SUPREME COURT OF THE UNITED STATES

DELAWARE, *Plaintiff*

v. Nos. 22O145 & 22O146 (Consolidated)

ARKANSAS, *et al.*, *Defendants*

APPENDIX IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY
Volume II of III [App. 416 to App. 825]

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CERTIFICATE OF SERVICE

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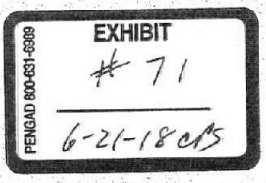
Department of Commerce

Division of Unclaimed Funds

John R. Kasich, Governor
Andre T. Porter, Director



August 29, 2014

Alex Holmes, Chief Financial Officer
MoneyGram International Inc.
2828 N. Harwood, Floor 15
Dallas, TX 75201

Dear Mr. Holmes:

The Ohio Department of Commerce, Division of Unclaimed Funds (State), pursuant to the authority granted to it under Chapter 169 of the Ohio Revised Code, the Ohio Unclaimed Funds Law (Law), has authorized and elected to join-in the involuntary examination of your records, as they relate to unclaimed funds, for the purpose of determining compliance with the Law. The examination has been initiated by another state and Ohio is one of the participating states. Per R.C. 169.03(F)(6), enclosed please find a list of states participating in the examination as of the date of this letter. The scope of the examination of MoneyGram International Inc. will include all relevant property subject to unclaimed funds reporting pursuant to R.C. 169.02 and encompass the parent company, subsidiaries, divisions and affiliates. The examination period, as defined in OAC 1301:10-1-01(K), will encompass the last ten (10) reporting cycles.

The examination will be conducted by APEX, a division of Treasury Services Group, L.L.C. (Contractor) as an authorized representative of the State. A copy of the Personal Service Contract between the State and the Contractor is available upon request. The Contractor has been directed to analyze your records for unclaimed funds in order to determine any portion rightfully reportable to the State pursuant to Chapter 169 of the Ohio Revised Code. You will be contacted by their representative who will advise you of the records and personnel who need to be made available for the examination, and to schedule a date to begin the review of the records.

The State reserves the right to impose interest and/or penalties permitted under the Law, for failure to report or deliver abandoned property within the prescribed time. Pursuant to R.C. 169.03(F)(7) and OAC 1301:10-3-04(K), MoneyGram International Inc. may appeal the disputed findings of the examination. The appeal may only be utilized after completion of the Closing Review at which the examination findings, including the total unclaimed funds reporting liability, are presented by the Contractor to your company's representative. A copy of the Annual Report of Unclaimed Funds Forms, Information and Instructions may be downloaded from the State's website at www.com.ohio.gov/unfd. Thank you for your cooperation in this matter. If you should have any questions, please contact Mr. James C. Dowley, Compliance Supervisor, at (614) 644-7283.

Sincerely,

Yaw Obeng
Superintendent

Enclosure

cc: James C. Dowley, Compliance Supervisor
Alex Kauffman, Treasury Services Group

77 South High Street, 20th Floor
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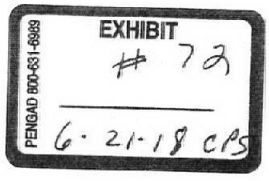
PENNSYLVANIA
TREASURY



August 1, 2014

MoneyGram International Inc.
Attn: Alex Holmes, CFO
2828 N. Harwood, Floor 15
Dallas, TX 75201

Dear Mr. Holmes:

The Pennsylvania Treasury Department, Bureau of Audits and Enforcement ("Treasury") pursuant to authority granted to it under the Pennsylvania Disposition of Abandoned and Unclaimed Property Act ("DAUPA") P.S. § 1301.1-1301.28a, as amended, hereby authorizes Treasury Services Group ("TSG") to conduct an examination of the books and records of MoneyGram International Inc., subsidiaries and related entities. The examination shall be for the purpose of determining compliance with the DAUPA.

This letter shall constitute authority for TSG to identify, collect and report all unclaimed property due and payable to Treasury. A representative from TSG will contact you to arrange a mutually agreed upon date to commence the examination.

Pursuant to Treasury's authority, it is our intention to impose interest upon MoneyGram International Inc. in connection with the audit findings and seek the imposition of penalties, when warranted, in accordance with Sections 1301.24 and 1301.25 of the DAUPA. However, Treasury is amendable to consider a showing of good cause or mitigating circumstances whereby the Treasurer may waive interest, penalties or both.

If you have questions, please feel free to contact Alex Kauffman of TSG at (402) 202-5053.

Sincerely,

Brian Munley, Esq., CPA
Director, Bureau of Audits and Enforcement

ALF00003152

SUSAN COMBS

TEXAS COMPTROLLER of PUBLIC ACCOUNTS

PO Box 13528 • AUSTIN TX 78711-3528

Alex Holmes CFO
MoneyGram International Inc
2828 N. Harwood Fl 15
Dallas TX 75201

Dear Mr. Holmes:

The Texas Comptroller of Public Accounts ("Comptroller"), pursuant to authority granted under the Texas Property Code, Title 6 Chapters 74 -75 ("Statute"), hereby provides this written notice that the Comptroller is commencing an unclaimed property audit and examination of the books and records of MoneyGram International Inc FEIN 16-1690064 ("Holder") and all relevant subsidiaries and divisions, for the purpose of determining compliance with the Statute. This audit relates to all overdue and unreported unclaimed property deemed abandoned and reportable to the Comptroller under the statute.

The audit and examination will be conducted by Treasury Services Group as the State's authorized agent. Contractor has been directed to determine all property deemed reportable to all states in order to establish that portion rightfully owing to the Comptroller. The Contractor will contact you to schedule a date to begin this audit and examination and will advise you of the documents, books, records and personnel that must be made available for the examination.

The contractor, acting as a custodian of the Comptroller, is authorized by the Comptroller to take delivery of all property, penalties and interest found due and owing at the conclusion of this audit and examination. In accordance with Section 74.707 of the Property Code, the Comptroller may waive penalty and interest if it is determined that the holder made a good faith effort to comply with Chapters 72-75 of the Property Code.

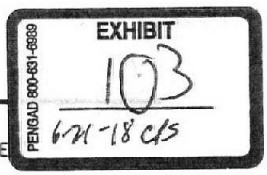
If you have any questions regarding the audit and examination, please contact Alex Kauffman at (402) 202-5053 or akauffman@treasuryservicesgroup.com. You may also contact me at (512) 463-5225 or matthew.angus@cpa.state.tx.us.

Sincerely,

Matthew T. Angus
Audit Division
Texas Comptroller of Public Accounts

cc: Alex Kauffman
Treasury Services Group

ALF00003264



Message

From: Kauffman, Alex [/O=TAG/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B56433BD6B744C9D953AA6C8DF90F5A9-KAUFFMAN, ALE
Sent: 11/16/2015 11:54:26 AM
To: Michael Rato [mrato@mdmc-law.com]
CC: Shane Osborn [/o=TAG/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3742eb531f348f682569219f71eeb64-S Osborn]
Subject: FW: MoneyGram
Attachments: Third Party Bank Checks memo from TSG.docx; 0051_001.pdf

Hi Mike,

I thought you might be interested to read Delaware's response to the States' demands for payments, and of our response to our States (this has not been sent to DE).

Also, Pennsylvania and a few other States have asked us to gather similar records for previous periods so that a broader settlement can hopefully reached among all States covering all periods. Would you please ask MoneyGram to provide a similar report for older Official Checks reported to their State(s) of incorporation? As far back as they have them, please.

Thanks,
Alex

From: Shane Osborn
Sent: Tuesday, November 3, 2015 2:46 PM
To: Kauffman, Alex <akauffman@treasuryservicesgroup.com>
Subject: Fwd: Info

Shane Osborn | Chairman & CEO | Treasury Services Group | www.treasuryservicesgroup.com |
Office: 402.682.7260 | Mobile: 402.699.0344 | sosborn@treasuryservicesgroup.com |

Begin forwarded message:

From: "Munley, Brian" <bmunley@patreasury.gov>
Date: November 3, 2015 at 2:43:44 PM AST
To: "sosborn@treasuryservicesgroup.com" <sosborn@treasuryservicesgroup.com>
Cc: "Benkovic, Barbara" <bbenkovic@patreasury.gov>, "Rohanna, Douglas K." <dkrohanna@patreasury.gov>
Subject: RE: Info

Shane,

While on topic, in addition to the reconciliation and supporting documentation re checks/orders erroneously reported to Delaware, Pennsylvania Treasury requests a similar reconciliation and supporting documentation for the amounts erroneously reported to Minnesota as far back as records have been maintained.
Thanks.

TSG
TREASURY SERVICES GROUP

TO: State Unclaimed Property Administrators

FROM: Treasury Services Group, LLC

RE: Delaware memo on Third Party Bank Checks

DATE: October 14, 2015

We wanted to provide some supplemental information for your attorneys as they review the MoneyGram issue and Delaware's recent letter to the participating States. Unfortunately it appears as though Delaware is continuing to ignore the facts and rely on a selective view of legal history for their analysis, just as they did in 2011 when they directed MoneyGram to continue improperly escheating all official checks to Delaware.

As you know, in 1974 Congress recognized the need to address escheatment priority rules following the Supreme Court decision in *Pennsylvania v. New York* as it applied to money orders, traveler's checks and other similar instruments, when it enacted the Disposition of Abandoned Money Orders and Traveler's Checks Act[1] (the "Act).

The Act modified the *Pennsylvania v. New York* decision by declaring that the state where the money order, traveler's check or other similar instrument was purchased has top priority to take custody of such unclaimed property. The statute also provides that if the issuer's books and records do not show the state of purchase, or if they do show the state of purchase but the state has no power under its own laws to take custody, then the state of the issuer's principal place of business, not the state of incorporation, has the right to take custody of the property. There is no doubt that Congress believed that the state where the instrument was purchased had a greater interest in the underlying property than: 1) the state where the issuer has its principal place of business; and 2) the state where the issuer is incorporated.

As we understand Delaware's position, Delaware believes that somehow these official check instruments, which are almost identical to money orders in every respect, are third party bank checks as excluded in the statutory language. Delaware's reasoning in this regard is based on a rejection of the notion that the language could be referring to bank checks that had been endorsed over to a third party, that the instruments may be considered "teller's checks," and on a selective reading of the legislative history of the Act.

Delaware's interpretation directly violates legal precedent. The only Federal case that defines "third party bank check" is contrary to Delaware's proposed reading of the phrase. In *U.S. v. Thwaites Place Associates*, the Southern District of New York (548 F.Supp 94) addressed specifically

[1] 12 U.S.C. §§ 2501-2503.

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the issue of third party bank checks. *In U.S. v. Thwaites*, the successful bidder at a foreclosure auction attempted to make the required down payment with a certified check that was made out to one other than the high bidder. To effectuate the sale the bank check had to be endorsed by the bidder. That instrument was deemed by the court to be a "third party bank check" which was unacceptable under the terms of the auction. Thus the courts deem a "third party bank check" to be a check made out to one party but endorsed over to another, as we have always maintained. This court interpretation proves that third party bank checks are different from the official checks reported to Delaware.

Delaware's consideration of the legislative history is misguided. In analyzing the Act we did in fact consider the statute's legislative history, which we agree is extremely helpful. The U.S. Department of the Treasury's ("Treasury") General Counsel, Edward C. Schmults, did express concerns that the legislation may be considered too broad and would cover "third party payment bank checks." The Committee adopted part of Treasury's recommendation in what it referred to in the Committee Report as a "technical amendment". However, Congress added only the words "third party bank checks." Why Congress dropped the word "payment" from Treasury's recommended language will most likely never be known. However, without the word payment it seems to suggest that the third party is not who is receiving payment from the bank check but rather as we originally suggested, it is a bank check that is now being presented for payment by a third party to the original transaction.

However, what is clear is that nowhere in Treasury's communication with the Committee did Mr. Schmults suggest -- nor did Congress endorse the idea -- that there were specific instruments that Congress had in mind that needed to be excluded. At the time the legislation was passed, there was no common definition of third party bank checks. It is highly unlikely that Congress would create an important exclusion for a particular financial instrument that did not have a common definition. It is much more likely that Congress was referring to the ***practice*** of signing checks over to a third party—a practice that was common at the time and would have clouded the issue of which State was entitled to the benefits of escheat.

If Congress did have a specific instrument in mind, it was much more likely to have been checks issued by thrifts and S&L corporations. At the time the legislation was being considered, there was a great deal of discussion within Congress and regulatory agencies about a new third party *payment* instrument that was allowing thrifts, savings and loans and credit unions to provide their customers a mechanism to make third party payments[2]. These accounts allowed nonbanks to compete with commercial banks by allowing them to make third party payments out of interest bearing accounts.

The practice was extremely controversial at the time and was subject to no less than eight bills introduced between 1973 and 1977[3] to either curb or further enhance its practice. Dozens of

[2] Third-party payment accounts are those that permit the depositor to direct the institution to pay a third party by means of an order issued to the third party. William E. Gibson, *Deposit Demand, "Hot Money," and the Viability of Thrift Institutions*, 3 Brookings Institution 593-636 (1974) (Brookings Papers on Economic Activity)

[3] H.R. 3035, 94th Congress (1975-1976) Added New York to New Jersey to the list of States in which NOW accounts are permitted, contingent on legislation within the respective States granting third party payment transfer authority to State-chartered thrift institutions; S. 1668, 95th Congress. A Bill to Provide for Equitable Regulation of savings accounts

scholarly articles were written to address this new payment instrument. Commercial banks, particularly national banks were extremely opposed to savings and loans, thrifts and credit unions being able to offer third party payment accounts or instruments of any kind. Therefore, logic dictates much more that the Department of the Treasury was urging Congress to narrow the coverage of this legislation by carving out these third party payment instruments (where the third party was always referred to as the receiver of the funds, not the guarantor of the funds.)

Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Commission et al. v. GTE Sylvania, Inc. et al.*,447 U.S. 102 (1980). "[I]n interpreting a statute a court should always turn to one cardinal canon before all others. . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, [HYPERLINK "https://en.wikipedia.org/wiki/Case_citation" \o "Case citation"] (1992). Indeed, "when the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" 503 U.S. 249, 254.

Looking at the precise language of the statute it says two things: 1) its provisions apply to money orders, traveler's checks or other similar written instruments; and 2) it excluded third party bank checks. First, MoneyGram's official check product is not only similar but is almost identical in every way to money orders. They sell both products through its agents, either financial institutions or other retail outlets. They both show MoneyGram as the drawer and MoneyGram's bank as the drawee. They both are treated similarly under their states' regulatory agencies. Physically, they are

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used to make payments to third parties; S. 1667, 95th Congress: Amends the Federal Home Loan Bank Act to permit federally-chartered savings and loan associations to offer negotiable order of withdrawal (NOW) accounts; H.R. 12934, 94th Congress (1975-1976) the Federal Reserve Reform Act added New York and New Jersey to the list of States in which third party payment transfer authority is allowed, if such authority is granted by such States-to-State chartered thrift institutions; H.R.13744, 95th Congress -- Prohibits the establishment by State or Federal law of interest rate differentials between: (1) banks, other than savings banks, the deposits of which are insured by the Federal Deposit Insurance Corporation; and (2) savings and loan, building and loan, or homestead associations (including cooperative banks) the deposits of which are insured by the FSLIC, or mutual savings banks, on savings accounts from which automatic transfers to third-party payment accounts may be made pursuant to the prearranged agreement of depositors or account holders; S.3461 — 95th Congress (1977-1978) Prohibits the establishment, by State or Federal law of interest rate differentials between: (1) banks, other than savings banks, the deposits of which are insured by the Federal Deposit Insurance Corporation; and (2) savings and loan, building and loan, or homestead associations (including cooperative banks) the deposits of which are insured by the FSLIC, or mutual savings banks, on savings accounts from which automatic transfers to third-party payment accounts may be made pursuant to the prearranged agreement of depositors or accountholders; H.R.13748 — 95th Congress (1977-1978) Prohibits the establishment, by State or Federal law of interest rate differentials between: (1) banks, other than savings banks, the deposits of which are insured by the Federal Deposit Insurance Corporation; and (2) savings and loan, building and loan, or homestead associations (including cooperative banks) the deposits of which are insured by the FSLIC, or mutual savings banks, on savings accounts from which automatic transfers to third-party payment accounts may be made pursuant to the prearranged agreement of depositors or accountholders; H.R.14044 — 95th Congress (1977-1978) Prohibits the establishment, by State or Federal law of interest rate differentials between: (1) banks, other than savings banks, the deposits of which are insured by the Federal Deposit Insurance Corporation; and (2) savings and loan, building and loan, or homestead associations (including cooperative banks) the deposits of which are insured by the Federal Savings and Loan Insurance Corporation, or mutual savings banks, on savings accounts from which automatic transfers to third-party payment accounts may be made pursuant to the prearranged agreement of depositors or accountholders.

identical. The only real differences are where they are sold and the limit on the value of the instruments.

The legislative history also is more instructive when looking at the entire Committee Report. That history includes the letter to the Committee from the Chairman of the Board of Governors of the Federal Reserve System. That letter emphasized many times, the need to address the inequities between the states that existed at the time. In his letter to the Committee, the Federal Reserve Chairman, Arthur F. Burns, referencing the legislation states that "[t]o correct this obvious inequity [created by the *Pennsylvania v. New York* decision], the Board concurs with the purpose[4] of the proposed legislation."

Chairman Burns recommended two changes to the underlying legislation to make it clear that the State of purchase should be dispositive as a matter of equity. One recommended change was to make sure the underlying legislative language achieved the Committee's purpose. Therefore, it was recommended that the language reference the State where the instrument was "purchased" rather than the State where the instrument was "issued". He went on to analyze why that was important. He focused on the traveler's check market at the time, noting that American Express accounted for two-thirds of the market and the rest of the market included two nonbanking subsidiaries of large bank holding companies (15%) and two other firms with each hold 1% of the market. He stated further that "[c]leary, an organization that issues such instruments will not usually be the organization that sells such instruments to the public. This fact emphasizes again the importance of the place where the instrument is ultimately purchased. . . ."

The second recommendation was to eliminate the different tests the Committee had established for national banks versus state chartered banks. The Chairman noted if the Committee maintained the different test for national banks where the property would escheat to "the State of its principal place of business" that it "*would result in a windfall* for a few States in which the laws for corporate organization are most attractive"[5] which would frustrate Congress' goal of making the disposition of unclaimed property among the states more equitable. The Committee adopted both of the Board's recommendations.

Delaware's reference to the UCC is irrelevant. They suggest that the MoneyGram official checks are teller's checks. First, the definition of teller's check under the Uniform Commercial Code ("UCC") is: 1) a draft drawn by a bank; 2) on another bank, or payable at or through a bank. Under §4-105(1) of the UCC, bank is defined as a "person engaged in the business of banking, including a savings bank, savings and loan association, credit union or trust company." It is clear based on the statutes of every state in which MoneyGram does business, including Delaware, that ***MoneyGram is not a bank***. In addition, MoneyGram definitely is not a bank under Federal law. On January, 7, 2015, the U.S. Tax Court found that MoneyGram is not regulated as a "bank" by the Federal Reserve Board, the Office of the Comptroller of Currency or the Federal Deposit Insurance Corporation and is not eligible for membership in the Federal Reserve System. The opinion further states that "it is regulated as a money services business. Federal banking regulations specifically

[4] Discussed further below
[5] *Id.* Page 4

exclude MSB's from the definition of "bank". *MoneyGram International Inc. and subsidiaries v. Commissioner of Internal Revenue*, case number 12231-12, 30309-12, in the U.S. Tax Court.

Therefore, in order for an official check to be a teller's check, both the drawer and drawee must be different banks under the UCC definition. MoneyGram's bank clients simply sell the official check instruments. However, according to MoneyGram's contracts, the funds are not drawn from the client financial institution. Rather, the instrument is purchased by the financial institution's customer either with cash or from funds drawn from the customer's account (not the bank's funds). Once purchased, the instrument is clearly marked that the drawer of the instrument is MoneyGram. Then, upon presentment, the funds are drawn from MoneyGram's account. Therefore, the funds are drawn from a bank but they are not drawn by another bank or payable at or through a bank. The Uniform Commercial Code requires the instrument to state that it is "payable through" a specific bank for it to be payable through a bank. UCC §4-106 Payable through or payable at bank; collecting bank. The MoneyGram instruments do not include any "payable through" language. Therefore, these instruments fail the second part of the "teller's check" definition.

Delaware's intention in this matter is clearly to undermine the very purpose of this bill—to provide equity among the States. Finally and possibly most importantly, is considering the purpose of the underlying legislation. As noted in *Travelers Express v. Minnesota*, when construing this statute, Congress' purposes must be borne in mind. See [HYPERLINK "https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1979135111&pubNum=708&originatingDoc=I8b91cd79556011d997e0acd5cbb90d3f&refType=RP&fi=co_pp_sp_708_1911&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)" \l "co_pp_sp_708_1911"]. [HYPERLINK "https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2503&originatingDoc=I8b91cd79556011d997e0acd5cbb90d3f&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)"] was obviously designed to modify the rule established by the Supreme Court regarding money orders, traveler's checks and other similar instruments.

Congress' purpose could not have been made clearer in this instance. In §2501 the Congressional findings and declaration of purpose[6] section states that "[t]he Congress finds and declares that: (1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments; (2) a substantial majority of such purchasers reside in the States where such instruments are purchased; (3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment (emphasis added); (4) it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto; and (5) the cost of maintaining and retrieving addresses of purchasers of money orders and traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments."

[6] (Pub. L. 93–495, title VI, § 601, Oct. 28, 1974, 88 Stat. 1525)

In addition to the language above that was adopted as the "Congressional Findings and Purposes" section of the Statute, the United States Senate Committee on Banking, Housing and Urban Affairs referenced its purpose to address the inequities that led to the need for the legislation at least five times in its Committee Report[7].

Congress' concern of addressing the inequities of one state receiving what they referred to as a "windfall" from other states which have a greater interest in the escheated property was well-founded at the time and could not be more evident by the current situation.

Less than one half of one-percent of all official check property escheated to the State of Delaware was actually purchased in Delaware. According to our review, MoneyGram should have escheated only slightly more than $1 million to Delaware rather than the more than $250 million Delaware now holds. That is a $250 million windfall to Delaware simply because Delaware has favorable laws of incorporation. There is no question that such a result turns the underlying purpose of the statute on its head. The tortured reading Delaware suggests of the phrase "third party bank check" to carve out these instruments is blatantly inconsistent with Congressional intent, has no basis in the Act's legislative history, has no basis in an otherwise heavily regulated banking sector or case law.

We believe without a doubt that this official check property was wrongfully escheated to Delaware. The instruments at issue are not just similar but are almost identical to money orders. They cannot be considered teller's checks and a reading of the Act as suggested by Delaware has no legal basis – whatsoever. The current situation demonstrates why it was important that Congress pass the Disposition of Abandoned Money Orders and Traveler's Checks Act. Delaware is enjoying an unfair windfall at the expense of the rest of the country.

MoneyGram's competitors escheat these items to the States of purchase and Minnesota agrees with our conclusion and has now reimbursed the correct States for items wrongfully escheated to Minnesota. This memo from Delaware is clearly nothing more than an attempt to slow down the necessary reimbursement of the other States, and we encourage you not to allow Delaware to do so.

[7] "Enactment of this legislation will equitably resolve a longstanding and much litigated conflict…."; "As these amounts grow, it becomes more important to assure their equitable distribution among the various States"; "Conflicting claims and the effect of a recent United States Supreme Court decision currently result inhibiting such an equitable distribution." "In order to resolve these conflicts and assure that each State receives its fair share of the proceeds of these instruments legislation was introduced by…."; "Thus, the legislation resolves existing and prospective conflicting claims by assuring that every State where such an instrument was sold has the opportunity to escheat or take custody of the proceeds of that instrument. This is far better than continuing to permit a relatively few States to claim these sums solely because the seller is domiciled in that State, even though the entire transaction took place in another State."

STATE OF DELAWARE
DEPARTMENT OF FINANCE
OFFICE OF THE SECRETARY

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September 29, 2015

Sent via E-Mail and U.S. Mail

Mr. Brian Munley, Esq., CPA, CGAP
Director, Bureau of Audits & Enforcement
State Treasury
P.O. Box 1837
Harrisburg, PA 17105-1837

RE: Claims to the State of Delaware Related to MoneyGram Payment Systems, Inc.

Dear Brian Munley, Esq., CPA, CGAP,

Your state is among a group of states that have contacted the State of Delaware, Department of Finance's Office of Unclaimed Property ("Delaware"), seeking payment of uncashed check funds previously reported to Delaware by the holder MoneyGram Payment Systems, Inc. ("MoneyGram"). It has been asserted that the uncashed check funds were "erroneously" reported to Delaware, and that certain of these funds are in fact due your state. Delaware takes these contentions very seriously, and we have been researching both the law and underlying facts regarding your claim since we started to receive supporting documentation from various states in April and from your contract auditor in late May of 2015.

While it would have been our preference to share our findings and determinations with your state once our review and research was completed, some states have been adamant in their demands that Delaware immediately either satisfy their claims or provide the basis for rejection. Delaware will undertake neither action at this time, but by this letter, we are sharing our preliminary analysis of your contract auditor's basis for demand that Delaware immediately pay over the MoneyGram uncashed check funds. A substantial amount of review is still required on our part, but we believe the work we have completed to date casts serious doubt on the theory of liability proposed by your contract auditor. We encourage you to review the following analysis and materials with your Attorney General's Office or other legal counsel.

In considering whether or not the uncashed MoneyGram checks are subject to reporting protocols of Public Law 93-495, codified at 12 U.S.C. § 2501 - 2503 (the "Federal Statute"), we considered it important to first review the statute's legislative history. Because the legislative

history was not provided by your contract auditor, we performed our own analysis. What we ultimately found was very significant.

The law as ultimately enacted by Congress (and included in the Federal Statute) differed from the legislation that was initially proposed. On May 29, 1973, unclaimed money order and travelers check legislation was first introduced, in the form of S. 1895. That bill, a copy of which is attached as Exhibit 1, addressed sums "payable on a money order, traveler's check, or similar written instrument," but provided no exemption for "third party bank checks." S. 1895 was referred to the Senate Committee on Banking and Urban Affairs (the "Senate Committee"), which sought views from various federal regulators on the proposed legislation.

The findings of the Senate Committee were compiled in a report (S. Rep. No 93-505), which is attached as Exhibit 2. The report, at page 5, includes a written statement from Edward C. Schmults, General Counsel to the U.S. Department of the Treasury that reads:

> The Department has no objection to legislation clarifying the escheat law with regard to traveler's checks, money orders or similar instruments but we believe the language of the bill is broader than intended by the drafters. The introductory language of section 2 could be interpreted to cover third party payment bank checks since it refers to a "money order, traveler's check, or similar written instrument on which a ban or financial organization or business association is directly liable." It is recommended that this ambiguity be cured by defining these terms to exclude third party payment bank checks.

The Senate Committee adopted the "technical suggestions" of Treasury, and included an exemption for "third party bank checks" in a revised bill, S. 2705, which is attached as Exhibit 3. The revised bill was ultimately incorporated in its totality into H.R. 11221, which was in turn became the Federal Statute.

As we understand it, the basis for your state's claim, as asserted by your contract auditor, is that "...unless Official Checks are third party bank checks, there is no reasonable interpretation that would exclude Official Checks from being covered" by the federal statute, and because "Official Checks are very different from, and cannot be considered, third party bank checks" MoneyGram's checks are in fact subject to the federal statute. The conclusion that MoneyGram checks cannot be considered third party bank checks apparently rests on the premise that "third party bank checks" are legally synonymous with "third party checks." We believe this premise to be incorrect.

Your state's contract auditor has provided a definition of "third party checks" ("a check endorsed by the payee to a new party who then becomes the holder of the check"), and we have no issue with that definition—*with respect to third party checks.* However, logic dictates that a "third party bank (payment) check" is something entirely different. As an initial matter, disregarding the word "bank" in "third party bank checks" ignores a fundamental rule of statutory construction: all words of a statute are to be taken into consideration, so that none are considered insignificant or superfluous. Congress could have exempted "third party checks" from the federal statute; however, it exempted third party *bank* checks, which were referenced in the legislative history as third party *bank payment* checks.

Additionally, third party checks operate differently. The payee of a check assigns (through signing-over, or "endorsing" the instrument) his or her rights of payment to another person. The records of the bank issuing the check do not reflect the assignment; the bank's records either reflect the original payee, or no payee. The bank only becomes aware of the third party assignment upon presentment and payment of the check, at which time the obligation is satisfied, and there is no longer a liability to "become" unclaimed, because a third party check properly presented for payment will be honored, and thus will not become unclaimed; the bank ultimately responsible for payment cannot deny payment on a third party check, where the third party to whom the check was endorsed is a holder in due course. It is unclear under what scenario a bank would be aware that it was holding funds representing an "*unclaimed* third party check," because the third party endorsement would be entirely independent of the creation of the payment obligation, and not reflected in the records of the bank.

We do not believe the General Counsel of the U.S. Treasury would have gone to the trouble of recommending to Congress that it modify legislation to take into account a non-existent issue. To accept that "third party bank checks" are the equivalent of "third party checks" would result in a construction of the federal statute inconsistent with basic principles of statutory interpretation, because it would imply that Congress and the U.S. Treasury were ignorant of the meaning of the language that was employed. It would also overlook the fact that the U.S. Treasury supervises national banks and thrifts; that the agency routinely reviews and comments on proposed legislation from the standpoint of how new laws might impact banking operations; and that there was a very logical explanation as to why it would have recommended the exemption of "third party checks" from the federal statute.

The Uniform Commercial Code (UCC), which has been adopted by your state and all other states participating in the MoneyGram audit, recognizes third party bank checks, i.e., a check that is issued by one bank, but drawn on the funds of a second, or "third party" bank. The UCC describes a "teller's check" as a check "drawn by a bank (i) on another bank, or (ii) payable at or through a bank." Regulation CC, enacted by the Federal Reserve, includes a similar definition. MoneyGram's unclaimed property reports filed with Delaware primarily consist of "teller's checks." The MoneyGram teller check specimen provided by your contract auditor to Delaware represents a check issued by a bank, but drawn on the funds of another (third party) bank.

