

ALR Federal

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From the editor

It seems that, like the poor, actions under the Federal Tort Claims Act (FTCA, 28 U.S.C.A. §§1346(b), 2671-2680) are always with us. This volume of A.L.R. Federal reflects the continuing importance of issues arising under the FTCA with two annotations on issues under that statutory scheme. The first addresses a question of what is within the scope of the Act, and the second, what is not. Thus, while one annotation explores the liability of the United States under the FTCA for injury or death caused by government-approved drugs, vaccines, and medicines, the other analyzes the cases construing or applying the FTCA exception (28 U.S.C.A. § 2680(c)) for tax-related claims. The vast differences in scope of these two annotations relating to a single statutory scheme illustrate the pervasiveness of the federal government in modern American society, and bring home the continuing value of A.L.R. Federal as a tool for finding and understanding the important details of federal law.

Russell G. Donaldson, J.D.

Highlights

EVIDENCE

Residual Hearsay Exception under Federal Rules of Evidence

Under the hearsay rule, out-of-court statements are traditionally excluded because they lack the traditional indicia of reliability: they are usually not made under oath or under circumstances that impress the declarant with the solemnity of his or her statements; the declarant's word is not subject to cross examination; and the declarant is not available so his or her demeanor can be assessed by the jury. There are, of course, numerous exceptions to the hearsay rule. The residual, or catch-all, hearsay exception, which is the subject of this annotation, permits the introduction of necessary and trustworthy hearsay evidence that does not fall within any of the enumerated hearsay exceptions. For many years, Federal Rule of Evidence 803(24) contained the residual hearsay exception where the availability of the declarant is immaterial. In December 1997, Rule 803(24) was



transferred to new Rule 807, where it was combined with the residual hearsay exception where the declarant is unavailable, previously found in Rule 804(b)(5). No change in meaning was intended. As can be seen from the detailed article outline, by its nature, the catch-all hearsay

exception has been applied in a wide variety of cases. In addition to the particular evidence that was considered for admission under the residual hearsay exception, the annotation also collects and analyzes cases that discussed the general tests for admission under this exception. [173 ALR Fed 1](#)

DEBT COLLECTION

"Debt Collector" under Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act, 15 U.S.C.A. §§1692a et seq., regulates the practices of "debt collectors." The statute contains both a definition of "debt

collector” and language describing certain categories of persons and entities excluded from the definition. Thus, an alleged debt collector may escape liability either by failing to qualify as a “debt collector” under the initial definitional language, or by falling within one of the exclusions. Among those expressly included as “debt collectors” are creditors who are collecting their own debts but who use a name other than their own which would indicate that a third person is collecting or attempting to collect such debts. This annotation collects and analyzes state and federal cases in which the courts have considered and decided whether a particular alleged person or organization was a “debt collector” within the meaning of the statute. See the Related Annotations section for a reference to an annotation discussing what constitutes “debt” for purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692a(5))(159 A.L.R. Fed. 121). [173 ALR Fed 223](#)

FEDERAL TORT CLAIMS ACT

Tax Assessment/Collection Exception to Liability

Each year we seem to hear more and more horror stories about the great lengths to which the IRS will go to collect unpaid taxes. This annotation will discuss whether there is any recourse under the Federal Tort Claims Act when the IRS goes above and beyond what seems necessary to obtain the desired result. The Federal Tort Claims Act (28 U.S.C.A. §§1346(b), 2671-2680), which is a limited statutory waiver of this immunity, gives jurisdiction to the federal district courts to hear civil actions against the United States for money damages for injuries caused by the negligent or wrongful acts or omissions of government employees while acting within the scope of their employment, subject to several exceptions. One of these exceptions, which appears at 28 U.S.C.A. § 2680(c) and is the focal point of this annotation, exempts any claim arising in respect of the assessment or collection of any tax or customs duty from the application of the provisions of the FTCA. Since this hurdle must be overcome before an action

can proceed, this annotation will be a primary research source for people who feel that they have a claim against the IRS or other government agency arising from the collection or assessment of taxes or custom duty. The construction of the particular terms of the provision are examined in this article, as well as the liability of particular agencies for particular activities. The article outline will provide a useful guide to the issues or fact patterns in which you are most interested. [173 ALR Fed 465](#)

DISABLED PERSONS

Americans With Disabilities Act—Supreme Court Cases

Enacted in 1990 and effective January 26, 1991, the Americans with Disabilities Act (ADA), was intended to level the playing field for some 43 million Americans with physical or mental disabilities. In the ADA, Congress for the first time referred expressly to segregation of persons with disabilities as a form of discrimination, and to discrimination that persisted in the area of institutionalization. Divided into three Titles, the ADA addresses employment in Title I, public entities and services in Title II, and providers of public accommodation and services in Title III. Title I is primarily enforced by the Equal Employment Opportunity Commission and private plaintiffs, while Title II and III are enforced by the Department of Justice, and by third party plaintiffs. An individual is disabled under all three titles if that individual has a physical or mental impairment that substantially limits one or more of his or her major life activities. The Supreme Court has examined cases involving claims brought under the ADA in a variety of circumstances. This annotation collects and analyzes United States Supreme Court cases that have discussed actions brought under the Americans with Disabilities Act of 1990, 42 U.S.C.A. §§ 12101 et seq. The Practice Aids section contains articles on defending against an ADA claim, see [49 Am Jur Trials 171](#) and [42 Am Jur POF 3d 1](#). [173 ALR Fed 639](#)

