

ALR Federal 2d *Alert*

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From the **editor**

With recent news items concerning abuses and major control lapses by internet credit reporting services, the nation's awareness has been drawn to the inherent risks of the fluid and vulnerable system of wireless financial transactions that sustains our modern economy. Federal legislation designed to control these risks is featured in the present and upcoming volumes of A.L.R. Federal, including annotations on harassment or abuse as governed by the Fair Debt Collection Practices Act, 15 U.S.C.A. § 1692d, which proscribes conduct, the natural consequence of which is to harass, oppress, or abuse any person in connection with debt collection, and private liability in an action brought under the Fair Credit Reporting Act § 623(b) (15 U.S.C.A. § 1681s-2(b)), governing duties of furnishers of credit information. As reflected below, these volumes also feature our usual eclectic mix of federal topics designed to provide reliable research information to a broad array of federal practitioners.

The reader should note that Part I of the 2005-06 ALR USSCT UPDATE is now online at http://west.thomson.com/newsletters/westelert/ALR_Part1_0506.asp.

Russell G. Donaldson, J.D.

Highlights

CONTRACTS

“Cardinal Change” Doctrine

A “cardinal change” occurs when an owner contracts for construction services and then imposes alterations in the work that are so drastic that the contractor is effectively required to perform duties materially different from those originally bargained for. Because the parties did not contemplate that the contractor would perform such different work at the time they entered into



the contract, an owner's insistence that a contractor perform such work is a breach of the contract. The determination whether and owner's insistence on changes in performance of the work is so extensive as to constitute a cardinal change—and thus a

breach of contract—is principally question of fact. This annotation collects and discusses all of the federal cases that have considered application of the “cardinal change” doctrine. **9 A.L.R. Fed. 2d 565**

ENVIRONMENTAL LAW

Emergency Planning and Community Right-to-Know Act of 1986

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), codified at 42 U.S.C.A. §§ 11001 to 11050, was passed in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. EPCRA's primary purpose is to inform communities and citizens of chemical hazards in their areas. This annotation collects and discusses federal cases in which the courts have construed or applied the Emergency Planning and Community Right to Know Act, 42 U.S.C.A. §§11001 et seq., and regulations thereunder. [9 A.L.R. Fed. 2d 711](#)

HABEAS CORPUS

Tolling of Limitations Period—Personal Limitations of Petitioner

In 1996, as part of the Antiterrorism and Effective Death Penalty Act (more commonly referred to as “AEDPA”), Congress enacted 28 U.S.C.A. § 2244(d). Section 2244(d)(1) creates a one-year limitation period for the filing of federal habeas petitions by persons in custody pursuant to the judgment of a state court. Although 28 U.S.C.A. § 2244(d)(1) provides that “a 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court,” the courts have recognized that, under appropriate

circumstances including the petitioner's personal limitations, equitable factors may permit the tolling of this one-year period. This annotation collects and analyzes the federal cases discussing personal limitations of the petitioner as grounds for such equitable tolling. [9 A.L.R. Fed. 2d 343](#)

SEARCH AND SEIZURE

Confidential Informants—No Previous Reliable Information Provided

A search warrant must be supported by probable cause shown in the affidavit supporting the application for the warrant. A question that has long faced the courts is whether an informant's tip can support a finding of probable cause. In *Gates*, the Supreme Court abandoned the “two-pronged test” for determining whether an informant's tip establishes probable cause for a search warrant and instead adopted a “totality of the circumstances” test. This annotation collects and analyzes all federal cases decided since *Gates* that discuss whether, under the circumstances and applying or apparently applying the “totality of the circumstances” test, probable cause for a search warrant issued by a federal court was established in whole or in part by information supplied by a confidential informant (an informant whose identity was known to the police but not disclosed to the issuing judge or magistrate at the time of the warrant application) where the informant had not proved reliable in the past. [9 A.L.R. Fed. 2d 1](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in Volume 10 of *A.L.R. Fed. 2d* in April, 2006. Some of the annotations listed may be rescheduled.



