

# ALR

## Federal 2d

### Alert

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#### From the editor

Just as General Motor emerges from bankruptcy protection, the details of bankruptcy is still at the forefront of everybody's mind. In the upcoming volumes of ALR Federal Second, the issues surrounding bankruptcy are covered with our usual depth. In volume 39, we look at the right to recover break-up fee arising from the sale of bankruptcy estate property ([39 A.L.R. Fed. 2d 219](#)), while in volume 40 we will discuss equitable tolling of the Federal Rules of Bankruptcy Procedure as they related to filing dischargeability complaints ([40 A.L.R. Fed. 2d](#)). Volume 39 also sees the publishing of the 2008 to 2009 A.L.R. Supreme Court Update ([39 A.L.R. Fed. 2d 507](#)). This article will catalog the cases from the last Supreme Court session and which annotations cover those points of law. Also, coming soon are articles on the removal of alien for domestic violence, stalking or child abuse ([40 A.L.R. Fed. 2d](#)) and First Amendment protection for members of the military ([40 A.L.R. Fed. 2d](#)).

*Michael T. Poccia, Editor, and Jill M. Marks, J.D.*

## Highlights

### BANKRUPTCY

#### Break-Up Fee

The trustee or debtor in possession in a bankruptcy case is granted broad powers with respect to the sale of property of the bankruptcy estate. Potential purchasers of such property may be unwilling to enter into asset purchase agreements knowing that they can be displaced by a higher offer at a later auction, therefore a potential purchaser may insist that the agreement include a "break-up fee" to compensate and reimburse it, as a "stalking horse" bidder, for fees and expenses it incurs in connection with its efforts to complete the transaction if the sale is not consummated. Courts have adopted differing views



on the approval of such break-up fees. This annotation collects and discusses the federal cases dealing with the right to recover a break-up fee arising from a sale of bankruptcy estate property. [39 A.L.R. Fed. 2d 219](#)

### HABEAS CORPUS

#### Extraordinary Rendition

One of the more controversial programs assertedly run by the United States, through the C.I.A., and greatly increased during the ongoing war against terror, is "extraordinary rendition." Under such program individuals caught by U.S. officials, often in foreign countries, who are strongly suspected of

being members in Al Qaeda or other terrorist groups, are flown out and are interrogated in secret C.I.A. foreign bases or turned over to third states. These states, whose standards of due process and interrogation are relatively low, will allegedly use exceedingly harsh methods or torture to extract information and confessions—in essence, the foreign country allegedly does the C.I.A.’s “dirty work” for it. Although the C.I.A. and other government officials strongly denied the existence of such programs or the violation of any laws, some individuals who assertedly had been through the system and who had been released have brought various claims against the United States or civilians who assisted in this program. [39 A.L.R. Fed. 2d 1](#)

## PRODUCTS LIABILITY

### Vaccine Act

The National Childhood Vaccine Injury Compensation Act of 1986 or “Vaccine Act,” 42 U.S.C.A. §§300aa-1 et seq., created a streamlined, no-fault compensation scheme making it faster and easier for injured vaccine recipients to recover damages while discouraging

costly and difficult litigation which threatened to force manufacturers out of the market. Although the Act does require exhaustion of its remedies before resort to state actions, and provides for some modifications of state law, in general it does not preempt state tort remedies. This annotation is a collection and discussion of the federal and state cases which have discussed preemption by the Vaccine Act and construed and applied its preemption provisions. [39 A.L.R. Fed. 2d 155](#)

## SUPREME COURT

### Supreme Court Update

The United States Supreme Court, in its 2008 to 2009 term, addressed many diverse issues, ranging from Aliens, Immigration, and Citizenship to the United States. This review notes the issues that were addressed, via opinions, or grants or denials of certiorari, by the United States Supreme Court in the 2008 to 2009 term, that are within the scope of and further analyzed by American Law Reports annotations. [39 A.L.R. Fed. 2d 507](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in Volume 40 of A.L.R. Fed. 2d in October 2009. Some of the annotations listed may be rescheduled.



