Washington Law Review

Volume 91 | Number 1

3-1-2016

Contents

anon

Follow this and additional works at: https://digitalcommons.law.uw.edu/wlr

Recommended Citation

anon, Table of Contents, *Contents*, 91 Wash. L. Rev. i (2016). Available at: https://digitalcommons.law.uw.edu/wlr/vol91/iss1/6

This Table of Contents is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

WASHINGTON LAW REVIEW

VOLUME 91, NUMBER 1, MARCH 2016

Published by Students of the University of Washington School of Law

CONTENTS

ARTICLES

Hospital Mergers and Economic Efficiency

Roger D. Blair, Christine Piette Durrance &

D. Daniel Sokol 1

Buyers in the Baby Market: Toward a Transparent Consumerism

June Carbone & Jody Lyneé Madeira 71

Why a "Large and Unjustified" Payment Threshold Is Not Consistent with *Actavis*

Michael A. Carrier 109

The Law, Economics, and Medicine of Off-Label Prescribing

William S. Comanor & Jack Needleman 119

A Flexible Health Care Workforce Requires a Flexible Regulatory Environment: Promoting Health Care Competition Through Regulatory Reform

Andrew I. Gavil & Tara Isa Koslov 147

Navigating Through the Fog of Vertical Merger Law: A Guide to Counselling Hospital-Physician Consolidation Under the Clayton Act

Thomas L. Greaney & Douglas Ross 199

Buyer Power and Healthcare Prices

John B. Kirkwood 253

Consume or Invest: What Do/Should Agency Leaders Maximize?

William E. Kovacic & David A. Hyman 295

COMMENTS

"No Handicapped People Allowed": The Need for Objective Accessibility Standards Under the Fair Housing Act

Michael J. Jeter 325

Our Corrosive Oceans: Exploring Regulatory Responses and a Possible Role for Tribes

Weston R. LeMay 361

Copyright © 2016, Washington Law Review Association. Except as otherwise provided, the author of each Article in this issue has granted permission for copies of that Article to be made for classroom use, provided that (1) copies are distributed at or below cost, (2) the author and journal are identified, (3) proper notice of copyright is affixed to each copy, and (4) the Washington Law Review Association is notified of the use.

WASHINGTON LAW REVIEW (ISSN 0043-0617) is published quarterly by students of the University of Washington School of Law. Periodicals postage paid at Seattle, Washington, and additional mailing offices.

POSTMASTER: Send address changes to:

Choong Kim Washington Law Review University of Washington Gallagher Law Library William H. Gates Hall Box 353025 Seattle, Washington 98195

SUBSCRIPTION INFORMATION: Subscription price for Vol. 89: \$41.06 per year in Washington State (tax included), \$37.50 per year in the United States, and \$47.50 elsewhere. Single issue: \$12.00 (order directly from WASHINGTON LAW REVIEW Business Office). Subscriptions are renewed automatically unless the business office is notified of cancellation. No refunds will be issued.

BACK ISSUES: See advertisement at the back of this issue.

SUBSCRIPTION & BACK ISSUE CORRESPONDENCE:

Choong Kim Washington Law Review University of Washington Gallagher Law Library William H. Gates Hall Box 353025 Seattle, Washington 98195 email: chk@u.washington.edu

MANUSCRIPTS: WASHINGTON LAW REVIEW invites the submission of legal scholarship on all topics for publication.

CITATION FORM: For Volume 91, WASHINGTON LAW REVIEW adopts the citation form of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (20th ed. 2015).

EDITORIAL CORRESPONDENCE:

Editor-in-Chief Washington Law Review University of Washington School of Law William H. Gates Hall Box 353025 Seattle, Washington 98195 email: editor@washlrev.org

Member, National Conference of Law Reviews

WEBSITE: www.washingtonlawreview.org

WASHINGTON LAW REVIEW

VOLUME 91 2016

2015-2016 EDITORIAL BOARD

Editor-in-Chief COURTNEY SCHIRR

Associate Editor-in-Chief SYDNEY CONWAY

Chief Articles Editor DEVON KING Associate Editor-in-Chief JAMES FELDMAN

Chief Managing Editor CHRISTOPHER PIERCE-WRIGHT

Chief Online Editor DANIEL RUSK Chief Notes & Comments Editor JORDAN MCCRITE

Executive Articles Editor MICHAEL JETER

Articles Editors Manmeet Dhami Spencer Gall Thomas Mann Miller

Executive Online Editor CHARLOTTE LUNDAY

SOPHIA AMBERSON ALAINA BALYEAT KALEIGH BOYD POWELL LENA BRODSKY NEIL S. BROWN JAMES CARR RYAN CASEY CEDAR COSNER TIFFANY CURTISS ADA DANELO Executive Notes & Comments Editor HARRY FUKANO