BANKRUPTCY

Rules Governing Computation of Time

Federal Rule of Bankruptcy Procedure 9006(a), which is an adaptation of Fed. R. Civ. P. 6(a), governs the computation of time for actions and proceedings in bankruptcy cases. Rule 9006(a) applies to compute any period of time “prescribed or allowed by [the bankruptcy] rules or by the Federal Rules of Civil Procedure made applicable by [the bankruptcy] rules, by the local rules, by order of court, or by any applicable statute” in a bankruptcy proceeding. This annotation shall collect and analyze the cases that have construed and applied Fed. R. Bankr. P. 9006(a). [10 A.L.R. Fed. 2d](#)

ELECTIONS AND VOTING

Help America Vote Act—Provisional Balloting Provisions

The Help America Vote Act (HAVA), Pub.L. 107-252, Title III, § 302, 116 Stat. 1706 (codified at 42 U.S.C.A.

§§ 15301 et seq.) establishes provisional balloting requirements for federal elections. In 42 U.S.C.A. § 15482, these include permitting a voter who does not appear on the official list of eligible voters for the polling place, or a voter challenged as not eligible to vote, to cast a provisional ballot in a federal election and have it counted once the voter's eligibility is verified. In 42 U.S.C.A. § 15483, provisional balloting is expressly permitted in the case of a voter registering by mail for the first time who fails to produce the requisite identification documentation. This annotation collects and discusses the cases which have construed and applied the provisional balloting provisions of the Help America Voting Act of 2002. [10 A.L.R. Fed. 2d](#)

SENTENCING AND PUNISHMENT

Constitutionality of Mandatory U.S. Sentencing Guidelines

In *U.S. v. Booker*, 125 S. Ct. 738, 160 L. Ed. 2d 621 (U.S. 2005), the United States Supreme Court, in two separate majority opinions, determined that: (1) the Sixth Amendment right to trial by jury applies to sentencing under the mandatory United States Sentencing Guidelines, so that a sentence imposed thereunder is subject to the principle that any fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt; and (2) that provision of the Sentencing Reform Act of 1984 (SRA) which makes the Sentencing Guidelines mandatory (18 U.S.C.A. § 3553(b)(1)) is incompatible with the Court's Sixth Amendment jury-trial holding and therefore had to be severed and excised from the SRA, along with 18 U.S.C.A. § 3742(e), which depends upon the mandatory nature of the Sentencing Guidelines, with the result that the SRA now makes the Sentencing Guidelines effectively advisory, requiring a sentencing court to consider the Sentencing Guidelines sentencing ranges but permitting it to tailor a sentence in light of other statutory concerns. This annotation collects and discusses the Supreme

Court cases and their federal and state applying progeny which have considered the constitutionality under the Sixth Amendment right to a jury trial of sentencing guidelines. **10 A.L.R. Fed. 2d**

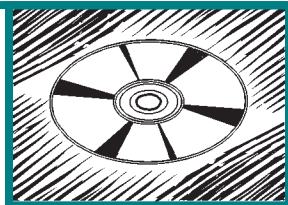
TAXATION

Tax Injunction Act—"Plain, Speedy and Efficient" Remedy

The Tax Injunction Act (TIA), 28 U.S.C.A. § 1341, prohibits federal district courts from enjoining, suspending or restraining the assessment, levy or collection of any tax under state law if a plain, speedy and efficient remedy may be had in the courts of such state. The United States Supreme Court has held that the TIA applies to actions brought for declaratory as well as injunctive relief, and to claims for damages brought under 42 U.S.C.A. § 1983. Many courts have addressed what constitutes a plain, speedy and efficient state remedy under the TIA regarding challenges to state taxation. Cases that have addressed the general principles and considerations governing the question what constitutes a plain, speedy and efficient state remedy under the TIA, prohibiting federal district courts from interfering with the assessment, levy or collection of state taxes, are collected in this annotation, which will form a component of an exhaustive series of annotations on the "plain, speedy and efficient" standard for application of the TIA. **10 A.L.R. Fed. 2d**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in Volume 9 of *A.L.R. Fed. 2d* or scheduled for publication in Volume 10 of *A.L.R. Fed. 2d*. Some of the annotations listed may be rescheduled.