## ALIENS

### Removal of Alien

Section 237 of the Immigration and Nationality Act (8 U.S.C.A. § 1227) establishes the grounds on which an alien may be removed or deported from the United States and, among other grounds, provides that an alien may be removed or deported from the United States for committing certain crimes after he or she has entered the United States. An alien may be removed from the United States under 8 U.S.C.A. § 1227(a)(2)(E)(i) as a result of a conviction for a crime of domestic violence, stalking, or child abuse, neglect, or abandonment, and may be removed under 8 U.S.C.A. § 1227(a)(2)(E)(ii) for the violation of certain domestic protection orders. This annotation collects and analyzes federal and state court cases, and selected administrative opinions, which have construed, applied, or determined the validity of 8 U.S.C.A. § 1227(a)(2)(E). [40 A.L.R. Fed. 2d](#)

## BANKRUPTCY

### Bankruptcy—Tolling

Fed. R. Bankr. P. 4007(c) provides that a complaint to determine the dischargeability of certain debts must be filed no later than 60 days after the first date set for the meeting of creditors, and allows

a bankruptcy court to extend this deadline for cause upon a motion filed before this deadline has expired. Some courts have held that this deadline may be extended. This annotation collects and analyzes cases discussing whether the doctrine of equitable tolling applies under Fed. R. Bankr. P. 4007(c) and applying or declining to apply the doctrine to extend the deadline under this Rule. [40 A.L.R. Fed. 2d](#)

## CONSUMER PROTECTION

### Credit Repair Organizations Act

The Credit Repair Organizations Act (CROA), 15 U.S.C.A. §§1679 et seq. regulates the manner in which credit repair services are marketed and provided. In *Reynolds v. Credit Solutions, Inc.*, 541 F. Supp. 2d 1248 (N.D. Ala. 2008), judgment vacated, 2009 WL 902145 (11th Cir. 2009), the court held that the defendant debt settlement company was a “credit repair organization” as defined by 15 U.S.C.A. § 1679a(3)(A), and was thus subject to CROA’s terms. Even though the defendant made no claim

that it could correct or repair inaccurate entries on consumers' credit reports, the court found that its representation that it could provide positive long-term effects on consumers' credit scores brought it within the statutory definition. The court further held that CROA's "right to sue" provision, 15 U.S.C.A. § 1679c, combined with a provision declaring unenforceable any waiver of "any right of the consumer," 15 U.S.C.A. § 1679f(a), voided the plaintiff's agreement to arbitrate any claims against the defendant. This annotation collects and discusses all of the cases in which courts have considered the validity of CROA, or in which they have construed or applied its provisions. **40 A.L.R. Fed. 2d**

## FIRST AMENDMENT

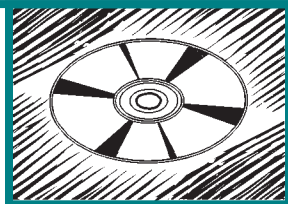
### Discharge Protection

While the First Amendment's Free Speech protections are applicable to members of the military services,

courts generally agree that because the military is, by necessity, a specialized society separate from civilian society, differing standards apply for analyzing First Amendment claims involving military service members. Consequently, conduct which might be protected in civilian life may not pass constitutional muster in the military setting. Military service members have mounted numerous challenges on First Amendment grounds to decisions made by military superiors. This annotation collects and analyzes all cases discussing under what circumstances courts have allowed or disallowed First Amendment claims against disciplinary, transfer, or discharge proceedings initiated by the military against service members. **40 A.L.R. Fed. 2d**

# Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in Volume 39 of A.L.R. Fed. 2d or scheduled for publication in Volume 40 of A.L.R. Fed. 2d. Some of the annotations listed may be rescheduled.



## ALIENS

Construction and Application of 8 C.F.R. § 208.6 and 8 C.F.R. § 1208.6 Prohibiting Nonconsensual Disclosure to Third Parties of Information Regarding Asylum Application, **39 A.L.R. Fed. 2d 189**

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