In a third party bank check scenario, information relative to the issuance of the check is bifurcated from the underlying check funds. In the case of an uncashed third party bank check, the details of where and by whom the check was purchased would be recorded by the issuing bank, but the unclaimed funds would be maintained by a different bank. In order to compile a report of unclaimed property under the revised federal reporting protocols, it would be necessary for the two banks to exchange information and collaborate on the compilation of the report.

In contrast, a cashier's check represents a far more straightforward proposition, because the funds are drawn on the account of the bank issuing the check. Note that in 1973, at the time the federal statute was being drafted, the availability and utilization of information technology systems in the clearing of checks would have been minimal, and there would be limited ability to store and retrieve data electronically. Treasury could have, and likely did determine that

mandating this information exchange would be overly burdensome on national banks and thrifts, and thus the treatment of unclaimed third party bank checks should remain subject to the federal common law. While information technology has changed tremendously in the last 40 years, Congress enacted legislation based on the capacities of the banking system that were in place at the time, not what they might become in the future.

While the issue of what constitutes a "third party bank check" is a very important one, it is not the only issue that arises in the context of your state's claim. As noted above, Delaware will continue to examine both the factual and legal aspects of this matter. The work yet to be performed is extensive, and we cannot at this time provide a date by which a final determination will be reached. We hope that given the sums involved, your state will appreciate the need for Delaware to be thorough in its review, and to perform the work itself.

We sincerely hope that the materials provided herein are useful, and demonstrate that this matter is not as cut-and-dried as your state's contract auditor has suggested. Going forward, Delaware would like to share additional findings and discuss the issues that arise; however, it would be difficult for our state to engage in active dialogues with some 20 other states. We respectfully suggest that your state confer with other states participating in the MoneyGram audit, and appoint a "lead state" to interact with Delaware. Because the resolution of this matter will be optimally achieved "state-to-state," we believe there will be efficiency in this approach. Further, while Delaware has no preference as to which state is selected as a liaison, we need to emphasize that the liaison must be another state, and not your contract auditor. We are cognizant of our duty to respond to the asserted claims, but Delaware is under no obligation to interact with a non-party.

Please be assured: *this matter is important to the State of Delaware.* We will continue to devote resources to addressing MoneyGram's unclaimed property reporting and the claim filed by your state. We would appreciate your patience while we research the various issues, and we will provide you with periodic updates as we uncover additional information.

Very truly yours,

David M. Gregor
State Escheator

Enclosures (3 Exhibits)

cc: Michelle Whitaker, Assistant Director of Unclaimed Property and Audit Manager
Caroline Lee Cross, Deputy Attorney General

Exhibit 1

93D CONGRESS
1ST SESSION

S. 1895

IN THE SENATE OF THE UNITED STATES

MAY 29, 1973

Mr. SCOTT of Pennsylvania (for himself, Mr. CRANSTON, and Mr. TOWER) (by request) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To regulate which State may escheat or take custody of certain intangible abandoned property.

Whereas the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and travelers checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments, and

Whereas it has been determined that a substantial majority of such purchasers reside in the States where such instruments are issued or sold, and

Whereas the States wherein the purchasers of money orders and travelers checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment, and

II

Whereas it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto, and

Whereas the cost of maintaining and retrieving addresses of purchasers of money orders and travelers checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments: Now, therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

(a) "Banking organization" means any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in the United States.

(b) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, or investment company, engaged in business in the United States.

SEC. 2. STATE ENTITLED TO ESCHEAT OR TAKE CUSTODY.

Where any sum is payable on a money order, traveler's check, or similar written instrument on which a banking or

financial organization or a business association is directly liable, and

(a) where the books and records of such banking or financial organization or business association show the State of origin of the transaction wherein such money order, traveler's check, or similar written instrument was issued, such State of origin of the transaction shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum; or

(b) where the books and records of such banking or financial organization or business association do not show the State of origin of the transaction wherein such money order, travelers check, or similar written instrument was issued, the State in which the banking or financial organization or business association is organized or incorporated or, in the case of a national banking association or other entity organized under Federal law, the State of its principal place of business, shall be entitled to escheat or take custody of the sum payable on such money order, travelers check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, until an-

other State shall demonstrate by written evidence that it is the State of origin of such transaction; or

(c) where the books and records of such banking or financial organization or business association show the State of origin of the transaction wherein such money order, travelers check, or similar written instrument was issued and the laws of the State of origin of the transaction do not provide for the escheat or custodial taking of the sum payable on such instrument, the State in which the banking or financial organization or business association is organized or incorporated or, in the case of a national banking association or other entity organized under Federal law, the State of its principal place of business, shall be entitled to escheat or take custody of the sum payable on such money order, travelers check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, subject to the right of the State of origin of the transaction to recover such sum from the State of organization, incorporation, or principal place of business if and when the law of the State of origin of the transaction makes provision for escheat or custodial taking of such sum.

SEC. 3. EFFECTIVE DATE.

This Act shall take effect on ———— and shall be applicable to sums payable on money orders, travelers checks, and similar written instruments deemed abandoned on or after February 1, 1965.

Exhibit 2

Calendar No. 481

93D CONGRESS 1st Session } SENATE { REPORT No. 93-505

DISPOSITION OF ABANDONED MONEY ORDERS AND TRAVELER'S CHECKS

NOVEMBER 15, 1973.—Ordered to be printed

Mr. ROBERT C. BYRD (for Mr. SPARKMAN), from the Committee on Banking, Housing and Urban Affairs, submitted the following

REPORT

[To accompany S. 2705]

The Committee on Banking, Housing and Urban Affairs, having considered the same, reports favorably an original bill (S. 2705), to provide for the disposition of abandoned money orders and traveler's checks.

PURPOSE OF THE LEGISLATION

S. 2705 is designed to assure a more equitable distribution among the various States of the proceeds of abandoned money orders, travelers checks or other similar written instruments on which a banking organization, other financial institution, or other business organization, is directly liable through its having sold said instrument. Enactment of this legislation will equitably resolve a longstanding and much litigated conflict between the various States as to which State is entitled to the proceeds of the subject instruments.

There is in this country an annual increase in the use of travelers checks and money orders to facilitate various financial transactions. While the vast majority of these instruments are promptly presented and paid, there are always a certain number of them which are never presented for payment. The funds due from the seller on these instruments remain in its hands until the instrument is ultimately presented for payment or until the passage of a period of time which, under various State laws, is sufficient to require that these funds be turned over to the State government, pursuant to State statute.

Since there is an annual increase in the sale of money orders and travelers checks, it follows that each year, the amount of unclaimed funds continues to grow. As these amounts grow, it becomes more important to assure their equitable distribution among the various States.

99-010

Conflicting claims and the effect of a recent United States Supreme Court decision currently result in inhibiting such an equitable distribution. In order to resolve these conflicts and assure that each State receive its fair share of the proceeds of these instruments, legislation (S. 1895) was introduced by Senators Scott, Cranston, and Tower on May 29, 1973. In reporting to the Committee on this legislation, Chairman Burns of the Federal Reserve Board clearly summarized the current situation and concluded that the legislation is desirable. The Committee also received a report from the Treasury Department in which it recommended certain clarifying amendments.

Chairman Burns' letter and the Treasury Department's letter to the Committee appear below:

CHAIRMAN OF THE BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., November 1, 1973.

HON. JOHN SPARKMAN,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in response to your request for a report on S. 1895, a bill to regulate which State may escheat or take custody of certain intangible abandoned property. The Board recognizes that the bill is designed to resolve a long standing, and much litigated, question as to which State (among several having contracts with a particular item of abandoned property, such as, money orders, travelers' checks, and similar instruments for the transmission of money) has the superior right to escheat proceeds from such property by means of its abandoned property or escheat laws. The problem has been highlighted by two recent decisions of the U.S. Supreme Court in *Texas* v. *New Jersey*, 379 U.S. 674, 85 S. Ct. 626 (1965) and *Pennsylvania* v. *New York*, 407 U.S. 206, 92 S. Ct. 2075 (1972), U.S. *reh den* 409 U.S. 897, 93 S. Ct. 91 (1972).

In the former case, the Court was presented with the question of which of several States was entitled to escheat intangible property consisting of debts owed by the Sun Oil Co. and left unclaimed by creditors. In reaching its decision, the Court reasoned that:

> ". . . since a debt is property of the creditor, not of the debtor, fairness among the States requires that the right and power to escheat the debt should be accorded to the State of the creditor's last known address as shown by the debtor's books and records. . . . Adoption of such a rule involves a factual issue simple and easy to resolve, and leaves no legal issue to be decided. . . . The rule . . . will tend to distribute escheats among the States in the proportion of the commercial activities of their residents. And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified. . . . We therefore hold that each item of property in question in this case is subject to escheat only by the State of the last known address of the creditor, as shown by the debtor's books and records." *Id.*, at 680 682 (footnotes omitted).

The Court hold further that if there is no record of a last known address, or if the record indicates a State does not provide for escheat

S.R. 505

of intangibles, then the State of the debtor's corporate domicile may take custody of the property "until some other State comes forward with proof that it has a superior right to escheat." *Id.*, at 682.

In the latter case, the State of Pennsylvania sought to escheat a portion of the proceeds from unclaimed Western Union money orders which had been purchased in Pennsylvania. The Court acknowledged that in this type of transaction ". . . Western Union does not regularly record the addresses of its money order creditors [and that] it is likely that the corporate domicile will receive a much larger share of the unclaimed funds here than in the case of other obligations, like bills for services rendered, where such records are kept as a matter of business practice." *Id.*, at 214. Nevertheless, the Court affirmed the rule enunciated in *Texas* v. *New Jersey* and, accordingly, awarded the proceeds of the unclaimed money orders to the State in which Western Union had its corporate domicile—New York.

This decision when applied to similar transactions involving money orders or travelers' checks where the addresses of creditors are not usually recorded will result in a distribution of funds based solely upon the location of a debtor's corporate domicile. To correct this obvious inequity, the Board concurs with the purpose of the proposed legislation. The bill focuses not upon the State of the last known address of the creditor, but upon the State where the debtor-creditor relationship was established—the place of purchase of the instrument (which in most cases will be the residence of the creditor). The dissenting opinion of Mr. Justice Powell, Jr. in the *Pennsylvania* v. *New York* case (joined by Mr. Justice Blackmun and Mr. Justice Rehnquist) took a similar position and concluded that:

> "[t]his modification is preferable, first, because it preserves the equitable foundation of the *Texas* v. *New Jersey* rule. The State of the corporate debtor's domicile is denied a 'windfall': the fund is divided in a proportion approximating the volume of transactions occurring in each State; and the integrity of the notion that these amounts represent assets of the individual purchasers or recipients of money orders is maintained. Secondly, the relevant information would be more easily obtainable. . . . "*Id.*, at 220.

The Board believes, however, that the proposed bill in its present form will not accomplish its intended purpose. The language used in sec. 2(a), (b), and (c) of S. 1895 refers to the State where, such instruments were issued". At least with respect to travelers' checks, the distinction between their issuance and their purchase or sale is more real than apparent. Most commercial banks throughout the country do not *issue* travelers' checks; instead, the *sell* travelers' checks in their capacity as agent for an issuing company. (An exception to this is the Republic National Bank of Dallas, Dallas, Texas, which issues its own travelers' checks; but this business accounts for only 1 per cent of the total sales of such instruments in the United States.) On the other hand, there are five organizations supplying (issuing) most of the output of the travelers' check industry which has, today, annual United States sales of approximately $6 billion. The largest organization, American Express, accounts for about two-thirds of the industry total; two nonbanking subsidiaries of large bank holding companies each control almost 15 per cent of that total; and two other firms each have

approximately 1 per cent thereof. Clearly, an organization that issues such instruments will not usually be the organization that sells such instruments to the public. This fact emphasizes again the importance of the place where the instrument is ultimately purchased in order to determine the origin of the transaction. Accordingly, in order to avoid any possible ambiguity, the Board suggests that the appropriate portions of sec. 2 of the bill be amended by eliminating the word "issued" and substituting the word "purchased". By such a change, the bill will more effectively achieve its stated purpose.

In addition, the Board would like to express its views concerning portions of sec. 2(b) and (c) which, in part, state:

> ". . . where the books and records of such banking or financial organization or business association do not show the State or origin of the transaction wherein such money order, travelers check, or similar written instrument was issued, *the State in which the banking or financial organization or business association is organized or incorporated* (italic supplied), or, in the case of a national banking association or other entity organized under Federal law, *the State of its principal place of business* (italic supplied) shall be entitled to escheat. . . ."

As sec. 2(b) and (3) are presently drafted, two different tests are proposed to be employed to determine which State is entitled to escheat—if the banking or financial organization or business association has been organized or incorporated under State law, that State is the place; on the other hand, if it is a national banking association or an entity organized under Federal law, the State of its principal place of business is the place. The Board believes that regardless of where or under what jurisdiction a banking or financial organization or business association is organized the test should be identical, namely, the State of its principal place of business. In its present language, the State of organization or incorporation of such banking or financial organization or business association would be determinative and this place would often have no connection whatsoever with the State of origin of the transaction. In fact, employment of the proposed test would result in a windfall for a few States in which the laws for corporate organization are most attractive. However, uniform application of the "principal place of business" test would prevent such a windfall and would assure a more equitable distribution of abandoned proceeds of such instruments among the several States having a closer connection with the origin of the transaction. The Board would be happy to provide an appropriate amendment in accordance with our recommendations.

Sincerely yours,

(S) Arthur F. Burns.
ARTHUR F. BURNS.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., November 1, 1973.

HON. JOHN SPARKMAN,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1895, "To regulate which State may escheat or take custody of certain intangible abandoned property."

The proposed legislation is intended to clarify and make more equitable the rules governing the disposition among the several states of the proceeds of abandoned traveler's checks, money orders and similar instruments for transmission of money.

The Supreme Court of the United States, in *Texas* v. *United States*, 379 U.S. 674 1965) and in *Pennsylvania* v. *New York*, 407 U.S. 206 (1972), held that the state of last known address is entitled to escheat the proceeds of a money order, and if there is no address, the state of corporate domicile of the issuer is entitled to escheat the proceeds. The bill would provide that where a bank, financial organization, or business association is directly liable on a money order, traveler's check, or similar instrument, and the records of the issuing agency show the state in which the instrument was issued, that state of origin of the transaction may escheat, pursuant to its laws, the amount of the instrument. Where there is no record of the state of origin, the state in which the bank, financial organization or business association is organized may escheat the proceeds. The state in which the issuer is organized may also escheat the amount of the instrument if the state of origin does not have laws providing for escheat. The provisions of the bill would be applicable to instruments deemed abandoned on or after February 1, 1965.

The Department has no objection to legislation clarifying the escheat laws with regard to traveler's checks, money orders or similar instruments but we believe the language of the bill is broader than intended by the drafters. The introductory language of section 2 could be interpreted to cover third party payment bank checks since it refers to a "money order, traveler's check, or similar written instrument on which a bank or financial organization or business association is directly liable." It is recommended that this ambiguity be cured by defining these terms to exclude third party payment bank checks.

The Department would have no objection to the enactment of S. 1895 if clarified as suggested.

In view of your request for the expedition of this report, it has not been possible to obtain the customary clearance by the Office of Management and Budget prior to its submission.

Sincerely yours,

EDWARD C. SCHMULTS,
General Counsel.

In acting on this legislation, the Committee adopted the technical suggestions of the Federal Reserve Board as well as the Department of Treasury and others. The resulting Committee Bill contains all of these technical corrections and results in the establishment of a fair, clear rule for determining which State is entitled to the proceeds of abandoned travelers checks and money orders. The bill was reported without objections.

Provisions of the Legislation

The legislation provides that where any sum is payable on a money order, travelers check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable, and the books and records of the obligor show the State in which that instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on that instrument, to the extent of that State's power so to do under its own laws.

If the obligor's books and records do not show the State in which the instrument was purchased, then the State where the obligor has its principal place of business shall be entitled to escheat or take custody of the sum payable on the instrument, to the extent of that State's power under its own law so to do, until another State shall demonstrate by written evidence that it is the State of purchase.

If the laws of the State of purchase do not provide for the escheat or custodial taking of the sum payable on such instrument, the State in which the obligor has its principal place of business shall be entitled to escheat or take custody of the sum payable on such instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, subject to the right of the State of purchase to recover such sum from the State of principal place of business if and when the law of the State of purchase makes provision for escheat or custodial taking of such sum.

The Act is applicable to sums payable on the various instruments deemed abandoned on or after February 1, 1965, except to such sums which have already been paid to a State prior to the date of enactment.

Thus, the legislation resolves existing and prospective conflicting claims by assuring that every State where such an instrument was sold has the opportunity to escheat or take custody of the proceeds of that instrument. This is far better than continuing to permit a relatively few States to claim these sums solely because the seller is domiciled in that State, even though the entire transaction took place in another State.

Cordon Rule

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection 4 of the rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

O

Exhibit 3

93D CONGRESS
2D SESSION

S. 2705

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1974

Referred to the Committee on Banking and Currency

AN ACT

To provide for the disposition of abandoned money orders and traveler's checks.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

FINDINGS

SECTION 1. The Congress finds and declares that—

(1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;

(2) a substantial majority of such purchasers re-

I

side in the States where such instruments are purchased;

(3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment;

(4) it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto; and

(5) the cost of maintaining and retrieving addresses of purchasers of money orders and traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments.

DEFINITIONS

SEC. 2. As used in this Act—

(1) "banking organization" means any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in the United States;

(2) "business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals; and

(3) "financial organization" means any savings

and loan association, building and loan association, credit union, or investment company engaged in business in the United States.

STATE ENTITLED TO ESCHEAT OR TAKE CUSTODY

SEC. 3. Where any sum is payable on a money order, traveler's check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable—

(1) if the books and records of such banking or financial organization or business association show the State in which such money order, traveler's check, or similar written instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum;

(2) if the books and records of such banking or financial organization or business association do not show the State in which such money order, traveler's check, or similar written instrument was purchased, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's

power under its own laws to escheat or take custody of such sum, until another State shall demonstrate by written evidence that it is the State of purchase; or

(3) if the books and records of such banking or financial organization or business association show the State in which such money order, traveler's check, or similar written instrument was purchased and the laws of the State of purchase do not provide for the escheat or custodial taking of the sum payable on such instrument, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, subject to the right of the State of purchase to recover such sum from the State of principal place of business if and when the law of the State of purchase makes provision for escheat or custodial taking of such sum.

APPLICABILITY

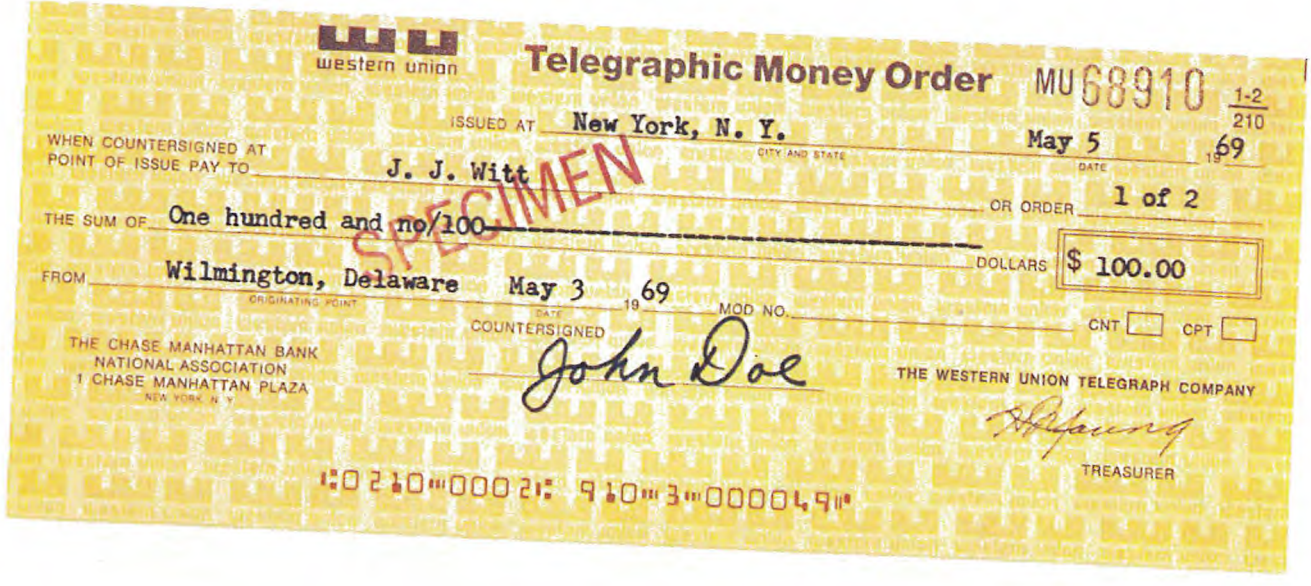
SEC. 4. This Act shall be applicable to sums payable on money orders, traveler's checks, and similar written

instruments deemed abandoned on or atter February 1, 1965, except to the extent that such sums have been paid over to a State prior to January 1, 1974.

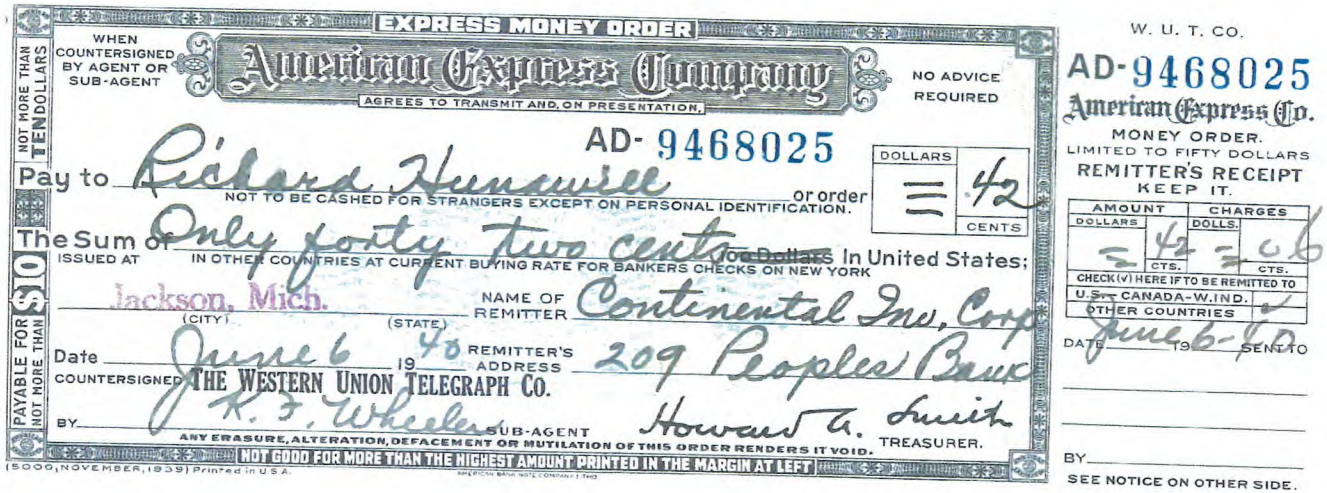
Passed the Senate February 28, 1974.

Attest: FRANCIS R. VALEO,
Secretary.

YOU DON'T HAVE TO TAKE IT WITH YOU



money by wire
via western union



EXPRESS MONEY ORDER

American Express Company

AGREES TO TRANSMIT AND, ON PRESENTATION,

NOT MORE THAN TEN DOLLARS

WHEN COUNTERSIGNED BY AGENT OR SUB-AGENT

NO ADVICE REQUIRED

AD- 9468025

Pay to Richard Hunswill or order

NOT TO BE CASHED FOR STRANGERS EXCEPT ON PERSONAL IDENTIFICATION.

DOLLARS = 42 CENTS

The Sum of Only forty two cents ~~Dollars~~

ISSUED AT IN OTHER COUNTRIES AT CURRENT BUYING RATE FOR BANKERS CHECKS ON NEW YORK In United States;

Jackson, Mich. (CITY) (STATE) NAME OF REMITTER Continental Ins. Corp

Date June 6 19 40 REMITTER'S ADDRESS 209 Peoples Bank

COUNTERSIGNED THE WESTERN UNION TELEGRAPH CO.

BY K. F. Wheeler SUB-AGENT Howard A. Smith TREASURER.

ANY ERASURE, ALTERATION, DEFACEMENT OR MUTILATION OF THIS ORDER RENDERS IT VOID.

NOT GOOD FOR MORE THAN THE HIGHEST AMOUNT PRINTED IN THE MARGIN AT LEFT

PAYABLE FOR $10 NOT MORE THAN

(5000, NOVEMBER, 1939) Printed in U.S.A.

W. U. T. CO.

AD-9468025

American Express Co.

MONEY ORDER.

LIMITED TO FIFTY DOLLARS

REMITTER'S RECEIPT

KEEP IT.

AMOUNT		CHARGES	
DOLLARS	CTS.	DOLLS.	CTS.
=	42	=	06

CHECK (√) HERE IF TO BE REMITTED TO

U.S., CANADA-W.IND. ✓

OTHER COUNTRIES

DATE June 6-40 SENT TO

BY

SEE NOTICE ON OTHER SIDE.

EXHIBIT 126 11-9-18 PENGAD 800-631-6989

WU0000001

WU00000002

NOTICE
THIS MONEY ORDER IS NOT PAYABLE TO BEARER.
IF HOLDER IS UNKNOWN CONCLUSIVE EVIDENCE OF IDENTITY MUST BE FURNISHED.

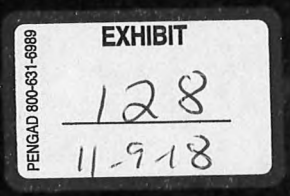
ENDORSE HERE

PROTECT YOUR TRAVEL FUNDS
CARRY
AMERICAN EXPRESS TRAVELERS CHEQUES

WHEN REMITTING TO FOREIGN COUNTRIES USE
AMERICAN EXPRESS SERVICE

NOTICE—IF THE MONEY ORDER DESCRIBED ON REVERSE HEREOF IS LOST OR DESTROYED, THE AMERICAN EXPRESS COMPANY WILL REFUND TO OWNER THE FACE VALUE THEREOF UPON PRESENTATION OF THIS RECEIPT AND EXECUTION OF THE COMPANY'S AGREEMENT FOR REFUND.

THE MONEY GRAM:



TELEGRAPHIC MONEY ORDER.

WALLACE BUSINESS FORMS, INC.

YOU CAN SEND A MESSAGE WITH YOUR MONEY *Only* A FEW CENTS MORE

WESTERN UNION
TELEGRAPHIC
WU 72A (R1-67)
MONEY ORDER

THE FASTEST AND SAFEST WAY TO SEND OR RECEIVE MONEY

Send the following Money Order subject to conditions below and on back hereof, which are hereby agreed to:

ACCTG. INFM.	CHECK	OFFICE	DATE AND FILING TIME
H6	PD	RIVERHEAD	51568 2P EDST
			SENDING DATA

$ AMT.	250	00
$ CHGS.	4	00
TOLLS	1	96
E TAX		04
TOTAL	256	40

DO NOT WRITE ABOVE THIS LINE

PAY AMOUNT: Two hundred and fifty (PRINT AMOUNT) /100 DOLLARS $ (250) (FIGURES)

CAU (SHOW CAU OR VIG AS APPROPRIATE)

TO: Mr. Herbert S. Levitt (PLEASE PRINT. IF WOMAN, GIVE MRS. OR MISS) Apt. 2A (CARE OF OR APT. NO.)

ADDRESS: 120 East 92 Street, New York City (STREET AND NUMBER) (CITY AND STATE)

SENDER'S NAME: Hunter Levitt

DELIVER THE FOLLOWING MESSAGE WITH THE MONEY:
This is the last time. Absolutely the last time.

● Unless signed below the Telegraph Company is directed to pay this money order at my risk to such person as its paying agent believes to be the above named payee, personal identification being given. Foreign money orders excepted.

Hunter L. Levitt

Hunter Lisle Levitt (SENDER'S FULL NAME)
226 Dune Road, Westhampton, N.Y. (SENDER'S ADDRESS)
516·288·3582 (TELEPHONE NUMBER)

Information for test question:

How to answer a cry for help.
Fast.

THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN

WESTERN UNION MONEY ORDER

1-2
210

ISSUED AT NEW YORK CITY, NEW YORK (CITY AND STATE) MAY 16 1968 (DATE)

When Countersigned at Point of Issue Pay to HERBERT S. LEVITT OR ORDER

THE SUM OF TWO HUNDRED AND FIFTY DOLLARS $250.00

TELEGRAPHED FROM RIVERHEAD, NY (ORIGINATING POINT) MAY 16 (DATE) 1968 NUMBER FV710444

THE CHASE MANHATTAN BANK
EIGHTEEN PINE STREET,
NEW YORK, N. Y.

COUNTERSIGNED Mary Frances McQuarrie (MONEY ORDER AGENT)

THE WESTERN UNION TELEGRAPH COMPANY
(TREASURER)

⑆021000021⑆ 910-3-000049⑈

Choose between this or cash.
It's good anywhere. With identification.

Money is a popular commodity. And we at Western Union are happy to say that we're in a position to hand it out. Yours, however, not ours.

This is not to say that we advocate either of us throwing it around loosely.

You may have, for example, a salesman on Bleached Bones Mesa who gets caught short. Or who needs an advance. Or who's missed a pay check. Or one of your executives may be in Paris or Montevideo or Tokyo. And suddenly poor.

What you do to help these people is this. Fill out the money order form you see on the opposite page. You can keep a stack of them in your office. Send it and the money to one of our offices near you. If you have a tieline or credit with us, you can arrange to send money anywhere without even leaving your office. Our receiving office either delivers the funds or notifies your people as soon as the money arrives. After they've identified themselves, they'll get the cash or a check, which any bank will cash upon identification.

This is an old service. It was born in 1870. And has been going great ever since. Which certainly says something about money.

western union

Western Union isn't just a lot of fast talk.