ARBITRATION

When Does Contract Evidence Transaction Involving Interstate Commerce Within Meaning of Federal Arbitration Act (FAA)—Legal Issues and Principles. **10 A.L.R. Fed. 2d**

BANKRUPTCY

Construction and Application of Federal Rule of Bankruptcy Procedure, Rule 9006(a) Governing Computation of Time. **10 A.L.R. Fed. 2d**

Willful Violation of Discharge Injunction Provisions of Bankruptcy Code § 524(a)(2) and (3) (11 U.S.C.A. § 524(a)(2) and (3)). **9 A.L.R. Fed. 2d 431**

CONSUMER CREDIT PROTECTION

Liability In Private Action Under Fair Credit Reporting Act § 623(b) (15 U.S.C.A. § 1681s-2(b)) Governing

Duties Of Furnishers Of Credit Information. **10 A.L.R. Fed. 2d**

What Constitutes Harassment or Abuse Under Provisions of Fair Debt Collection Practices Act, 15 U.S.C.A. § 1692d, Which Proscribes Conduct, the Natural

Consequence of Which Is to Harass, Oppress, or Abuse any Person in Connection with Collection of Debt. **9 A.L.R. Fed. 2d 645**

CONTRACTS

"Cardinal Change" Doctrine in Federal Contracts Law. **9 A.L.R. Fed. 2d 565**

ELECTIONS AND VOTING

Construction and Application of Provisional Balloting Provisions of the Help America Vote Act, Pub.L. 107-252, Title III, § 302, 116 Stat. 1706 (codified at 42 U.S.C.A. §§ 15301 et seq.). **10 A.L.R. Fed. 2d**

EMINENT DOMAIN

Construction and Application of "Public Use" Restriction in Fifth Amendment's Takings Clause—United States Supreme Court Cases. **10 A.L.R. Fed. 2d**

What Constitutes A Taking of Property Requiring Compensation under The Takings Clause of The Fifth Amendment to The United States Constitution—Supreme Court Cases. **10 A.L.R. Fed. 2d**

ENVIRONMENTAL LAW

Construction and Application of Emergency Planning and Community Right-To-Know Act of 1986 and Regulations Promulgated Thereunder. **9 A.L.R. Fed. 2d 711**

EVIDENCE

Proper Procedure for Determining Whether Alleged Statement or Report of Government Witness Should be Produced on Accused's Demand, Under Jencks Act (18 U.S.C.A. § 3500) and Rule 26.2 of Federal Rules of Criminal Procedure. **9 A.L.R. Fed. 2d 193**

HABEAS CORPUS

Personal Limitations of the Petitioner as Grounds for Equitable Tolling of the One-year Limitations Period Established in the Antiterrorism and Effective Death Penalty Act for a Writ of Habeas Corpus Sought by a Person in Custody Pursuant to a Judgment of a State Court (28 U.S.C.A. § 2244(d)(1)). **9 A.L.R. Fed. 2d 343**

IMMIGRATION

Validity, Construction, and Application of Legal Immigration Family Equity Act ("Life Act"), and Regulations Promulgated Thereunder. **10 A.L.R. Fed. 2d**

LABOR RELATIONS

Construction and Application of Right to Vote Provision of §101(a)(1) of Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A. § 411(a)(1)),

Included in Bill of Rights of Member of Labor Organizations. **9 A.L.R. Fed. 2d 505**

SEARCH AND SEIZURE

Sufficiency of Information Provided by Confidential Informant, Whose Identity is Known to Police, to Provide Probable Cause for Federal Search Warrant Where Informant Failed to Provide Reliable Information to Police in Past—Cases Decided after *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). **9 A.L.R. Fed. 2d 1**

SENTENCING AND PUNISHMENT

Comment Note: Constitutionality of Mandatory Application of United States Sentencing Guidelines under Sixth Amendment Right to Jury Trial in Light of *U.S. v. Booker*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), and its Progeny. **10 A.L.R. Fed. 2d**

TAXATION

What Constitutes "Plain, Speedy and Efficient" State Remedy under Tax Injunction Act (28 U.S.C.A. § 1341), Which Prohibits Federal District Courts from Interfering with Assessment, Levy, or Collection of State Taxes—Overview and General Principles. **10 A.L.R. Fed. 2d**

TERRORISM

Application of Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C.A. §§ 1961 et seq., to Terrorists and Acts of Terrorism. **10 A.L.R. Fed. 2d**

WEAPONS

Due Process Defense to Possession of Unregistered Weapon Under 26 U.S.C.A. § 5861(d). **9 A.L.R. Fed. 2d 391**

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