This PDF is a selection from a published volume from the National Bureau of Economic Research

Volume Title: Regulation vs. Litigation: Perspectives from Economics and Law

Volume Author/Editor: Daniel P. Kessler, editor

Volume Publisher: University of Chicago Press

Volume ISBN: 0-226-43218-1 ISBN13: 978-0-226-43218-2

Volume URL: http://www.nber.org/books/kess09-1

Conference Date: September 11-12, 2009

Publication Date: December 2010

Chapter Title: Front matter, table of contents, acknowledgments

Chapter Authors: Daniel P. Kessler

Chapter URL: http://www.nber.org/chapters/c12876

Chapter pages in book: (i - x)

Regulation versus Litigation



A National Bureau of Economic Research Conference Report

Regulation versus Litigation Perspectives from Economics and Law

Edited by

Daniel P. Kessler

The University of Chicago Press

Chicago and London

The University of Chicago Press, Chicago 60637 The University of Chicago Press, Ltd., London © 2011 by the National Bureau of Economic Research All rights reserved. Published 2011. Paperback edition 2012 Printed in the United States of America

21 20 19 18 17 16 15 14 13 12 2 3 4 5 6

ISBN-13: 978-0-226-43218-2 (cloth) ISBN-13: 978-0-226-43220-5 (paper) ISBN-10: 0-226-43218-1 (cloth) ISBN-10: 0-226-43220-3 (paper)

Library of Congress Cataloging-in-Publication Data

Regulation versus litigation : perspectives from economics and law / edited by Daniel P. Kessler. p. cm.— (A National Bureau of Economic Research conference report) Includes bibliographical references and index.

ISBN-13: 978-0-226-43218-2 (hardcover : alk. paper) ISBN-10: 0-226-43218-1 (hardcover : alk. paper) 1. Administrative procedure—United States. 2. Industrial laws and legislation— United States. 3. Trade regulation—United States. 4. Actions and defenses—United States. 5. Administrative procedure—Economic aspects. 6. Actions and defenses—Economic aspects. 7. Social control. I. Kessler, Daniel P. II. Series: National Bureau of Economic Research conference report. KF5407.R44 2010 342.73'066—dc22

2010016561

© The paper used in this publication meets the requirements of ANSI/NISO Z39.48-1992 (Permanence of Paper).

National Bureau of Economic Research

Officers

John S. Clarkeson, *chairman* Kathleen B. Cooper, *vice-chairman* James M. Poterba, *president and chief executive officer* Robert Mednick, *treasurer*

Directors at Large

Peter C. Aldrich Elizabeth E. Bailey Richard B. Berner John H. Biggs John S. Clarkeson Don R. Conlan Kathleen B. Cooper Charles H. Dallara George C. Eads Jessica P. Einhorn Mohamed El-Erian Jacob A. Frenkel Judith M. Gueron Robert S. Hamada Karen N. Horn John Lipsky Laurence H. Meyer Michael H. Moskow

Kelly Horak, controller and assistant corporate secretary Alterra Milone, corporate secretary Gerardine Johnson, assistant corporate secretary

> Alicia H. Munnell Rudolph A. Oswald Robert T. Parry James M. Poterba John S. Reed Marina v. N. Whitman Martin B. Zimmerman

Directors by University Appointment

George Akerlof, California, Berkeley Jagdish Bhagwati, Columbia Glen G. Cain, Wisconsin Ray C. Fair, Yale Franklin Fisher, Massachusetts Institute of Technology Mark Grinblatt, California, Los Angeles Saul H. Hymans, Michigan Marjorie B. McElroy, Duke Joel Mokyr, Northwestern Andrew Postlewaite, Pennsylvania Uwe E. Reinhardt, Princeton Nathan Rosenberg, Stanford Craig Swan, Minnesota David B. Yoffie, Harvard Arnold Zellner (Director Emeritus), Chicago

Directors by Appointment of Other Organizations

Jean-Paul Chavas, Agricultural and Applied Economics Association Martin Gruber, American Finance Association Arthur B. Kennickell, American Statistical Association Thea Lee, American Federation of Labor and Congress of Industrial Organizations William W. Lewis, Committee for Economic Development Robert Mednick, American Institute of Certified Public Accountants Angelo Melino, Canadian Economics Association Harvey Rosenblum, National Association for Business Economics John J. Siegfried, American Economic Association

Directors Emeriti

Andrew Brimmer Carl F. Christ George Hatsopoulos Lawrence R. Klein Franklin A. Lindsay Paul W. McCracken Peter G. Peterson Eli Shapiro Arnold Zellner

Relation of the Directors to the Work and Publications of the National Bureau of Economic Research

1. The object of the NBER is to ascertain and present to the economics profession, and to the public more generally, important economic facts and their interpretation in a scientific manner without policy recommendations. The Board of Directors is charged with the responsibility of ensuring that the work of the NBER is carried on in strict conformity with this object.

