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## Recent Developments

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## RECENT DEVELOPMENTS

### *CONSTITUTIONAL LAW: Memphis Community School District v. Stachura*

In *Memphis Community School District v. Stachura*,<sup>1</sup> the United States Supreme Court held that the abstract “value” of the constitutional rights infringed is an impermissible element of section 1983 damages. The Court thereby reaffirmed that section 1983 damages are designed only to compensate injuries caused by the deprivation of constitutional rights.

*Stachura* involved a seventh-grade life science teacher who was suspended as a result of parental complaints about his use of allegedly sexually explicit photographs and films as teaching aids. Before his reinstatement, the teacher brought suit against the school district, the Board of Education, and several individuals under 42 U.S.C. § 1983.<sup>2</sup> He sought compensatory and punitive damages for deprivation of liberty and property rights without due process and for the violation of his first amendment right to academic freedom. The jury award was based on instructions authorizing two types of compensatory damages, one associated with the actual injury and the other being linked to the “importance” of the constitutional rights violated.

*Carey v. Piphus*,<sup>3</sup> the Court’s first decision on types of damages for constitutional violations, held that no compensatory damages may be awarded absent actual injury. Because *Carey* dealt with a procedural due process deprivation, a conflict among the circuits has arisen as to whether the holding extends to substantive violations.<sup>4</sup> In *Stachura*, the Court declared that the purpose of section 1983 damages is to provide compensation for injuries, regardless of the category of the constitutional basis for liability.<sup>5</sup>

Although labeled “compensatory,” the damages authorized by the challenged instruction were necessarily *noncompensatory* because they related to the jury’s perception of the value of constitutional rights in the abstract.<sup>6</sup> The Court reasoned that to allow such an instruction would “inject

1. 106 S. Ct. 2537 (1986).

2. Section 1983 reads:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

3. 435 U.S. 247 (1978).

4. See *Memphis Community School Dist. v. Stachura*, 106 S. Ct. 2537, 2541 n.5 (1986).

5. *Id.* at 2544.

6. See *id.*

caprice into the determinations of damages in § 1983 cases," leaving juries at liberty to make arbitrary awards with no evidentiary basis.<sup>7</sup>

Drawing a distinction between damages for the inherent value of a right and damages for a "non-monetary harm that cannot easily be quantified,"<sup>8</sup> the Court declined to characterize the former as "presumed damages."<sup>9</sup> Presumed damages, a substitute for ordinary compensatory damages, are only appropriate when the plaintiff would not otherwise be able to recover due to difficulty in establishing injury.<sup>10</sup> In the instant case, there was ample proof from which the jury could have found actual harm to the plaintiff.<sup>11</sup>

In *Bivens v. Six Unknown Named Agents*,<sup>12</sup> a federal constitutional tort action analogous to the state cause of action provided for in section 1983 was created. However, since *Stachura* and *Carey* involve statutory interpretation, they are not binding in a judicially created *Bivens* action.<sup>13</sup> Yet, courts usually look to section 1983 case law for guidance in determining damages in *Bivens* actions; therefore, *Stachura* contributes indirectly to the consistency of the full body of constitutional tort remedial law.<sup>14</sup>

#### FEDERAL COURTS: No Federal Question Over a State-created Claim That Incorporates a Federal Standard

Federal district courts have jurisdiction over claims arising under the Constitution, laws, or treaties of the United States.<sup>1</sup> A case may arise under federal law "where the vindication of a right under state law necessarily turned on some construction of federal law."<sup>2</sup> In *Merrell Dow Pharmaceuticals, Inc. v. Thompson*,<sup>3</sup> the Supreme Court held that no federal question jurisdiction existed where plaintiffs' claim was created under a state law that incorporated a federal standard, the violation of which did not give rise to a private cause of action.

Plaintiffs sued in state court on common law theories of negligence, breach of warranty, strict liability, fraud, and gross negligence.<sup>4</sup> One of the counts alleged that defendant had violated the federal Food, Drug and Cosmetics Act (FDCA)<sup>5</sup> and that this constituted a rebuttable presumption of

7. *Id.* at 2545.

8. *Id.* at n.14.

9. *Id.* at 2545.

10. *Id.*

11. *Id.* at 2541.

12. 403 U.S. 388 (1971).

13. Love, *Damages: A Remedy for the Violation of Constitutional Rights*, 67 CALIF. L. REV. 1242, 1267 n.210 (1979).

14. *Id.* at 1244 n.12.