SPMO 30 (7/68)

STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
UNCLAIMED PROPERTY
CARVEL STATE BUILDING
820 N. FRENCH STREET
P.O. BOX 8749
WILMINGTON, DELAWARE 19899-8749

May 2, 2011

Michael Rato, Esq.
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962-2075

CONFIDENTIAL

Re: Your Request for Guidance Regarding Conflicting Escheat Claims

Dear Mr. Rato:

I received your letter dated April 20, 2011, regarding an issue facing a client of your firm that you have not identified. As a general matter the Office of Unclaimed Property does not render advisory opinions, nor does it respond to hypothetical fact situations; however, in the case of the facts presented in your letter, the position of the State of Delaware is abundantly clear.

Our position is that your client has been properly reporting and delivering unclaimed property in accordance with the strict rules established by the Supreme Court of the United States (the "Court") in *Texas v. New Jersey*, 379 U.S. 674 (1965), and clarified in *Delaware v. New York*, 507 U.S. 490 (1993). As summarized by the Court in *Delaware*, the Court's opinion in *Texas* created two priority rules:

> (1) where the last known address of the creditor (*i.e.*, owner of the intangible personal property) is known, the State in which that address is located has the right to escheat ("primary rule"); and
>
> (2) where the last known address of the owner is unknown, or in a state that "does not provide for escheat of the property owed," the State in which the debtor is incorporated is awarded the right to escheat subject to the "superior" right of the creditor's state should the creditor's state submit proof of the owner's address ("secondary rule").

507 U.S. at 499. According to the Court, these two rules are "the fairest, . . . easy to apply, and in the long run . . . the most generally acceptable to all the States." *Texas*, 379 U.S. at 683.

The Court applied the *Texas* priority rules in *Pennsylvania v. New York*, 407 U.S. 206 (1972), a suit brought by the Western Union Company ("Western Union"). The fact situation presented in that case appears to be "on all fours" with the facts presented in your letter. In that case, Western Union had not retained the last known address of purchasers of its money orders. Several states "perceived injustice"

because the primary rule would rarely apply in light of Western Union's failure to maintain last known addresses, and the secondary rule would often apply, resulting in the abandoned money orders most often escheating to the state of Western Union's domicile. *Id.* at 214. Rejecting the states' argument that an alternate rule should be established, the Court upheld the two-rule priority scheme, reasoning "the resulting likelihood of a windfall for the debtor's State of incorporation would [not] justify the carving out of an exception to the *Texas* rule[s]." *Id.* at 214.

The plaintiffs in *Pennsylvania* urged the Court to "define the creditor's residence according to a presumption based on the *place of purchase*," *id.* (emphasis added), because there were numerous money order transactions for which no last known address was kept. The Court explicitly rejected this proposal, reasoning:

> *Texas v. New Jersey* was not grounded on the assumption that all creditors' addresses are known. Indeed, as to four of the eight classes of debt involved in that case, the Court expressly found that some of the creditors 'had no last address indicated.' Thus, the only arguable basis for distinguishing money orders is that they involve a higher percentage of unknown addresses. But . . . to vary the application of the *Texas* rule according to the adequacy of the debtor's records would require this Court to do precisely what we said should be avoided-that is, 'to decide each escheat case on the basis of its particular facts or to devise new rules of law to apply to ever-developing new categories of facts.'

Id. at 214-15 (internal citations omitted); see also *Delaware*, 507 U.S. at 509.

The two priority rules established by the Supreme Court could not be clearer. There is no "third priority rule." To the extent any state claims to have established any other priority scheme by state statute, that statute is unenforceable as a matter of well-established law and binding precedent of the Court. Whatever doubt may have arisen from the language of Section 4(d) of the 1981 Uniform Unclaimed Property Act was erased by *Delaware v. New York*, 507 U.S. 490 (1993).

Please do not hesitate to contact me if you have any questions.

Sincerely,

Edward K. Black
Deputy Attorney General

cc: Mark Udinski, State Escheator and Audit Manager

Michael Rato, Esq.
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962-2075

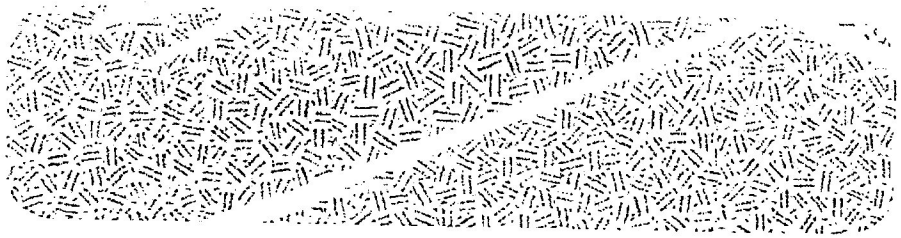
STATE OF DELAWARE
DIVISION OF REVENUE
CARVEL STATE BUILDING
820 N. FRENCH STREET
P.O. BOX 8749
WILMINGTON, DELAWARE 19899-8749
"Official Business, Penalty for
Private Use $300."

ADDRESS SERVICE REQUESTED

FIRST 1CL MAILED6196 DS2E69 050311 (2)

PRESORTED
FIRST CLASS

UNITED STATES POSTAGE
PITNEY BOWES
02 1M
0004261417 MAY03 2011
$ 00.34⁰
MAILED FROM ZIP CODE 19801



CAHRP51 07962

MATTHEW P. DENN
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
NEW CASTLE COUNTY
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400
FAX (302) 577-6630
CRIMINAL DIVISION (302) 577-8500
FAX (302) 577-2496
FRAUD DIVISION (302) 577-8600
FAX (302) 577-6499

February 24, 2015

Michael Rato, Esquire
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue
PO Box 2075
Morristown, New Jersey, 07962-2075

Re: Escheatment of Official Checks to Delaware by MoneyGram International

Dear Mr. Rato,

As you know, I am the Deputy Attorney General for the State of Delaware assigned to represent the Delaware State Escheator and the Office of Unclaimed Property (the "OUP"). We spoke last week about concerns your client, MoneyGram International ("MoneyGram"), has regarding a demand letter dated February 10, 2015 it received from Treasury Services Group ("TSG").

Let me first allay your client's concerns by assuring you that the OUP is bound by 12 *Del. C.* § 1203(c). That statute provides as follows:

> If the holder pays or delivers property to the State Escheator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the State Escheator acting on behalf of the State, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

"Good faith" is further defined in section (d) of the statute, which states as follows:

> For the purposes of this section, "good faith" means that:
> (1) Payment or delivery was made in a reasonable attempt to comply with this subchapter;
> (2) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then

known to the person, that the property was abandoned for the purposes of this subchapter; and

(3) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

12 *Del. C.* § 1203(d). Based on the information known at this time, the OUP accepts that MoneyGram has been escheating property to Delaware in "good faith," as contemplated by the statute. Therefore, Delaware will satisfy any claim made on the property by the lawful owner or a jurisdiction with a superior claim to escheat.

Under the priority rules articulated by the United States Supreme Court, because Delaware is the state of incorporation, Delaware is entitled to escheat abandoned and unclaimed property with a last known address in any jurisdiction, subject to a claim by another jurisdiction with a superior claim. *See Texas v. New Jersey*, 379 U.S. 674 (1965); *Texas v. New Jersey*, 380 U.S. 518 (1965); *Pennsylvania v. New York*, 407 U.S. 206, 210-211 (1972), and *Delaware v. New York*, 507 U.S. 490, 509 (1993). Unclaimed property is, by definition, not "owned" by the holder, MoneyGram. The above-cited cases have made it abundantly clear that once MoneyGram reports unclaimed property to a state claiming the right to escheat (in this case, Delaware), MoneyGram's obligation with regard to that property is satisfied, and no other state has standing to request said property from MoneyGram. Rather, the state must present a claim to the state which has escheated the property and establish that it has a superior right to escheat.

I am frankly shocked that TSG, purporting to act under color of authority of twenty other states, would issue a demand to MoneyGram while acknowledging that the property in question had previously been reported to Delaware. The U.S. Supreme Court has consistently held that "the same property cannot constitutionally be escheated" more than once. *See Texas*, 379 U.S. at 679, citing *Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71 (1961). TSG's undocumented assertion that the escheatment to Delaware was "improper[]" raises an issue that must, as a matter of law, be resolved between the states involved.

If the states referenced in TSG's letter believe that they have a superior claim to any of the property reported to Delaware by MoneyGram, those states are well aware that U.S. Supreme Court jurisprudence, established practice, efficiency, and common sense dictate that said states should present Delaware's OUP with a claim and the necessary documentation to support it.

You are authorized to share this letter with representatives of any states who attempt to enforce a demand for payment based on TSG's letter dated February 10, 2015.

Sincerely yours,

Caroline Lee Cross
Deputy Attorney General

cc: David M. Gregor, State Escheator
Michelle Whitaker, Audit Manager

Michael Rato

From: Cross, Caroline (DOJ) <Caroline.Cross@state.de.us>
Sent: Monday, October 12, 2015 2:00 PM
To: Michael Rato
Subject: RE: Official Check Unclaimed Property Issues
Attachments: Exhibit I.PDF; Exhibit II.PDF; Exhibit III.PDF

Dear Mike,

Thank you for your patience and diligence in following up with Delaware on this issue. As I hope I made clear in our brief conversation this morning, Delaware is committed to finding the right answer to this conflict between the states. Unfortunately, we do not share some of the other involved states' opinion that the answer is clear.

I understand that Ohio has issued a "cease and desist" to MoneyGram and is demanding that the property in question be reported to Ohio, rather than Delaware. Delaware's position, remains, *tentatively*, that Delaware is the proper jurisdiction for reporting. We are delving into the issue further with the hopes that we can present our findings to the states, and we can all reach a consensus on the issue.

To keep you in the loop on where we are, Delaware has shared the following with the involved states:

In considering whether or not the uncashed MoneyGram checks are subject to reporting protocols of Public Law 93-495, codified at 12 U.S.C. § 2501 - 2503 (the "Federal Statute"), we considered it important to first review the statute's legislative history. Because the legislative history was not provided by the contract auditor involved in the MoneyGram examination, we performed our own analysis. What we ultimately found was very significant.

The law as ultimately enacted by Congress (and included in the Federal Statute) differed from the legislation that was initially proposed. On May 29, 1973, unclaimed money order and travelers check legislation was first introduced, in the form of S. 1895. That bill addressed sums "payable on a money order, traveler's check, or similar written instrument," but provided no exemption for "third party bank checks." S. 1895 was referred to the Senate Committee on Banking and Urban Affairs (the "Senate Committee"), which sought views from various federal regulators on the proposed legislation.

The findings of the Senate Committee were compiled in a report (S. Rep. No 93-505). The report includes a written statement from Edward C. Schmults, General Counsel to the U.S. Department of the Treasury that reads:

> The Department has no objection to legislation clarifying the escheat law with regard to traveler's checks, money orders or similar instruments but we believe the language of the bill is broader than intended by the drafters. The introductory language of section 2 could be interpreted to cover third party payment bank checks since it refers to a "money order, traveler's check, or similar written instrument on which a ban or financial organization or business association is directly liable." It is recommended that this ambiguity be cured by defining these terms to exclude third party payment bank checks.

The Senate Committee adopted the "technical suggestions" of Treasury, and included an exemption for "third party bank checks" in a revised bill, S. 2705. The revised bill was ultimately incorporated in its totality into H.R. 11221, which was in turn became the Federal Statute.

As we understand it, the basis for the states' claims, as asserted by the contract auditor, is that "...unless Official Checks are third party bank checks, there is no reasonable interpretation that would exclude Official Checks from being covered" by the federal statute, and because "Official Checks are very different from, and cannot be considered, third

party bank checks" MoneyGram's checks are in fact subject to the federal statute. The conclusion that MoneyGram checks cannot be considered third party bank checks apparently rests on the premise that "third party bank checks" are legally synonymous with "third party checks." We believe this premise to be incorrect.

The contract auditor has provided a definition of "third party checks" ("a check endorsed by the payee to a new party who then becomes the holder of the check"), and we have no issue with that definition—*with respect to third party checks.* However, logic dictates that a "third party bank (payment) check" is something entirely different. As an initial matter, disregarding the word "bank" in "third party bank checks" ignores a fundamental rule of statutory construction: all words of a statute are to be taken into consideration, so that none are considered insignificant or superfluous. Congress could have exempted "third party checks" from the federal statute; however, it exempted third party *bank* checks, which were referenced in the legislative history as third party *bank payment* checks.

Additionally, third party checks operate differently. The payee of a check assigns (through signing-over, or "endorsing" the instrument) his or her rights of payment to another person. The records of the bank issuing the check do not reflect the assignment; the bank's records either reflect the original payee, or no payee. The bank only becomes aware of the third party assignment upon presentment and payment of the check, at which time the obligation is satisfied, and there is no longer a liability to "become" unclaimed, because a third party check properly presented for payment will be honored, and thus will not become unclaimed; the bank ultimately responsible for payment cannot deny payment on a third party check, where the third party to whom the check was endorsed is a holder in due course. It is unclear under what scenario a bank would be aware that it was holding funds representing an "*unclaimed* third party check," because the third party endorsement would be entirely independent of the creation of the payment obligation, and not reflected in the records of the bank.

We do not believe the General Counsel of the U.S. Treasury would have gone to the trouble of recommending to Congress that it modify legislation to take into account a non-existent issue. To accept that "third party bank checks" are the equivalent of "third party checks" would result in a construction of the federal statute inconsistent with basic principles of statutory interpretation, because it would imply that Congress and the U.S. Treasury were ignorant of the meaning of the language that was employed. It would also overlook the fact that the U.S. Treasury supervises national banks and thrifts; that the agency routinely reviews and comments on proposed legislation from the standpoint of how new laws might impact banking operations; and that there was a very logical explanation as to why it would have recommended the exemption of "third party checks" from the federal statute.

The Uniform Commercial Code (UCC), which has been adopted by all states participating in the MoneyGram audit, recognizes third party bank checks, i.e., a check that is issued by one bank, but drawn on the funds of a second, or "third party" bank. The UCC describes a "teller's check" as a check "drawn by a bank (i) on another bank, or (ii) payable at or through a bank." Regulation CC, enacted by the Federal Reserve, includes a similar definition. MoneyGram's unclaimed property reports filed with Delaware primarily consist of "teller's checks." The MoneyGram teller check specimen provided by the contract auditor to Delaware represents a check issued by a bank, but drawn on the funds of another (third party) bank.

In a third party bank check scenario, information relative to the issuance of the check is bifurcated from the underlying check funds. In the case of an uncashed third party bank check, the details of where and by whom the check was purchased would be recorded by the issuing bank, but the unclaimed funds would be maintained by a different bank. In order to compile a report of unclaimed property under the revised federal reporting protocols, it would be necessary for the two banks to exchange information and collaborate on the compilation of the report.

In contrast, a cashier's check represents a far more straightforward proposition, because the funds are drawn on the account of the bank issuing the check. Note that in 1973, at the time the federal statute was being drafted, the availability and utilization of information technology systems in the clearing of checks would have been minimal, and there would be limited ability to store and retrieve data electronically. Treasury could have, and likely did determine that mandating this information exchange would be overly burdensome on national banks and thrifts, and thus the treatment of unclaimed third party bank checks should remain subject to the federal common law. While information

technology has changed tremendously in the last 40 years, Congress enacted legislation based on the capacities of the banking system that were in place at the time, not what they might become in the future.

I know you have spent a considerable amount of time on this issue as well. If MoneyGram has any additional information or has reached different conclusions, Delaware would welcome your input on this question.

Thanks.

Carey Cross

Caroline Lee Cross
Deputy Attorney General
Department of Justice
State of Delaware
Carvel Office Building
820 N. French St., SLC C600
Wilmington, DE 19801
302.577.8814 (office)
caroline.cross@state.de.us

From: Michael Rato [mailto:mrato@mdmc-law.com]
Sent: Friday, October 09, 2015 9:33 AM
To: Cross, Caroline (DOJ)
Cc: 'Feinberg, Cory'
Subject: Official Check Unclaimed Property Issues

Dear Ms. Cross:

As you know, this firm represents MoneyGram in connection with the above-referenced matter. I am writing to follow up on my voice messages to you seeking information regarding Delaware's position on the escheatment of MoneyGram official checks. As mentioned in my message today, MoneyGram received a letter from the State of Ohio advising it to "cease and desist" reporting Ohio-issued (but no last-known address) Official Checks to Delaware. We would like to know Delaware's position on this demand so that the Company can evaluate its options.

Thank you for your consideration.

Regards,
Mike

LAWS

OF THE

STATE OF NEW YORK

PASSED AT THE

ONE HUNDRED AND SIXTY-SIXTH
SESSION

OF THE

LEGISLATURE

BEGUN JANUARY SIXTH AND ENDED MARCH
TWENTY-SIXTH

1943

AT THE CITY OF ALBANY

ALSO OTHER MATTERS REQUIRED BY LAW
TO BE PUBLISHED WITH THE SESSION LAWS

VOLUME I

ALBANY
1943

§ 3. Paragraph a of section 11.00 of chapter four hundred twenty-four of the laws of nineteen hundred forty-two, entitled "An act in relation to the financial affairs and management of municipalities, school districts and district corporations, constituting chapter thirty-three-a of the consolidated laws," is hereby amended by inserting a new subdivision, to be subdivision thirty-nine, to read as follows: § 11.00, ¶ a, new subd. 39, added.

39. Plans for post-war projects. The preparation of preliminary plans and detailed plans and specifications for a capital improvement which may be undertaken after the termination of the war, including test borings or other extraordinary expenditures related thereto, state aid for which shall have been approved by the temporary state post-war public works planning commission pursuant to law, three years.

§ 4. Section five-c of chapter twenty-nine of the laws of nineteen hundred nine, entitled "An act relating to municipal corporations, constituting chapter twenty-four of the consolidated laws," as added by this act, is hereby **repealed.** § 5-c, repealed.

§ 5. Sections one and two of this act shall take effect immediately. Sections three and four of this act shall take effect July first, nineteen hundred forty-four. Effective in part July 1, 1944.

CHAPTER 697

AN ACT in relation to escheated and abandoned property, constituting chapter one of the consolidated laws

Became a law April 23, 1943, with the approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

ABANDONED PROPERTY LAW

Abandoned Property Law.

CHAPTER ONE OF THE CONSOLIDATED LAWS

Article
- I. Short title; declaration of policy; definitions.
- II. Escheat of real property.
- III. Unclaimed property held or owing by banking organizations.
- IV. Unclaimed deposits and refunds for utility services.
- VI. Unclaimed or unknown owner court funds.
- VII. Unclaimed life insurance funds.
- X. Unclaimed condemnation awards.
- XII. Escheat of property paid or deposited in federal courts.
- XIII. Miscellaneous unclaimed property.
- XIV. General provisions.
- XV. Laws repealed; constitutionality; effective date.

ARTICLE I

SHORT TITLE; DECLARATION OF POLICY; DEFINITIONS

§ 101. **Short title.** This chapter shall be known and may be cited as the "Abandoned Property Law."

§ 102. **Declaration of policy.** It is hereby declared to be the policy of the state, while protecting the interest of the owners thereof, to utilize escheated lands and unclaimed property for the benefit of all the people of the state, and this chapter shall be liberally construed to accomplish such purpose.

§ 103. **Definitions.** As used in this chapter

(a) "Abandoned property fund" means the abandoned property fund established by section ninety-four of the state finance law, as such section was added by a chapter of the laws of nineteen hundred forty-three, entitled "An act to amend the state finance law, in relation to establishing an abandoned property fund and providing for the transfer of certain moneys and property to such fund, and to amend the surrogate's court act in relation to payments from such fund."

(b) "Abandoned property heretofore paid to the state" means, unless a more limited meaning clearly appears from the context, all money or other personal property collected or received by the state comptroller or the department of taxation and finance pursuant to the provisions of

(i) section two hundred seventy-two of the surrogate's court act;

(ii) subdivision two of section five, sections thirty-two, one hundred twenty-seven, one hundred seventy, two hundred fifty-seven and three hundred fourteen of the banking law;

(iii) section two hundred ninety-eight and subdivision three of section five hundred forty-five of the insurance law;

(iv) subdivision four of section sixty-six-a and section one hundred four-c of the public service law;

(v) section thirteen-c of the transportation corporations law;

(vi) sections eighty-four, ninety and ninety-two of the state finance law;

(x) and any earlier provision of law which embodies provisions which are substantially the same as or equivalent to those contained in such sections.

(c) "Banking organizations" means all banks, trust companies, private bankers, savings banks, industrial banks, safe deposit companies, savings and loan associations, credit unions and investment companies organized under or subject to the provisions of the banking law.[1]

[1] See subdivision 11 of section 2 of the banking law.

(d) "Domestic life insurance corporation" means any authorized insurer corporation incorporated and organized under any law of this state having power to do either one or both kinds of insurance business authorized in paragraphs one and two of section forty-six of the insurance law, as amended from time to time.

(e) "Utility services" means gas, electricity or steam supplied by, telephone, telegraph or other service furnished by, or appliances, equipment, installations, fixtures or appurtenances rented by a gas, electric, gas and electric, district steam, telegraph, telephone or telegraph and telephone corporation.

ARTICLE II

ESCHEAT OF REAL PROPERTY

§ 200. **Escheated lands.** All lands the title of which shall fail from a defect of heirs, shall revert, or escheat, to the people.[2]

§ 201. **Action for recovery of property.** Whenever the attorney-general has good reason to believe that the title to, or right of possession of, any real property has vested in the people of the state by escheat, or by conviction or outlawry for treason as provided in section eight hundred nineteen of the code of criminal procedure, he must commence an action of ejectment to recover the property.[3]

§ 202. **Publication of notice.** The attorney-general must cause a notice, specifying the names of the parties and the object of the action, and containing a brief description of the property affected thereby, to be published in the state bulletin, in a newspaper published in the city of New York, and in a newspaper published in each county in which any part of the property is situated, at least once in each week, for twelve successive weeks, before an issue of fact, joined in the action, is brought to trial; or where judgment is rendered therein in favor of the plaintiff, otherwise than upon the trial of an issue of fact, before final judgment is rendered.[4]

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[2] See section 10 of Article 1 of the State Constitution.
[3] See section 139-c of the public lands law.
[4] See section 139-d of the public lands law.

§ 203. **Unknown claimants as defendants.** If the property is not occupied, and no person is known to the attorney-general as claiming title thereto, the defendant or defendants may be designated as "unknown claimants," without any other description. When the name becomes known an order must be made for inserting the true name in the same manner and by the same proceedings as in any other civil action.[5]

§ 204. **Effect of judgment against unknown claimants.** Where, in an action of ejectment, to recover property alleged to be escheated, brought as prescribed in section two hundred three, final judgment in favor of the people is rendered against unknown claimants, and the real property recovered thereby is afterwards sold and conveyed, under the direction of the commissioners of the land office, the judgment is conclusive upon the title of that property, as against all persons, except those who commence an action of ejectment for the recovery thereof, or of a part thereof, within five years after the final judgment was rendered in the action in favor of the people, and the judgment-roll was filed thereupon. If a person who might maintain an action is at the time the judgment-roll is filed within the age of twenty-one years, or insane, or imprisoned under a criminal charge, or in execution upon conviction of a criminal offense, for a term less than life, the time of such liability is not a part of the time limited in this section, for commencing such action, except that the time so limited cannot be extended more than five years after the disability ceases, or after the death of the person disabled.[6]

§ 205. **Report by attorney-general.** The attorney-general shall report to the commissioners of the land office all the real property recovered by the people in any action brought pursuant to this article and report annually to the legislature of such real property recovered during the preceding calendar year.[7]

§ 206. **Petition for release of escheated lands.** 1. A petition for the release to the petitioner of any interest in real property escheated to the state by reason of the failure of heirs or the incapacity, for any reason except infancy or mental incompetency, of any of the petitioner's alleged predecessors in interest to take such property by devise or otherwise, or to convey the same or by reason of the alienage of any person, who but for such alienage would have succeeded to such interest, may be presented to the board of commissioners of the land office within forty years after such escheat. Such petition may be presented:

a. By any person who would have succeeded to such interest but for his alienage or the alienage of another person, or

b. By the surviving husband, widow, stepfather, stepmother or adopted child of the persons whose interest has so escheated, or

c. By the purchaser at a judicial sale or sheriffs' sale on execution, or

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[5] See section 139-e of the public lands law.
[6] See section 139-f of the public lands law.
[7] See section 139-g of the public lands law.

d. By an heir, devisee, assignee, grantee, immediate or remote, or executor of any person, who but for his death, assignment or grant could present such petition, or the alleged grantee of any person or of any association or body, whether incorporated or not, who or which would have succeeded by devise or otherwise to the title of such person but for his alienage or a legal incapacity to take or convey the property so escheated.

2. Such petition shall be verified by each petitioner in the same manner as a pleading in a court of record may be verified, and shall allege:

a. The name and residence of each person owning any interest in such real property immediately prior to the escheat;

b. The name and residence of each petitioner and the circumstances which entitle him to present such petition;

c. The name and place of residence of every person who would have succeeded to any such interest but for his alienage or the alienage of another or any other rule of legal incapacity hereinabove mentioned affecting an attempted transfer of such interest to such person or to or by any of his alleged predecessors in interest;

d. The description and value, at the date of the verification of the petition, of such real property sought to be released;

e. The description and value, at the date of the verification of the petition, of all the property of every such owner, which shall have escheated to the people of the state by reason of failure of heirs or alienage and which shall not then have been released or conveyed by the state;

f. The name and residence of each person having or claiming an interest in such real property at the date of the verification of the petition and the nature and value of such interest;

g. Any special facts or circumstances by reason of which it is claimed that such interest should be released to the petitioner.

Such petition may be filed within sixty days after its verification with the secretary of state, who shall present it to the board at its next meeting thereafter, and who may call a meeting of the board to consider the same.

§ 207. **Proceedings on receipt of petition.** The board shall determine the truth of the allegations of the petition; the value of the real property sought to be released; and the value of all the property of every such owner which shall have escheated to the state, and shall not have been conveyed or released by the state, and for that purpose the board may take testimony and proof, either orally or by affidavits. It may, as a condition of hearing the matter, require the petitioners to produce witnesses or advance the expense of producing them.[8]

§ 208. **Conveyance to petitioner.** 1. The board may in its discretion, if it deem it just to all persons interested, execute in the name of the state, a conveyance on such terms and conditions as the

[8] See section 61 of the public lands law.

board deems just, releasing to such petitioners the interest of the state so acquired in such real property so sought to be released.

2. A conveyance so made to any such petitioner who is a parent, child, surviving husband or widow of any such owner of any interest therein immediately prior to the escheat, or the heirs-at-law of any such surviving husband or widow, or the alleged grantee of any person or of any association or body, whether incorporated or not, who or which would have succeeded by devise or otherwise to the title of such person but for a legal incapacity to take or convey the property so escheated shall be without consideration, if the value, at the date of the petition, as determined by the board of all property of any such owner escheated to the state and not conveyed or released by the state, shall not exceed one hundred thousand dollars, and of the property sought to be released shall not exceed ten thousand dollars. Where, however, the value of the property sought to be released shall exceed the sum of ten thousand dollars the board may release the same to such petitioner upon the payment of the appraised value in excess of ten thousand dollars.

3. The conveyance shall contain a brief recital of the determinations required to be made by the board on the hearing of the petition, and of all the terms and conditions on which the conveyance is made.[9]

§ 209. **Effect of conveyance on rights of others.** No such conveyance shall impair or affect any right, title, interest or estate in or to the lands thereby released, of any heir-at-law, devisee, grantee, mortgagee or creditor of any person having an interest in the real property released immediately prior to the escheat thereof, or of any person having a lien or incumbrance thereon, through, under or by any person having an interest therein immediately prior to the escheat.[10]

§ 210. **Protest against conveyance; notice of hearing.** Any person may file, at any time, with the secretary of state, a protest, stating his name, residence and post-office address, against the conveyance or release by the state of any interest of the people of the state acquired by escheat, in any real property described in such protest. The secretary of state shall present such protest to the board at its next meeting thereafter, and the board shall, if practicable cause a notice of its hearing of any petition for the conveyance or release of any such real property, to be given to each person filing such protest, in such manner as will enable such person to appear before them on such hearing. It may, in its discretion, cause like notice to be given to any other person, of the hearing of any petition for the release by the state of any interest of the people of the state in any real property acquired by escheat, or may cause notice of such petition to be given generally by publication in a newspaper published in the county in which such real property is situated.[11]

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[9] See section 62 of the public lands law.

[10] See section 63 of the public lands law.

[11] See section 64 of the public lands law.

§ 211. **Lands held under written contract.** Where lands have been escheated to the state and the person last seized was a citizen or capable of taking and holding real property the board shall fulfill any contract made by such person or by any person from whom his title is derived, in respect to the sale of such lands, so far only as to convey the right and title to the state, pursuant to such contract, without any covenants of warranty or otherwise, and shall allow all payment which may have been made on such contracts. If any part of such escheated land has been occupied under a verbal agreement for the purchase thereof, and the occupants have made valuable improvements thereon, such agreement shall be as valid and effectual as if it were in writing.[12]

§ 212. **Escheated lands subject to trusts and incumbrances.** Lands escheated to the state for defect of heirs shall be held subject to the same trusts and incumbrances to which they would have been subject if they had descended.[13]

§ 213. **Condemnation awards as interest in real property.** An interest in real property escheated to the state shall for the purposes of this article, be deemed to include any and all awards heretofore or hereafter made in condemnation proceedings against such escheated lands and all the provisions of this article shall apply to the release and assignment of such awards with the same force and effect as to the release and conveyance of an interest in real property.[14]

ARTICLE III

UNCLAIMED PROPERTY HELD OR OWING BY BANKING ORGANIZATIONS

§ 300. **Unclaimed property held or owing by banking organizations.** 1. The following unclaimed property held or owing by banking organizations shall be deemed abandoned property:

(a) Any amounts due on deposits or any amounts to which a shareholder of a savings and loan association or a credit union is entitled to, held or owing by a banking organization, which shall have remained unclaimed for fifteen years by the person or persons appearing to be entitled thereto, including any interest or dividends credited thereon, excepting

(i) any such amount which has been reduced or increased, exclusive of dividend or interest payment, within fifteen years, or

[12] See section 66 of the public lands law.
[13] See section 68 of the public lands law.
[14] See section 70 of the public lands law.