> Notes & Comments Editors SARA ALAVI SARAH CHAPLIN AMANDA HAILEY

> > Online Editors PETER COOPER WESTON LEMAY

EDITORIAL STAFF

ERIC FRANZ ASTI GALLINA ZACHARY GUSSIN KELLY HOLLER KAITLYN KELLY BIANCA LACAILLE XIN LIU CAMILLE MCDORMAN HARLAN MECHLING Executive Managing Editor HAYLEE HURST

> Managing Editors Ashley Brown Peter Damrow Krystal Jenkins Tyler Lichter Dierdre Madsen Ashleigh Rhodes Henry Ross Margaret Sholian

JAMES MILLER JEFFREY MUSTO BENJAMIN OMDAL ANDREW PEREZ DESIREE PHAIR JANE PRYJMAK BENJAMIN ROBBINS SHELBY STONER VALERIE WALKER RACHEL YEMINI

WASHINGTON LAW REVIEW ASSOCIATION FACULTY BOARD

CRAIG ALLEN THOMAS ANDREWS KAREN BOXX LINDA HUME

BUSINESS STAFF

Faculty Business Manager PENNY HAZELTON Faculty Advisor ROBERT GOMULKIEWICZ Business Office Jonathan Franklin Choong Kim

SARAH KALTSOUNIS

KATHY MCGINNIS

University of Washington School of Law 2015–2016

OFFICERS OF ADMINISTRATION

Kellye Y. Testy, B.A., J.D., Toni Rembe Dean & Professor of Law

Patricia C. Kuszler, B.A., M.D., J.D., Vice Dean, Professor of Law

Mary A. Hotchkiss, B.A., M.S.L.S., J.D., LL.M., Senior Associate Dean for Students & Academic Life, Senior Law Lecturer

Kimberly Eckstein, B.A., Assistant Dean for Advancement

Michele Storms, B.A., J.D., Assistant Dean for Public Service, Executive Director William H. Gates Public Service Law Program

Anita K. Krug, B.A., M.A., J.D., Ph.D., Associate Dean for Faculty Research and Development, Associate Professor of Law

Mathiew Le, B.A., J.D., Assistant Dean for Admissions and Financial Aid

Kojay Pan, M.P.A, Assistant Dean for Finance and Operations

Pontus Niklasson, M.A, Assistant Dean for Academic Services & Registrar

- FACULTY EMERITI
- William R. Andersen, B.S.L., LL.B., LL.M.

Robert H. Aronson, B.A., J.D.

James H. Hardisty, A.B., LL.B.

Roland L. Hjorth, A.B., LL.B.

Linda Hume, B.A., J.D.

John Huston, B.A., J.D., LL.M.

John M. Junker, B.A., J.D.

John R. Price, A.B., LL.B.

Roy L. Prosterman, B.A., J.D.

Marjorie D. Rombauer, B.A., J.D.

Charles Z. Smith, B.S., J.D.

Frank W. Smith, B.A., J.D., LL.M.

Philip A. Trautman, B.A., J.D.

Louis Wolcher, B.A., J.D.

FACULTY OF LAW

Craig H. Allen, B.S., J.D., LL.M., Professor of Law

Kimberly D. Ambrose, B.A., J.D., Senior Law Lecturer

Helen A. Anderson, B.A., J.D., Professor of Law

Robert T. Anderson, B.A., J.D., Professor of Law, Director of Native American Law Center

Thomas R. Andrews, B.A., M.A., J.D., Professor of Law

William Bailey, B.A., J.D., Law Lecturer

Karen E. Boxx, B.A., J.D., Professor of Law

Steve P. Calandrillo, B.A., J.D., Professor of Law

Ryan Calo, B.A., J.D., Assistant Professor of Law, Co-director of the Center for Advanced Study and Research on Intellectual Property

Thomas D. Cobb, B.A., M.A., M.A., J.D., Senior Law Lecturer

Molly M. Cohan, B.A., J.D., Law Lecturer

William Covington, B.A., J.D., Senior Law Lecturer

Dwight J. Drake, B.S., J.D., Associate Professor of Law

Melissa J. Durkee, B.A., J.D., Assistant Professor of Law

Jonathan A. Eddy, B.A., J.D., Professor of Law, Manager of Afghanistan Legal Educators Project

