Georgia Law Review

Volume 49 | Number 1 Article 1

2014

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GEORGIA LAW REVIEW

VOLUME 49 FALL 2014 NUMBER 1

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For nearly 150 years, American insurance companies have engaged in race and gender pricing practices that would be illegal if followed today by any other major commercial enterprise. The insurance industry has defended its long-standing practices, first for race and now for gender, based on ideas about insurance "equity" developed in the nineteenth century. The continued application of these ideas, and the practices that have resulted from them, conflict with fundamental civil rights principles and should not be tolerated as exceptions to our national civil rights laws. As that history shows, classifications used by insurers to determine rates and benefits raise complex distributional, financial, and political issues that cannot be resolved simply as technical questions of actuarial risk or economics. This Article proposes comprehensive federal civil rights legislation to ban discrimination based on race, color, religion, national origin, and sex in insurance coverage, rates, and benefits. It explains why previous reform efforts have failed and why recent developments, including the adoption of unisex insurance rates in Europe, could make consideration of such legislation in the United States timely once again.

Using Reasonable Royalties to
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In the last several years, commentators have expressed serious concerns with the state of the law governing awards of reasonable royalties as damages in patent infringement cases. Given these concerns, the proper assessment of royalties has been a recent, frequent topic for debate among economists and legal scholars. At the same time, all three branches of the federal government have studied ways to improve the law governing reasonable

royalties. In this Article, I reframe the ongoing debate by identifying and exploring two basic paradigms for calculating reasonable royalties: valuing patent rights and valuing patented technology. The traditional paradigm, valuing patent rights, reflects a tort law make-whole conception of compensatory damages. Notably, however, the alternative paradigm, valuing patented technology, in various respects explains the course of the common law governing the method for calculating reasonable royalties, comports with the public policies identified by courts as guiding the award of reasonable royalties, and, moreover, if fully adopted may have significant benefits. I therefore consider several reforms that would tie the law governing reasonable royalty determinations even closer to the value of patented technology, and I highlight several open questions related to full adoption of this alternative paradigm.

Justifying a Prudential Solution to the *Williamson County* Ripeness Puzzle.....*Katherine Mims Crocker* 163

In the much-maligned 1985 case Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City, *the Supreme Court articulated a rule of "ripeness" requiring most Fifth Amendment regulatory-takings claimants to seek "just compensation" in state court before attempting to litigate in federal court.* Williamson County *and its progeny have opened a Pandora's box of unforeseen complications, spawning many more questions than they purported to answer. At the forefront is what kind of requirement the rule is anyway. This Article contends that reading* Williamson County *as grounded in the Constitution (specifically, in Article III or the Fifth Amendment) runs the risk of inflicting considerable and unintentional harm on litigants and the judicial system alike. The rule, therefore, ought to be reconceptualized as a matter of merely "prudential" ripeness.*

Indeed, the Supreme Court has recently taken a few tentative and unexplained steps in that direction. This Article seeks to justify that shift by demonstrating the superiority of a prudential framing of the requirement with respect to various persistent areas of uncertainty, ranging from so-called "facial" Fifth Amendment

challenges to the effect of claim preclusion in state courts. In short, viewing the compensation prong as prudential in nature permits a comparison of competing considerations on a case-by-case basis and, ultimately, allows courts to avoid some of the most surprising and senseless potential implications of alternative understandings.

NOTES

Where Do We Go Now? The Uncertain Future for 29 U.S.C. § 1301(b)(1), Private Equity Funds, and Multiemployer Pension Plans after *Sun Capital*.....*Crighton Thomas Allen* 209

The United States faces a growing problem concerning corporate indebtedness to pension plans, specifically, multi-employer pension plans (MEPPs). MEPPs are group pension plans in which a number of employers join together to contribute to a fund benefitting all employees of the participating companies. If an employer seeks to withdraw from a MEPP by ceasing to contribute into it, the company faces a withdrawal penalty—its proportionate share of the plan's vested but unfunded benefits.