(ii) any such amount which is represented by a passbook not in the possession of the banking organization, which has been presented for entry of dividend or interest credit within fifteen years, or

(iii) any such amount with respect to which the banking organization has on file written evidence received within fifteen years that the person or persons appearing to be entitled to such amounts had knowledge thereof, or

(iv) any such amount payable only at or by a branch office located in a foreign country.[15]

(b) Any amounts held or owing by a banking organization for the payment of a negotiable instrument or a certified check whether negotiable or not on which such organization is directly liable, which instrument shall have been outstanding for more than fifteen years from the date it was payable or from the date of its issuance, if payable on demand.

2. Any abandoned property held or owing by a banking organization to which the right to receive the same is established to the satisfaction of such banking organization shall cease to be deemed abandoned.

§ 301. **Annual report of abandoned property.** 1. On or before the first day of August in each year every banking organization shall make a verified written report to the state comptroller, which shall contain a true and accurate statement, as of the first day of July next preceding, of all abandoned property specified in section three hundred, held or owing by it.

2. (a) Such report shall, with respect to amounts specified in paragraph (a) of subdivision one of section three hundred which are abandoned property, set forth:

(i) the name and last known address of each person or persons appearing from the records of such banking organization to be the owner of any such abandoned property;

(ii) the amount appearing from such records to be due such person or persons;

(iii) the date of the last transaction with respect to such abandoned property;

(iv) the nature and identifying number, if any, of such abandoned property; and

(v) such other identifying information as the state comptroller may require.

(b) Such report shall, with respect to amounts specified in paragraph (b) of subdivision one of section three hundred which are abandoned property, set forth:

(i) the name and last known address, if any, of the person or persons appearing from the records of such banking organization to be entitled to receive such abandoned property;

(ii) a description of such abandoned property including

[15] See paragraph (a) of subdivision 23 of section 2, subdivision 1 of sections 126, 169, 256 and 313 of the banking law.

identifying numbers, if any, and the amount appearing from such records to be due or payable;

(iii) the amount of any interest or other increment due thereon;

(iv) the date such abandoned property was payable or demandable; and

(v) such other identifying information as the state comptroller may require.

3. Such report shall be in such form as the state comptroller may prescribe. All names of persons appearing in the section of such report relating to deposits, appearing to be the owners thereof, shall be listed in alphabetical order. Abandoned property other than deposits listed in such report shall be classified in such manner as the state comptroller may prescribe, and names of persons appearing to be entitled to such abandoned property appearing in such report shall be listed alphabetically within each such classification.

4. In case any banking organization shall on the first day of July in any year neither hold nor owe any abandoned property specified in section three hundred, it shall on or before the tenth day of August next succeeding make a verified written report to the state comptroller so stating.[16]

§ 302. **Publication of list of abandoned property.** 1. Within thirty days after making a report of abandoned property pursuant to the provisions of section three hundred one, such banking organization shall cause to be published a notice entitled: "NOTICE OF NAMES OF PERSONS APPEARING AS OWNERS OF CERTAIN UNCLAIMED PROPERTY HELD BY (name of banking organization)."

2. Such notice shall be published once in two newspapers published in the city or village where such abandoned property is payable, provided, however, that if such abandoned property is payable in the city of New York, such publication shall be in two newspapers published in the county where such abandoned property is payable. If there is only one newspaper published in any such city or village, such notice shall be published in such newspaper and in a newspaper published in the county in which such abandoned property is payable. If there are no newspapers published in such city or village, then such publication shall be in two newspapers published in the county where such abandoned property is payable, or, if there is only one such newspaper published in such county, then in such newspaper, or, if there are no newspapers published in such county, then in a newspaper published in an adjacent county. All newspapers in which such notice shall be published shall be newspapers printed in the English language.

3. Such notice shall, in accordance with the classification prescribed by the state comptroller for the report pursuant to the provisions of section three hundred one, set forth:

(a) the names and last known addresses, which were in such report, of all persons appearing to be entitled to any such

[16] See sections 126(1), 169(1), 256(1), and 313(1) of the banking law.

abandoned property amounting to ten dollars or more. Such names shall be listed in alphabetical order. If, however, such banking organization has reported abandoned property payable in more than one city or village or, in the case of the city of New York, more than one county, the names shall be listed alphabetically for each such city, village or county and such notice shall include only the names of the persons appearing to be entitled to abandoned property payable in such city, village or county;

(b) such other information as the state comptroller may require; and

(c) a statement

(i) that a report of unclaimed amounts of money or other property held or owing by it has been made to the state comptroller and that a list of the names of the person or persons appearing from the records of such banking organization to be entitled thereto is on file and open to public inspection at its principal office or place of business in any city, village or county where any such abandoned property is payable;

(ii) that such unclaimed moneys or other property will be paid or delivered by it on or before the succeeding thirty-first day of October to persons establishing to its satisfaction their right to receive the same; and

(iii) that in the succeeding month of November, and on or before the tenth day thereof, such unclaimed moneys or other property still remaining will be paid or delivered to the state comptroller and that it shall thereupon cease to be liable therefor.

4. Such banking organization shall file with the state comptroller on or before the tenth day of September in each year proof by affidavit of such publication.[17]

§ 303. **Payment of abandoned property.** 1. In such succeeding month of November, and on or before the tenth day thereof, every banking organization shall pay or deliver to the state comptroller all abandoned property specified in such report, excepting such abandoned property as since the date of such report shall have ceased to be abandoned.

2. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may require relative to such abandoned property as shall have ceased to be abandoned.

§ 304. **Unclaimed property held by the superintendent of banks after liquidation.** 1. All amounts held by the superintendent of banks as trustee for the owners thereof after the completion of the voluntary or involuntary liquidation of the business and affairs of any banking organization as provided in section thirty of the banking law which shall not have been claimed and paid within four years after receipt by the superintendent shall be deemed abandoned property.

[17] See sections 126(2) (3), 162(2) (3), 256 (2) (3) and 313 (2) (3) of the banking law.

2. Any such abandoned property held by the superintendent of banks to which the right to receive the same is established as provided in section thirty-one of the banking law shall cease to be deemed abandoned.[18]

§ 305. **Payment of abandoned property after liquidation by superintendent of banks.** 1. Not later than the first day of October in each year the superintendent of banks shall pay to the state comptroller all such abandoned property held by him which shall have become abandoned property at any time prior to the first day of July next preceding, excepting such abandoned property as since such first day of July shall have ceased to be abandoned.

2. Such payment shall be accompanied by a statement signed by the superintendent of banks setting forth the name and last known address of, and the amount owing to, each person appearing to be the owner of any such abandoned property, or if the name is unknown, the nature and identifying number of the indebtedness and the name of the banking organization from which such abandoned property was received, together with such other identifying information as the state comptroller may require.[19]

ARTICLE IV

UNCLAIMED DEPOSITS AND REFUNDS FOR UTILITY SERVICES

§ 400. **Unclaimed deposits and refunds for utility services.** 1. The following unclaimed moneys held or owing by a gas corporation, an electric corporation, a gas and electric corporation, a district steam corporation, a telegraph corporation, a telephone corporation, and a telegraph and telephone corporation, shall be deemed abandoned property:

(a) Any deposit made by a consumer or subscriber with such a corporation to secure the payment for utility services furnished by such corporation, or the amount of such deposit after deducting any sums due to such corporation by such consumer or subscriber, together with any interest due thereon, which shall have remained unclaimed by the person or persons appearing to be entitled thereto for five years after the termination of the utility services to secure the payment of which such deposit was made, or, if during such five year period utility services are furnished by such corporation to such consumer or subscriber and such deposit is held by such corporation to secure payment therefor, for five years after the termination of such utility services.[20]

(b) Any amount paid by a consumer or subscriber to such a corporation in advance or in anticipation of utility services furnished

[18] See section 2(23) (b) and section 30 of the banking law.
[19] See section 32 of the banking law.
[20] See section 13 of the transportation corporations law and section 104 of the public service law.

or to be furnished by such corporation which in fact is not furnished, after deducting any sums due to such corporation by such consumer or subscriber for utility services in fact furnished, which shall have remained unclaimed by the person or persons appearing to be entitled thereto for five years after the termination of the utility services for which such amount was paid in advance or in anticipation, or, if during such period utility services are furnished by such corporation to such consumer or subscriber and such amount is applied to the payment in advance or in anticipation of such utility services, for five years after the termination of such utility services.

(c) The amount of any refund of excess or increased rates or charges heretofore or hereafter collected by any such corporation for utility services lawfully furnished by such corporation which has been or shall hereafter lawfully be ordered refunded to a consumer or other person or persons entitled thereto, together with any interest due thereon, less any lawful deductions, which shall have remained unclaimed by the person or persons entitled thereto for five years from the date it became payable in accordance with the final determination or order providing for such refund.[21]

2. Any such abandoned property held or owing by such a corporation to which the right to receive the same is established to the satisfaction of such corporation shall cease to be deemed abandoned.

§ 401. **Annual report of abandoned property.** 1. On or before the first day of August in each year every such corporation shall make a verified written report to the state comptroller, which shall contain a true and accurate statement, as of the first day of July next preceding, of all abandoned property specified in section four hundred, held or owing by it.

2. (a) As to abandoned property specified in paragraphs (a) and (b) of subdivision one of section four hundred, such report shall set forth:

(i) the name and last known address of each depositor or subscriber appearing from the records of such corporation to be entitled to receive any such abandoned property;

(ii) the date when the deposit was made or amount paid;

(iii) the amount of such deposit or payment;

(iv) the date when utility services furnished such consumer or subscriber ceased;

(v) any sums due and unpaid to the corporation by such consumer or subscriber, with interest thereon from the date of termination of service;

(vi) the amount of interest due upon such deposit or payment on any balance thereof that has remained with such corporation and not been credited to such consumer's or subscriber's account;

(vii) the amount of such abandoned property; and

(viii) such other identifying information as the state comptroller may require.

[21] See subdivision 1 of section 66-a of the public service law.

(b) As to abandoned property specified in paragraph (c) of subdivision one of section four hundred, such report shall set forth:

(i) the name and last known address of each person appearing from the records of such corporation to be entitled to receive the same;

(ii) the amount appearing from such records to be due each such person;

(iii) the date payment became due; and

(iv) such other identifying information as the state comptroller may require.

3. Such report shall be in such form and the abandoned property listed classified in such manner as the state comptroller may prescribe. Names of persons entitled to such abandoned property appearing in such report shall be listed in alphabetical order within each such classification.

4. In case any such corporation shall on the first day of July in any year neither hold nor owe any abandoned property specified in section four hundred, it shall on or before the first day of August next succeeding make a verified written report to the state comptroller so stating.[22]

§ 402. **Publication of notice of abandoned property.** 1. Within thirty days after making a report of abandoned property pursuant to the provisions of section four hundred one, such corporation shall cause to be published a notice entitled: "NOTICE OF CERTAIN UNCLAIMED PROPERTY HELD BY (name of corporation)."

2. Such notice shall be published once in two newspapers published in the county where such deposits, payments or payments to be refunded were made. If there is only one newspaper published in any such county, such notice shall be published in such newspaper. If there are no newspapers published in such county, then such publication shall be in a newspaper published in an adjacent county. All newspapers in which such notice shall be published shall be newspapers printed in the English language.

3. Such notice shall be approved as to form by the state comptroller and shall state:

(a) that a report of unclaimed amounts of money or other property held or owing by it has been made to the state comptroller and that a list of the names of the person or persons appearing from the records of such corporation to be entitled thereto is on file and open to public inspection at its principal office or place of business in any city, village or county where any such abandoned property is payable;

(b) that such deposits, payments and refunds, together with interest due thereon and less lawful deductions, will be paid by it on or before the succeeding thirtieth day of September to persons establishing to its satisfaction their right to receive the same; and

(c) that in the succeeding month of October, and on or before

[22] See section 13-a of the transportation corporations law and subdivision 2 of section 66-a and section 104-a of the public service law.

the tenth day thereof, such unclaimed deposits, payments and refunds, together with interest due thereon and less lawful deductions, still remaining will be paid to the state comptroller and that it shall thereupon cease to be liable therefor.

4. Such corporation shall file with the state comptroller on or before the tenth day of September in each year proof by affidavit of such publication.[23]

§ 403. **Payment of abandoned property.** 1. In such succeeding month of October, and on or before the tenth day thereof, every such corporation shall pay to the state comptroller all abandoned property specified in the last preceding report made to the state comptroller pursuant to section four hundred one, excepting such abandoned property as since the date of such report shall have ceased to be abandoned.

2. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may require relating to such abandoned property as shall have ceased to be abandoned.

ARTICLE VI

UNCLAIMED OR UNKNOWN OWNER COURT FUNDS

§ 600. **Unclaimed or unknown owner court funds.** 1. The following unclaimed property shall be deemed abandoned property:

(a) Any moneys or other personal property or security in lieu thereof paid into court, which, except as provided in section ten hundred, shall have remained in the hands of any county treasurer, or the treasurer of the city of New York, for twenty years, together with all accumulations of interest or other increment thereon, less such legal fees as he may be entitled to.[24]

(b) Any legacy or distribution share to which an unknown person is entitled, as specified in section two hundred seventy-two of the surrogate's court act.[25]

(c) Any moneys paid to a support bureau of a domestic relations court for the support of a wife, child or poor relative, which shall have remained in the custody of a county treasurer, or the treasurer of the city of New York, for ten years, together with any interest due thereon, less such legal fees as he may be entitled to.[26]

2. Any abandoned property held or owing by a county treasurer or the treasurer of the city of New York to which the right to receive the same is established to the satisfaction of such county

[23] See subdivision (3) section 66-a and section 104-b of the public service law and section 13-b of the transportation corporations law.

[24] See sections 134–137 of the civil practice act.

[25] See section 272 of the surrogate's court act.

[26] See section 29-a of the domestic relations court act of the city of New York.

treasurer or treasurer of the city of New York shall cease to be abandoned.

§ 601. **Publication of list of abandoned property.** 1. On or before the first day of February in each year, such county treasurer or the treasurer of the city of New York shall cause to be published a notice entitled: "NOTICE OF NAMES OF PERSONS APPEARING AS OWNERS OF CERTAIN UNCLAIMED PROPERTY HELD BY (title of officer)."

2. Such notice shall be published once in two newspapers published in the county where such abandoned property is held, except that if such abandoned property is held by the treasurer of the city of New York it shall be published once in three newspapers of general circulation published daily in the city of New York, not more than one of which shall be published in any one county. If there is only one newspaper published in any such county, such notice shall be published in such newspaper, or, if there are no newspapers published in such county, then in a newspaper published in an adjacent county. All newspapers in which such notice shall be published shall be newspapers printed in the English language.

3. Such notice shall be classified as the state comptroller shall prescribe and shall set forth:

(a) the names and last known addresses, in alphabetical order, of all persons appearing to be entitled to any such abandoned property, as of the first day of January next preceding, amounting to ten dollars or more, except the names of persons appearing to be the owners of abandoned property which since such date has ceased to be abandoned;

(b) such other information as the state comptroller may require; and

(c) a statement

(i) that a list of the names of the person or persons appearing from the records of such officer to be entitled thereto is on file and open to public inspection at his office;

(ii) that such unclaimed moneys or other property will be paid or delivered by him on or before the thirty-first day of March to persons establishing to his satisfaction their right to receive the same; and

(iii) that in the succeeding month of April, and on or before the tenth day thereof, such unclaimed moneys or other property still remaining will be paid or delivered to the state comptroller and that he shall thereupon cease to be liable therefor.

4. Such county treasurer or treasurer of the city of New York shall file with the state comptroller on or before the tenth day of February in each year proof by affidavit of such publication.

§ 602. **Payment of abandoned property.** 1. In such succeeding month of April, and on or before the tenth day thereof, every county treasurer and the treasurer of the city of New York shall pay or deliver to the state comptroller all abandoned property specified

in section six hundred, paragraph (a), which was so abandoned as of the first day of January next preceding.[27]

2. In such succeeding month of April, and on or before the tenth day thereof, every executor, administrator, guardian or testamentary trustee shall pay or deliver to the state comptroller all abandoned property specified in section six hundred, paragraph (b), which was so abandoned as of the first day of January next preceding.[28]

3. In such succeeding month of April, and on or before the tenth day thereof, every county treasurer and the treasurer of the city of New York shall in each year pay to the state comptroller all abandoned property specified in section six hundred, paragraph (c), which was so abandoned as of the first day of January next preceding.

§ 603. **Report to accompany payment.** Each such payment of abandoned property pursuant to section six hundred two shall be accompanied by a verified written report, classified as the state comptroller shall prescribe, setting forth:

(a) The names and last known addresses, if any, of the persons entitled to receive such abandoned property;

(b) The title of any proceeding relating to such abandoned property; and

(c) Such other identifying information as the state comptroller may require.

ARTICLE VII

UNCLAIMED LIFE INSURANCE FUNDS

§ 700. **Unclaimed domestic life insurance corporation moneys.** 1. The following unclaimed property held or owing by domestic life insurance corporations shall be deemed abandoned property:

(a) Any moneys held or owing by any domestic life insurance corporation which shall have remained unclaimed for seven years by the person or persons appearing to be entitled thereto under matured life insurance policies on the endowment plan issued on the lives of residents of this state.

(b) Any moneys held or owing by any domestic life insurance corporation which are payable under other kinds of life insurance

[27] See section 84 of the state finance law.

[28] See section 87 of the state finance law.

policies issued on the lives of residents of this state where the insured, if living, would, prior to the thirty-first day of December next preceding the report required by section seven hundred one, have attained the limiting age under the mortality table on which the reserves are based, exclusive of

(i) any policy which has within seven years been assigned, readjusted, kept in force by payment of premium, reinstated or subjected to loan, or

(ii) any policy with respect to which such corporation has on file written evidence received within seven years that the person or persons apparently entitled to claim thereunder have knowledge thereof.

(c) Any moneys held or owing by any domestic life insurance corporation due to beneficiaries under policies issued on the lives of residents of this state who have died, which moneys shall have remained unclaimed by the person or persons entitled thereto for seven years.

2. Any such abandoned property held or owing by a domestic life insurance corporation to which the right to receive the same is established to the satisfaction of such corporation shall cease to be deemed abandoned.[29]

§ 701. **Annual report of abandoned property.** 1. On or before the first day of April in each year every domestic life insurance corporation shall make a verified written report to the state comptroller, which shall contain a true and accurate statement, as of the first day of January next preceding, of all abandoned property specified in section seven hundred, held or owing by it.

2. Such report shall set forth:

(a) The name and last known address of any person or persons appearing from the records of such domestic life insurance corporation to be entitled to receive any such abandoned property;

(b) The amount appearing from the records of such corporation to be due;

(c) The policy number and policy age of the insured;

(d) The date such abandoned property was payable;

(e) The names and last known addresses of each beneficiary appearing in the records of the insurer; and

(f) Such other identifying information as the state comptroller may require.

3. Such report shall be in such form and the abandoned property listed shall be classified in such manner as the state comptroller may prescribe. Names of persons appearing to be entitled to such property or of beneficiaries appearing in such report shall be listed in alphabetical order within each such classification.

4. In case any domestic life insurance corporation shall on the first day of January in any year neither hold nor owe any abandoned property specified in section seven hundred, it shall on or before the first day of April next succeeding make a verified written report to the state comptroller so stating.[30]

[29] See section 295 of the insurance law.

[30] See section 296 of the insurance law.

§ 702. **Publication of list of abandoned property.** 1. Within thirty days after making a report of abandoned property pursuant to the provisions of section seven hundred one, such life insurance corporation shall cause to be published a notice entitled: "NOTICE OF NAMES OF PERSONS APPEARING AS OWNERS OF CERTAIN UNCLAIMED PROPERTY HELD BY (name of life insurance corporation)."

2. Such notice shall be published once in two newspapers published in the city or village in which is located the last known address of the holder of a policy under which such abandoned property is payable; provided, however, that if such address is in the city of New York, such publication shall be in two newspapers published in the county where such address is located. If there is only one newspaper published in any such city or village, such notice shall be published in such newspaper and in a newspaper published in the county where such address is located. If there are no newspapers published in such city or village, then such publication shall be in two newspapers published in the county where such address is located, or, if there is only one such newspaper published in such county, then in such newspaper, or, if there are no newspapers published in such county, then in a newspaper published in an adjacent county. All newspapers in which such notice shall be published shall be newspapers printed in the English language.

3. Such notice shall, in accordance with the classification prescribed by the state comptroller for the report pursuant to the provisions of section seven hundred one, set forth:

(a) the names and last known addresses which were in such report, of all persons appearing to be entitled to any such abandoned property amounting to ten dollars or more. Such names shall be listed in alphabetical order. If, however, such life insurance corporation has reported abandoned property payable on policies whose holders' last known addresses are in more than one city or village or, in the case of New York city, more than one county, the names shall be listed alphabetically for each such city, village or county and such notice shall include only the names of the persons appearing to be entitled to abandoned property payable on policies whose holders' last known addresses are in such city, village or county;

(b) such other information as the state comptroller may require; and

(c) a statement

(i) that a report of unclaimed amounts of money held or owing by it has been made to the state comptroller and that a list of the names of the person or persons appearing from the records of such life insurance corporation to be entitled thereto is on file and open to public inspection at its principal office or place of business in any city, village or county where any such abandoned property is payable;

(ii) that such unclaimed moneys will be paid by it on or before the succeeding thirty-first day of August to persons

establishing to its satisfaction their right to receive the same; and

(iii) that in the succeeding month of September, and on or before the tenth day thereof, such unclaimed moneys still remaining will be paid to the state comptroller and that it shall thereupon cease to be liable therefor.

4. Such life insurance corporation shall file with the state comptroller on or before the tenth day of May in each year proof by affidavit of such publication.[31]

§ 703. **Payment of abandoned property.** 1. In such succeeding month of September, and on or before the succeeding tenth day thereof, every such domestic life insurance corporation shall pay to the state comptroller all abandoned property specified in such report, excepting such abandoned property as since the date of such report shall have ceased to be abandoned.

2. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may require relative to such abandoned property as shall have ceased to be abandoned.[32]

§ 704. **Life insurance departments of savings and insurance banks.** The life insurance department of any savings and insurance bank shall be regarded as a domestic life insurance corporation for the purposes of this article and such savings and insurance banks shall comply with and be subject to all the provisions of this article with respect to the actions and transactions of such life insurance department.[33]

§ 705. **Unclaimed property held by superintendent of insurance after liquidation.** 1. All unclaimed dividends and other assets of every description held by the superintendent of insurance as trustee for the owners thereof after five years from the last court order in any proceeding under article sixteen of the insurance law authorizing and permitting payment of dividends, shall be deemed abandoned property.

2. Any such abandoned property held by the superintendent of insurance to which the right to receive the same is established as provided by law, shall cease to be deemed abandoned.[34]

§ 706. **Payment of abandoned property after liquidation by superintendent of insurance.** 1. Not later than the first day of October in every year the superintendent of insurance shall pay to the state comptroller all such abandoned property held by him which shall have become abandoned at any time prior to the first day of July next preceding, excepting such abandoned property as since such first day of July shall have ceased to be abandoned.

2. Such payment shall be accompanied by a statement signed by the superintendent of insurance setting forth the name and last known address, and the amount owing to, each person appearing to be the owner of any such abandoned property, or, if the name is

[31] See section 297 of the insurance law.
[32] See section 298 of the insurance law.
[33] See Article 6-A of the banking law.
[34] See section 545(3) of the insurance law.

unknown, the nature of the original claim and the name of the insurer, and such other identifying information as the state comptroller may require.

ARTICLE X

UNCLAIMED CONDEMNATION AWARDS

§ 1000. **Unclaimed condemnation awards.** 1. Any moneys held or owing for the payment of an award heretofore or hereafter made by a court in any condemnation proceeding and payable by a public corporation or other corporation possessing powers of condemnation, which shall have remained unclaimed by the person or persons appearing to be entitled thereto for five years after confirmation by the court, together with any interest due thereon, less, when an award is payable by a public corporation, any amount due such public corporation at the time of title vesting for tax or water liens on the same parcel the award was for with any interest due thereon, and any amount due such public corporation at the time of title vesting or at the time of confirmation, whichever is later, for an assessment on the same parcel the award was for, with any interest due thereon, shall be deemed abandoned property.

Notwithstanding any other provision of law, any such award paid to any county treasurer or to the treasurer of the city of New York shall be deemed an abandoned award. Any county treasurer to whom such an abandoned award has been paid by a public or other corporation shall repay forthwith to such corporation any such abandoned awards remaining in his custody after deducting any fees he may be entitled to pursuant to law for a payment of such moneys, and hereafter no such corporation shall pay to a county treasurer any award made by a court in a condemnation proceeding unless such award is made for county owned property. The treasurer of the city of New York shall pay out of the court and trust fund in his custody any abandoned awards therein in the same manner as he would pay pursuant to this section any abandoned award, except that he shall deduct from such awards any fees he may be entitled to pursuant to law for a payment of such moneys.

The issuance of a warrant for such an award shall not prevent an award from being deemed abandoned property if such warrant is unclaimed five years after confirmation by the court of such award.

2. Any such abandoned property held or owing by such a corporation to which the right to receive the same is established to the satisfaction of such corporation shall cease to be deemed abandoned.[35]

[35] See section 92(1) of the state finance law.

§ 1001. **Annual report of abandoned property.** 1. On or before the first day of October in each year every public and private corporation holding or owing any abandoned property specified in section ten hundred shall make a verified written report to the state comptroller, which shall contain a true and accurate statement, as of the first day of July next preceding, of all such abandoned property, held or owing by it.

2. Such report shall be in such form as the state comptroller may prescribe and shall set forth the title of the proceeding, the name and last known address of the awardee if such award is made to a known owner, the date of confirmation, the damage parcel number, the amount of the award, and the amount of any interest due thereon and, if a deduction is claimed for liens by a public corporation, the nature and amount of such liens and any interest claimed thereon.[36]

§ 1002. **Publication of notice of abandoned property.** 1. Within thirty days after making a report of abandoned property pursuant to the provisions of section ten hundred one, such corporation shall cause to be published once in a newspaper of general circulation in each county where a damaged parcel included in such report is located a notice, approved as to form by the state comptroller, stating:

(a) That a report of all awards in condemnation proceedings unclaimed for more than five years has been made to the state comptroller and that a copy thereof is on file and open to public inspection, if a public corporation at the office of the chief fiscal officer thereof; or if not a public corporation at the principal office or place of business of such corporation;

(b) That such awards, together with any interest due thereon and less lawful deductions, will be paid by it on or before the succeeding thirty-first day of January to persons establishing to its satisfaction their right to receive the same; and

(c) That in the succeeding month of February, and on or before the tenth day thereof, such awards, together with any interest due thereon and less lawful deductions, still remaining will be paid to the state comptroller and that it shall thereupon cease to be liable therefor.

2. Such corporation shall file with the state comptroller on or before the tenth day of November proof by affidavit of such publication.[37]

§ 1003. **Payment of abandoned property.** 1. In such succeeding month of February, and on or before the tenth day thereof, every such public and other corporation shall pay to the state comptroller all abandoned property specified in such report, excepting such abandoned property as since the date of such report shall have ceased to be abandoned.

2. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may require in

[36] See section 92(2) of the state finance law.
[37] See section 92(3) of the state finance law.

relation to such abandoned property as shall have ceased to be abandoned.[38]

ARTICLE XII

ESCHEAT OF PROPERTY PAID OR DEPOSITED IN FEDERAL COURTS

§ 1200. **Unclaimed property paid or deposited in federal courts.** All money or other property which shall have been, or shall hereafter be, paid into or deposited in the custody of, or be under the control of, any court of the United States in and for any district within the state, or shall have been or hereafter shall be in the custody of any depository, registry, clerk, or other officer of such court, and the rightful owner or owners thereof either (a) shall have been or shall be unknown for a period of ten consecutive years; or (b) shall have died or shall die without having disposed thereof, and without having left or without leaving a will disposing thereof, and without having left or without leaving heirs, next-of-kin, or distributees; or (c) shall have abandoned or shall abandon such funds or property, are declared to have escheated or to escheat, together with all interest accrued thereon, to and to have become or to become the property of the state.[39]

§ 1201. **Presumption of abandonment.** In any proceeding authorized by this article if it shall appear from the records of the court of the United States that the rightful owner or owners of money or property which has been or shall hereafter be deposited in the custody or be under the control of, such court, or in the custody of its depository, registry, clerk, or other officer, have not made claim thereto for a period of ten successive years, it shall be presumed for all purposes of this article that such rightful owner or owners are, and during such period have been, unknown, and that they have died without having disposed thereof, and without having left a will, and without having left any heirs, next-of-kin, or distributees, and that such property has been abandoned. In a case where the rightful owners of such money or property was a corporation it shall also be presumed for purposes of this article that the corporation

[38] See section 92(4) of the state finance law.
[39] See section 90(1) of the state finance law.

is dissolved and no longer in existence, and its charter forfeited, and all the foregoing presumptions set forth in this section shall be made with respect to the rightful owners or claimants to the assets of such corporation, including its stockholders and creditors. Any or all of the foregoing several presumptions may be rebutted by competent evidence to the contrary.[40]

§ 1202. **Special proceeding for escheat.** Whenever it shall appear, after investigation by the comptroller or otherwise, that there exists or may exist escheated property under this article, the attorney-general may institute a special proceeding in the name of the people of the state of New York for an adjudication that an escheat to the state of such property has occurred, and he shall take appropriate action to recover such funds or property.[41]

§ 1203. **Jurisdiction.** The supreme court shall have jurisdiction to hear and determine such a special proceeding. Such proceeding shall be commenced in the supreme court for the county in which is located the court of the United States into which such escheated property has been paid or which has control or custody of said property, or which has jurisdiction to make orders for the payment of such funds or property to the rightful owners thereof.[42]

§ 1204. **Respondents.** There shall be named as respondents:

(a) The clerk of the court into which or into whose registry the fund or property has been paid or deposited or which has control or custody of the fund or property; and

(b) All last known owners or claimants as disclosed by the records of such court, provided that if such last known owners or claimants, with respect to a particular fund, shall exceed ten in number, they may be designated and described as a class; and

(c) All unknown owners or claimants, who may be designated and described as "unknown owners or claimants to the fund or property deposited to the credit of the following entitled actions or proceedings in the United States district court for the ..... district of New York: (naming the actions and proceedings by their titles as appearing on the original process which instituted such actions or proceedings, or by suitable abbreviations thereof, which shall sufficiently describe such actions and proceedings)."[43]

§ 1205. **Contents of petition.** The petition shall briefly describe the fund or property with respect to which the proceeding is brought, and the nature of the action or proceeding which gave rise to the fund or property. It may include one or more items, as the attorney-general may be advised, without prejudice to his right subsequently to commence proceedings relating to other items not included. It shall also set forth the facts from which the court may find, or from which a presumption may arise, that (a) the rightful owner or owners of the fund or property are unknown; or (b) that they have died without having disposed

[40] See section 90(2) of the state finance law.
[41] See section 90(3) of the state finance law.
[42] See section 90(4) of the state finance law.
[43] See section 90(5) of the state finance law.

thereof, and without having left a will, disposing thereof and without having left any heirs, next-of-kin or distributees; or (c) that such property has been abandoned.[44]

§ 1206. **Service of notice and petition.** 1. The notice and petition shall be served upon the clerk of the court into which or into whose registry the fund or property has been paid or deposited or which has control or custody thereof, or which has jurisdiction to make orders for the payment of such money to the rightful owners thereof, together with a notice that no personal claim is made against him, and also upon the United States attorney for the district in which such court is located.

