Periodical Collection

Indiana Law Review



Volume 22 No. 3 1989

ARTICLES

The Efficiency of a Disgorgement as a Remedy for Breach of Contract
Sidney W. DeLong

Defending Purchase Money Security Interests
Under Article 9 of the UCC
From Professor Buckley
Paul M. Shupack

NOTES

Random Drug Testing of Police Officers:
A Proposed Procedure Which Satisfies
Fourth Amendment Requirements

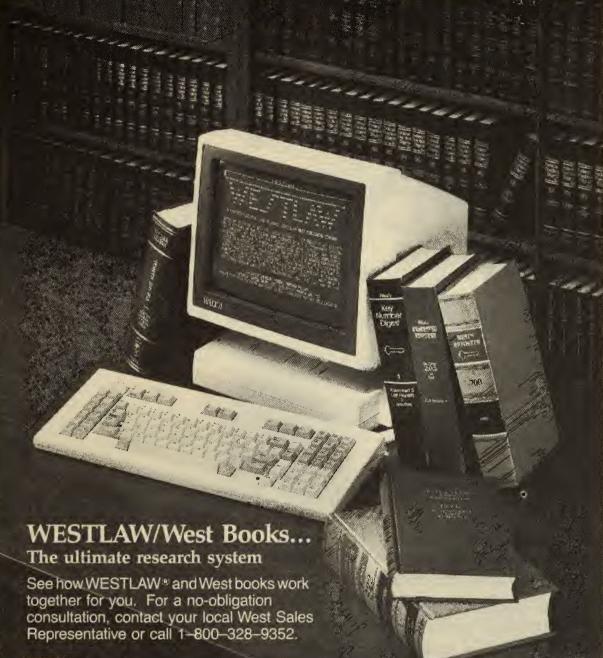
Delimiting the Manufacturer's Liability:
An Examination of Loss of Consortium
Recovery in Strict Products Liability
Actions Under Section 402A of the
Restatement (Second) of Torts

The Test for Patent Infringement
Under the Doctrine of Equivalents After
Pennwalt v. Durand-Wayland

The Standard of Proof in Civil RICO Actions for Treble Damages: Why the Clear and Convincing Standard Should Apply

FER - 6 990





WEST PUBLISHING COMPANY

DALE A. CHRIST 7440 North Shadeland Avenue Suite 150 Indianapolis, IN 46250-2027 Phone: 317/577-9378

L. JAMES HANKINS 1204 Flat Rock Road Louisville, KY 40245 Phone: 502/245–2806

JOHN M. WALSH P.O. Box 6278 South Bend, IN 46660 Phone: 219/272-5307

Decisions, Decisions, Decisions.



Every week, there are over 1,000 decisions rendered by the federal appellate courts, federal district courts, and state courts. Many will affect your clients. But you can't possibly review them all. So how do you decide which to read?

Put BNA's U.S. Law Week to work.

Each year the lawyers who edit *Law Week* screen over 50,000 state and federal opinions for you and report digests and text of only the most important ones in all areas of the law.

With Law Week every week, it takes just a few minutes to keep up with critical decisions you must know about to successfully represent your clients.

See for yourself. Call for a free sample issue today. Then make your own decision to subscribe. For a sample issue of *Law Week*, call toll-free: 1-800-372-1033.

People who know law, know BNA.



THE BUREAU OF NATIONAL AFFAIRS, INC. 1231 25th Street, N.W., Washington, D.C. 20037

