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Introduction

Erin McSherry

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INTRODUCTION

Happily, I introduce the third and last issue of the *New Mexico Law Review's* fortieth-anniversary volume. In this issue, we continue the relatively recent tradition of dedicating the last issue of each volume to student notes and comments. This issue includes seven student contributions, all authored by members of the Class of 2011. Four of the seven specifically discuss and critique recent New Mexico cases. One addresses a national healthcare issue, and two others explore immigration issues.

We begin with *The Learned Intermediary Doctrine in New Mexico: An Uncertain Future* by Loren Foy. Foy asserts that the essence of the learned intermediary doctrine has been consistently applied by the New Mexico Court of Appeals, although New Mexico has never expressly adopted the rule. She then argues that the Federal District Court of New Mexico incorrectly determined that the doctrine was “fundamentally inconsistent” with New Mexico’s strict liability jurisprudence in *Rimbert v. Eli Lilly & Co.*, when that court held that the New Mexico Supreme Court would reject the learned intermediary doctrine in its entirety.

Next, Aaron Holloman’s note, *Collective Venue and Equality Among Corporations in New Mexico: Bank of America v. Apache Corp.*, argues that the New Mexico venue statute affords greater procedural protections to domesticated corporations over residents and questions the policy behind such a scheme. Holloman proposes court-instituted and legislative solutions to avoid this outcome, such that the venue statute “better achieves its original purposes grounded in notions of equality.”

Ana Romero Jurisson’s note, *The Misuse of Brand X and the Detrimental Impact on Undocumented Immigrants in the Tenth Circuit: Revisiting the Basics of the Chevron Doctrine*, critiques the Board of Immigration Appeals’ and U.S. Citizenship and Immigration Services’ interpretations of the interaction between two parts of the Immigration and Nationality Act. Romero Jurisson concludes that the agency interpretations do not meet the elements of the *Chevron* test and that the courts in the Tenth Circuit should follow the Tenth Circuit Court interpretation, rather than the agencies’ interpretation.

Tara Kinman analyzes a recent New Mexico Supreme Court case in *Striking a Balance in the Valuation of Temporary Takings: Examining the Award of Lost Profits in Primetime Hospitality, Inc. v. City of Albuquerque*. Kinman recognizes the unusual nature of the *Primetime* case, in that it provided for lost profits as a remedy in a temporary condemnation action. She then recommends certain treatment of future cases and predicts the future of New Mexico takings law as a result of the precedent set in *Primetime*.

Genia Lindsey, in her comment, *Why the Rescission of Health Insurance Policies Is Not an “Equitable” Remedy*, looks at the practices commonly relied upon by insurers to carry out rescissions, the relationship between health plan laws and rescissions, and notable cases on rescission. Based on this review, she argues that rescission is not an equitable remedy.

Andy Scholl’s note, *State v. Belanger and New Mexico’s Lone Stance on Allowing Defense Witness Immunity*, considers the recently decided *Belanger* case, in which New Mexico became the first state in the country to recognize a defense witness immunity. In addition to setting out the history of witness immunity, Scholl

discusses *Belanger* policy implications, predicts its impact on criminal proceedings, and offers suggestions on how to best argue and best apply the case.

We conclude the issue with Melanie Stambaugh's comment, *Well-Founded Fear of Persecution Among Women Seeking Asylum: Lessons Learned from the Law of Rape*. Stambaugh makes a compelling comparison between the early application of criminal rape statutes and the modern application of U.S. asylum law. She argues that the lessons learned in the rape law arena should be applied in gender-based asylum jurisprudence.

This issue and fortieth-anniversary volume would not have been possible without the hard work of the student authors; the students' faculty advisors; the editorial board; *New Mexico Law Review* Advisor, Professor Michael Browde; and *New Mexico Law Review* Managing Editor of Publications, Lynne Arany. I am grateful to have had all of this support—thanks!

—Erin McSherry, Editor-in-Chief