2. The notice shall be served by publication upon the last known owners or claimants, as disclosed by the records of such court, and upon the respondents designated as unknown claimants. The court, upon finding that the petition sufficiently sets forth the facts required under section twelve hundred one of this article, may make any or all of the presumptions set forth in such section and make an order directing that the notice be served upon such respondents by publication thereof not less than once in each of six successive weeks in two newspapers in the English language designated in the order as most likely to give notice to such owners or claimants, at least one of which newspapers shall be published in the county in which the escheat proceeding shall be commenced, and also by publication thereof in the state bulletin as provided in the executive law.[45]

§ 1207. **Contents and time of answer.** For the purpose of reckoning the time within which a respondent must appear or answer, service by publication under this article is complete on the forty-second day after the date of first publication. Any respondent, or any person making claim to any of the property or funds described in the petition, shall have sixty days after completion of service within which to appear, and the time for all further proceedings shall be as prescribed for proceedings in the supreme court. The answer shall be verified, shall set forth the true name, residence and business address, if any, of the claiming respondent, and shall set forth in full detail the basis of the claim and the respondent's claim of title thereto.[46]

§ 1208. **Amendment of proceedings.** On application of the attorney-general the court shall:

(a) order the proceeding with respect to items, or portions thereof, as to which claimants appear, to be severed into one or more separate proceedings, and allow all such proceedings to proceed separately;

(b) amend the proceeding or proceedings, as the case may be, by adding to the title thereof the true names of the claiming respondents;

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[44] See section 90(6) of the state finance law.
[45] See section 90(7) of the state finance law.
[46] See section 90(8) of the state finance law.

(c) amend the proceedings from time to time in any just and equitable manner.[47]

§ 1209. **Right of deposition.** The attorney-general shall as a matter of right be entitled to take by deposition before trial the testimony of any claimant, or any other person, firm or corporation, and to require the production of any and all records and documents thereon, and to a discovery and inspection of any and all such records and documents, as to the facts upon which claimant's claim is based, the circumstances under which claimant became apprised of the existence of the claim, and any other matters material and necessary to determine the validity of the claim. In so far as they may be applicable, and not in conflict with the foregoing, the provisions of articles twenty-nine and thirty-two of the civil practice act and titles fifteen and eighteen of the rules of civil practice, shall apply.[48]

§ 1210. **Judgment.** If the court, after taking the testimony, shall determine either (a) that the rightful owner or owners of such funds or property are unknown or (b) that they have died without having disposed thereof, and without having left a will disposing thereof, and without having left heirs, next-of-kin or distributees, or (c) that they have abandoned such funds or property, it shall make and enter separate findings of fact and conclusions of law and enter a final order, describing the funds or property, and adjudicating that they have escheated and are payable to the state of New York. The findings of any one such set of facts shall not be deemed inconsistent with any other such set of facts, and the court may find one or more such sets of facts. If the court shall determine that any funds or property or part thereof had not escheated to the state, it shall make and enter separate findings of fact and conclusions of law and shall make and enter a final order describing said funds or property or part thereof, dismissing the petition with respect thereto either on the merits or without prejudice to a subsequent proceeding as may be proper.[49]

§ 1211. **Collection by attorney-general.** The attorney-general shall take appropriate action, by obtaining an order of the court of the United States, or otherwise, to collect and receive such funds or property.[50]

§ 1212. **Payment to the state comptroller; report.** 1. Upon the collection or receipt of any such funds or property the attorney-general shall forthwith pay or deliver the same to the state comptroller.

2. Each such payment or delivery shall be accompanied by a written report setting forth the names and last known addresses, if any, of the persons whose property has been escheated pursuant to this article and such other identifying information as the state comptroller may require.

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[47] See section 90(9) of the state finance law.
[48] See section 90(10) of the state finance law.
[49] See section 90(11) of the state finance law.
[50] See section 90(12) of the state finance law.

ARTICLE XIII

MISCELLANEOUS UNCLAIMED PROPERTY

Section 1300. Unclaimed surplus from sale of pledged property.

§ 1300. **Unclaimed surplus from sale of pledged property.** 1. Any unclaimed moneys arising from the sale of any personal property which shall have been pledged or mortgaged as security for the loan of money with a corporation, except a banking organization or a licensed lender, heretofore or hereafter organized by or pursuant to a special statute for the purpose of, and principally engaged in, giving aid to individuals by loans of money at interest upon the pledge or mortgage of personal property, and which has subjected itself to special provisions of the banking law, after deducting the amount of the loan, the interest then due on the same and any other lawful charges, which shall have remained in its possession for six years from the date of such sale, shall be deemed abandoned property.

2. Any such abandoned property held or owing by a corporation to which the right to receive the same is established to the satisfaction of such corporation shall cease to be deemed abandoned.

3. On or before the first day of June in each year every such corporation shall report and pay over to the state comptroller all abandoned property specified in subdivision one, which is in its possession and which shall have become abandoned prior to the preceding first day of January.[51]

ARTICLE XIV

GENERAL PROVISIONS

Section 1400. Statutes of limitations not a bar.
1401. Comptroller to maintain public record.
1402. Publication of abandoned property by state comptroller.
1403. Sale of personal property by state comptroller.
1404. Assumption of liability by the state.
1405. Interest not to run after report of abandoned property.
1406. Claims for abandoned property heretofore or hereafter paid to the state.
1407. Payment by state comptroller.
1408. Verification.
1409. Payment for publication.
1410. Designation of newspapers.
1411. Waiver of publication.
1412. Penalty for failure to report or file.
1413. Penalty for fraudulent returns.

§ 1400. **Statutes of limitations not a bar.** The expiration of any period of time specified by law, during which an action or proceed-

[51] See section 5 of the banking law.

ing may be commenced or enforced to secure payment of a claim for money or recovery of property, shall not prevent any such money or property from being deemed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver to the state comptroller any such abandoned property; and shall not serve as a defense in any action or proceeding by or on behalf of the state comptroller to compel the filing of any report or the payment or delivery of any abandoned property required by this chapter or to enforce or collect any penalty provided by this chapter.[52]

§ 1401. **Comptroller to maintain public record.** The state comptroller shall maintain a public record of all names and last known addresses of the person or persons appearing to be entitled to abandoned property, heretofore paid to the state or hereafter paid or delivered to the state comptroller pursuant to this chapter. Other identifying information set forth in any report or record made or delivered to the state comptroller shall be retained by him but shall be considered confidential and may be disclosed only in the discretion of the state comptroller. The state comptroller shall not reveal the amount of any abandoned property, except to a person who has presented satisfactory proof of an interest in or title to such property.

§ 1402. **Publication of abandoned property by state comptroller.** 1. (a) The state comptroller shall publish in the October, nineteen hundred forty-three issue of the state bulletin a statement of abandoned property heretofore paid to and still held by the state, except

(i) abandoned property so paid pursuant to chapter four hundred twenty-two of the laws of nineteen hundred thirty-nine or pursuant to section thirteen hundred of this chapter;

and abandoned property hereafter paid to the state comptroller prior to the first day of September, nineteen hundred forty-three, which shall not have been paid to claimants.

(b) Thereafter, and in each succeeding October issue of the state bulletin, the state comptroller shall publish a statement of abandoned property paid to him during the twelve months ending September first next preceding such publication which shall not have been paid to claimants.

2. Such statement shall be in such form and classified in such manner as the state comptroller shall determine, except that names of persons appearing to be entitled to any such abandoned property shall be listed in alphabetical order within each such classification.

3. Such statement shall set forth:

(a) The names and last known addresses of all persons appearing from the records in the comptroller's office to be entitled to receive such abandoned property consisting of money not less than ten dollars in amount;

(b) The names and last known addresses of all persons appearing from the records in the comptroller's office to be entitled to receive

[52] See Margiotti vs. Cunningham, 337 Pa. 289.

such abandoned property consisting of personal property other than money and which the state comptroller shall not have determined as provided in section fourteen hundred three to be valueless or of such little value that a sale thereof would cost in excess of the probable proceeds therefrom;

(c) Where any such abandoned property consisted of personal property other than money and was converted into money pursuant to the provisions of section fourteen hundred three, and such money amounts to ten dollars or more, the names and last known addresses of the persons appearing from the records in the comptroller's office to be entitled to receive the same;

(d) Such other information as the state comptroller may determine; and

(e) A statement

(i) that a public record is maintained in the office of the state comptroller of all abandoned property in accordance with section fourteen hundred one of this chapter;

(ii) that a claim for any such abandoned property should be filed with the state comptroller at his office in the city of Albany or established as provided in section fourteen hundred six of this chapter; and

(iii) that a service charge of one per cent, but in no event less than three dollars in amount, must be retained by the state comptroller in connection with each claim allowed or established.

§ 1403. **Sale of personal property by state comptroller.** 1. All abandoned property, other than money, heretofore paid to the state shall, prior to October first, nineteen hundred forty-four, be sold by the state comptroller. and all abandoned property, other than money, delivered to the state comptroller pursuant to this chapter, shall within fifteen months after such delivery be sold by him, at public auction to the highest bidder, except such property as in his opinion is valueless or of such little value that the cost of sale would exceed the probable proceeds therefrom.

2. The proceeds from the sale of any such abandoned property, less all costs incurred in connection with such sale, shall be deposited by the state comptroller in the abandoned property fund and any claimant for abandoned property shall be entitled only to the money so received and deposited, less lawful service charges.

3. The state comptroller shall not be liable in any action for any act of his made in good faith pursuant to this section.

§ 1404. **Assumption of liability by the state.** 1. The care and custody, subject only to the duty of conversion prescribed in section fourteen hundred two of this chapter, of all abandoned property heretofore paid to the state, except

(i) abandoned property in individual amounts of less than one dollar so paid pursuant to chapter one hundred seven of the laws of nineteen hundred forty-two; and of all abandoned property paid to the state comptroller pursuant to this chapter, is hereby assumed for the benefit of those entitled to

receive the same, and the state shall hold itself responsible for the payment of all claims established thereto pursuant to law, less any lawful deductions, which cannot be paid from the abandoned property fund.

2. Any person, copartnership, unincorporated association or corporation making a payment of abandoned property to the comptroller shall immediately and thereafter be relieved and held harmless from any or all liability for any claim or claims which exist at such time with reference to such abandoned property or which may thereafter be made or may come into existence on account of or in respect of any such abandoned property.

3. No action shall be maintained against any person, copartnership, unincorporated association or corporation, or any officer thereof, for

(a) the recovery of abandoned property paid to the state comptroller pursuant to this chapter or for interest thereon subsequent to the date of the report of such abandoned property to the state comptroller pursuant to this chapter;

(b) the recovery of abandoned property heretofore paid to the state or for interest thereon subsequent to the date of such payment; or

(c) damages alleged to have resulted from any such payment.

§ 1405. **Interest not to run after report of abandoned property.** Notwithstanding any other provision of law, no owner of abandoned property shall be entitled to receive interest on account of such abandoned property from and after the date a report of such abandoned property is made to the state comptroller pursuant to this chapter, whether or not he was entitled to interest on such property prior to such date. No claimant to abandoned property heretofore paid to the state comptroller shall be entitled to receive interest on account of such property, whether or not he was entitled to interest on such property prior to such payment.

§ 1406. **Claims for abandoned property heretofore or hereafter paid to the state.** 1. (a) Claim may be filed with the state comptroller for any abandoned property heretofore paid to the state or hereafter paid to the state comptroller pursuant to this chapter, except abandoned property heretofore paid to the state pursuant to

(i) section nine of chapter six hundred fifty-one of the laws of eighteen hundred ninety-two, section forty-four of chapter fifty-eight of the laws of nineteen hundred nine or as such section was amended by chapter two hundred seventeen of the laws of nineteen hundred thirty-three and chapter two hundred thirty-one of the laws of nineteen hundred thirty-eight, and section eighty-four of chapter five hundred ninety-three of the laws of nineteen hundred forty;

(ii) section two hundred seventy-two of the surrogate's court act;

(iii) chapter eight hundred fifteen of the laws of nineteen hundred forty-one as amended by chapter seven hundred eighty-eight of the laws of nineteen hundred forty-two;

(iv) chapter one hundred seven of the laws of nineteen hundred forty-two, if such abandoned property was less than one dollar in amount;

(vii) and abandoned property hereafter paid to the state comptroller pursuant to subdivisions (a) or (b) of section six hundred one or section twelve hundred twelve of this chapter.

(b) The comptroller shall possess full and complete authority to determine all such claims and shall forthwith send written notice of such determination to the claimant. At any time within four months thereafter, such claimant may apply for a hearing and a redetermination of his claim. After an appropriate hearing on notice, before the comptroller or person duly designated by him, the comptroller shall make and serve his final determination, which alone shall be reviewable by application to the supreme court, Albany county, upon not less than ten days' notice to the comptroller.

(c) The comptroller, or any person duly designated by him, is empowered to take testimony and proofs, under oath, upon such hearing, and shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents pertinent to such hearings.

(d) Whenever it shall be necessary for the state comptroller to determine the validity of a claim for abandoned property heretofore paid to the state pursuant to section five of the banking law or hereafter paid to the state pursuant to section thirteen hundred of this chapter, he shall forthwith notify the corporation which paid such abandoned property to the state of such claim. Within thirty days after such notification such corporation shall send a verified written report to the state comptroller, containing such information as the state comptroller may require from its books or records. The state comptroller shall determine from such report the validity of such claim.

2. Claim for any abandoned property heretofore paid to the state pursuant to section forty-four of chapter fifty-eight of the laws of nineteen hundred nine or as such section was amended by chapter two hundred seventeen of the laws of nineteen hundred thirty-three and chapter two hundred thirty-one of the laws of nineteen hundred thirty-eight, or hereafter paid to the state comptroller pursuant to subdivision (a) of section six hundred one of this chapter, may be established only in accordance with section one hundred thirty-seven of the civil practice act.

3. Claim for any abandoned property heretofore paid to the state pursuant to section two hundred seventy-two of the surrogate's court act or hereafter paid to the state comptroller pursuant to subdivision (b) of section six hundred one of this chapter may be established only in accordance with section two hundred seventy-two of the surrogate's court act.

4. (a) Claim for any abandoned property heretofore paid to the state pursuant to chapter eight hundred fifteen of the laws of nineteen hundred forty-one as amended by chapter seven hundred eighty-eight of the laws of nineteen hundred forty-two, or hereafter

paid to the state comptroller pursuant to section twelve hundred twelve of this chapter, may be established only in accordance with this subdivision.

(b) Such claim may be established only by a person, copartnership, unincorporated association or corporation who shall have had no actual knowledge of the escheat proceeding and who shall commence a proceeding in the supreme court within five years after the entry of the final order of escheat, except that this limitation of time shall be extended pursuant to the provisions of sections twenty, twenty-four, twenty-seven, twenty-eight, twenty-nine and sixty of the civil practice act.

(c) Such proceeding shall be commenced by service of a verified petition and notice of motion upon the comptroller, who shall have twenty days within which to answer. The petition shall set forth the true name, residence and business address, if any, of the claimant and shall also set forth in full detail the basis of the claim and the claimant's chain of title thereto.

(d) In such proceeding the presumptions set forth in section twelve hundred one of this chapter shall apply. The comptroller shall be entitled to an examination before trial and discovery and inspection in accordance with section twelve hundred nine of this chapter.

(e) If the court, after hearing the testimony, shall find that such claimant, or his predecessor in interest, would have been entitled to any part of the escheated fund in the escheat proceeding, it shall enter a final order directing the comptroller to pay to him from the abandoned property fund an amount equal to that part of such escheated fund to which he would have been so entitled, provided such amount shall have been collected and received by the comptroller, without interest and costs.

§ 1407. **Payment by state comptroller.** Any claim which is allowed by the state comptroller or ordered to be paid by him by a court of competent jurisdiction pursuant to the provisions of section fourteen hundred six, together with such costs and disbursements as may be allowed by the court, shall be paid out of the abandoned property fund and the comptroller shall not be liable in any action for any claim paid by him in good faith. There shall be deducted by the state comptroller from any claim allowed or the amount, other than costs and disbursements allowed by the court, of any claim ordered to be paid by him by a court of competent jurisdiction, one per cent, but in no event less than three dollars, from any such payment as a service charge, and such amount shall remain in the abandoned property fund.

If during any session of the legislature there are insufficient moneys in the abandoned property fund to pay all claims which have been allowed by the state comptroller or ordered to be paid by him by a court of competent jurisdiction, the state comptroller shall so certify to the legislature, which shall appropriate from the general fund to the abandoned property fund an amount sufficient to pay such claims.

§ 1408. **Verification.** Any report required to be verified by this chapter shall be verified, if made by a person by such person, if made by a partnership by one of the members thereof, if made by an unincorporated association or private corporation by the president or by a vice-president and one other principal officer thereof, and if made by a public corporation by the chief fiscal officer thereof.

§ 1409. **Payment for publication.** Any amount paid by a person to a newspaper or newspapers for any publication of names as required by this chapter shall be charged pro rata against all abandoned property held or owing by such person at the time of such publication, except abandoned property of individual amounts of less than ten dollars.

§ 1410. **Designation of newspapers.** Any notice required by this chapter shall be published in such newspapers as shall be designated by the state comptroller, except that in no case shall a notice be published in a newspaper other than one specified in the section requiring such publication.

§ 1411. **Waiver of publication.** The state comptroller may waive the publication of any notice required by this chapter, except a notice required by section fourteen hundred two, whenever in his opinion the cost of publishing such notice would be unreasonable in relation to the amount of abandoned property.

§ 1412. **Penalty for failure to report or file.** Any person failing to make any report or to file any affidavit required by this chapter shall forfeit to the people of the state the sum of one hundred dollars for each day such report or affidavit shall be delayed or withheld, except that the state comptroller may extend the time for making any such report or filing any such affidavit and may waive the payment of any penalty or part thereof provided for by this section.

§ 1413. **Penalty for fraudulent returns.** The making of a willful false oath in any report required under the provisions of this chapter shall be perjury and punishable as such according to law.

ARTICLE XV

LAWS REPEALED; CONSTITUTIONALITY; EFFECTIVE DATE

Laws repealed.

§ 1500. **Laws repealed.** Of the laws enumerated in the schedule annexed to this chapter, that portion specified in the last column is hereby repealed.

§ 1501. **Constitutionality.** If any part, provision or section of this chapter, or the application of any such part, provision or section in any particular respect, shall be adjudged by any court of competent jurisdiction to be unconstitutional or ineffective in whole or in part, such judgment shall be confined in its operation to the particular provision or section or application directly

involved in the controversy in which such judgment shall have been rendered and shall not affect, impair or invalidate the remainder of such provisions or sections or their application in other respects; and to the extent that such provisions or sections are not unconstitutional or ineffective, they shall remain in full force and effect.

§ 1502. **Effective date.** This chapter shall take effect June first, nineteen hundred forty-four. Effective June 1, 1944.

SCHEDULE OF LAWS REPEALED Schedule.

Laws of	Chapter	Section
1909.....	50.....	60–68
1909.....	240.....	68, 69
1909.....	509.....	All
1911.....	399.....	All
1912.....	272.....	All
1920.....	932.....	2, part adding Art. XIV of the Public Lands Law
1928.....	578.....	4, except § 69 of the Public Lands Law
1934.....	535.....	All
1935.....	658.....	2, 3 and 4, except § 13-f of the Transportation Law
1936.....	672.....	2, 3
1937.....	619.....	1, part amending §§ 126, 127 of the Banking Law; 19, 25, except part repealing § 166 of the Banking Law; 26
1937.....	776.....	All
1938.....	352.....	1, part adding §§ 256, 257 of the Banking Law
1938.....	459.....	14
1938.....	547.....	11, 12
1938.....	684.....	2, part amending § 2(23) of the Banking Law; 29, 58
1939.....	422.....	All
1939.....	790.....	3
1939.....	882.....	545, subdivisions 3 and 4
1940.....	593.....	84, 85, 86
1940.....	602.....	All, except part repealing Art. IX-c of the Insurance Law
1940.....	627.....	1
1940.....	628.....	All
1940.....	705.....	2
1940.....	707.....	2, 3
1940.....	710.....	1, 2
1940.....	759.....	All
1941.....	521.....	All
1941.....	618.....	All

Laws of	Chapter	Section
1941.....	815.....	1, 2
1942.....	107.....	All
1942.....	633.....	All
1942.....	635.....	All
1942.....	701.....	All
1942.....	788.....	All

CHAPTER 698

AN ACT to amend the state finance law, the abandoned property law, the correction law, the mental hygiene law and the social welfare law, in relation to certain unclaimed personal property

Became a law April 23, 1943, with the approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

New § 128, added.

Section 1. Chapter five hundred ninety-three of the laws of nineteen hundred forty, entitled "An act in relation to state finance, constituting chapter fifty-six of the consolidated laws," is hereby amended by inserting a new section, to be section one hundred twenty-eight, to read as follows:

§ 128. **Disposition of unclaimed personal property.** 1. Any personal property, and any interest or increments accruing thereon, belonging or credited to a person in any institution under the jurisdiction of the department of social welfare, the department of health, the department of mental hygiene or the department of correction, who shall have been discharged from such institution or who shall have died or escaped before discharge or before termination of sentence, which is in the custody of the proper officer of such institution, shall, if unclaimed by such discharged or escaped person or by the legal representative of such deceased person for a period of six months after the discharge, decease or escape of such person, be fully inventoried and a copy of such inventory shall be filed with the commissioner of the department having jurisdiction over such institution and with the state comptroller.

2. Any such personal property consisting of money or intangible property shall be paid or delivered forthwith, by such officer, to the state comptroller pursuant to the provisions of section thirteen hundred four of the abandoned property law.

3. Such commissioner shall cause any such property consisting of tangible personal property, other than money, except such property as such commissioner may determine to be valueless or of such little value that the probable proceeds of a sale thereof would be less than the cost of such sale, which property may be ordered destroyed by such commissioner, to be sold at public or private

1954

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Prefatory Note

Uniform and comprehensive state legislation dealing with the disposition of unclaimed property should fill a very real need. Present statutory provisions on the subject are exceedingly diverse in character and are often not well formulated. Most states already have statutes dealing with the disposition of unclaimed tangible personal property, the abandonment of which is a more or less obvious fact. In addition, a considerable number of states have statutes dealing with the disposition of unclaimed bank deposits. However, only ten states have adopted really comprehensive legislation covering the entire field of unclaimed property. They are: Arkansas, Connecticut, Kentucky, Massachusetts, Michigan, New Jersey, New York, North Carolina, Oregon, and Pennsylvania. Several other states have, however, currently manifested interest in adopting comprehensive legislation on the subject. If the Uniform Disposition of Unclaimed Property Act serves to promote a fair and adequate treatment of the subject in state legislation, a good cause will be served.

In addition to the general desirability of symmetry in the law for the benefit of persons doing business in more than one state, there is at least one especially important reason for uniform legislation on the subject. Two recent decisions of the United States Supreme Court, *Connecticut Mutual Insurance Co. v. Moore,* 333 U.S. 541, 92 L. Ed. 863 (1947) and *Standard Oil Co. v. New Jersey,* 341 U.S. 428, 95 L. Ed. 1078 (1951), (both of which are explained more fully in the commentary to Section 10) reveal that a troublesome problem of multiple liability for the holder of unclaimed property arises in case two or more states, each having jurisdiction over such property, enact statutes dealing with the subject. If two such statutes cover the same items of property, and if each state seeks to exercise its jurisdiction, it becomes likely that the holder may be subjected to double, or, perhaps, even more extensive liability for funds in its custody. Or, even though the statutes are so framed as to avoid multiple liability, a "race of diligence" between states having jurisdiction may ensue, with each state trying to reach the funds first. In the 1947 decision in *Connecticut Mutual Insurance Co. v. Moore,* the United States Supreme Court held that the state of New York may take possession of unclaimed funds due on insurance policies issued to persons in the state of New York, even though the insurance company holder of the funds is domiciled in another state. Jurisdiction is based upon the relationship of the policy

holders to the state. Later, in 1951 in the *Standard Oil Company* case, the Court upheld the right of the state of New Jersey, the domicile of the company, to escheat stock and stock dividends belonging to residents of the state of New York. So jurisdiction can also be based upon the domicile of the holder. These two decisions viewed together reveal the possibilities of multiple liability. Moreover, since federal concepts of jurisdiction may not preclude multiple liability, it is especially proper and desirable to resort to a uniform state act providing reciprocity. The Uniform Act here submitted deals specifically with this problem.

The Uniform Act is custodial in nature,—that is to say, it does not result in the loss of the owner's property rights. The state takes custody and remains the custodian in perpetuity. Although the actual possibility of his presenting a claim in the distant future is not great, the owner retains his right of presenting his claim at any time no matter how remote. State records will have to be kept on a permanent basis. In this respect the measure differs from the escheat type of statute, pursuant to which the right of the owner is foreclosed and the title to the property passes to the state. Not only does the custodial type of statute more adequately preserve the owner's interests, but, in addition, it makes possible a substantial simplification of procedure.

The Act, which consists of thirty-two sections, commences with the usual section on definitions. This is followed by Sections 2 through 9 devoted to defining and describing the circumstances under which various classes of property are to be presumed abandoned under the Act. Separate sections deal with property held or owing by banks or other financial organizations, insurance corporations, public utilities, other business associations, trustees in corporate dissolution proceedings, fiduciaries, and state courts and other public agencies. Section 9 is an omnibus section covering all other items held or owing "in the ordinary course of the holder's business." Thereafter comes Section 10 which may be regarded as a key section in the Act, for it contains the provisions which preclude the possibility of multiple liability being imposed upon the holder of unclaimed property who happens to be subject to the jurisdiction of two or more states. The remaining sections, 11 through 32, deal principally with procedural matters, including the reporting of unclaimed property, the giving of notice to owners, payment into the custody of the state and various provisions pursuant to which the owner may subsequently present his claim to the state and recover his property.

The Uniform Disposition of Unclaimed Property Act, if adopted by the states, will serve to protect the interests of owners, to relieve the holders from annoyance, expense and liability, to preclude multiple liability, and to give the adopting state the use of some considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof.

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

AN ACT RELATING TO THE DISPOSITION OF UNCLAIMED PROPERTY AND MAKING UNIFORM THE LAW WITH REFERENCE THERETO

SECTION 1. [*Definitions and Use of Terms.*] As used in this act, unless the context otherwise requires:

(a) "Banking organization" means any bank, trust company, savings bank [industrial bank, land bank, safe deposit company,] or a private banker engaged in business in this state.

(b) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, [cooperative bank] or investment company, engaged in business in this state.

(d) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this act.

(e) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

SECTION 2. [*Property Held by Banking or Financial Organizations.*] The following property held or owing by a banking or financial organization is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization [or any deposit made therewith in this state], and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven years:

(1) Increased or decreased the amount of the funds [or deposit], or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds [or deposit]; or

(3) Otherwise indicated an interest in the funds [or deposit] as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within seven years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository [or agency or collateral deposit box] in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven years from the date on which the lease or rental period expired.

COMMENT

Section 2(a) establishes the criteria for the presumption of abandonment of deposits held by banking organizations. Section 2(b) establishes similar criteria for funds paid toward shares or other interests in financial organizations other than banks. Section 2(c) deals with other forms of obligations of both banking and financial organizations, and Section 2(d) covers the contents of safe deposit boxes and other deposit arrangements. In each instance the jurisdictional test for presumption of abandonment within the enacting state bears direct relationship to events taking place within that state, e.g., deposits "made in this state," funds "paid in this state," written instruments "issued in this state," property removed from safe deposit boxes "in this state." These qualifications are explicitly included both for the legal reason that there must be a jurisdictional basis for the claiming of the property within the state, and also for the practical reason that the presence of the events within the state means that the convenience of various parties in interest will be best served in this way.

Including both the states having general abandoned property laws, and others that deal only with certain specific items of property, some 36 states now have legislation designed to capture dormant bank deposits (See Garrison, "Escheats, Abandoned Property Acts, and their Revenue Aspects," 35 Ky. L.J. 302 (1947)). Section 2 parallels Section 300 of the New York Abandoned Property Law which is a general statute, and more or less similar provisions are found in the legislation of Arizona, California, Connecticut, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, North Carolina, and Pennsylvania.

Comment should be made concerning the seven-year period, the lapse of which gives rise to the presumption of abandonment. This period is used throughout the Uniform Act and is applied to all types of property subject to the Act. It is a fact, however, that the various states have adopted different time periods for this purpose. Moreover, in any single state different time periods may be prescribed for different items of property. Possibly differing business practices in various parts of the country will indicate the desirability in some states of the utilization of a period other than seven years in connection with at least some types of property. This may be especially the case with respect to savings bank deposits, for in many states it may be deemed desirable to allow more than seven years, and perhaps allow a longer period of dormancy for such deposits than is allowed in connection with other items of unclaimed property. Each state may adjust the time period to its own needs, and although a seven-year period seems reasonably satisfactory for most purposes for most parts of the country, the benefits of this Uniform Act, particularly the benefits of the reciprocal provisions of Section 10, will in no way be diminished by the substitution of some other time period if deemed more satisfactory in view of the local practices.

