

ALR Federal *Alert*

Route to:

- _____
- _____
- _____
- _____
- _____
- _____

From the editor

Continuing coverage of legal issues which have arisen in connection with the current high level of interest and concern with terrorism, Volume 199 of ALR Federal includes an annotation on the validity, construction, and application of 18 U.S.C.A. § 2332a prohibiting the use or threat, attempt, or conspiracy to use certain weapons of mass destruction. Other annotations reflecting a broad range of topics appearing in Volume 199 and scheduled to appear in Volume 200 include: a bankruptcy annotation relating to Bankruptcy Rule 9011 sanctions in a Chapter 13 case; Americans with Disability Act annotations relating to the major life activity of walking or manual tasks; tax annotations relating to income of tax exempt organizations and relating to contingent fees paid to attorneys as gross income to the client, and criminal law annotations relating to breach of pleas agreements and enhancing a sentence for substantial interference with the administration of justice. In addition, varied annotations topics in these volumes relate to: preemption of state law under the Carmack Amendment to the Interstate Commerce Act; past persecution entitling an alien to refugee status; the analysis of various federal acts, including the Torture Victim Protection Act, the Paperwork Reduction Act, the Harter Act; and the Indian Gaming Regulatory Act; federal court abstention as to state law claims for breach of contract; proving damages in federal court using the total cost or modified total cost method; and analysis of the United Nations Convention on Contracts for the International Sale of Goods.

Joel E. Smith, J.D.

Highlights

AMERICANS WITH DISABILITIES ACT

What General or Systemic Diseases or Conditions Constitute Substantial Limitation on Major Life Activity of Walking for Purposes of Americans with Disabilities Act (42 U.S.C.A. §§ 12101 to 12213)



The Americans with Disabilities Act (42 U.S.C.A. §§ 12101 to 12213) and implementing regulations define “disability” to include impairments that substantially limit the major life activity of “walking.” This has led courts in a number of cases to consider whether and under what circumstances general

or systemic diseases or conditions that affect the ability to walk or other related activities constitute a substantial limitation of a major life activity. This annotation collects and analyzes cases construing or applying the ADA and its implementing regulations as they relate to the question of when a general or systemic disease, condition, or impairment is considered a limitation of the ability to walk sufficient to constitute an ADA disability. [199 ALR Fed 481](#)

BANKRUPTCY

Bankruptcy Rule 9011 Sanctions in Chapter 13 Bankruptcy Proceedings

For many years, the Federal Rules of Bankruptcy Procedure have included a rule equivalent to Rule 11 of the Rules of Civil Procedure governing the signing and verification of pleadings filed in a court. The former Bankruptcy Rule 911 was changed to Rule 9011 in 1983, when both the civil procedure rule and the bankruptcy rule were strengthened. Since then, Fed. R. Bankr. P. 9011 has been used by bankruptcy judges to impose sanctions in hundreds of cases in which widely various conduct and pleadings were deemed to violate the rule's prohibition against filing frivolous or baseless pleadings or using the bankruptcy process for improper purposes. With respect to Chapter 13 cases in bankruptcy, many of the cases in which Fed. R. Bankr. P. 9011 was invoked arose from the improper use of bankruptcy to delay or avoid foreclosure of the debtor's property. This annotation collects and analyzes all the federal cases addressing sanctions under Bankruptcy Rule 9011 in Chapter 13 bankruptcy proceedings. [199 ALR Fed 21](#)

TERRORISM

Validity, Construction, and Application of 18 USCA § 2332a Prohibiting Use or Threat, Attempt, or Conspiracy to Use Certain Weapons of Mass Destruction

18 U.S.C.A. § 2332a, enacted originally in 1994 and amended in 1996, makes it a crime to use, threaten, or attempt or conspire to use, a weapon of mass destruction against nationals or property of the United States, or against any person within the United States in a way which would affect interstate or foreign commerce, and authorizes sentences of imprisonment or, if death results, punishment by death. The statute has been discussed and applied in only a limited number of cases. The courts have upheld the statute's constitutional validity and interpreted several of its clauses, in addition to applying the statute's provisions to users of such weapons and other terrorists. This annotation collects and discusses all of the cases decided under 18 U.S.C.A. § 2332a. [199 ALR Fed 1](#)

TORTURE

Construction and Application of Torture Victim Protection Act of 1991, 28 U.S.C.A. § 1350 note

Courts have addressed both substantive and procedural issues under the Torture Victim Protection Act of 1991, 28 U.S.C.A. § 1350 note, which allows victims of certain international law violations, or their representatives, to bring a civil action against those responsible in federal district court. This annotation collects and analyzes all cases in which courts have discussed the construction or application of the Torture Victim Protection Act of 1991. [199 ALR Fed 389](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in volume 200 of A.L.R. Fed. Some of the annotations listed may be rescheduled.



