

5-1-2014

## **Vol. 5 No. 2, Spring 2014; Table of Contents & Masthead, Northern Illinois University Law Review Online Supplement**

Northern Illinois University Law Review Online Supplement

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### **Original Citation**

Table of Contents & Masthead, Northern Illinois University Law Review Online Supplement, Vol. 5, No. 2, Spring 2014

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# Northern Illinois University Law Review

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Volume 5

Spring 2014

Number 2

ONLINE JOURNAL

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## ARTICLES

### Pay-for-Delay and Interstate Commerce: Why Congress or the Supreme Court Must Take Action Opposing Reverse Payment Settlements

Corey Hickman.....1

*A pay-for-delay drug settlement, also called a reverse payment settlement, occurs when a brand name pharmaceutical company agrees to pay the maker of a similar generic drug to delay the release of the generic drug into the stream of commerce, thereby allowing the brand name pharmaceutical company to eliminate competition for an extended period of time. These agreements allow both the brand name manufacturer and the generic manufacturer to profit immensely. These settlements cost the American public an estimated \$3.5 billion per year. Further, reverse payment settlements on average prevent generic drugs from entering the stream of commerce for an additional seventeen months. As a result, the public is missing out on generic drugs that could be up to ninety percent cheaper than the brand name version.*

*This Comment intends to show that reverse payment settlements are unduly burdensome on interstate commerce, and thus it is within the purview of Congress to regulate these types of agreements. First, this Comment will explore the statutory framework through which pay-for-delay settlements became prominent. Next, this Comment discusses the history of pay-for-delay litigation and the underlying patent and antitrust laws that courts have focused on in making their decisions. After the necessary background is established, this Comment explores the commerce clause of the United States Constitution and argues that pay-for-delay settlements are unduly burdensome on interstate commerce, and therefore, either Congress should legalize the settlements through legislation or the Supreme Court should find them unconstitutional. Finally, the possible benefits of such legislation are discussed.*

“You Can’t Handle the Truth” . . . Well, the States That Is: The Legality of State-Imposed Transfer Taxes on Fannie Mae, Freddie Mac, and the Federal Housing Finance Agency

Lars Okmark ..... 32

*Fannie Mae and Freddie Mac were created by Congress to help stabilize the housing market. Congress included an express exemption from all taxation imposed by states, counties, and municipalities, albeit real property owned by Fannie and Freddie. In 2008, the Federal Housing Finance Agency (FHFA), a similarly exempt government entity, became conservator of the federally chartered entities. Across the United States, Fannie and Freddie purchase mortgages to ensure all families have access to affordable housing. This is where the problem lies: when Fannie and Freddie offer the deed for recording, localities attempt to tax the recording of the deed. This Comment argues that Fannie, Freddie, and FHFA are exempt from the recording tax because it is legally intuitive that states cannot tax an instrumentality of the federal government, especially when the federal government has provided explicit exemption statutes. Through examination of federal statutes, federal case law, constitutional principles, and other authoritative sources, this Comment urges courts to classify Fannie and Freddie as federal instrumentalities and uphold the clear meaning of the exemption statutes as just that—exempting statutes from all taxation imposed by local authorities.*

**NORTHERN ILLINOIS UNIVERSITY  
LAW REVIEW ONLINE JOURNAL**

Volume 5

Spring 2014

Number 2

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*Special thanks to Christina Raguse, Barbara Manning, Pamela Sampson, Julie Mahoney-Krzyzek, Annie Mentkowski, Karl Pettit, and Therese Clarke Arado for administrative and support purposes.*

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