Jennifer Fan, A.B., J.D., Managing Director, Entrepreneurial Law Clinic & Law Lecturer

Mary D. Fan, B.A., J.D., M.Phil., Professor of Law

Daniel Foote, A.B., J.D., Professor of Law, Co-Director Asian Law Center

Julia Gold, B.A., J.D., Principal Law Lecturer

Robert W. Gomulkiewicz, B.A., M.A., J.D., Professor of Law, Faculty Director, IP LLM, Co-director of the Center for Advanced Study and Research on Intellectual Property

Ben Halasz, B.A., J.D., Law Lecturer

Michael Hatfield, B.A., M.A., J.D., Professor of Law

Penny A. Hazelton, B.A., J.D., M.L.L., Professor of Law

Gregory A. Hicks, B.A., J.D., Professor of Law

Mary A. Hotchkiss, B.A., M.S.L.S., J.D., LL.M., Senior Associate Dean for Students & Academic Life, Senior Law Lecturer

Maureen A. Howard, B.A., J.D., Associate Professor of Law

Stewart M. Jay, A.B., J.D., Professor of Law

Sarah Kaltsounis, B.S., M.Ed., J.D., Senior Law Lecturer

Lisa Kelly, B.A., J.D., Professor of Law, Director of Children & Youth Advocacy Clinic

Alan Kirtley, B.A., J.D., Associate Professor of Law

Sanne Knudsen, B.S., M.S., J.D., Assistant Professor of Law

Anita K. Krug, B.A., M.A., J.D., Ph.D., Associate Dean for Research and Faculty Development, Associate

Professor of Law

- Patricia C. Kuszler, B.A., M.D., J.D., Vice Dean, Professor of Law
- Clark B. Lombardi, B.A., M.A., J.D., Ph.D., Associate Professor of Law, Adjunct Associate Professor of Law in International Affairs
- Lisa Manheim, B.A., J.D., Assistant Professor of Law
- Deborah Maranville, B.A., J.D., Professor of Law, Director of Clinical Law Program
- Anna C. Mastroianni, B.S., B.A., J.D., M.P.H., Professor of Law
- Shannon McCormack, B.A., J.D., LL.M, Associate Professor of Law
- Kathleen M. McGinnis, B.A., J.D., Senior Law Lecturer
- Jacqueline McMurtrie, B.G.S., J.D., Professor of Law, Director of Innocence Project Northwest
- Theodore A. Myhre, B.A., M.A., M.A., J.D., Senior Law Lecturer
- Peter Nicolas, B.A., M.P.P., J.D., Professor of Law
- Sean O'Connor, B.A., M.A., J.D., Professor of Law, Chair of the Center for Advanced Study and Research on Intellectual Property, Boeing International Professor
- Kathleen O'Neill, B.A., J.D., Professor of Law
- Elizabeth Porter, B.A., M.Ed., M.A., J.D., Assistant Professor of Law
- Anita Ramasastry, B.A., M.A., J.D., Professor of Law
- Jeffrey Riedinger, B.A., J.D., M.A., Ph.D., Professor of Law, Vice Provost for Global Affairs
- Beth Rivin, B.A., M.D., M.P.H., Research Associate Professor of Law
- William H. Rodgers, B.A., J.D., Professor of Law
- Zahr Said, B.A., J.D., Ph.D., Assistant Professor of Law, Co-director of the Center for Advanced Study and Research on Intellectual Property
- Lauren Sancken, B.A., J.D., Law Lecturer
- Sallie Thieme Sanford, B.A., J.D., Associate Professor of Law
- Eric Schnapper, B.A., M.A., B.Phil., LL.B., Professor of Law
- Scott A. Schumacher, B.A., J.D., LL.M., Professor of Law, Director of Federal Tax Clinic, Director of Graduate Program in Taxation
- Toshiko Takenaka, B.A., LL.M., Ph.D., Professor of Law
- Kellye Y. Testy, B.A., J.D., Toni Rembe Dean & Professor of Law
- Anna Tolin, B.A., J.D., Law Lecturer
- Michael E. Townsend, B.A., M.A., Ph.D., J.D., Associate Professor of Law
- Lea B. Vaughn, A.B., J.D., Professor of Law
- Walter J. Walsh, B.C.L., LL.M., S.J.D., Associate Professor of Law
- Kathryn Watts, B.S., J.D., Professor of Law
- Todd Wildermuth, B.S., M.S., Ph.D., Law Lecturer
- Brenda Williams, B.A., M.P.A., J.D., Law Lecturer
- Jane K. Winn, B.Sc., J.D., Professor of Law, Co-director of the Center for Advanced Study and Research on Intellectual Property
- Lara Zarowsky, J.D., Law Lecturer
- Dongsheng Zang, LL.B., LL.M., S.J.D., Associate Professor of Law, Co-Director Asian Law Center David Ziff, A.B., J.D., Law Lecturer

