Regulation versus Litigation
A National Bureau of Economic Research Conference Report
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
Kelly Horak, controller and assistant corporate secretary
Alterra Milone, corporate secretary
Gerardine Johnson, assistant corporate secretary

Directors at Large

Peter C. Aldrich, Jessica P. Einhorn, Alicia H. Munnell
Elizabeth E. Bailey, Mohamed El-Erian, Rudolph A. Oswald
Richard B. Berner, Jacob A. Frenkel, Robert T. Parry
John H. Biggs, Judith M. Gueron, James M. Poterba
John S. Clarkeson, Robert S. Hamada, John S. Reed
Don R. Conlan, Karen N. Horn, Marina v. N. Whitman
Kathleen B. Cooper, John Lipsky, Martin B. Zimmerman
Charles H. Dallara, Laurence H. Meyer
George C. Eads, Michael H. Moskow

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

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

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

   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 *Heller*: 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
<table>
<thead>
<tr>
<th></th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>Opting Out of Workers’ Compensation in Texas: A Survey of Large, Multistate Nonsubscribers</td>
<td>197</td>
</tr>
<tr>
<td></td>
<td>Alison Morantz</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>M&amp;A Break Fees: U.S. Litigation versus UK Regulation</td>
<td>239</td>
</tr>
<tr>
<td></td>
<td>John C. Coates IV</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stephen T. Parente</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Natural Disaster Management: Earthquake Risk and Hospitals’ Provision of Essential Services in California</td>
<td>301</td>
</tr>
<tr>
<td></td>
<td>Tom Chang and Mireille Jacobson</td>
<td></td>
</tr>
</tbody>
</table>

Contributors 321
Author Index 323
Subject Index 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.