on the subject of options

| Investment Option | Minimum Investment | Maturities | Credit | Income | Benefits |
|--|--------------------------|-----------------------------|-------------------------------------|---|---|
| Tax-Exempt Municipal Bonds/ Unit Investment Trusts | \$ 5,000 1,000 | To 30 Years | Backed by Issuer | Semi-Annual Coupon/ Monthly, Quarterly, Semi-Annual | Exempt from Federal Income Tax for Corporations, and from State and Federal Tax for Individuals.* |
| Money Market Funds | 1,000 | Day to Day | Issuing Fund | Monthly | High current income, preservation of capital, easy withdrawal procedures. Share value stability & check writing redemption. |
| Mutual Funds | 250 | Open End Funds | Issuing Fund | Monthly | High current return, monthly income, liquidity, high quality portfolios. |
| U.S. Treasury Bills | 10,000 | One Year or less | Direct Obligations of U.S. Treasury | Discount to Maturity | High quality, extremely liquid, state tax exempt.* |
| U.S. Treasury Notes | 5,000 1,000 | 1 - 3 Years 3 - 10 Years | Direct Obligations of U.S. Treasury | Semi-Annual Coupon | High quality, extremely marketable, state tax exempt.* |
| U.S. Treasury Bonds | 1,000 | Over 10 Years | Direct Obligations of U.S. Treasury | Semi-Annual Coupon | High quality, extremely marketable, state tax exempt.* |
| Discount Notes: Primarily Federal Home Loan Banks, FNMA, Federal Farm Credit Banks | 10,000 | 30 to 360 Days | Issuing Agency | At Maturity | May offer higher yields and smaller mini- mums than Treasury issues. High quality and extremely liquid.* |
| Federal Farm Credit, FNMA, Federal Home Loan Banks | 1,000 5,000 10,000 | 6 Months to 30 Years | Issuing Agency | At Maturity or Semi-Annual Coupon | May offer higher yields and smaller mini- mums than Treasury issues. High quality and good marketability.* |
| Bankers Acceptances | 100,000 | 10 Days to 270 Days | Guaranteed by Issuing Bank | Discount to Maturity | High quality and extremely liquid.* |
| Commercial Paper | 100,000 | To 270 Days | Backed by Issuer | At Maturity or Discount to Maturity | High yields, good marketability, highly liquid.* |

^{*}Possible market risk if sold before maturity date.

Have you considered all your options?

Investment banking from Indiana National

You may not have thought of Indiana National as a source of investment banking. But we're one of Indiana's major marketers of tax-exempt municipal bonds and notes, government and agency securities.

Reaching your investment goals

Our account executives have proven their capabilities and market insights by assisting clients in the acquisition of over \$32 billion in fixed income securities during the last five years.

And because they focus on safety, liquidity and rate of return, they provide the kind of securities that meet clients' investment objectives.

Managing your investment plan

At Indiana National you receive individualized attention to your investment goals. And you benefit from our decades of experience in personal service and prompt execution of trades.

The next time you're ready to make an investment, think of Indiana National. Because, when it comes to meeting your investment objectives, we've got all the ontions

Call 1-800-382-1102 or (317) 266-6829 for more information.





Please enter my subscription to the INDIANA LAW REVIEW

| _ | | | | | |
|---|-----------------------------------|--|--|--|--|
| | | | | | |
| | | | | | |
| | Enclosed is \$ for subscriptions. | | | | |
| | Bill me for subscriptions. | | | | |
| | Mail to: | | | | |
| | INDIANA LAW REVIEW | | | | |

INDIANA UNIVERSITY

SCHOOL OF LAW-INDIANAPOLIS
735 West New York Street
Indianapolis, Indiana 46202

Subscription Rates (one year):

Regular, \$22; Foreign, \$25; Survey, \$15; Single Issue, \$7

Indiana Law Review

Volume 22 1989 Number 3

Copyright © 1989 by the Trustees of Indiana University

TABLE OF CONTENTS

Articles

| tract | 73 |
|---|-----|
| Defending Purchase Money Security Interests Under Article 9 of the UCC From Professor Buckley | 777 |
| NOTES | |
| Random Drug Testing of Police Officers: A Proposed Procedure Which Satisfies Fourth Amendment Requirements | 799 |
| Delimiting the Manufacturer's Liability: An Examination of Loss of Consortium Recovery in Strict Products Liability Actions Under Section 402A of the Restatement (Second) of Torts | 821 |
| The Test for Patent Infringement Under the Doctrine of Equivalents After Pennwalt v. Durand-Wayland | 849 |
| The Standard of Proof in Civil RICO Actions for Treble Damages: Why the Clear and Convincing Standard Should Apply | 881 |

Volume 22 1989 Number 3

The INDIANA LAW REVIEW (ISSN 0090-4198) is the property of Indiana University and is published quarterly by the Indiana University School of Law—Indianapolis, which assumes complete editorial responsibility thereof. Subscription rates: one year \$22; foreign \$25. Please notify us one month in advance of any change in address and include both old and new addresses with zip codes to ensure delivery of all issues. Send all correspondence to Editorial Assistant, Indiana Law Review, Indiana University School of Law—Indianapolis, 735 West New York Street, Indianapolis, Indiana 46202. Publication office: 735 West New York Street, Indianapolis, Indiana 46201.

POSTMASTER: Send address changes to INDIANA LAW REVIEW, 735 West New York Street, Indianapolis, Indiana 46202.