Comment should also be made concerning the reference to "deposits" in Section 2(b). Normally financial organizations, as that term is defined in this Act, do not receive deposits, but instead they receive funds for the purchase of shares. However, in some states such funds are in fact referred to as "deposits" in the pertinent statutes. Therefore the word is included in Section 2(b), but is set forth in brackets to indicate that it may be eliminated in any state where it is inapplicable.

SECTION 3. [*Unclaimed Funds Held by Life Insurance Corporations.*]

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the

last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

COMMENT

Section 3, dealing with unclaimed funds held by insurance companies, establishes as the jurisdictional test for the purposes of the Section the fact that "the last known address, according to the records of the corporation, of the person entitled to the funds is within this state." For perfectly practical reasons this test differs in coverage from that applied under Section 2 to deposits in banks and also under Section 5 to undistributed dividends of corporations. In general, insurance companies qualify and are authorized to write insurance in many or most of the states of the Union. Therefore, jurisdiction over such companies as holders of unclaimed property is normally wide-spread throughout the country, thus permitting and suggesting differentiation from ordinary business or industrial corporations and also from banking organizations. Indeed, reliance upon the state of incorporation or principal place of business of the insurance company to take custody of unclaimed property would be most undesirable, both for the reason that it would concentrate the administrative burdens in the few states that incorporate most of the insurance companies, and also because such reliance would result in the same few states obtaining the use of the bulk of the unclaimed funds regardless of the state of address of the persons entitled thereto. The alternative used in Section 3 is preferable, and accordingly, jurisdiction is conferred upon the state of the last recorded address of the person entitled. This practice has been adopted in the

states which have most recently enacted legislation of this nature, notably Connecticut, Massachusetts, North Carolina, and Pennsylvania.

SECTION 4. [*Deposits and Refunds Held by Utilities.*] The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the date it became payable in accordance with the final determination or order providing for the refund.

COMMENT

Section 4, dealing with deposits and refunds held by public utilities, establishes as the jurisdictional test the fact that the deposit has been made or the refund has been ordered with respect to utility services "furnished in this state." A question naturally arises in connection with the utility which does business in two or more states and collects advances or is required to pay refunds in each of the states concerned. Suppose one or more states fail to enact abandoned property legislation. Should the state of incorporation of the utility be empowered to take custody of the windfall in the event other states do not do so?

In answering this question account must be taken of the administrative inconvenience to the state of incorporation if it is obliged to undertake the advertising, mailing of notices, accounting, etc., for unclaimed funds due to persons who received utility service in other jurisdictions. Moreover, account must be taken of the inconvenience to customers in other states who would be compelled to seek their unclaimed funds from the State Treasurer of a state other than that of their residence. Furthermore, recognizing the desirability of avoiding a windfall by the utility, there is nevertheless a certain lack of equity in the acquisition of funds by a state other than that in which the services were rendered. Weighing these several considerations, and proceeding on the assumption that legislation of the nature of the Unclaimed Property Act will be widely adopted, it seems desirable to base the jurisdictional test in this section upon the fact of rendition of the services "within the state." This has been done in Section 4.

SECTION 5. [*Undistributed Dividends and Distributions of Business Associations.*] Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a

shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this state; or

(b) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

COMMENT

This section deals with ordinary business and industrial corporations, and their stock and dividends. A corporation may be incorporated and do business in but a single state and at the same time its stock may be owned by residents of many states. Such other states would have no jurisdiction over the corporation such as to permit it to compel reporting unclaimed dividends and delivering custody of property. Hence, for want of a better solution and to prevent a windfall to the corporation, the state of incorporation must assume jurisdiction, unless through the effect of the reciprocal clause in Section 10 its jurisdiction is precluded by virtue of the fact that another state in which the stockholder has his last known address also has jurisdiction over the corporation. Accordingly, a dual jurisdictional test is set up in Section 5 and reliance is placed upon the reciprocal clause of Section 10 to prevent multiple liability.

SECTION 6. [*Property of Business Associations and Banking or Financial Organizations Held in Course of Dissolution.*] All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned.

SECTION 7. [*Property Held by Fiduciaries.*] All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(b) If it is held by a business association, doing business in this

state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(c) If it is held in this state by any other person.

SECTION 8. [*Property Held by State Courts and Public Officers and Agencies.*] All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned.

SECTION 9. [*Miscellaneous Personal Property Held for Another Person.*] All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned.

COMMENT

Section 9 is the omnibus section covering all other intangible personal property not otherwise covered by the more specific provisions of the Act. It should be noted that to be subject to the section the property must be held or owing in the "ordinary course of the holder's business in this state." A wide variety of items will be embraced under this section, including, by way of illustration, money, stocks, bonds, certificates of membership in corporations, securities, bills of exchange, deposits, interest, dividends, income, amounts due and payable under the terms of insurance policies not covered by Section 4, pension trust agreements, profit-sharing plans, credit balances on paid wages, security deposits, refunds, funds deposited to redeem stocks, bonds, coupons and other securities, or to make a distribution thereof, together with any interest or increment thereon. If desired, these specific items could readily be written into Section 9 itself, thus perhaps adding to clarity and ready understanding of the coverage of the section, although necessarily at the expense of brevity.

SECTION 10. [*Reciprocity for Property Presumed Abandoned or Escheated Under the Laws of Another State.*] If specific property which is subject to the provisions of sections 2, 5, 6, 7, and 9 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that

similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

COMMENT

This is a key section of the Act. If two states, each having contact with the transaction, have each adopted the Act, the jurisdictional test becomes the last known address of the owner. Accordingly, if the holder is within the jurisdiction of the state of last known address, that state takes custody of the unclaimed funds regardless of the domicile of the holder. To illustrate, if a corporation is domiciled in state A but does business in both state A and state B, and if it owes dividends to a person whose last known address is in state B, then without the benefit of Section 10 both states A and B could demand custody of the unclaimed dividends—state A on the basis of corporate domicile, and state B on the basis of the last known address of the person entitled. However, if Section 10 is adopted in both states, the state of domicile of the corporation would relinquish custody because (1) the last known address of the owner is in state B, (2) the holder is subject to the jurisdiction of state B, (3) the dividends are claimed as abandoned property by state B, and (4) the laws of state B contain the reciprocal provision.

Thus the reciprocal provision serves to avoid the problems of multiple liability and the "race of diligence" made possible by the decisions in *Connecticut Mutual Insurance Co. v. Moore,* 333 U.S. 541, 92 L. Ed. 863 (1946) and *Standard Oil Co. v. New Jersey,* 341 U.S. 428, 95 L. Ed. 1078 (1951). These problems are surely going to arise when two or more states claim the property under their respective unclaimed property statutes if no such reciprocity provision is available.

It should be noted that Section 10 does not apply to unclaimed property covered by Section 3 (insurance companies), Section 4 (public utilities), and Section 8 (property held by state courts and public officers) for the reason that in each of these instances practical considerations have resulted in limiting the jurisdiction in such manner as to preclude the possibility of multiple state jurisdiction.

SECTION 11. [*Report of Abandoned Property.*]

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the [State Treasurer] with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of [$3.00] or more presumed abandoned under this act;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under [$3.00] each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the [State Treasurer] prescribes by rule as necessary for the administration of this act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The [State Treasurer] may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten year period preceding its effective date.

SECTION 12. [*Notice and Publication of Lists of Abandoned Property.*]

(a) Within [120] days from the filing of the report required by section 11, the [State Treasurer] shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the [State Treasurer].

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within [65] days from the date of the second published notice, the abandoned property will be placed not later than [85] days after such publication date in the custody of the [State Treasurer] to whom all further claims must thereafter be directed.

(c) The [State Treasurer] is not required to publish in such notice any item of less than [$25.00] unless he deems such publication to be in the public interest.

(d) Within [120] days from the receipt of the report required by section 11, the [State Treasurer] shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of [$25.00] or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the [State Treasurer], property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the [State Treasurer] to whom all further claims must be directed.

COMMENT

Every effort is made in the Uniform Act to minimize the expense of administration. Not only is there the provision in Section 11 which permits aggregate reporting of claims under $3.00 in amount, but Section 12 gives the State Treasurer authority to eliminate from the published notices any item of less than $25 unless he deems such publication to be in the public interest. And finally, notice need not be sent by mail to any person who is entitled to property of the value of less than $25. Furthermore, it should be noted that the notice published in any county will include only the names and addresses of the persons who are "entitled to notice within the county." In other words, it is not necessary to go to the expense of listing the names of all persons appearing entitled in each of the counties involved.

SECTION 13. [*Payment or Delivery of Abandoned Property.*] Every person who has filed a report as provided by Section 11 shall within [20] days after the time specified in Section 12 for claiming the property from the holder pay or deliver to the [State Treasurer] all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in Section 12, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the [State Treasurer], but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

SECTION 14. [*Relief from Liability by Payment or Delivery.*] Upon the payment or delivery of abandoned property to the [State Treasurer], the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the [State Treasurer] under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the [State Treasurer] pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the [State Treasurer] shall forthwith reimburse the holder for the payment.

SECTION 15. [*Income Accruing After Payment or Delivery.*] When property is paid or delivered to the [State Treasurer] under this act, the owner is not entitled to receive income or other increments accruing thereafter.

SECTION 16. [*Periods of Limitation Not a Bar.*] The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the [State Treasurer].

COMMENT

Section 16 treats unclaimed property as subject to the Act even though the period of limitations has run prior to date of presumed abandonment. A special

problem is presented that warrants careful consideration in relation to the local law in each state adopting the Uniform Act. The following brief statement of the authorities will be of service.

The Supreme Court has held that, where, under the local law as interpreted by the courts, title to real or personal property has not "vested," the 14th Amendment is not violated by legislation reviving a cause of action already barred by the running of the statute of limitations. *Campbell v. Holt,* 115 U.S. 620, 29 L. Ed. 483 (1885); *Chase Securities Corp. v. Donaldson,* 325 U.S. 304, 89 L. Ed. 1628 (1944). However, there are a number of courts which have held that the defense of the statute of limitations creates a vested right and in that case it cannot be taken away by statute. See cases collected in notes entitled Power of Legislature to Revive a Right of Action Barred by Limitation, 36 A.L.R. 1316 (1924); 133 A.L.R. 384 (1940). Comment, Developments in the Law, Statutes of Limitations, 63 Harv. L. Rev. 1177, 1178-1190 (1950).

Illustrative of the problem is *Standard Oil Co. v. New Jersey,* 5 N.J. 281 (1950), in which case the defendant raised the defense of the bar of limitations against an action of escheat brought by the state under its general unclaimed property law. The property involved consisted of unpaid stock dividends, shares of stock, unpaid wages, money withheld from wages toward purchase of liberty bonds, money held to pay checks issued by the corporation, and money owing on uncashed bond coupons. The court stated that:

> "The principle is imbedded in our jurisprudence that where a right of action has become barred under existing law, the statutory defense constitutes a vested right which is proof against legislative impairment."

Under the doctrine of escheat, the court said, the state merely succeeds to the rights of the owner. If such rights have been barred by the statute of limitations, the state has no derivative right because the owner has no right. Thus, the court concluded the state had no right to unpaid wages, money owing on checks, and the money payable on the bond coupons. However, the court decided otherwise as to dividends on stock and money withheld from wages for purchase of bonds, for these, the court said, were in the nature of a trust against which the statute of limitations did not run. Thus the state was enabled to escheat these items.

The New Jersey Legislature has taken action to avoid this decision by revising its escheat law to provide that cash, dividends, interest, and wages owed by a corporation shall be presumed abandoned and delivered to the custody of the state after being unclaimed for five years, instead of the previous period of fourteen years. The new period is shorter than the period of limitations. N. J. Stat., Sec. 2A:37-29 (1951). After two years of custody, the property is escheated to the state. Thus, the statute of limitations with a period exceeding five years will be no defense to an action against a corporation to escheat these items of property.

Each state, in considering the adoption of the Uniform Act, must investigate its own law on the subject to determine whether the bar of the statute of limitations can be lifted. Oklahoma, for instance, appears to have a constitutional prohibition against reviving a cause of action barred by the statute of limitations. *Mines v. Hogan,* 79 Okla. 233, 192 Pac. 811 (1920). If the law of vesting is in accord with that of New Jersey, the solution used by that state may well be desired. Of course, in determining the question of policy, any state may conclude to permit the statute of limitations to serve as a defense. Kentucky has so decided, Ky. Rev. Stat. (1949), Sec. 393.110. In such case, the problem is eliminated by the holder becoming entitled to the property.

Finally, it should be noted that, in connection with many types of abandoned property, the statute does not run during the period of inactivity which gives rise to the presumption of abandonment. Thus where the claim is against a fiduciary,

as with some of the items involved in *Standard Oil Co. v. New Jersey, supra,* or if "demand" is a condition of the owners' right to sue, as in the case of utility deposits and certificates of deposit in banks (see the Uniform Commercial Code, Sec. 3-108(2): "A cause of action on a certificate of deposit does not accrue until demand. . . ."), the problem of removing the bar of the statute will not arise. (See also Comment, Developments in the Law, Statutes of Limitations, *supra,* pp. 1200 et seq., for general discussion of when the statute begins to run.) In case of insurance policies, the obligation of the company is generally conditioned upon the submission of proof of death or other contingency. Thus it would seem the statute would not begin to run until such proof was submitted. Bank deposits fall into a similar category. Thus it may well be that the bulk of abandoned property falls outside the scope of the statute of limitations problem.

Finally, in connection with the removal of the bar of the statute of limitations, attention must be given to the fact that in connection with certain classes of business transactions, for example, so-called "nominee dividends" in brokers' accounts, reliance may have been placed upon the bar of the statute of limitations and the holder of unclaimed property may have made distribution or otherwise utilized it in some manner which would result in severe prejudice if the bar of the statute were later removed for the purposes of the unclaimed property law. In such instances it may prove necessary to include an exception, either in this section or elsewhere in the Act avoiding hardship by precluding the arising of presumption of abandonment in such cases.

SECTION 17. [*Sale of Abandoned Property.*]

(a) All abandoned property other than money delivered to the [State Treasurer] under this act shall within one year after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The [State Treasurer] may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least [3] weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the [State Treasurer] pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The [State Treasurer] shall execute all documents necessary to complete the transfer of title.

COMMENT

Because of the considerable number of events involved it may prove helpful to summarize the "time-table" for the disposition of unclaimed property. The steps are as follows:

(1) *Filing of report by holder,* before November 1, except that insurance companies file before May 1, Section 11(d).

(2) *Publishing notice,* 120 days after filing of report, Section 12(a).

(3) *Mailing notice,* 120 days after filing of report, Section 12(d).

(4) *Period for owner claiming from holder,* 65 days from the date of the *second* published notice, Section 12(b)(3).

(5) *Delivery by holder to State Treasurer,* 20 days after expiration of period for claiming from holder, 85 days after date of the second published notice, Section 13.

(6) *Sale by state,* within one year after delivery, Section 17.

It should be noted that most of the time-table dates are bracketed, and hence they may be adjusted by any adopting state to the convenience of its own business and administrative practices.

SECTION 18. [*Deposit of Funds.*]

(a) All funds received under this act, including the proceeds from the sale of abandoned property under section 17, shall forthwith be deposited by the [State Treasurer] in the [general funds] of the state, [except that the [State Treasurer] shall retain in a separate trust fund an amount not exceeding [$25,000] from which he shall make prompt payment of claims duly allowed by him as hereinafter provided.] Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

[(b) Before making any deposit to the credit of the [general funds], the [State Treasurer] may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.]

SECTION 19. [*Claim for Abandoned Property Paid or Delivered.*]

Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the [State Treasurer].

SECTION 20. [*Determination of Claims.*]

(a) The [State Treasurer] shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) [If the claim is allowed, the [State Treasurer] shall make payment forthwith.] The claim shall be paid without deduction for costs of notices or sale or for service charges.

[SECTION 21. [*Judicial Action upon Determinations.*] Any person aggrieved by a decision of the [State Treasurer] or as to whose claim the [State Treasurer] has failed to act within [90] days after the filing of the claim, may commence an action in the [district] [circuit] court to establish his claim. The proceeding shall be brought within [90] days after the decision of the [State Treasurer] or within [180] days from the filing of the claim if the [State Treasurer] fails to act. The action shall be tried *de novo* without a jury.]

SECTION 22. [*Election to Take Payment or Delivery.*] The [State Treasurer], after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within [120] days after filing the report required under section 11, the [State Treasurer] shall be deemed to have elected to receive the custody of the property.

SECTION 23. [*Examination of Records.*] The [State Treasurer] may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

SECTION 24. [*Proceeding to Compel Delivery of Abandoned Property.*] If any person refuses to deliver property to the [State Treasurer] as required under this act, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

SECTION 25. [*Penalties.*]

(a) Any person who wilfully fails to render any report or perform other duties required under this act, shall be punished by a fine of [$.....] for each day such report is withheld, but not more than [$.....].

(b) Any person who wilfully refuses to pay or deliver abandoned property to the [State Treasurer] as required under this act shall be punished by a fine of not less than [$.....] nor more than

[$.....], or imprisonment for not more than [.....] months, or both, in the discretion of the court.

SECTION 26. [*Rules and Regulations.*] The [State Treasurer] is hereby authorized to make necessary rules and regulations to carry out the provisions of this act.

SECTION 27. [*Effect of Laws of Other States.*] This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this act.

SECTION 28. [*Severability.*] If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 29. [*Uniformity of Interpretation.*] This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 30. [*Short Title.*] This act may be cited as the Uniform Disposition of Unclaimed Property Act.

SECTION 31. [*Repeal.*] [The following acts and parts of acts are hereby repealed:

(a)

(b)

(c) .]

SECTION 32. [*Time of Taking Effect.*] This act shall take effect .....

REVISED UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS SEVENTY-FIFTH YEAR
AT MONTREAL, CANADA
JULY 30-AUGUST 5, 1966

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING AT MONTREAL, CANADA, AUGUST 9, 1966

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REVISED UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Prefatory Note

Reason for Proposed Uniform Act

Uniform and comprehensive state legislation dealing with the disposition of unclaimed property should fill a very real need. Present statutory provisions on the subject are exceedingly diverse in character and are often not well formulated. Most states already have statutes dealing with the disposition of unclaimed tangible personal property, the abandonment of which is a more or less obvious fact. In addition, a considerable number of states have statutes dealing with the disposition of unclaimed bank deposits. However, at the time the original Uniform Disposition of Unclaimed Property Act was approved by the Conference in 1954, only ten states had adopted really comprehensive legislation covering the entire field of unclaimed property. They were: Arkansas, Connecticut, Kentucky, Massachusetts, Michigan, New Jersey, New York, North Carolina, Oregon, and Pennsylvania. However, several other states manifested interest in adopting comprehensive legislation on the subject. In order to provide the states with an act that would promote a fair and adequate treatment of the subject, the Conference drafted and, in 1954, approved the Uniform Disposition of Unclaimed Property Act. This Act was subsequently adopted in Arizona, California, Florida, Idaho, Illinois, Montana, New Mexico, Oregon, Utah, Virginia, Washington, and West Virginia.

Why Revision is Needed Now

In the operation of the Uniform Disposition of Unclaimed Property Act of 1954 and similar acts, special problems have arisen concerning money orders and traveler's checks, particularly those issued by an organization not properly classified as a "banking or financial institution." The Act was revised, therefore, to take care of these problems.

Section 2 has been amended by adding to the persons covered by the section, the phrase "a business association." In subsection (c) the phrase "money orders" is added to the types of sums payable and a special rule concerning the time at which abandonment is presumed is established for traveler's checks. For all property subject to the section, other than traveler's checks, seven years from the date payable raises

the presumption of abandonment but a longer period, 15 years from the date of issuance, is established for traveler's checks.

Section 11 of the original Act, requiring a report by the holder of abandoned property, is amended to eliminate the requirement of reporting the name and address of the owner with respect to "traveler's checks and money orders." Section 12 of the Act which required notice and publication of lists of abandoned property is also amended to eliminate traveler's checks and money orders from the requirement of publication of a list. Both of these amendments are necessary because of the inability of the issuer of money orders and traveler's checks to know who the holder is in most cases.

Section 13 of the original Act obligating the holder of the sums to pay or deliver the abandoned property to the state is amended so that the obligation to pay is, in the case of traveler's checks or money orders, not tied to publication of the list but rather to the filing of the appropriate type of report.

What the Act Does

The Uniform Act is custodial in nature—that is to say, it does not result in the loss of the owner's property rights. The state takes custody and remains the custodian in perpetuity. Although the actual possibility of his presenting a claim in the distant future is not great, the owner retains his right of presenting his claim at any time, no matter how remote. State records will have to be kept on a permanent basis. In this respect the measure differs from the escheat type of statute, pursuant to which the right of the owner is foreclosed and the title to the property passes to the state. Not only does the custodial type of statute more adequately preserve the owner's interests, but, in addition, it makes possible a substantial simplification of procedure.

The Act, which consists of thirty-two sections, commences with the usual section on definitions. This is followed by sections 2 through 9 devoted to defining and describing the circumstances under which various classes of property are to be presumed abandoned under the Act. Separate sections deal with property held or owing by banks or other financial organizations, insurance corporations, public utilities, other business associations, trustees in corporate dissolution proceedings, fiduciaries, and state courts and other public agencies. Section 9 is an omnibus section covering all other items held or owing "in the ordinary course of the holder's business." Thereafter comes section 10 which may be regarded as a key section in the Act, for it contains the provisions which preclude the possibility of multiple liability being imposed upon the holder of unclaimed property who happens to be subject to the jurisdiction of two or more states. The remaining sections, 11 through 32, deal principally with procedural matters, including the

reporting of unclaimed property, the giving of notice to owners, payment into the custody of the state and various provisions pursuant to which the owner may subsequently present his claim to the state and recover his property.

The Uniform Disposition of Unclaimed Property Act, if adopted by the states, will serve to protect the interests of owners, to relieve the holders from annoyance, expense and liability, to preclude multiple liability, and to give the adopting state the use of some considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof.

Why Uniformity Is Necessary

In addition to the general desirability of symmetry in the law for the benefit of persons doing business in more than one state, there is at least one especially important reason for uniform legislation on the subject. Two recent decisions of the United States Supreme Court, *Connecticut Mutual Insurance Co. v. Moore,* 333 U.S. 541, 92 L. Ed. 863 (1947) and *Standard Oil Co. v. New Jersey,* 341 U.S. 428, 95 L. Ed. 1078 (1951), (both of which are explained more fully in the commentary to section 10) reveal that a troublesome problem of multiple liability for the holder of unclaimed property arises in case two or more states, each having jurisdiction over such property, enact statutes dealing with the subject. If two such statutes cover the same items of property, and if each state seeks to exercise its jurisdiction, it becomes likely that the holder may be subjected to double, or, perhaps, even more extensive liability for funds in its custody. Or, even though the statutes are so framed as to avoid multiple liability, a "race of diligence" between states having jurisdiction may ensue, with each state trying to reach the funds first. In the 1947 decision in *Connecticut Mutual Insurance Co. v. Moore,* the United States Supreme Court held that the state of New York may take possession of unclaimed funds due on insurance policies issued to persons in the state of New York, even though the insurance company holder of the funds is domiciled in another state. Jurisdiction is based upon the relationship of the policy holders to the state. Later, in 1951 in the *Standard Oil Company* case, the Court upheld the right of the state of New Jersey, the domicile of the company, to escheat stock and stock dividends belonging to residents of the state of New York. So jurisdiction can also be based upon the domicile of the holder. These two decisions viewed together reveal the possibilities of multiple liability. Moreover, since federal concepts of jurisdiction may not preclude multiple liability, it is especially proper and desirable to resort to a uniform state act providing reciprocity. The Uniform Act here submitted deals specifically with this problem.

REVISED UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

AN ACT RELATING TO THE DISPOSITION OF UNCLAIMED PROPERTY AND MAKING UNIFORM THE LAW WITH REFERENCE THERETO

SECTION 1. [*Definitions and Use of Terms.*] As used in this Act, unless the context otherwise requires:

(a) "Banking organization" means any bank, trust company, savings bank [industrial bank, land bank, safe deposit company], or a private banker engaged in business in this state.

(b) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, [cooperative bank] or investment company, engaged in business in this state.

(d) "Holder" means any person in possession of property subject to this Act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this Act.

(e) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this Act, or his legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

SECTION 2. [*Property Held by Banking or Financial Organizations or by Business Associations.*] The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within 7 years:

(1) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) corresponded in writing with the banking organization concerning the deposit; or

(3) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization [or any deposit made therewith in this state], and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within 7 years:

(1) increased or decreased the amount of the funds [or deposit], or presented an appropriate record for the crediting of interest or dividends; or

(2) corresponded in writing with the financial organization concerning the funds [or deposit]; or

(3) otherwise indicated an interest in the funds [or deposit] as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that, with the exception of traveler's checks, has been outstanding for more than 7 years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than 15 years from the date of its issuance, unless the owner has within 7 years, or within 15 years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association.

(d) Any funds or other personal property, tangible or intangible,

removed from a safe deposit box or any other safekeeping repository [or agency or collateral deposit box] in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than 7 years from the date on which the lease or rental period expired.

COMMENT

Section 2(a) establishes the criteria for the presumption of abandonment of deposits held by banking organizations. Section 2(b) establishes similar criteria for funds paid toward shares or other interests in financial organizations other than banks. Section 2(c) deals with other forms of obligations of both banking and financial organizations, or business associations, and section 2(d) covers the contents of safe deposit boxes and other deposit arrangements. In each instance the jurisdictional test for presumption of abandonment within the enacting state bears direct relationship to events taking place within that state, e.g., deposits "made in this state," funds "paid in this state," written instruments "issued in this state," property removed from safe deposit boxes "in this state." These qualifications are explicitly included both for the legal reason that there must be a jurisdictional basis for the claiming of the property within the state, and also for the practical reason that the presence of the events within the state means that the convenience of various parties in interest will be best served in this way.

Including both the states having general abandoned property laws, and others that deal only with certain specific items of property, some 36 states now have legislation designed to capture dormant bank deposits (See Garrison, "Escheats, Abandoned Property Acts, and their Revenue Aspects," 35 Ky. L.J. 302 (1947)). Section 2 parallels section 300 of the New York Abandoned Property Law which is a general statute, and more or less similar provisions are found in the legislation of Arizona, California, Connecticut, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, North Carolina, and Pennsylvania.

Comment should be made concerning the seven-year period, the lapse of which gives rise to the presumption of abandonment. This period is used throughout the Uniform Act and is applied to all types of property, with the exception of traveler's checks, subject to the Act. It is a fact, however, that the various states have adopted different time periods for this purpose. Moreover, in any single state different time periods may be prescribed for different items of property. Possibly differing business practices in various parts of the country will indicate the desirability in some states of the utilization of a period other than seven years in connection with at least some types of property. This may be especially the case with respect to savings bank deposits, for in many states it may be deemed desirable to allow more than seven years, and perhaps allow a longer period of dormancy for such deposits than is allowed in connection with other items of unclaimed property. Because of problems arising under the original Act, the Act is amended to provide a period of 15 years from date of issuance for traveler's checks before abandonment is presumed. Each state may adjust the time period to its own needs, and although a seven-year period, with 15 years for traveler's checks, seems reasonably satisfactory for most purposes for most parts of the country, the benefits of this Uniform Act, particularly the benefits of the reciprocal provisions of section 10, will in no way be diminished by the substitution of some other time periods if deemed more satisfactory in view of the local practices.

Comment should also be made concerning the reference to "deposits" in section 2(b). Normally financial organizations, as that term is defined in this Act, do not receive deposits, but instead they receive funds for the purchase of shares. However, in some states such funds are in fact referred to as "deposits" in the pertinent statutes. Therefore the word is included in section 2(b), but is set forth in brackets to indicate that it may be eliminated in any state where it is inapplicable.

SECTION 3. [*Unclaimed Funds Held by Life Insurance Corporations.*]

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than 7 years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding 7 years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

COMMENT

Section 3, dealing with unclaimed funds held by insurance companies, establishes as the jurisdictional test for the purposes of the section the fact that "the last known address, according to the records of the corporation, of the person entitled to the funds is within this state." For perfectly practical reasons this test differs in coverage from that applied under section 2 to deposits in banks and also under section 5 to undistributed dividends of corporations. In general, insurance com-

panies qualify and are authorized to write insurance in many or most of the states of the Union. Therefore, jurisdiction over such companies as holders of unclaimed property is normally wide-spread throughout the country, thus permitting and suggesting differentiation from ordinary business or industrial corporations and also from banking organizations. Indeed, reliance upon the state of incorporation or principal place of business of the insurance company to take custody of unclaimed property would be most undesirable, both for the reason that it would concentrate the administrative burdens in the few states that incorporate most of the insurance companies, and also because such reliance would result in the same few states obtaining the use of the bulk of the unclaimed funds regardless of the state of address of the persons entitled thereto. The alternative used in section 3 is preferable, and accordingly, jurisdiction is conferred upon the state of the last recorded address of the person entitled. This practice has been adopted in the states which have most recently enacted legislation of this nature, notably Connecticut, Massachusetts, North Carolina, and Pennsylvania.

SECTION 4. [*Deposits and Refunds Held by Utilities.*] The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 7 years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 7 years after the date it became payable in accordance with the final determination or order providing for the refund.

COMMENT

Section 4, dealing with deposits and refunds held by public utilities, establishes as the jurisdictional test the fact that the deposit has been made or the refund has been ordered with respect to utility services "furnished in this state." A question naturally arises in connection with the utility which does business in two or more states and collects advances or is required to pay refunds in each of the states concerned. Suppose one or more states fail to enact abandoned property legislation. Should the state of incorporation of the utility be empowered to take custody of the windfall in the event other states do not do so?