2. The President shall establish an internal review process to ensure that book manuscripts proposed for publication DO NOT contain policy recommendations. This shall apply both to the proceedings of conferences and to manuscripts by a single author or by one or more co-authors but shall not apply to authors of comments at NBER conferences who are not NBER affiliates.

3. No book manuscript reporting research shall be published by the NBER until the President has sent to each member of the Board a notice that a manuscript is recommended for publication and that in the President's opinion it is suitable for publication in accordance with the above principles of the NBER. Such notification will include a table of contents and an abstract or summary of the manuscript's content, a list of contributors if applicable, and a response form for use by Directors who desire a copy of the manuscript for review. Each manuscript shall contain a summary drawing attention to the nature and treatment of the problem studied and the main conclusions reached.

4. No volume shall be published until forty-five days have elapsed from the above notification of intention to publish it. During this period a copy shall be sent to any Director requesting it, and if any Director objects to publication on the grounds that the manuscript contains policy recommendations, the objection will be presented to the author(s) or editor(s). In case of dispute, all members of the Board shall be notified, and the President shall appoint an ad hoc committee of the Board to decide the matter; thirty days additional shall be granted for this purpose.

5. The President shall present annually to the Board a report describing the internal manuscript review process, any objections made by Directors before publication or by anyone after publication, any disputes about such matters, and how they were handled.

6. Publications of the NBER issued for informational purposes concerning the work of the Bureau, or issued to inform the public of the activities at the Bureau, including but not limited to the NBER Digest and Reporter, shall be consistent with the object stated in paragraph 1. They shall contain a specific disclaimer noting that they have not passed through the review procedures required in this resolution. The Executive Committee of the Board is charged with the review of all such publications from time to time.

7. NBER working papers and manuscripts distributed on the Bureau's web site are not deemed to be publications for the purpose of this resolution, but they shall be consistent with the object stated in paragraph 1. Working papers shall contain a specific disclaimer noting that they have not passed through the review procedures required in this resolution. The NBER's web site shall contain a similar disclaimer. The President shall establish an internal review process to ensure that the working papers and the web site do not contain policy recommendations, and shall report annually to the Board on this process and any concerns raised in connection with it.

8. Unless otherwise determined by the Board or exempted by the terms of paragraphs 6 and 7, a copy of this resolution shall be printed in each NBER publication as described in paragraph 2 above.

Contents

	Acknowledgments	ix
	Introduction Daniel P. Kessler	1
1.	Regulation (Agencies) versus Litigation (Courts): An Analytical Framework Richard A. Posner	11
2.	Efficient Regulation Andrei Shleifer	27
3.	The Trouble with Cases Frederick Schauer and Richard Zeckhauser	45
4.	Tobacco Regulation through Litigation: The Master Settlement Agreement W. Kip Viscusi and Joni Hersch	71
5.	Gun Control after <i>Heller</i>: Litigating against Regulation Philip J. Cook, Jens Ludwig, and Adam Samaha	103
6.	The Effects of Product Liability Exemption in the Presence of the FDA Tomas J. Philipson, Eric Sun, and Dana Goldman	137
7.	The Impact of Employment Protection on Workers Disabled by Workplace Injuries Adam H. Gailey and Seth A. Seabury	165

8.	Opting Out of Workers' Compensation in Texas: A Survey of Large, Multistate Nonsubscribers Alison Morantz	197
9.	M&A Break Fees: U.S. Litigation versus UK Regulation John C. Coates IV	239
10.	Exploring Ex Ante Regulatory Mechanisms for Detecting Prescription Drug Misuse Stephen T. Parente	285
11.	Natural Disaster Management: Earthquake Risk and Hospitals' Provision of Essential Services in California Tom Chang and Mireille Jacobson	301
	Contributors Author Index Subject Index	321 323 329

Acknowledgments

A great many institutions and people contributed to the research reported in this volume. I gratefully appreciate the generous financial support of the Smith Richardson Foundation in the form of a grant to the National Bureau of Economic Research. Martin Feldstein, James Poterba, and Andrei Shleifer provided invaluable guidance and intellectual encouragement throughout the process. Carl Beck and Brett Maranjian organized our group's meetings flawlessly. David Pervin, our editor at the University of Chicago Press, helped me and the contributors navigate the publication process and refine the chapters. Two anonymous referees provided numerous helpful suggestions for revision. Finally, Helena Fitz-Patrick made the production of the book—an editor's least favorite job—wonderfully smooth and efficient.