Indiana Law Review

Volume 22

1989

Editor-in-Chief Robert G. Solloway

Executive Editors

Articles and Production

Carol Kirk

Notes and Topics

Katharine Liell Polito

Articles Editors

Rebecca S. Bowman

Madonna F. McGrath

Debra Linn Burns

Peggy J. Naile

Cynthia Pearson Purvis

Business Editor and Survey Coordinator Robert Davis

Note Development Editors

Bruce J. Alvarado Douglas E. Cressler Karen Glasser Deane

Catherine A. Kling Olivia A. Napariu Douglas K. Norman

Associate Editors

Rene F. Barnard

Carolyn A. Bielefeld

Raymond Charles Bowyer

Thomas A. Brodnik

Gary L. Chapman

L.S. John Ciecimirski

Jane A. B. Eppink

Brian S. Fennerty

Kisti L. Good

Barbara E. Lollar

Karen R. McClure

Deborah B. Noah

Paul F. Reidy

Mara J. Snyder

Clare M. Sproule

Darlene M. Stephens

E. Scott Treadway

Editorial Assistant Amy Morrison Grubbs

> Faculty Advisor Paul J. Galanti

Indiana University School of Law—Indianapolis 1988-89 ADMINISTRATIVE OFFICERS AND FACULTY

Administrative Officers

THOMAS M. EHRLICH, LL.B., President of the University

GERALD L. BEPKO, LL.M., Vice-President

NORMAN LEFSTEIN, LL.B., Dean

JAMES F. BINDLEY, J.D., Assistant Dean for Administration

DEBRA A. FALENDER, J.D., Acting Assistant Dean of Administration

LAWRENCE P. WILKINS, LL.M., Associate Dean for Academic Affairs

Faculty

- THOMAS B. ALLINGTON, Professor. B.S., University of Nebraska, 1964; J.D., 1966; LL.M., New York University, 1971.
- EDWARD P. ARCHER, Professor. B.M.E., Rensselaer Polytechnic Institute, 1958; J.D., Gerogetown University, 1962; LL.M., 1964.
- James F. Bailey, III., Professor and Director of Law Library. A.B., University of Michigan, 1961; J.D., 1964; M.A.L.S., 1970.
- GERALD L. BEPKO, Vice President and Professor. B.S., Northern Illinois University, 1962; J.D., IIT/Chicago-Kent College of Law, 1965; LL.M., Yale University, 1972.
- James F. Bindley, Assistant Dean for Administration and Director of Placement & Development, B.A., Loyola University, 1969; J.D., University of Kentucky. 1972.
- PAUL N. Cox, Professor. B.S., Utah State University, 1972; J.D., University of Utah, 1974; LL.M., University of Virginia, 1980.
- CLYDE HARRISON CROCKETT, Professor. A.B., University of Texas, 1962; J.D., 1965; LL.M., University of London (The London School of Economics and Political Science), 1972.
- DEBRA A. FALENDER, Professor. A.B., Mount Holyoke College, 1970; J.D., Indiana University, 1975.
- DAVID A. Funk, Professor. A.B., College of Wooster, 1949; J.D., Case Western Reserve University, 1951; M.A., The Ohio State University 1968; LL.M., Case Western Reserve University, 1972; LL.M., Columbia University, 1973.
- Paul J. Galanti, Professor. A.B., Bowdoin College, 1960; J.D., University of Chicago, 1963. Helen P. Garfield, Professor. B.S.J., Northwestern University, 1945; J.D., University of Colorado, 1967.
- HAROLD GREENBERG, Associate Professor. A.B., Temple University, 1959; J.D., University of Pennsylvania, 1962.
- JEFFREY W. GROVE, Professor. A.B., Juniata College, 1965; J.D., George Washington University, 1969.
- WILLIAM F. HARVEY, Carl M. Gray Professor of Law. A.B., University of Missouri, 1954; J.D., Georgetown University, 1959; LL.M., 1961.
- PAUL T. HAYDEN, Assistant Professor. B.A., Yale University, 1979; J.D., University of California, Los Angeles, 1984.
- W. WILLIAM HODES, Professor. A.B., Harvard College, 1966; J.D., Rugters Newark, 1969. LAWRENCE A. JEGEN, III., Thomas F. Sheehan Professor of Tax Law and Policy, 1982. A.B., Beloit College 1956; J.D., The University of Michigan 1959; M.B.A., 1960, LL.M., Harvard University, 1963.
- HENRY C. Karlson, Professor. A.B., University of Illinois, 1965; J.D., 1968; LL.M., 1977. William Andrew Kerr, Professor. A.B., West Virginia University, 1955. J.D., 1957, LL.M., Harvard University, 1958; D.B., Duke University, 1968.
- ELEANOR D. KINNEY, Assistant Professor. A.B., Duke University, 1969; M.A., University of Chicago, 1970; J.D., Duke University, 1973.
- Walter W. Krieger, Associate Professor. A.B., Bellarmine College, 1959; J.D., University of Louisville, 1962; LL.M., George Washington University, 1969.
- NORMAN LEFSTEIN, Dean and Professor. LL.B., University of Illinois, 1961; LL.M., Georgetown University, 1964.
- DAVID P. LEONARD, Professor. B.A., University of California at San Diego, 1974; J.D., UCLA School of Law, 1977.
- WILLIAM E. MARSH, Professor. B.S., University of Nebraska, 1965; J.D., 1958.

