ARIZONA
LAW
REVIEW

VOLUME 50 2008 NUMBER 4

CONTENTS

PAGE

ARTICLES

Antitrust law provides that successful private plaintiffs are entitled to treble damages. Despite this, in antitrust class action litigation, courts have subtly dismantled the treble damage regime by manipulating the standard for reviewing proposed settlements. Federal law requires judicial approval of class action settlements in order to ensure that the class members' interests are adequately protected. However, following the Second Circuit's 1974 *Grinnell* opinion, federal courts decline to consider the trebling of damages when estimating the value of class claims extinguished by antitrust class action settlements. Despite its longevity, the *Grinnell* rule has received no academic attention. This is surprising because the *Grinnell* court based its decision on a misreading of its source material. More importantly, the *Grinnell* rule undermines both the compensatory and deterrent functions of antitrust law.

Creditors exercise significant power over financially distressed corporations, thereby pushing corporate managers further into the realm of unprofitable risk aversion. The heavy hand of creditor power and the threats creditors are able to make to managers' professional stability and success misalign senior officers' incentives by undermining their freedom to make wealth-maximizing decisions on behalf of the corporation. The importance of independent managerial decision making is paramount in the law of corporate governance and that independence has been inefficiently undermined by the exertion of oppressive creditor control. This Article resolves the problem by creating a mechanism to balance shareholder and creditor influence over management so that no one constituent is able to dominate or undermine the independence of managerial decision making. A new shareholder representative called an "equity trustee" will represent shareholder interests during times of financial distress. The equity trustee gives voice to shareholder preferences in times when creditors are likely to dictate terms of governance so that the creditor voice does not grow too strong. The equity trustee should serve to balance competing preferences so that managers maintain independence and the ability to make value-maximizing decisions without fear of destructive retribution from either shareholders or creditors.

Every federal court that has addressed the issue has held that Rule 13(a) of the Federal Rules of Civil Procedure bars a defendant who defaults and fails to file a timely answer to a complaint from later filing a transactionally related claim in a subsequent suit. This Article argues that the federal courts' interpretation of Rule 13(a) is fundamentally wrong. The interpretation appears to be rooted in docket-clearing interests, rather than the text of Rule 13(a) itself or the history and policies underlying the rule. The history of preclusion law shows that defendants traditionally have been accorded the autonomy to bring their claims in the forum of their choice. The federal rules drafters carved out a narrow exception to the traditional rule and required defendants who file answers to assert any transactionally related claim they wished to pursue. The rule on its face, however, applies this exception only when defendants actually file an answer. The decisions applying the rule to defaulting defendants not only ignore the clear language of the rule, they also fail to serve the rule's purpose while needlessly penalizing defendants who unintentionally default, as well as defendants who wish to pursue their own claims elsewhere. These decisions are either poorly reasoned or fail even to discuss the issue at all, and they should now be abandoned.

NOTES

Over the past few years, federal sentencing procedure has seen significant changes. Most recently, in *Irizarry v. United States*, the Supreme Court held that federal criminal defendants are not entitled to advance notice when a district court judge makes a sua sponte decision to sentence them at variance with the federal Sentencing Guidelines. This Note provides a brief history of the sentencing changes that preceded *Irizarry*. Next, it explains why the *Irizarry* decision wrongly interprets previous cases, ultimately putting a roadblock in what was designed to be an efficient and fair sentencing process. Finally, it explains why it is still the better policy for district courts to voluntarily provide advance notice to defendants sentenced outside the Sentencing Guidelines, regardless of *Irizarry*'s holding that advance notice is not required.

Federal law entitles military veterans to disability benefits for post-traumatic stress disorder (PTSD). The Department of Veterans Affairs (VA) judges the severity of each veteran's case and decides how much to pay. However, VA has not written regulations that give specific guidance about handling PTSD cases. Instead, VA has tried the regulatory equivalent of jamming a square peg into a round hole. VA uses decades-old regulations developed for mental disorders that do not resemble PTSD. Without relevant regulations, VA lacks adequate guidance, it cannot fairly decide how much a veteran should be paid, and veterans are denied benefits they deserve. This Note proposes judicial and legislative solutions.

ARIZONA CASE NOTES

AFTERWORD