DAMAGES

“Total Cost Method (or Approach)” and “Modified Total Cost Method (or Approach)” to Proving Damages in Federal Contract Cases

Contractors who incur excessive costs in performing work are ordinarily entitled to recover damages only when they can demonstrate the specific costs that were incurred as a consequence of causes not attributable to the contractor. In some cases, however, a contractor is relieved of the obligation of attributing specific costs to particular delays or other sources of overruns, and instead may use the “total cost method” to recover the entire amount by which its project costs exceeded its initial bid. This annotation collects and analyzes the federal cases applying federal law to accept or reject use of the total

cost method or modified total cost method in computing a contractor's damages or entitlement to an equitable adjustment under construction and manufacturing contracts. **200 ALR Fed**

GAMBLING

Validity of Indian Gaming Regulatory Act

Recognizing the importance of fostering tribal self-sufficiency and government, and the important role that gambling can serve toward that end, Congress in 1988 enacted the Indian Gaming Regulatory Act to provide a statutory basis for the operation of gaming by Indian tribes. It sets out three classes of gambling activities, the third of which includes banking card games, slot machines, and games of chance, and is subject to the strongest regulation. Such games are legal only if authorized by tribal resolution, located in states which otherwise permit gambling, and conducted in conformance with tribal-state compacts, which must be negotiated by states and tribes in good faith. On newly acquired tribal lands, gaming is generally prohibited unless found by the Secretary of the Interior to be beneficial, and approved by the state governor's concurrence. The Act's validity has in fact been upheld in almost all cases, except for the question of federal court jurisdiction over states who allegedly fail to negotiate compacts in good faith, the Supreme Court holding that sovereign immunity prevents states from being brought to court without their consent. This annotation will discuss all of the federal cases which have considered the constitutional validity of IGRA. **200 ALR Fed**

INCOME TAX

Contingent Fees Paid to Attorneys as Gross Income to Client for Federal Income Tax Purposes

When clients enter into a contingency fee agreement pursuant to a lawsuit, a portion of the client's recovery typically is used to pay the attorney for the contingency fee. Where the client's recovery is taxable, the amount of contingent fees ordinarily would be deductible as a miscellaneous

itemized deduction to the extent the fees exceed two percent floor of adjusted gross income. Where high-value recoveries exist, however, the alternative minimum tax is triggered which disallows the miscellaneous itemized deduction for attorney's fees. This tax effect frequently is the impetus for legal battles between the client/taxpayer and the Internal Revenue Service, wherein the courts often consider a particular state's law on attorney's liens in reaching a decision. This annotation collects and analyzes cases dealing with the issue of whether contingent legal fees that are paid to the client's attorneys, pursuant to a contingent fee agreement, are included in the client's gross income under the Internal Revenue Code. **200 ALR Fed**

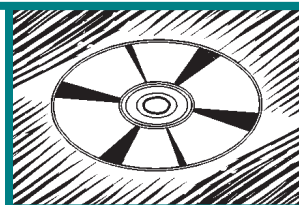
SENTENCING AND PUNISHMENT

Propriety of Sentencing Judge's Imposition of Harsher Sentence than Offered in Connection with Plea Bargain Rejected or Withdrawn Plea by Defendant—Federal Cases

The propriety of imposing a harsher sentence than that offered in a plea bargain which was refused or withdrawn by a defendant is an issue that depends fundamentally on the presence of vindictiveness or a retaliatory motive on the part of the sentencing judge in response to the defendant's decision to exercise his or her constitutional right to trial. On one hand, the United States Supreme Court has recognized the validity of the plea bargaining process, remarking that whatever might be the situation in an ideal world, the fact is that the guilty plea and the often concomitant plea bargain are important components in this country's criminal justice system. On the other hand, it is a fundamental principle of American jurisprudence that a criminal defendant cannot be punished for exercising a constitutional right. Federal cases discussing the propriety of imposing a harsher sentence than that offered in a plea bargain which was rejected or withdrawn by the defendant are collected in this annotation. **200 ALR Fed**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 199 or scheduled for publication in volume 200 of ALR Federal. Some of the annotations listed may be rescheduled.