In answering this question account must be taken of the administrative inconvenience to the state of incorporation if it is obliged to undertake the advertising, mailing of notices, accounting, etc., for unclaimed funds due to persons who received utility service in other jurisdictions. Moreover, account must be taken of the inconvenience to customers in other states who would be compelled to seek their unclaimed funds from the State Treasurer of a state other than that of their

residence. Furthermore, recognizing the desirability of avoiding a windfall by the utility, there is nevertheless a certain lack of equity in the acquisition of funds by a state other than that in which the services were rendered. Weighing these several considerations, and proceeding on the assumption that legislation of the nature of the Unclaimed Property Act will be widely adopted, it seems desirable to base the jurisdictional test in this section upon the fact of rendition of the services "within the state." This has been done in section 4.

SECTION 5. [*Undistributed Dividends and Distributions of Business Associations.*] Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within 7 years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this state; or

(b) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

COMMENT

This section deals with ordinary business and industrial corporations, and their stock and dividends. A corporation may be incorporated and do business in but a single state and at the same time its stock may be owned by residents of many states. Such other states would have no jurisdiction over the corporation such as to permit it to compel reporting unclaimed dividends and delivering custody of property. Hence, for want of a better solution and to prevent a windfall to the corporation, the state of incorporation must assume jurisdiction, unless through the effect of the reciprocal clause in Section 10 its jurisdiction is precluded by virtue of the fact that another state in which the stockholder has his last known address also has jurisdiction over the corporation. Accordingly, a dual jurisdictional test is set up in section 5 and reliance is placed upon the reciprocal clause of section 10 to prevent multiple liability.

SECTION 6. [*Property of Business Associations and Banking or Financial Organizations Held in Course of Dissolution.*] All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within 2 years after the date for final distribution, is presumed abandoned.

SECTION 7. [*Property Held by Fiduciaries.*] All intangible per-

sonal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within 7 years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(b) If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(c) If it is held in this state by any other person.

SECTION 8. [*Property Held by State Courts and Public Officers and Agencies.*] All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than 7 years is presumed abandoned.

SECTION 9. [*Miscellaneous Personal Property Held for Another Person.*] All intangible personal property, not otherwise covered by this Act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 7 years after it became payable or distributable is presumed abandoned.

COMMENT

Section 9 is the omnibus section covering all other intangible personal property not otherwise covered by the more specific provisions of the Act. It should be noted that to be subject to the section the property must be held or owing in the "ordinary course of the holder's business in this state." A wide variety of items will be embraced under this section, including, by way of illustration, money, stocks, bonds, certificates of membership in corporations, securities, bills of exchange, deposits, interest, dividends, income, amounts due and payable under the terms of insurance policies not covered by section 4, pension trust agreements, profit-sharing plans, credit balances on paid wages, security deposits, refunds, funds deposited to redeem stocks, bonds, coupons and other securities, or to make a distribution thereof, together with any interest or increment thereon. If desired, these specific items could readily be written into section 9 itself, thus perhaps adding to clarity and ready understanding of the coverage of the section, although necessarily at the expense of brevity.

SECTION 10. [*Reciprocity for Property Presumed Abandoned or Escheated Under the Laws of Another State.*] If specific property which is subject to the provisions of sections 2, 5, 6, 7, and 9 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subjected to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

COMMENT

This is a key section of the Act. If two states, each having contact with the transaction, have each adopted the Act, the jurisdictional test becomes the last known address of the owner. Accordingly, if the holder is within the jurisdiction of the state of last known address, that state takes custody of the unclaimed funds regardless of the domicile of the holder. To illustrate, if a corporation is domiciled in state A but does business in both state A and state B, and if it owes dividends to a person whose last known address is in state B, then without the benefit of Section 10 both states A and B could demand custody of the unclaimed dividends—state A on the basis of corporate domicile, and state B on the basis of the last known address of the person entitled. However, if section 10 is adopted in both states, the state of domicile of the corporation would relinquish custody because (1) the last known address of the owner is in state B, (2) the holder is subject to the jurisdiction of state B, (3) the dividends are claimed as abandoned property by state B, and (4) the laws of state B contain the reciprocal provision.

Thus the reciprocal provision serves to avoid the problems of multiple liability and the "race of diligence" made possible by the decisions in *Connecticut Mutual Insurance Co. v. Moore,* 333 U.S. 541, 92 L. Ed. 863 (1946) and *Standard Oil Co. v. New Jersey,* 341 U.S. 428, 95 L. Ed. 1078 (1951). These problems are surely going to arise when two or more states claim the property under their respective unclaimed property statutes if no such reciprocity provision is available.

It should be noted that section 10 does not apply to unclaimed property covered by section 3 (insurance companies), section 4 (public utilities), and section 8 (property held by state courts and public officers) for the reason that in each of these instances practical considerations have resulted in limiting the jurisdiction in such manner as to preclude the possibility of multiple state jurisdiction.

SECTION 11. [*Report of Abandoned Property.*]

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this Act shall report to the [State Treasurer] with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of [$3.00] or more presumed abandoned under this Act;

(2) in case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under [$3.00] each may be reported in aggregate;

(4) the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) other information which the [State Treasurer] prescribes by rule as necessary for the administration of this Act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The [State Treasurer] may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this Act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this Act shall include all items of property that would have been presumed abandoned if this Act had been in effect during the 10 year period preceding its effective date.

SECTION 12. [*Notice and Publication of Lists of Abandoned Property.*]

(a) Within [120] days from the filing of the report required by section 11, the [State Treasurer] shall cause notice to be published at least once each week for 2 successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property," and shall contain:

(1) the names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(2) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the [State Treasurer].

(3) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within [65] days from the date of the second published notice, the abandoned property will be placed not later than [85] days after such publication date in the custody of the [State Treasurer] to whom all further claims must thereafter be directed.

(c) The [State Treasurer] is not required to publish in such notice any item of less than [$25.00] unless he deems such publication to be in the public interest.

(d) Within [120] days from the receipt of the report required by section 11, the [State Treasurer] shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of [$25.00] or more presumed abandoned under this Act.

(e) The mailed notice shall contain:

(1) a statement that, according to a report filed with the [State Treasurer], property is being held to which the addressee appears entitled.

(2) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) a statement that, if satisfactory proof of claim is not

presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the [State Treasurer] to whom all further claims must be directed.

(f) This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 2.

COMMENT

Every effort is made in the Uniform Act to minimize the expense of administration. Not only is there the provision in section 11 which permits aggregate reporting of claims under $3.00 in amount, but section 12 gives the State Treasurer authority to eliminate from the published notices any item of less than $25 unless he deems such publication to be in the public interest. And finally, notice need not be sent by mail to any person who is entitled to property of the value of less than $25. Furthermore, it should be noted that the notice published in any county will include only the names and addresses of the persons who are "entitled to notice within the county." In other words, it is not necessary to go to the expense of listing the names of all persons appearing entitled in each of the counties involved.

Sections 11 and 12 of the 1954 Act are amended to exclude traveler's checks and money orders from the requirements for a report and a list because of the inability of the issuer to know who the holder is in most cases.

SECTION 13. [*Payment or Delivery of Abandoned Property.*] Every person who has filed a report under section 11, within [20] days after the time specified in section 12 for claiming the property from the holder, or in the case of sums payable on traveler's checks or money orders presumed abandoned under section 2 within [20] days after the filing of the report, shall pay or deliver to the [State Treasurer] all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 12, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the [State Treasurer], but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

COMMENT

This section of the 1954 Act is amended so that the obligation to pay in the case of traveler's checks or money orders is not tied to publication of the list but rather to the filing of the appropriate type of report.

SECTION 14. [*Relief from Liability by Payment or Delivery.*] Upon the payment or delivery of abandoned property to the [State Treasurer], the state shall assume custody and shall be responsible

for the safekeeping thereof. Any person who pays or delivers abandoned property to the [State Treasurer] under this Act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the [State Treasurer] pursuant to this Act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the [State Treasurer] shall forthwith reimburse the holder for the payment.

SECTION 15. [*Income Accruing After Payment or Delivery.*] When property is paid or delivered to the [State Treasurer] under this Act, the owner is not entitled to receive income or other increments accruing thereafter.

SECTION 16. [*Periods of Limitation Not a Bar.*] The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this Act or to pay or deliver abandoned property to the [State Treasurer].

COMMENT

Section 16 treats unclaimed property as subject to the Act even though the period of limitations has run prior to date of presumed abandonment. A special problem is presented that warrants careful consideration in relation to the local law in each state adopting the Uniform Act. The following brief statement of the authorities will be of service.

The Supreme Court has held that, where, under the local law as interpreted by the courts, title to real or personal property has not "vested," the 14th Amendment is not violated by legislation revising a cause of action already barred by the running of the statute of limitations. *Campbell v. Holt,* 115 U.S. 620, 29 L. Ed. 483 (1885); *Chase Securities Corp. v. Donaldson,* 325 U.S. 304, 89 L. Ed. 1628 (1944). However, there are a number of courts which have held that the defense of the statute of limitations creates a vested right and in that case it cannot be taken away by statute. See cases collected in notes entitled Power of Legislature to Revive a Right of Action Barred by Limitation, 36 A.L.R. 1316 (1924); 133 A.L.R. 384 (1940). Comment, Developments in the Law, Statutes of Limitations, 63 Harv. L. Rev. 1177, 1178-1190 (1950).

Illustrative of the problem is *Standard Oil Co. v. New Jersey,* 5 N.J. 281 (1950), in which case the defendant raised the defense of the bar of limitations against an action of escheat brought by the state under its general unclaimed property law. The property involved consisted of unpaid stock dividends, shares of stock, unpaid wages, money withheld from wages toward purchase of liberty bonds,

money held to pay checks issued by the corporation, and money owing on uncashed bond coupons. The court stated that:

> "The principle is imbedded in our jurisprudence that where a right of action has become barred under existing law, the statutory defense constitutes a vested right which is proof against legislative impairment."

Under the doctrine of escheat, the court said, the state merely succeeds to the rights of the owner. If such rights have been barred by the statute of limitations, the state has no derivative right because the owner has no right. Thus, the court concluded the state had no right to unpaid wages, money owing on checks, and the money payable on the bond coupons. However, the court decided otherwise as to dividends on stock and money withheld from wages for purchase of bonds, for these, the court said, were in the nature of a trust against which the statute of limitations did not run. Thus the state was enabled to escheat these items.

The New Jersey Legislature has taken action to avoid this decision by revising its escheat law to provide that cash, dividends, interest, and wages owed by a corporation shall be presumed abandoned and delivered to the custody of the state after being unclaimed for five years, instead of the previous period of fourteen years. The new period is shorter than the period of limitations. N.J. Stat., Sec. 2A:37-29 (1951). After two years of custody, the property is escheated to the state. Thus, the statute of limitations with a period exceeding five years will be no defense to an action against a corporation to escheat these items of property.

Each state, in considering the adoption of the Uniform Act, must investigate its own law on the subject to determine whether the bar of the statute of limitations can be lifted. Oklahoma, for instance, appears to have a constitutional prohibition against reviving a cause of action barred by the statute of limitations. *Mines v. Hogan,* 79 Okla. 233, 192 Pac. 811 (1920). If the law of vesting is in accord with that of New Jersey, the solution used by that state may well be desired. Of course, in determining the question of policy, any state may conclude to permit the statute of limitations to serve as a defense. Kentucky has so decided, Ky. Rev. Stat. (1949), Sec. 393.110. In such case, the problem is eliminated by the holder becoming entitled to the property.

Finally, it should be noted that, in connection with many types of abandoned property, the statute does not run during the period of inactivity which gives rise to the presumption of abandonment. Thus where the claim is against a fiduciary, as with some of the items involved in *Standard Oil Co. v. New Jersey, supra,* or if "demand" is a condition of the owners' right to sue, as in the case of utility deposits and certificates of deposit in banks (see the Uniform Commercial Code, Sec. 3-108(2): "A cause of action on a certificate of deposit does not accrue until demand. . . ."), the problem of removing the bar of the statute will not arise. (See also Comment, Developments in the Law, Statutes of Limitations, *supra,* pp. 1200 et seq., for general discussion of when the statute begins to run.) In case of insurance policies, the obligation of the company is generally conditioned upon the submission of proof of death or other contingency. Thus it would seem the statute would not begin to run until such proof was submitted. Bank deposits fall into a similar category. Thus it may well be that the bulk of abandoned property falls outside the scope of the statute of limitations problem.

Finally, in connection with the removal of the bar of the statute of limitations, attention must be given to the fact that in connection with certain classes of business transactions, for example, so-called "nominee dividends" in brokers' accounts, reliance may have been placed upon the bar of the statute of limitations and the holder of unclaimed property may have made distribution or otherwise

utilized it in some manner which would result in severe prejudice if the bar of the statute were later removed for the purposes of the unclaimed property law. In such instances it may prove necessary to include an exception, either in this section or elsewhere in the Act avoiding hardship by precluding the arising of presumption of abandonment in such cases.

SECTION 17. [*Sale of Abandoned Property.*]

(a) All abandoned property other than money delivered to the [State Treasurer] under this Act shall within one year after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The [State Treasurer] may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least [3] weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the [State Treasurer] pursuant to this Act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The [State Treasurer] shall execute all documents necessary to complete the transfer of title.

COMMENT

Because of the considerable number of events involved it may prove helpful to summarize the "time-table" for the disposition of unclaimed property. The steps are as follows:

(1) *Filing of report by holder,* before November 1, except that insurance companies file before May 1, Section 11(d).

(2) *Publishing notice,* 120 days after filing of report, Section 12(a). (Not applicable to traveler's checks or money orders.)

(3) *Mailing notice,* 120 days after filing of report, Section 12(d). (Not applicable to traveler's checks or money orders.)

(4) *Period for owner claiming from holder,* 65 days from the date of the *second* published notice, Section 12(b)(3). (Not applicable to traveler's checks or money orders.)

(5) *Delivery by holder to State Treasurer,* 20 days after expiration of period for claiming from holder, 85 days after date of the second published notice; for traveler's checks or money orders, 20 days after filing of report, Section 13.

(6) *Sale by state,* within one year after delivery, Section 17.

It should be noted that most of the time-table dates are bracketed, and hence they may be adjusted by any adopting state to the convenience of its own business and administrative practices.

SECTION 18. [*Deposit of Funds.*]

(a) All funds received under this Act, including the proceeds from the sale of abandoned property under section 17, shall forthwith be deposited by the [State Treasurer] in the [general funds] of the state, [except that the [State Treasurer] shall retain in a separate trust fund an amount not exceeding [$25,000] from which he shall make prompt payment of claims duly allowed by him as hereinafter provided]. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

[(b) Before making any deposit to the credit of the [general funds], the [State Treasurer] may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.]

SECTION 19. [*Claim for Abandoned Property Paid or Delivered.*] Any person claiming an interest in any property delivered to the state under this Act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the [State Treasurer].

SECTION 20. [*Determination of Claims.*]

(a) The [State Treasurer] shall consider any claim filed under this Act and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) [If the claim is allowed, the [State Treasurer] shall make payment forthwith.] The claim shall be paid without deduction for costs of notices or sale or for service charges.

[SECTION 21. [*Judicial Action upon Determinations.*] Any person aggrieved by a decision of the [State Treasurer] or as to whose claim the [State Treasurer] has failed to act within [90] days after the filing of the claim, may commence an action in the [district] [circuit] court to establish his claim. The proceeding shall be brought within [90] days after the decision of the [State Treas-

urer] or within [180] days from the filing of the claim if the [State Treasurer] fails to act. The action shall be tried *de novo* without a jury.]

SECTION 22. [*Election to Take Payment or Delivery.*] The [State Treasurer], after receiving reports of property deemed abandoned pursuant to this Act, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within [120] days after filing the report required under section 11, the [State Treasurer] shall be deemed to have elected to receive the custody of the property.

SECTION 23. [*Examination of Records.*] The [State Treasurer] may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this Act.

SECTION 24. [*Proceeding to Compel Delivery of Abandoned Property.*] If any person refuses to deliver property to the [State Treasurer] as required under this Act, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

SECTION 25. [*Penalties.*]

(a) Any person who wilfully fails to render any report or perform other duties required under this Act, shall be punished by a fine of [$.....] for each day such report is withheld, but not more than [$.....].

(b) Any person who wilfully refuses to pay or deliver abandoned property to the [State Treasurer] as required under this Act shall be punished by a fine of not less than [$.....] nor more than [$.....], or imprisonment for not more than [.....] months, or both, in the discretion of the court.

SECTION 26. [*Rules and Regulations.*] The [State Treasurer] is hereby authorized to make necessary rules and regulations to carry out the provisions of this Act.

SECTION 27. [*Effect of Laws of Other States.*] This Act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this Act.

SECTION 28. [*Severability.*] If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 29. [*Uniformity of Interpretation.*] This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 30. [*Short Title.*] This Act may be cited as the Uniform Disposition of Unclaimed Property Act.

SECTION 31. [*Repeal.*] [The following acts and parts of acts are hereby repealed:

(a)

(b)

(c) .]

SECTION 32. [*Time of Taking Effect.*] This act shall take effect .....

UNIFORM UNCLAIMED PROPERTY ACT

1981 ACT

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Why Change is Needed

Thirty-one states and the District of Columbia have enacted either the original 1954 version of the Uniform Disposition of Unclaimed Property Act, or the 1966 revision of that Act. Of the remaining 19 states, all but 2 have some form of escheat or abandoned property legislation. The 1954 Uniform Act was drafted as a response to conflicting legislation among the various states and in response to a series of Supreme Court decisions in the late 1940's and early 1950's. The 1954 and 1966 Acts served well as evidenced by their numerous adoptions. However, the era of stability was ended with the decision in Texas v. New Jersey, 379 U.S. 674 (1965). That decision established a set of priorities for claimant states which were, in some instances, inconsistent with those established by the Uniform Act. A few states which previously had enacted the Uniform Act have changed their legislation to reflect the holding in Texas v. New Jersey.

In the last decade states have become increasingly aware of the opportunities for collecting and returning to their residents unclaimed money and using the "windfall" unreturned funds as general fund receipts for the benefit of citizens of the state. Accordingly several states have sought to enforce their unclaimed property laws with enhanced vigor. They have found, however, that obtaining compliance with the law has been extremely difficult. In some instances the uncertain status of unclaimed property statutes in the wake of Texas v. New Jersey accounts for

the high degree of noncompliance; many holders feel they do not know what is required of them. In addition the enforcement provisions of the Uniform Act are inadequate and have not served to encourage compliance with the Act.

The Uniform Act served its time. However, to conform the Uniform Act expressly to the Supreme Court ruling in Texas v. New Jersey a comprehensive revision is desirable.

The Impact of Texas v. New Jersey

The 1954 and 1966 Uniform Acts basically tied the enacting state's claim to abandoned property to the ability of that state's courts to assert personal jurisdiction over the holder. The basic jurisdictional test of Sections 2, 4, 5, 6, 7, 8 and 9 for a presumption of abandonment bears a direct relationship to events taking place within the state. The thrust of this "contacts" test generally is to allow any state with jurisdiction over the holder, i.e., the debtor, to take unclaimed property. In recognition of the potential for conflict among jurisdictions over the application of a contacts test, the Uniform Act contained a reciprocity clause in Section 10. Section 10 allowed another state to claim abandoned property if the last known address of the claimant was in that state and if other states with contacts would forego their claims. The success of this clause was dependent upon uniform enactment by competing states. However, this was never forthcoming, and the assertion of competing claims by states continued.

The Supreme Court decisions leading up to Texas v. New Jersey did little to clarify the law. The state of residence of the creditor could claim, Connecticut Mutual Life Insurance v. Moore, 333 U.S. 541 (1948), and the state of the holder's domicile could likewise escheat, Standard Oil Co. v. New Jersey, 347 U.S. 428 (1951).

Standard Oil also held that it was a denial of due process for more than one state to escheat the same property. This rule created a race of diligence among the states. In Western Union Telegraph Co. v. Pennsylvania, 368 U.S. 71 (1962), however, the court told the most diligent state (Pennsylvania) that it had to assure Western Union that no other state would claim the property. In Western Union, Pennsylvania sought to escheat uncashed money orders and drafts which were held by Western Union and unclaimed by either the senders or the payees. The court held that Western Union should not be embroiled in a race of diligence among New York, Pennsylvania and other states. The Supreme Court's opinion in effect admonished the states mutually to resolve which state was entitled to claim abandoned property or, absent agreement, to present their conflicting claims to the only judicial forum in which they could be resolved, the Supreme Court. Thus any state facing an actual or potential dispute by a sister state was forced to bring an original action in the

Supreme Court for a declaration of its rights before it could take the property. This was the condition of the law when the Supreme Court decided Texas v. New Jersey.[1]

[1] While the court in Texas v. New Jersey set down rules applying to both escheat statutes and custodial type unclaimed property statutes (such as the Uniform Act), all but a few of the states have laws which are custodial and allow the lawful owner to claim the property at any time.

The problem in Texas v. New Jersey was which of several states was entitled to escheat intangible property consisting of debts owed by Sun Oil Company and left unclaimed by creditors. Four rules were proposed:

1. that the funds should go to the state having the most significant "contacts" with the debt;

2. that the funds should go to the state of the debtor company's incorporation;

3. that the funds should be paid to the state in which the company has its principal place of business; and

4. that the funds should be paid to the state of the creditor's last known address as shown by the debtor's books and records.

Rule 4 was adopted by the Supreme Court as a "simple and easy" standard to follow. The court pointed out that this rule tended to "distribute escheats among the states in proportion of the commercial activities of their residents". In addition to the holding that the state of the creditor's last known address is entitled to escheat or custodially claim the property owed to the creditor, the court held that, if the creditor's address does not appear on the debtor's books or is in a state that does not provide for the escheat of intangibles, then the state of the debtor's incorporation may take custody of the property until some other state comes forward with proof that it has a superior right to escheat or take custody.

The Texas v. New Jersey rule makes the Uniform Act inadequate because the Uniform Act is based on the claimant state's ability to assert jurisdiction over the holder. Under Texas v. New Jersey a Uniform Act state may not claim certain property held by persons subject to its jurisdiction (which the Uniform Act covers) but can assert custody to property held by persons not subject to its jurisdiction (which the Uniform Act does not cover).

A simple hypothetical illustrates the problem of meshing the rule of Texas v. New Jersey with the Uniform Act. Assume a corporate holder, incorporated in State A, holding unclaimed

property (an uncashed dividend check) belonging to a claimant whose last known address was in State B. The holder does not do business in State B. Under the Texas v. New Jersey rule, State B is the first priority claimant. However, since the holder does not do business there the Uniform Act would not authorize State B to assert a claim to the property. State A, if it had enacted the Uniform Act, could claim the property under its abandoned property law in accordance with the second priority rule of Texas v. New Jersey; however, that frustrates the goal of equitable distribution of unclaimed property among creditor states.

Why Uniformity is Necessary

The 1954 and 1966 Uniform Acts responded to the need for symmetry in the law for the benefit of persons doing business in more than one state. Widespread enactment of the Uniform Act by the States indicates their recognition of the need for uniformity.

Since the 1954 and 1966 Acts are inconsistent with Texas v. New Jersey and other cases, the Conference, after receiving the report of a Study Committee, decided to revise the Uniform Act once again.

What the Act Does to Conform With Texas v. New Jersey

Section 3 of the Act provides a statutory response which is consistent with the Court's pronouncement in Texas v. New Jersey. Basically, the Act provides that unclaimed intangible property is payable to the state of last known address of the owner. In those instances in which that information is unknown or the state of the owner's last known address does not assert a claim to the property, it is payable to the state of the holder's domicile.

There are other sections which shore up this scheme of priority, some of which are necessitated by the Texas v. New Jersey decision and some of which merely represent a statutory enactment of existing practices among states. One issue which has been raised by academic commentators concerns the reporting requirements of abandoned property legislation in light of the priority rules among claimant states enunciated by Texas v. New Jersey. Because the Texas v. New Jersey decision authorizes a state to claim abandoned property even though it cannot assert personal jurisdiction over the holder, the question has arisen as to whether a claimant state in that instance has the power to compel reporting from a holder to ascertain the existence of its claim. That is an important consideration, for the right given to the state of last known address by Texas v. New Jersey is a hollow one if the state is without sufficient information to assert its claim to abandoned property.[2]

[2] Texas v. New Jersey did not decide whether the state which is entitled to the first priority claim can compel reporting by a

foreign corporation. The issue was neither briefed nor argued in the case; however footnote 8 of the decision implies that such a legislative power exists. The right given to creditor states would be meaningless without the remedy of compelling reports.

The state acts as a conservator of the lost owner's property and the Act is akin to a succession statute.[3] The Texas v. New Jersey rule, as the Supreme Court noted, is a variation of the common law concept of mobilia sequunter personam, according to which the law of the state of domicile of the intestate owner determines the right of succession to personal property. The state in which the owner last resided is a rough indicator of domicile, and that state is entitled to provide by legislation for succession. The state of last known address, succeeding to the right of the owner, is entitled to compel a holder to disclose the existence of property which belongs to the owner in the same manner that a conservator of an estate of an incompetent or the administrator of the estate of a missing person or decedent can compel the holder of that person's property to account for it.[4] That the state may not be able to assert its claim in its own courts, but would be required to use the courts of another jurisdiction, is not determinative of its power to act as a custodian.[5] Hence the suggestion that corporate holders not "doing business" in a state might escape their obligation to pay unclaimed property owing to persons with last known addresses in that state is incorrect.[6]

[3] The Court's decision in Connecticut Mutual Life Insurance Co. v. Moore, 333 U.S. 541, 546-47 (1947), described the state as a "conservator" when claiming property under a custodial unclaimed property law. The Court in Standard Oil Co. v. New Jersey, 347 U.S. 428, 437 (1951), characterized the Moore case as involving a "conservation statute".

[4] As the United States Supreme Court noted in upholding the constitutionality of the Massachusetts custodial unclaimed property laws: "[i]f the facts warrant it, a legal representative can be appointed at any time with all the rights incident to such appointment, including that of withdrawing the funds and holding them for the true owner when he shall establish his claim." Provident Institution for Savings v. Malone, 221 U.S. 660, 666 (1911).

[5] In this connection, see Commonwealth of Pennsylvania v. Kervick, 60 N.J. 289, 288 A.2d 289 (1972) (Pennsylvania held entitled to sue in New Jersey state courts for property owing to Pennsylvania residents.)

[6] "Doing business", for purposes of service of process is limited only by the Fourteenth Amendment of the United States Constitution. On the other hand, jurisdiction to regulate a foreign corporation in a substantive fashion must run the gauntlet of the Commerce Clause, the Equal Protection Clause, and

the Impairment of Contracts Clause as well as the Due Process Clause. (See Miller Bros. Co. v. Maryland, 347 U.S. 340 (1954) (a Delaware business is not required to collect a sales tax from Maryland purchasers even though it makes some deliveries in Maryland)).

The Supreme Court's failure to expressly mandate a reporting requirement in Texas v. New Jersey does not appear significant. Holders rarely raise a defense of failure to "do business" in response to a request for reporting. In any event many major holders are subject to the regulatory jurisdiction of most states. Even in those instances in which a holder is not subject to the regulatory jurisdiction of a state, the claimant state can nevertheless require reporting under this succession analysis.

Other Changes in the Act

In recent years the National Association of Unclaimed Property Administrators has become an active group. There is growing cooperation among member states to exchange information. Several states have joined together to conduct joint investigations of holders. States also have agreed that they will collect property for each other from holders, and they regularly exchange property. This Act seeks to encourage further cooperation among the states by authorizing such joint agreements and by authorizing the adoption of uniform reporting forms. See Section 33. Neither the existing agreements among states nor the agreements envisioned under Section 33 require the consent of Congress under the Compact Clause of the Constitution, Art. I, § 10, cl. 3. The Supreme Court has held that the Compact Clause is limited to combinations or agreements that tend to increase the political power of the states to such an extent that it interferes with the supremacy of the United States. United States Steel v. Multi-State Comm., 434 U.S. 452 (1978).

The 1966 Act provided a presumption of abandonment of unclaimed dividend or interest checks but arguably did not cover the underlying ownership interest represented by issued and outstanding securities certificates. In recent years several states have amended their statutes to authorize taking of this property and indications are that the trend is likely to continue. California, Florida, Indiana, Maine, Massachusetts, Montana, Rhode Island and Virginia have statutes with such provisions and other states are known to be considering similar proposals. The new Act specifically covers securities even though they are not in the possession of the issuer. See Section 10.

Two major concerns have been expressed with the concept of presuming abandonment of underlying shares of stock or principal amounts of debt securities where the dividends or interest payments have been unclaimed. First, under what circumstances is it proper to presume abandonment and, second, what are the rights

of the various parties when the conditions precedent to abandonment have occurred? As to the first question, Section 10 of the Act requires that there must be the passage of at least 7 years after the failure of an entitled person to claim or inquire about a dividend, interest payment, or other distribution and also the payment of at least 7 dividends, interest sums, or other distributions during such period which remain unclaimed.

As to the rights of the parties under the Act, the Administrator is entitled to have duplicate certificates issued in the state's name. The issuer of the duplicate certificate is relieved of all liability respecting the property delivered (Section 19) and is protected against claims by virtue of the administrator's duty to defend on behalf of the issuer and to indemnify that party against any liability on account of such claims (Section 20).

Under the Act, the administrator may require any person who has not filed a report to file a verified statement that he has or has not any unclaimed and reportable property (Section 30). The administrator has a right to audit records not limited to cases where there is reason to believe a person is not complying with the Act (Section 30).

In keeping with the Act's focus on the last known address of an owner as vesting a state with a priority claim to property, the revision requires a holder who has a record of the last known address to retain it for 10 years after the property becomes reportable (Section 31).

The Act reflects a tendency among state legislatures in recent years to reduce dormancy periods. The current high inflation rate exacts a severe penalty from one who holds money or its equivalent for extended periods; an inference of loss or abandonment may be drawn more quickly than in 1966 when the value of money was more stable. The general rule of presumed abandonment is 5 years (Section 2) as compared with 7 years in the 1966 Act. A one year dormancy period is provided for unclaimed wages (Section 15), utility deposits (Section 8), refunds due from utilities (Section 9), and property held by courts and government agencies (Section 13).