Coming Soon

FRAUD AND DECEIT

Computer Fraud Act

In our technologically advanced world, computers have become a source of great power and have opened the doors to endless sources of information. Alongside all the positive aspects of the development of widespread computer usage, however, there have been many legal issues arising from fraud and other serious abuses. Congress enacted the Computer Fraud and Abuse Act, 18



U.S.C.A. §1030, in 1984 to address the problems of computer crime, and the statute has since been amended and broadened to try to keep pace with technological advances. Originally a criminal statute, it now includes a civil action component as well. This annotation will review all the federal cases, involving both criminal and civil actions, discussing the Computer Fraud and Abuse Act, including construction of the statute’s terms and application of particular provisions to varied circumstances. [174 ALR Fed](#)

TRIAL

Judge's Negative Remarks To Defense Counsel

Defendants frequently raise, as an issue on appeal, the question of whether, by remarks or acts, a federal trial judge has criticized, rebuked, or punished the defense counsel in a criminal case in such a way as to prejudice the defendant and thereby necessitate reversal of the defendant's conviction and a new trial. Courts have given a variety of reasons for reversing convictions, ranging from the denial of the defendant's right to a fair trial, to the jury having been prejudiced, to the defense counsel having been made ineffective. This annotation collects and discusses federal criminal cases addressing the question of whether and in what ways federal trial judges have prejudiced a defendant by remarks or acts criticizing, rebuking or punishing the defense counsel. **174 ALR Fed**

TELECOMMUNICATIONS

Telephone "Slamming"

A layman might easily guess that "slamming" is what the telephone user does with the phone on receiving annoying news. It is perhaps, then, an appropriate extension of this image that gives rise to the term used to describe one of the most pernicious practices of telecommunications providers. "Slamming" is, in fact, a term used to describe the unauthorized switching of a customer's long distance telephone service carrier by a long distance service provider or by a contractor, reseller, or other representative of such provider. The Federal Communications Act as amended by the Telecommunications Act of 1996 (47 U.S.C.A. § 258) provides that "Any telecommunications carrier that violates the verification procedures described in subsection (a) of this section and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the

Commission may prescribe . . ." These provisions, as well as provisions in the Lanham Act relating to actions for "slamming," are discussed in this annotation, which collects the case law relating to this cause of action. **174 ALR Fed**

CIVIL RIGHTS

Hospital Staff Privileges

In order to treat patients in a hospital a doctor or a nurse obtain staff privileges from the hospital. Staff privileges can be denied or suspended by the hospital for any number of reasons. Many doctors or nurses who have had their staff privileges revoked or who have been denied such privileges had filed Title VII suits against the hospital who revoked or denied staff privileges. Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §§2000e et seq.) makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual" or "to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities . . . because of such individual's race, color, religion, sex, or national origin." In cases where a hospital refuses or revokes the staff privileges of a doctor or nurse, the question of whether the doctor or nurse is an employee of the hospital or merely an independent contractor arises. In addition, courts have had to determine whether a hospital may be held liable for interfering with a doctor or nurse's employment opportunities with third parties, including patients, by refusing or denying hospital staff privileges. This annotation collects and summarizes those cases in which the courts have considered the liability, under Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §§2000e et seq.), of a hospital on the basis of refusing or revoking hospital staff privileges to a physician or nurse. For more information on the denial or suspension of staff privileges, see Denial of Hospital Staff Privileges ([1 Proof of Facts 2d 65](#)) and Due Process Considerations in Suspension of a Physician's Staff Privileges ([32 Am Jur Trials 1](#)). **174 ALR Fed**

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The following is a complete list, arranged alphabetically by topic, of annotations contained in the current Volume 173 or scheduled for publication in Volume 174 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 1-800-225-7488 or by sending an e-mail to alr@westgroup.com.



CIVIL RIGHTS

Liability, Under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§2000e et seq.), of Hospital on Basis of Refusal or Revocation of Hospital Staff Privileges to Physician or Nurse. **174 ALR Fed**

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DEBT COLLECTION

What Constitutes “Debt Collector” for Purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692(a)(6)). **173 ALR Fed 223**

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Liability of United States, Under Federal Tort Claims Act (28 U.S.C.A. §§1346, 2680), for Damages Caused by Ingestion or Administration of Government-Approved Drugs, Vaccines, and Medications. **173 ALR Fed 431**

TRIAL

Nature and Determination of Prejudice Caused by Remarks or Acts of Federal Trial Judge Criticizing, Rebuking, or Punishing Defense Counsel in Criminal Case, as Requiring New Trial or Reversal. **174 ALR Fed**

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