ABSTENTION DOCTRINE

Propriety of Federal Court's Abstention, under *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943), as to State Law Claim for Breach of Contract. **200 ALR Fed**

ADMINISTRATIVE LAW

Construction and Application of Paperwork Reduction Act of 1980 (PRA), 44 U.S.C.A. §§ 3501 et seq. **200 ALR Fed**

AMERICANS WITH DISABILITIES ACT

What General or Systemic Diseases or Conditions Constitute Substantial Limitation on Major Life Activity of Walking for Purposes of Americans with Disabilities Act (42 U.S.C.A. §§ 12101 to 12213). **199 ALR Fed 481**

What Constitutes Substantial Limitation on Major Life Activity of Performing Manual Tasks for Purposes of Americans With Disabilities Act (42 U.S.C.A. §§ 12101 to 12213). **200 ALR Fed**

ATTORNEYS' FEES

Contingent Fees Paid to Attorneys as Gross Income to Client for Federal Income Tax Purposes, **200 ALR Fed**

BANKRUPTCY

Bankruptcy Rule 9011 Sanctions in Chapter 13 Bankruptcy Proceedings. **199 ALR Fed 21**

CARRIERS

Construction and Application of Harter Act, 46 App.U.S.C.A. §§ 190-196-Post-1936 Cases. **200 ALR Fed**

CRIMINAL LAW

Validity, Construction, and Application of 18 USCA § 2332a Prohibiting Use or Threat, Attempt, or Conspiracy to Use Certain Weapons of Mass Destruction. **199 ALR Fed 1**

Construction and Application of U.S.S.G. § 2J1.2(b)(2), Providing for Enhancement for “Substantial Interference with the Administration of Justice.” **199 ALR Fed 445**

DAMAGES

“Total Cost Method (or Approach)” and “Modified Total Cost Method (or Approach)” to Proving Damages in Federal Contract Cases. **200 ALR Fed**

GAMBLING

Validity of Indian Gaming Regulatory Act. **200 ALR Fed**

IMMIGRATION AND NATURALIZATION

Sufficiency of Evidence to Establish Alien’s Past Persecution Entitling Alien to Status of Refugee Under § 101(a)(42)(A) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(a)(42)(A))—Alleged Persecution in African and Oceanian Nations. **199 ALR Fed 307**

INCOME TAX

When Will Income of Tax Exempt Organization Be Deemed Income From Unrelated Trade or Business Taxable Under §§ 511 to 513 of Internal Revenue Code (26 U.S.C.A. §§ 511 to 513). **199 ALR Fed 591**

Contingent Fees Paid to Attorneys as Gross Income to Client for Federal Income Tax Purposes. **200 ALR Fed**

INTERSTATE COMMERCE

Preemption of State Law Under Carmack Amendment to Interstate Commerce Act, 49 U.S.C.A. § 1476, and Predecessor Statutes—Shipments Other than Machinery, Livestock, Food, or Beverages. **199 ALR Fed 169**

SENTENCING AND PUNISHMENT

Propriety of Sentencing Judge’s Imposition of Harsher Sentence than Offered in Connection with Plea Bargain Rejected or Withdrawn Plea by Defendant—Federal Cases. **200 ALR Fed**

TERRORISM

Validity, Construction, and Application of 18 USCA § 2332a Prohibiting Use or Threat, Attempt, or Conspiracy to Use Certain Weapons of Mass Destruction. **199 ALR Fed 1**

TORTURE

Construction and Application of Torture Victim Protection Act of 1991, 28 U.S.C.A. § 1350 note. **199 ALR Fed 389**

TREATIES

Construction and Application of United Nations Convention on Contracts for the International Sale of Goods (CISG). **200 ALR Fed**

West, a Thomson business, has created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. West is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Have questions or need help? Please call customer support at 1-800-225-7488 or email at alr@thomson.com.