1. 28 U.S.C. § 1331 (1980).

2. *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 9 (1983).

3. 106 S. Ct. 3229 (1986).

4. *Id.* at 3231.

5. 21 U.S.C. §§ 301-392 (Supp. II 1982).

negligence.<sup>6</sup> Defendant removed the case to federal court alleging that the action was founded on a claim arising under the laws of the United States. Plaintiffs' motion to remand on the ground that the federal court lacked subject matter jurisdiction was denied, and the court then granted defendant's motion to dismiss due to forum non conveniens.<sup>7</sup> The Sixth Circuit reversed, stating that "[f]ederal question jurisdiction would . . . exist only if plaintiffs' right to relief *depended necessarily* on a substantial question of federal law."<sup>8</sup> Because the jury could find for plaintiff without finding a violation of the FDCA, the court reasoned that the case did not depend on the issue of federal law.<sup>9</sup>

The Supreme Court affirmed. Crucial to the holding was the undisputed conclusion of the court of appeals that there is no private federal cause of action for FDCA violations.<sup>10</sup> The Court said that Congress did not intend to establish a private federal remedy when it enacted the statute.<sup>11</sup> The Court reasoned that if Congress did not intend to create a federal cause of action for violations of the FDCA, it would undermine such intent to allow federal question jurisdiction of a state law claim that incorporated a violation of the statute as a standard of liability.<sup>12</sup>

The holding in *Merrell Dow* seems to be contrary to a literal interpretation of *Franchise Tax Board v. Construction Laborers Vacation Trust*, which held that federal question jurisdiction would exist if "it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims."<sup>13</sup> Violation of the FDCA is a question of federal law. Plaintiffs' complaint alleged that such a violation established a presumption of negligence. Therefore, if they could show a violation, plaintiffs would be entitled to recover. The Court held, instead, that the congressional intent not to create a private federal remedy for violations of the FDCA amounted to a congressional determination that the presence of such a violation in a state-created claim is insufficient to confer federal question jurisdiction.<sup>14</sup>

The holding may be an attempt to reconcile earlier cases concerning this type of federal question jurisdiction.<sup>15</sup> *Merrell Dow* seems to hold that the

6. 106 S. Ct. at 3231.

7. *Id.*

8. *Id.* at 3231-32.

9. *Id.* at 3232.

10. *Id.* at 3234.

11. *Id.*

12. *Id.* at 3235.

13. *Id.*

14. *Id.* at 3236.

15. Compare *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921) (Court found federal question jurisdiction where the federal issue was the constitutionality of an important federal statute) with *Moore v. Chesapeake & Ohio R.R.*, 291 U.S. 205 (1934) (no federal question jurisdiction of a state-created tort recovery which incorporated a federal standard as an element of recovery).

word "substantial" refers to the nature of the federal issue, not its place in plaintiffs' claim. Thus a question of statutory interpretation of an issue for which Congress has determined there should be no private federal remedy is insufficient to confer federal question jurisdiction. On the other hand, the presence of a constitutional issue, or a federal statutory issue not singled out by Congress as inappropriate for the federal courts, could confer federal question jurisdiction if plaintiff's right to recover necessarily depends on it.

### *PRACTICE AND PROCEDURE: Time to File Pleadings*

Section 2005E of the Oklahoma Pleading Code<sup>1</sup> provides that pleadings and other papers that must be filed with the court shall be filed with the clerk of the court, except that the judge may permit them to be filed with him. This provision is the same as Federal Rule of Civil Procedure 5(e). The federal courts have held that the federal rule requires the actual receipt of the pleading within the prescribed time. "If mailed, the filing is accomplished only when actually received by the clerk or when placed in the clerk's post office box. Filings reaching the clerk's office after a deadline are untimely, even if mailed before the deadline."<sup>2</sup> However, there is no deadline for filing papers subsequent to the petition that must be served upon a party. "All papers after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter."<sup>3</sup>

1. 12 OKLA. STAT. § 2005E (Supp. 1986).

2. *Torras Herreria y Construcciones, S.A. v. M/V Timur Star*, 803 F.2d 215, 216 (6th Cir. 1986) (citation omitted).

3. 12 OKLA. STAT. § 2005D (Supp. 1986). See section 2005A in regard to what papers must be served upon parties to the action.