Fed 655](#)

FREEDOM OF INFORMATION

Confidential Source Exception From Disclosure

There is a constant flow of requests to governmental agencies under the Freedom of Information Act to find out what the government “has” on the requester or on persons in whom the requester is interested. Although the rule under the Freedom of Information Act is generally for free disclosure of such information, there are a number of exceptions under which an agency may refuse to disclose certain information. This annotation is part of a series exploring those exceptions, listed in 5 U.S.C.A. § 552(b)(7), that specify the circumstances under which a refusal to disclose information is justifiable under the Freedom of Information Act, and it covers the exception for information received from a confidential source, or information that might identify the source itself. The annotation discusses both express and implied grants of confidentiality and examines cases involving particular kinds of sources to show the working of the exception in the real world. [171 ALR Fed 193](#)

Coming Soon

ANTITRUST

Robinson-Patman Act—Secondary-Line Competitive Injury

Section 2 of the Clayton Act, as originally enacted in 1914, Oct. 15, 1914, c. 323, § 2, 38 Stat. 730, was born of a desire by Congress to curb the use by financially powerful corporations of localized price-cutting tactics, which had



gravely impaired the competitive position of other sellers. In 1936, this statute was broadened in various ways by the enactment of the Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a), June 19, 1936, c. 592, § 1, 49 Stat. 1526, which replaced § 2 of the Clayton Act. A secondary-line injury under § 13(a) occurs when competition between favored and disfavored purchasers of a discriminating

seller is harmed. One type of price discrimination that may result in a secondary-line injury to a disfavored purchaser is a discount offered to favored purchasers. Many federal courts have examined when a discount causes a secondary-line injury under § 13(a). This annotation collects and analyzes those federal cases in which the courts have discussed when a discount causes a secondary-line competitive injury under § 2(a) of the Clayton Act, as amended by the Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a). Check the Related Annotations section for annotations on the meeting the competition defense to a charge of price discrimination ([164 ALR Fed 633](#)) and who is a purchaser within the meaning of § 2(a) of the Robinson Patman Act ([60 A.L.R. Fed. 875](#)). **172 ALR Fed**

IMPORTATION

Importation of obscene articles

Section 305 of the Tariff Act of 1930 (19 U.S.C.A. §1305) prohibits the importation of obscene or immoral articles into the United States and permits the forfeiture of such articles. It is not surprising that the question whether particular material is obscene arises quite frequently under this provision. For example, in *U.S. v. Various Articles of Merchandise*, Schedule No. 287, 230 F.3d 649 (3d Cir. 2000), as amended, (Dec. 15, 2000), an action by the United States seeking forfeiture of French and German magazines devoted to nudists' lifestyles that had been imported into the United States and seized pursuant to § 305 of the Tariff Act of 1930 (19 U.S.C.A. § 1305), the court held that the magazines were not obscene within the meaning of the Act. This annotation collects and summarizes those cases in which courts have decided what constitutes obscene material subject to forfeiture under § 305 of the Tariff Act of 1930 (19 U.S.C.A. §1305). **172 ALR Fed**

TORTS

Discretionary Duty: Medical Practitioners

Many of America's doctors, nurses, and other medical practitioners work for the federal government. Their employer is a sovereign nation immune in its own

courts to civil suit except as it consents to be sued. They are like other medical practitioners, though, in that they are human and make human mistakes, which may on occasion cause injury to others. Although the federal government has enacted the Federal Tort Claims Act (FTCA) to waive its usual immunity to suit for such mistakes, it has limited that waiver in certain ways, including an exception for acts of employees performed in the exercise of a "discretionary function." The courts have struggled with the scope and construction of this exception for years, especially as it relates to the exercise of professional judgment. This annotation focuses particularly on the "discretionary function" exception as a defense to FTCA liability for allegedly negligent acts of medical professionals in giving or failing to give medical care. The annotation deals with the discretionary function exemption in a number of categories of the medical profession, and in the context of suits by a number of different classes of plaintiff for thorough coverage of the relevant issues. **172 ALR Fed**

ATTORNEY'S FEES

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Fifth Amendment of the United States Constitution prohibits the taking of private property for public use without "just compensation." The term "just compensation" has been defined to include only the value of the property taken, and not indirect costs to the property owner caused by the taking, such as attorney's fees and similar litigation costs or expenses. Nevertheless, under § 304 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. § 4654), Congress has provided for recovery of litigation costs associated with federal condemnation or inverse condemnation proceedings in certain specific circumstances. Section 304 requires that litigation costs be "actually incurred" and that they be "reasonable" in amount, and the burden is on the party seeking to recover litigation costs to demonstrate that the amount requested meets these statutory requirements. This annotation collects and analyzes federal cases discussing or applying the attorney's fee provisions of 42 U.S.C.A. § 4654. **172 ALR Fed**

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The following is a complete list, arranged alphabetically by topic, of annotations contained in the current Volume 171 or scheduled for publication in Volume 172 of ALR Federal. Some of the annotations listed may be rescheduled. Advance copies of coming annotations may be obtained by customers free of charge by calling 1-800-



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ANTITRUST

Primary-Line Price Discrimination under § 2(a) of the Clayton Act, as Amended by the Robinson-Patman Price Discrimination Act (15 U.S.C.A. § 13(a)). **171 ALR Fed 581**

Discount as Cause of Secondary-Line Competitive Injury Under § 2(a) of the Clayton Act, as Amended by the Robinson-Patman Act (15 U.S.C.A. § 13(a)) **172 ALR Fed**

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Award of Costs and Attorney's Fees Under § 304 of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. § 4654). **172 ALR Fed**

What Constitutes Special Circumstances Precluding Attorney's Fee Award Under §11(e) of Voting Rights Act of 1965 (42 U.S.C.A. §1973l(e)). **171 ALR Fed 173**

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Liability of United States for Failure to Warn Local Police or Individuals of Discharge, Release, or Escape of Person Who is Deemed Dangerous to Public as Affected by "Discretionary Act or Duty" Exception to Federal Tort Claims Act. **171 ALR Fed 655**
Claims Arising from Conduct of Governmental Employee in Administering or Failing to Administer Medical Care as Within Discretionary Function Exception of Federal Tort Claims Act (28 U.S.C.A. § 2680(a)). **172 ALR Fed**

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