ADJUNCT AND VISITING FACULTY

Betsy Baker, B.A., J.D., LL.M., Counsel to the Dean - Alaska Programs & Affiliate Professor of Law Gad Barzilai, B.A., LL.S., LL.B., M.A., Ph.D., Adjunct Professor of Law Katherine Beckett, B.A., M.A., Ph.D., Adjunct Professor, Law Societies and Justice Program, Sociology Andrew Benjamin, J.D., Ph.D., Affiliate Professor of Law Sharan E. Brown, B.A., M.A., J.D., Ed.D., Adjunct Research Associate Professor of Law Angelica Chazaro, B.A., J.D., Visiting Assistant Professor Christine Cimini, B.A., J.D., Visiting Professor Denise Dudzinski, Ph.D., MTS, Adjunct Professor, Bioethics and Humanities John Haley, Professor of Law Thomas Hazlet, B.S., Pharm.D., Dr.P.H., Adjunct Associate Professor, Pharmacy Nancy S. Jecker, B.A., M.A., M.A., Ph.D., Adjunct Professor of Law Sang Jo Jong, Visiting Professor Michael McCann, B.A., M.A., Ph.D., Adjunct Professor of Law Arzoo Osanloo, B.A., J.D., Ph.D., Adjunct Associate Professor of Law, Law, Societies and Justice Program Saadia Pekkanen, B.A., M.I.A., Ph.D., M.S.L., Adjunct Associate Professor of Law Clare Ryan, B.S., M.S., Ph.D., Adjunct Professor, School of Environmental and Forest Sciences Thomas Schoenbaum, B.A., J.D., Visiting Professor Hugh D. Spitzer, B.A., J.D., LL.M., Acting Professor of Law Susan Whiting, B.A., Ph.D., Adjunct Associate Professor of Law Richard O. Zerbe, Jr., A.B., Ph.D., Adjunct Professor of Law GALLAGHER LAW LIBRARY STAFF

Crystal Alberthal, B.A., M.L.I.S., Library Specialist, Serials Karen Ballard, B.A., Library Specialist, Cataloging Rob Britt, B.A., M.A., M.A., East Asian Law Library Services Coordinator Judy Davis, B.A., M.L.I.S., Librarian, Resource Sharing Anna Endter, B.A., J.D., M.L.I.S., Librarian, Reference

Flora Escarez, B.S., Library Specialist, Cataloging

- Grace Feldman, B.A., J.D., M.L.I.S., Librarian, Reference
- Jonathan Franklin, A.B., A.M., J.D., M.L.I.S., Interim Director of Library and Computing Services, Associate Law Librarian

Sharon Hall, Library Specialist Supervisor, Cataloging

Tricia Hart, B.A., M.L.I.S., Librarian, Cataloging

Ingrid Holmlund, A.B., J.D., M.L.I.S., CILP Co-Editor

Peggy Jarrett, B.A., M.S.L.I.S., Librarian, Collection Development & Reference

Richard Jost, B.A., M.A., M.A., Information Systems Coordinator

Choong Kim, B.A., Fiscal Specialist, Washington Law Review, Washington International Law Journal

Kaden Mack, B.A., Library Technician, Circulation

Ann Nez, B.A., M.L.I.S., Librarian, Technical Services Coordinator

- Vickie Northington, B.A., Library Supervisor, Circulation
- Cheryl Nyberg, B.A., M.S.L.I.S., Librarian, Reference

Nikki Pike, Information Specialist, CILP

Patty Roberts, B.A., Library Technician Lead, Evening Circulation Supervisor

Tania Schriwer, B.A., J.D., M.L.I.S., CILP Co-Editor

Dave Tawatao, Senior Computer Specialist

Reba Turnquist, B.A., M.L.I.S., Librarian, Collection Development

Mary Whisner, B.A., J.D., M.L.I.S., Librarian, Coordinator of Reference Services

- Alena Wolotira, B.A., J.D., M.L.I.S., Librarian, Reference; CILP Co-Editor
- Quan (John) Zhang, B.A., M.A., Ph.D., Library Specialist, Acquisitions