The recent decision by the First Circuit in Sun Capital Partners III, LP v. New England Teamsters & Trucking Industry Pension Fund *has the potential to greatly impact the long-term viability of MEPPs going forward and to unsettle another entity also receiving recent national attention, private equity funds. In* Sun Capital, *the court held that the private equity fund Sun Fund IV is a "trade or business" under § 1301(b) of the Employment Retirement Income Security Act. As a "trade of business," the fund (if it satisfies other statutory requirements, as determined on remand) can be held jointly and severally liable for the MEPP withdrawal liability of a now-bankrupt company that it acquired as part of its investment strategy.*

This Note argues that Sun Capital *was wrongly decided as a matter of statutory interpretation and policy by exploring* Sun Capital*'s flawed analysis and suggesting the ramifications for both the private equity industry and MEPPs the decision might engender going forward.*

The Impact of *Clapper v. Amnesty International USA* on the Doctrine of Fear-Based Standing ..... *Amanda Mariam McDowell* 247

The Supreme Court's 2013 decision in Clapper v. Amnesty International USA *dealt with the government's electronic surveillance authority under the Foreign Intelligence Surveillance Act (FISA) Amendments. In a 5–4 opinion, the Court held that a variety of U.S. persons, including attorneys and media organizations, did not have standing to challenge the constitutionality of the FISA Amendments because the plaintiffs' fear of future unlawful surveillance was not "certainly impending." Depending on how lower courts choose to interpret* Clapper, *the decision could have a significant impact on the doctrine of fear-based standing, which allows plaintiffs to establish standing based on fear of future injury. While* Clapper *could be read as a directive to severely limit the scope of fear-based standing, it could also be reconciled with past precedent or limited to the foreign affairs context. However, the most accurate reading of the decision reveals that the* Clapper *Court devised a slightly stricter standing doctrine where the "certainly impending" test should be flexibly applied. This theory is supported by footnote five of the opinion, which references an alternative and more lenient "substantial risk" standing inquiry. This Note argues that lower courts should apply the more lenient footnote five test when hearing a constitutional challenge to a statute where the alleged fear of future harm is a threat of prosecution or the "chilling" of First Amendment rights.*

The Plaintiffs Keep Getting Richer, the Manufacturers Just Stay Poor: Design Defect Litigation in Georgia Post-*Banks* ..... *Davis S. Popper* 281

How much proof of a reasonable alternative design is necessary to survive a claim for defective design and when should proof of a reasonable alternative design be denied as irrelevant to claims pertaining to products that exhibit open and obvious dangers? Design defect litigation is particularly important because it involves claims that take entire product lines out of the market and cost manufacturers exorbitant losses and expose them to steep damages. In these cases, plaintiffs often suffer life-changing injuries or death. In this Note, I provide a

history of design defect litigation in the United States. In particular, I focus on the legal developments leading up to the implementation of the Restatement (Third) of Torts. *Then, I address critical reactions to the requirement of the reasonable alternative design in the* Restatement (Third). *Finally, I focus on the development of strict liability in Georgia by examining key cases therein. I address the myriad of requirements that Georgia courts hold as necessary for plaintiffs to prove a reasonably alternative design. I further argue that the* Banks*-factor test has swung too far in favor of plaintiffs and produced uncertainty in the application of proof of a reasonable alternative design. I conclude that the* Banks*-factor test is merely repackaged negligence and suggest that the new rule of law should be interpreted to require a lessened showing of alternative design known as the* feasible alternative design. *This test can be likened to a quasi-strict liability test for defective design in products liability cases.*

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GEORGIA LAW REVIEW ASSOCIATION, INC.
2014

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Published Four Times a Year by
Students of the University of Georgia School of Law

The *Georgia Law Review* (ISSN 0016 8300) is published four times a year by students of the University of Georgia School of Law. The *Review* invites the submission of unsolicited manuscripts. Citations in manuscripts should follow *The Bluebook: A Uniform System of Citation* (19th ed. 2010).

Current subscription: $34.00 per year (plus $6.00 for foreign mailing) payable in advance. Single issues: $12.00 (plus $3.00 for foreign mailing). Prices may vary for symposium and special issues. Subscriptions will be renewed automatically unless cancellation is requested. Cancellation notice must be received prior to payment. Periodicals postage paid at Athens, Georgia and additional mailing offices. POSTMASTER: Send address changes to the *Georgia Law Review*, University of Georgia School of Law, Athens, Georgia 30602-6012.

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