- Susanah M. Mead, Associate Professor. B.A., Smith College, 1969; J.D., Indiana University, 1976.
- MARY H. MITCHELL, Associate Professor. A.B., Butler University, 1975; J.D., Cornell Law School, 1978.
- DAVID R. PAPKE, Associate Professor. A.B., Harvard College, 1969; J.D., Yale Law School, 1973; M.A., in American Studies, Yale University, 1973; Ph.D., in American Studies, The University of Michigan, 1984.
- RONALD W. POLSTON, Professor. B.S., Eastern Illinois University, 1953; LL.B., University of Illinois, 1958.
- KENNETH M. STROUD, Professor. A.B., Indiana University, 1958; J.D., 1961.
- JAMES W. TORKE, Professor. B.S., University of Wisconsin, 1963; J.D., 1968.
- Joe A. Tucker, Assistant Professor. B.A., Houston, 1977; J.D., University of Texas, 1981. James Patrick White, Professor of Law. A.B., University of Iowa, 1953; J.D., 1956; LL.M., George Washington University, 1959.
- LAWRENCE P. WILKINS, Professor. B.A., The Ohio State University, 1968; J.D., Capital University Law School, 1973; LL.M., University of Texas School of Law, 1974.
- MARY Wolf, Assistant Professor. B.A., Saint Xavier College, 1969; J.D., University of Iowa College of Law, 1974.

Emeriti

- AGNES P. BARRETT, Associate Professor Emeritus. B.S., Indiana University, 1942; J.D., 1964. CLEON H. FOUST, Professor Emeritus. A.B., Wabash College, 1928; J.D., University of Arizona, 1933.
- JOHN S. GRIMES, Professor of Jurisprudence Emeritus. A.B., Indiana University. 1929; J.D., 1931.
- MELVIN C. Poland, Cleon H. Foust Professor of Law Emeritus. B.S., Kansas State University, 1940; LL.B., Washburn University, 1949; LL.M., The University of Michigan, 1950.
- R. Bruce Townsend, Cleon H. Foust Professor of Law Emeritus, A.B., Coe College, 1938; J.D., University of Iowa, 1940.

Legal Writing Instructors

- CYNTHIA ADAMS, B.A., Indiana State University, 1976; B.A., Kentucky Wesleyan College, 1977; J.D., Indiana University, 1983.
- ROBERT L. ELLIS, B.A., Ohio State University, 1971; J.D., Antioch School of Law, 1981.
- VICKIE RENFROW, Lecturer, B.A., University of Northern Iowa, 1970; M.A., 1971; Ph.D., Indiana University, Bloomington, 1976; J.D., Indiana University, Bloomington, 1981.
- JOAN RUHTENBERG, Director of Legal Writing. B.A., Mississippi University Women, 1959; J.D., Indiana University, 1980.

Law Library Staff

- MARY P. HUDSON, Assistant Librarian, B.A., Ball State, 1979; M.L.S., Indiana University, 1973.
- Wendell F. Johnting, Technical Services Librarian, A.B., Taylor University, 1974; M.L.S., Indiana University, 1975.
- KIYOSKI OTSU, Assistant Librarian, Parkland College, A.A., 1976; A.B., University of Illinois, 1980; M.S., 1982; C.A.S., 1983.
- TERRI L. Ross, Assistant Librarian, B.A., Indiana University, 1982; M.L.S., 1983.
- MERLIN P. WHITEMAN, Readers' Services Librarian, B.A., Hope College, 1973; M.L.S., Indiana University, 1974; J.D., 1982.