Another set of problems addressed in the revision has to do with service charges imposed on abandoned property. Experience has shown that service charges levied against outstanding items such as money orders and cashier's checks as well as inactive and dormant checking and savings accounts have completely wiped out otherwise reportable property. Sections 5(b) and 6(c) of this revision codify the case law which has limited these charges.

The 1966 Act did not address the small but active heir finder's industry; that is, those businesses which pursuant to contract attempt to locate owners of abandoned property. Some

state statutes have placed limits on the role of heir finders from the time property becomes reportable until a specified time after it has been turned over to the state. Section 35 of the new Act prohibits heir finder activity during a two-year period after payment or delivery to the state.

UNCLAIMED PROPERTY (1981 ACT)

TABLE OF COMPARATIVE SECTIONS

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Section 2 [Property Presumed Abandoned; General Rule.]	Section 9
Section 3 [General Rules for Taking Custody of Intangible Unclaimed Property.]	No comparable section
Section 4 [Travelers Checks and Money Orders.]	Section 2
Section 5 [Checks, Drafts and Similar Instruments Issued or Certified by Banking and Financial Organizations.]	Section 2
Section 6 [Bank Deposits and Funds in Financial Organizations.]	Section 2
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Section 2(d)
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[Report of Abandoned Property.] Section 11
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[Time of Taking Effect.] Section 32

UNCLAIMED PROPERTY (1981 ACT)

Section

40. [Uniformity of Application and Construction.]
41. [Short Title.]
42. [Repeal.]
43. [Time of Taking Effect.]

§ 1. [Definitions and Use of Terms].

As used in this Act, unless the context otherwise requires:

(1) "Administrator" means [ ].

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this State.

(4) "Banking organization" means a bank, trust company, savings bank, [industrial bank, land bank, safe deposit company,] private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a non-public corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of 2 or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a unincorporated person.

(7) "Financial organization" means a savings and loan association, [cooperative bank,] building and loan association, or credit union.

(8) "Holder" means a person, wherever organized or domiciled, who is:

(i) in possession of property belonging to another,

(ii) a trustee, or

(iii) indebted to another on an obligation.

(9) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization,

illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(10) "Intangible property" includes:

(i) monies, checks, drafts, deposits, interest, dividends, and income;

(ii) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;

(iii) stocks and other intangible ownership interests in business associations;

(iv) monies deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(v) amounts due and payable under the terms of insurance policies; and

(vi) amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(11) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(12) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this Act or his legal representative.

(13) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(14) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(15) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production,

storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Comment

Prior Uniform Act Provision:

Section 1.

The definitions have been revised to reflect, pursuant to Texas v. New Jersey, 379 U.S. 674 (1965), the fact that the Act applies to persons in other states who are holding property, eliminating any requirement that those persons be engaged in business in the enacting state.

Subsection (2) has been added to facilitate reference to the person who appears on the holder's records to be the person entitled to the property. The right of a state to claim abandoned property depends on the information in the holder's records concerning the apparent owner's identification. It is of no consequence that without notice to the holder, he may have transferred his interest to another person. In Nellius v. Tampax, Inc., 394 A.2d 333 (Del.Ch.Ct.1978), the court held that the address of the apparent, not the actual, owner controlled. The holder is not required to ascertain the name of the current owner or resolve a dispute between the owner of record and a successor contesting ownership. However, nothing in this Act prohibits the actual owner from recovering the property, pursuant to Sections 20 and 24, from the holder or the administrator. Similarly, the state of last known address of the actual owner can recover the property, pursuant to Section 25, from the state which initially receives custody.

The definition of "business association" in subsection (5) expressly includes non-profit corporations.

The Act provides exclusively for the disposition of unclaimed intangible property with one exception in Section 16 for tangible property contained in safe deposit boxes.

Subsection (10) is not intended as a substantive addition to the coverage of Section 9 of the prior Acts. Included as intangible property are a variety of items which are often overlooked by holders, all of which were included within the 1966 Act and are within the coverage of this Act.

Subsection (11) defines "last known address" as the location of the apparent owner for the purpose of mail delivery, consistent with most state laws which have defined an address.

§ 2. [Property Presumed Abandoned; General Rule].

(a) Except as otherwise provided by this Act, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than 5 years after it became payable or distributable is presumed abandoned.

(b) Property is payable or distributable for the purpose of this Act notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

Comment

Prior Uniform Act Provision:

Section 9.

Section 2 establishes as a general proposition that all intangible property held or owing in the ordinary course of the holder's business is within the coverage of this Act. See the comment to Section 1(10).

This section provides that unless a different time period is specified all intangible property which has remained unclaimed for more than 5 years is presumed abandoned. Sections 4-16 deal with specific types of property and prescribe the events which raise a presumption of abandonment.

The general dormancy period of the 1966 Uniform Act was 7 years. Some legislatures have recently shortened that time period. Likewise, a few recently enacted abandoned property laws have provided for a longer dormancy period. Given the greater mobility of the population in 1981 as compared with that of a quarter century ago when the 7-year dormancy period was first established, a reduction of the general dormancy period to 5 years is warranted. Additionally, the experiences of those states with shorter abandonment periods reveal that they are able to return to owners a substantially higher percentage of property reported as abandoned. There are exceptions in this Act to the 5-year dormancy period, however. For instance, statistical evidence indicates that a period of 15 years continues to be appropriate in the case of travelers checks. A majority of travelers checks will ultimately be presented for payment within the 15-year period. Also, in certain instances a shorter period is appropriate. For instance, the likelihood of finding the owner of a payroll check is materially decreased after one year. Hence, Section 15 has a one year dormancy period for unpaid wages.

Subsection (b) is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his entitlement to property, fails to present to the holder evidence of his ownership or to make a demand for payment. See Connecticut Mutual Life Insurance Co. v. Moore, 333 U.S. 541 (1948), in which the Court stated: "When the state undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the state to comply with conditions that may be quite proper as between the contracting parties." See also Provident Institution for Savings v. Malone, 221 U.S. 660 (1911), involving savings accounts; Insurance Co. of North America v. Knight, 8 Ill.App.3d 871, 291 N.E.2d 40 (1972), involving negotiable instruments, and People v. Marshall Field & Co., 83 Ill.App.3d 811, 404 N.E.2d 368 (1980), involving gift certificates.

Section 2(b) obviates the result reached in Oregon Racing Comm. v. Multonamah Kennel Club, 242 Or. 572, 411 P.2d 63 (1963), involving unpresented winning parimutuel tickets.

Since the holder is indemnified against any loss resulting from the delivery of the property to the administrator, no possible harm can result in requiring that holders turn over property, even though the owner has not presented proof of death or surrendered the insurance policy, savings account passbook, the gift certificate, winning racing ticket, or other memorandum of ownership.

A draft issued by a property or casualty insurance company as an offer of settlement of a claim for property damage or personal injury is not subject to the presumption of abandonment if the offer was not accepted by the payee. In this situation, the draft never became payable or distributable. The issue of whether a draft is accepted by a payee is a question of fact that is not addressed by the Act.

§ 3. [General Rules for Taking Custody of Intangible Unclaimed Property].

Unless otherwise provided in this Act or by other statute of this State, intangible property is subject to the custody of this State as unclaimed property if the conditions raising a presumption of abandonment under Sections 2 and 5 through 16 are satisfied and:

(1) the last known address, as shown on the records of the holder, of the apparent owner is in this State;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this State;

(3) the records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(i) the last known address of the person entitled to the property is in this State, or

(ii) the holder is a domiciliary or a government or governmental subdivision or agency of this State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this State;

(5) the last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this State; or

(6) the transaction out of which the property arose occurred in this State, and

(i)(A) the last known address of the apparent owner or other person entitled to the property is unknown, or

(B) the last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property, and

(ii) the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

Comment

Prior Uniform Act Provision:

None.

Section 3 describes the general circumstances under which a state may claim abandoned intangible property. (There is a special provision for travelers checks and money orders in Section 4 infra). This section closely follows the language of Texas v. New Jersey,[1] in which the court reasoned that unclaimed property is an asset of the creditor and should generally be paid to the creditor state, i.e., the state of residence of the apparent owner. Consistent with that reasoning it held that unclaimed intangible property is subject to escheat or custody as unclaimed property first by the state of the owner's last known address. If that state cannot claim the property, the state of the holder's domicile is entitled to it. Consistent with the court's concern for a simple rule which would avoid the complexities of proving domicile and residence the court established the priority on the basis of information contained in the holder's records. Recognizing that the holder's records might be incomplete, the court's ruling permits a claimant state to prove by other means that the last known address of the owner is within its boundaries. Where the holder's records do not show the owner's last address, the second priority claimant, the state of domicile of the holder, is entitled to claim the property. The state of the owner's last known address can later assume custody from the state of the holder's domicile by showing that the last known address of the owner is within its borders. Likewise, if the state of last known address does not have an unclaimed property law which applies to the property, the state of the holder's domicile can take the property, again subject to the right of the state of last known address to recover the property if and when it enacts an unclaimed property or escheat law.

[1] Section 3 is akin to a jurisdictional section, in that it empowers the state to assert custody. At the same time it limits that jurisdictional assertion and establishes a partial system of priorities. It would be possible, of course, to separate the two concepts of jurisdiction and priority. However, the court did not do so in Texas v. New Jersey, and to do so in this Act might have some unfortunate and unforseen consequences. The decision directs the state of corporate domicile to take only if the state of the owner cannot. If Section 3 established as an independent basis of jurisdiction that the state of the holder's domicile could take without regard to the prior claim of the creditor state, there might well be a race between holder and creditor states, with attendant confusion for both states and holders. A priority section ranking the order of asserting claims would diminish the race if it were uniformly enacted. However, there is a strong likelihood that the domiciliary states of major holders would not enact a priority section and thereby would frustrate the system established by Texas v. New Jersey. Section 3 combined with Section 25 establish a system of priorities consistent with Texas v. New Jersey.

Paragraph (1) restates the factual situation in Texas v. New Jersey. As the court there said ". . . the address on the records of a debtor, which in most cases will be the only one available, should be the only relevant last known address." If the holder's records are erroneous and the actual last known address of the owner is in another state, that other state can reclaim the property pursuant to Section 25.

Paragraph (2) covers the situation in which the identity of the person entitled to the property is unknown, but it is established, either through the holder's records or by some other means, that the property was owned by or payable to a person whose last known address was within the claiming state. This is a rational extension of Texas v. New Jersey. Reunification of the owner with his property in this circumstance is impossible, and insofar as that issue is concerned, it makes no difference whether the property is delivered to the state of the holder's domicile or the state of the owner's last known address. However, following the equitable concept of distributing unclaimed property among creditor states articulated by the Supreme Court in Texas v. New Jersey, the subsection directs that, where there is no record of a name but there is a record of last known address, the state of last known address can claim the property.

Paragraph (3) is the secondary rule of Texas v. New Jersey. The Supreme Court ruled that, when property is owed to persons for whom there are no addresses, the property will be subject to escheat by the state of the holder's domicile, provided that another state may later claim upon proof that the last known address of the person entitled to the property was within its borders. If the property is initially paid or turned over to the state of corporate domicile, the state of last known address is authorized to assert its claim pursuant to Section 25. However, unless the right to claim the property is initially conferred in this section, there would be no basis for a reclamation action under Section 25. Where a holder originally had the address of the owner and it has been subsequently destroyed, a computer code may be one way of establishing an address within the state.

Paragraph (4) provides that, if the law of the state of the owner's last known address does not provide for escheat or taking custody of the unclaimed property or if that state's escheat or unclaimed property law is not applicable to the property in question, the property is subject to claim by the state in which the holder is domiciled. In that instance, the state of the owner's last known address may thereafter claim the property if it enacts an applicable unclaimed property law. The holder state will act as custodian and pay or deliver the property to the owner or the state which has priority under Texas v. New Jersey upon request; see also State v. Liquidating Trustees of Republic Petroleum Co., 510 S.W.2d 311 (Texas 1974). See Section 25.

Paragraph (5) provides that, when the last known address of the apparent owner is in a foreign nation the state in which the holder is domiciled may claim the property. This issue was not dealt with by the Supreme Court in Texas v. New Jersey, but is a rational extension of that ruling.

Paragraph (6) provides for a situation in which neither of the priority claims discussed in Texas v. New Jersey can be made, but the state has a genuine and important contact with the property. An example of the type of claim which might be made under paragraph (6) arose in O'Connor v. Sperry & Hutchinson Co., 412 A.2d 539 (Pa.1980). There Pennsylvania sought to escheat unredeemed trading stamps sold by a corporation domiciled in New Jersey to retailers located in Pennsylvania. Pennsylvania took the position that Texas v. New Jersey did not create a jurisdictional bar to escheat by other states when the states granted priority were unable to take. There was no first priority claim since there were no addresses of the trading stamp purchasers. The second priority claimant, the state of corporate domicile (New Jersey), was not permitted under its law to escheat trading stamps (see New Jersey v. Sperry & Hutchinson Co., 56 N.J.Super. 589, 153 A.2d 691 (1959), affirmed per curiam, 31 N.J. 385, 157 A.2d 505 (1960)) and hence Pennsylvania urged that in order to prohibit a corporate windfall it should be allowed to claim this property. The Pennsylvania Supreme Court affirmed a lower court decision which overruled Sperry & Hutchinson's motion to dismiss but did not reach the Texas v. New Jersey issue.

Gift certificates, unused airline tickets, and other property for which there is no last known address may be claimed by the state of purchase if the state of corporate domicile does not have an abandoned property law covering the property in question under paragraph (6).

Wholly foreign transactions are excluded from the coverage of the Act. See Section 36.

§ 4. [Travelers Checks and Money Orders].

(a) Subject to subsection (d), any sum payable on a travelers check that has been outstanding for more than 15 years after its issuance is presumed abandoned unless the owner, within 15 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(b) Subject to subsection (d), any sum payable on a money order or similar written instrument, other than a third-party bank check, that has been outstanding for more than 7 years after its issuance is presumed abandoned unless the owner, within 7 years, has communicated in writing with the issuer concerning it

or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(c) A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(d) No sum payable on a travelers check, money order, or similar written instrument, other than a third-party bank check, described in subsections (a) and (b) may be subjected to the custody of this State as unclaimed property unless:

(1) the records of the issuer show that the travelers check, money order, or similar written instrument was purchased in this State;

(2) the issuer has its principal place of business in this State and the records of the issuer do not show the state in which the travelers check, money order, or similar written instrument was purchased; or

(3) the issuer has its principal place of business in this State, the records of the issuer show the state in which the travelers check, money order, or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

(e) Notwithstanding any other provision of this Act, subsection (d) applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

Comment

Prior Uniform Act Provision:

Section 2.

Section 4 is concerned with travelers checks and money orders which are unclaimed. Subsections (a) and (b) deal with the substantive requirements for presuming this property abandoned and follow closely the provisions of Section 2 of the 1966 Act. Although the general dormancy period has been reduced

for many kinds of property, the 15-year period for travelers checks and the 7-year period for money orders is retained. Statistical and economic evidence has shown that these periods continue to be appropriate.

Subsection (c) is consistent with those cases which have ruled on the issue of service charges by money order issuers under the 1966 Act.

Subsections (d) and (e) are new and adopt the rules, including the dates, provided by congressional legislation which determine the state entitled to claim sums payable on travelers checks, money orders, and similar instruments, see Pub.L. 93-495, §§ 603, 604 (Oct. 28, 1974), 88 Stat. 1525-26, 12 U.S.C. §§ 2501 et seq. The congressional action was in response to the Supreme Court decision in Pennsylvania v. New York, 407 U.S. 206 (1972), which held that the state of corporate domicile was entitled to escheat money orders when there was no last known address of the purchaser although the property had been purchased in other states. Subsection (d) substitutes as the test for asserting a claim to travelers checks and money orders the place of purchase rather than the state of incorporation of the issuer.

§ 5. [Checks, Drafts and Similar Instruments Issued or Certified by Banking and Financial Organizations].

(a) Any sum payable on a check, draft, or similar instrument, except those subject to Section 4, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than 5 years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within 5 years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

(b) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

Comment

Prior Uniform Act Provision:

Section 2.

Section 5 covers checks and similar instruments issued or certified by banking and financial organizations. Checks and other instruments issued by persons other than banking and financial organizations are covered generally by Section 2. Travelers checks and money orders are covered by Section 4.

§ 6. [Bank Deposits and Funds in Financial Organizations].

(a) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within 5 years has:

(1) in the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(2) communicated in writing with the banking or financial organization concerning the property;

(3) otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

(4) owned other property to which paragraph (1), (2), or (3) applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or

(5) had another relationship with the banking or financial organization concerning which the owner has

(i) communicated in writing with the banking or financial organization; or

(ii) otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

(b) For purposes of subsection (a) property includes interest and dividends.

(c) A holder may not impose with respect to property described in subsection (a) any charge due to dormancy or inactivity or cease payment of interest unless:

(1) there is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;

(2) for property in excess of $2.00, the holder, no more than 3 months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before the effective date of this Act; and

(3) the holder regularly imposes such charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.

(d) Any property described in subsection (a) that is automatically renewable is matured for purposes of subsection (a) upon the expiration of its initial time period, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in Section 19, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

Comment

Prior Uniform Act Provision:

Section 2.

Section 6 covers bank accounts and follows closely Section 2(a) of the 1966 Act. In addition to the depositor or owner contacts contained in the 1966 Act which will prevent a

presumption of abandonment, paragraphs (4) and (5) of subsection (a) add two additional tests rebutting the presumption of abandonment. Activity by an owner with another account in the bank or another active relationship between the owner and the holder such as a loan will prevent abandonment provided the holder gives notice to the owner of the inactive account. These changes will conform the Act to the practices of financial organizations which issue unified bank statements or which are otherwise able to cross reference owners of inactive accounts with owners of active accounts.

Subsection (c) is consistent with those cases which have construed the 1966 Act to require the reporting of savings accounts (together with interest thereon) and checking accounts where the holder for purposes of reporting seeks to impose service charges and cease the payment of interest but regularly reverses or cancels such charges and cessation of interest for customers that reactivate their accounts. If the holder does not have a contract with the owner providing for charges he must, in any event, report and deliver the property.

Subsection (c) may change banking statutes or regulations in certain states.

Paragraph (2) of subsection (c) imposes the additional requirement that notice of the imposition of such charges must be provided to the owner at his last known address. Since the cost of mailing such a notice might approximate the amount of a $2.00 balance, notices are required only when the balance exceeds $2.00.

Subsection (d) prevents a certificate of deposit with automatic renewal provisions from being treated as perpetually exempt from a presumption of abandonment. The subsection also insures that no interest penalty will result from the delivery of such property during the interest term then in effect. Although delivery of such property is deferred, reporting is not.

§ 7. [Funds Owing Under Life Insurance Policies].

(a) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than 5 years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subsection (c)(2) is presumed abandoned if unclaimed for more than 2 years.

(b) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that

the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(c) For purposes of this Act, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(1) the company knows that the insured or annuitant has died; or

(2)(i) the insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(ii) the policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph (i); and

(iii) neither the insured nor any other person appearing to have an interest in the policy within the preceding 2 years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(d) For purposes of this Act, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection (a) if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) If the laws of this State or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this State, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(f) Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within 4 months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(g) Commencing 2 years after the effective date of this Act, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this State must request the following information:

(1) the name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;

(2) the address of each beneficiary; and

(3) the relationship of each beneficiary to the insured.

Comment

Prior Uniform Act Provision:

Section 3.

Subsections (a) and (b) restate the substance of Section 3(a) of the 1966 Act. Paragraph (1) of subsection (c) provides that proceeds of a life insurance policy are presumed abandoned if the insurer is aware that the insured has died even though actual proof of death has not been furnished to the insurer. Under the 1966 Act these proceeds generally would not have been reportable until the 103rd anniversary of the decedent's birth. Paragraph (2) of subsection (c) provides that the policy proceeds are payable if the limiting age under the mortality table on which the reserve is based is reached and there has been no activity with respect to the policy for 2 years. This is a restatement of a similar provision in subsection (b) of Section 3 of the 1966 Act; however, the abandonment period has been reduced from 7 to 2 years.

Subsection (d) provides that the application of an automatic premium loan provision will not be used to consume the proceeds of a policy and prevent the policy from being matured under subsection (a) if the insured has died or if the beneficiaries have otherwise become entitled to the proceeds of the policy.

Subsection (e) in certain instances imposes an affirmative duty upon the insurer to ascertain a correct address of an insured who fails to receive notice of the exercise of the

nonforfeiture option. In these cases it is expected that as a result of the search the insurer will become aware that the insured is deceased. Subsection (f) then requires the insurer to attempt to locate the beneficiaries and pay the policy proceeds, a duty apparently not heretofore imposed on insurance companies. See Insurer's Duty to Disclose the Existence of a Policy, 76 Colum.L.Rev. 825 (1976).

Subsection (f) provides for the insurer to request the addresses of beneficiaries if the insured changes a beneficiary designation. Most insurance companies do not request address information for beneficiaries. Since in many instances the initial beneficiary resides in the same household as the insured and the administrative burden of accumulating address information is thought to be considerable, the obligation to obtain the address is deferred until such time as a change of beneficiary occurs. This subsection will assist in locating this limited class of beneficiaries. By making the commencement date of this subsection 2 years after enactment, insurers will be provided sufficient time within which to undertake the necessary administrative steps to implement this provision.

Civil penalties are provided by Section 34(b) for failure to perform the duties imposed by subsections (f) and (g).

§ 8. [Deposits Held by Utilities].

A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

Comment

Prior Uniform Act Provision:

Section 4.

The requirement that the services be furnished in the state before a presumption of abandonment arises is eliminated. This is consistent with Texas v. New Jersey, 379 U.S. 674 (1965). The dormancy period for the property is one year. The fact that a deposit in the hands of the utility can be of no benefit to the former subscriber raises a strong inference that it has been forgotten by the owner.

See Section 1(10) for the definition of "utility."

Intangible property held by utilities other than deposits are subject to the 5-year period set forth in Section 2(a).

§ 9. [Refunds Held by Business Associations].

Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.

Comment

Prior Uniform Act Provision:

Section 4.

Section 9 provides that court or administrative agency ordered refunds which remain unclaimed for more than one year are presumed abandoned. The short dormancy period of one year is justified since no possible advantage can occur to the owner by leaving his property with the holder, and failure to claim a refund is strong evidence that the property has been abandoned.

§ 10. [Stock and Other Intangible Interests in Business Associations].

(a) Except as provided in subsections (b) and (e), stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for 7 years and the owner within 7 years has not:

(1) communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(2) otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with

the association prepared by an employee of the association.

(b) At the expiration of a 7-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least 7 dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If 7 dividends, distributions, or other sums are paid during the 7-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If 7 dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been 7 dividends, distributions, or other sums that have not been claimed by the owner.

(c) The running of the 7-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection (a). If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(d) At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(e) This Act does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within 7 years communicated in any manner described in subsection (a).

Comment

Prior Uniform Act Provision:

Section 5.

Section 10 covers underlying shares of stock and principal amounts of debt securities, i.e., stock certificates in the possession of the record owner.[1] Dividends and other distributions which were included in Section 5 of the 1966 Act are to be reported pursuant to Section 2 of this Act.

[1] It has generally been assumed that Section 5 of the 1966 Act did not cover underlying shares unless those shares were in the actual possession of the issuer (i.e., as undeliverable stock). However, the Supreme Court's analysis of the New Jersey escheat statute in Standard Oil Co. v. New Jersey, 341 U.S. 428 (1951), suggests that Sections 5 and 9 of the 1966 Act apply to underlying shares even though they are not in the possession of the issuer but have been delivered to an owner who is lost and has made no claim on the stock. It has generally been assumed that actual certificates for the abandoned shares in Standard Oil were in the possession of the company or its transfer agent. However, the record clearly reflects that neither the company or its transfer agent had custody of the shares. (See Stipulation Of Facts Entered Between the state of New Jersey and the Standard Oil Company, Exhibit 3, Clerks Transcript, pp. 198a and 199a, see also, p. 77a, p. 233a.) The Supreme Court affirmed New Jersey's claim to escheat the shares notwithstanding that its laws did not expressly refer to underlying shares.

Even if underlying shares not in the possession of the issuer were not within the coverage of Section 5 of the 1966 Act, the comment to Section 9 of that Act, the omnibus provision, indicate that this type of property was within the coverage of Section 9. However, the fact remains that no states with the Uniform Act have sought to recover this property in a systematic way.

Several states have enacted specific provisions for the presumption of abandonment of underlying share certificates. Typical is the provision of California (Cal.Civ.Pro.Code § 1516) which provides that the underlying intangible interest is presumed abandoned if the owner has not contacted the company within the abandonment period and he cannot be found whether or not dividends on that interest are paid. Connecticut, Florida, Indiana, Massachusetts, Montana, New York, Rhode Island, Wisconsin and Virginia also have specific provisions for the presumption of abandonment of underlying shares. States with escheat laws similar to New Jersey's would be entitled to claim underlying shares based on the Standard Oil precedent.

Two major concerns have been expressed with the concept of presuming abandonment of underlying stock interests. The first deals with the evidential showing necessary to raise a presumption of abandonment, and the second concerns the rights of the various parties when underlying stock interests are presumed abandoned.

Under what set of circumstances is it appropriate to presume that stock has been abandoned when the shares have been delivered to an owner and are no longer in the possession of the issuer? Section 10 establishes a longer dormancy period, (7 years) for this property than for other property covered by this Act. Further, Section 10 requires that there must be at least 7

consecutive dividend checks issued during this period of dormancy which remain uncashed. Additionally, the presumption of abandonment will not arise in the event the missing owner has communicated with the association. In this regard, the communication would normally be with an agent of the association such as a transfer agent or a dividend disbursing agent. Of course, such communication would satisfy the provision of this section. The existing underlying shares statutes make no formal distinction between dividend and nondividend paying stock and provide that the mere passage of time with no contact is sufficient to raise the presumption of abandonment. Section 10 combines both a period of inactivity, 7 years, with the requirement that distributions paid on the underlying intangible interest remain unclaimed, thus avoiding concerns that abandonment should not be presumed where a shareholder has not contacted a non-dividend paying company.

If the conditions leading to a presumption of abandonment have occurred, the holder (issuer of the security) must report to the state pursuant to Section 17, and if the holder has in its records an address of the owner, it must send written notice to the owner in an effort to reunite the owner with his property. Thereafter the administrator must give notice by advertising the existence of the property and send mailed notice to owners of property valued at $50 or more. See Section 18.

Many owners will be located through the publication and mail notice requirements of the Act. In the event abandonment is presumed and the owner subsequently appears, there are at least 3 formal opportunities to reunite that owner with the issuer before a duplicate certificate is turned over to the administrator.

If the owner is not located, however, a duplicate certificate is issued to the administrator pursuant to Section 19(d) and the original certificate will be cancelled. Thereafter, if the owner appears, the duplicate certificate may be claimed from the administrator. The Act is designed to encourage the administrator to hold the certificate for at least 3 years. (See Section 22(d).) If the administrator does sell the stock before the expiration of this 3-year period, the original owner may recover the net proceeds of sale or the market value of the property at the time he makes a claim, whichever is higher. If the owner appears after the 3-year holding period and after his interest has been sold, he recovers the net proceeds of sale.

The issuer who delivers a duplicate certificate under the Act is protected, because upon delivery it is relieved of all liability to the extent of the value of the property delivered under Section 20. If any person thereafter makes a claim against the holder, the administrator is required to indemnify the holder against any liability on the claim. The required indemnity is

complete, and it is not restricted to the value of the property turned over.

If a purchaser from the owner turns up and presents the original share for registration after the property has been presumed abandoned, his claim is initially under the UCC. However, because of the indemnity provision in Section 20, the state will be required to assume all liability. UCC § 8-405 provides that the issuer must register the transfer unless to do so would result in overissue. In this event, the purchaser's rights are determined by UCC § 8-104 and, if a similar security is not reasonably available for purchase, he recovers the price he paid the original owner. Presumably the issuer would call on the administrator to fulfill his requirement of indemnity. If the administrator still has the duplicate certificate, he would turn it over to the purchaser.

Subsection (e) would not require the reporting of interests enrolled in dividend reinvestment plans unless the owner has other stock which is not in dividend reinvestment and which would be presumed abandoned under Section 10.

§ 11. [Property of Business Associations Held in Course of Dissolution].

Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned.

Comment

Prior Uniform Act Provision:

Section 6.

This section closely follows Section 6 of the 1966 Act except that the dormancy period has been reduced to one year from 2 years. This section covers both voluntary and involuntary dissolutions.

§ 12. [Property Held By Agents and Fiduciaries].

(a) Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within 5 years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an

interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(b) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the Internal Revenue laws of the United States are not payable or distributable within the meaning of subsection (a) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(c) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

(d) For the purposes of this Act, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

Comment

Prior Uniform Act Provision:

Section 7.

Intangible property is not "payable or distributable" under subsection (a) if the fiduciary possesses merely the discretion to pay or distribute property and has not exercised the discretion.

Subsection (d) is designed to clarify the status of transfer agents. That is, they are agents for the business association and the administrator must look to the principal, the business association, as the holder, unless they have contractually undertaken the obligation to report the property. A later section provides that the administrator is authorized to examine the records of the holder or records relating to the holder which are in the possession of the transfer agent. See Section 30.

§ 13. [Property Held by Courts and Public Agencies].

Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

Comment

Prior Uniform Act Provision:

Section 8.

§ 14. [Gift Certificates and Credit Memos].

(a) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than 5 years after becoming payable or distributable is presumed abandoned.

(b) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

Comment

Prior Uniform Act Provision:

Section 9.

Section 14 should be read in conjunction with Section 2. The comment to Section 2 is particularly pertinent to this section. Holders did not routinely report gift certificates and credit memos under the 1966 Act, but it has been held that both kinds of property are within the coverage of Section 9 of that Act. See, for instance, People v. Marshall Field & Co., 83 Ill.App.3d 811, 404 N.E.2d 368 (1980).

Subsection (b) is intended to clarify the amount reportable which is represented by gift certificates and credit memos. In the case of a gift certificate, it is the price paid by the purchaser. In the case of a credit memo, it is the amount credited to the recipient's account.

§ 15. [Wages].

Unpaid wages, including wages represented by unpresented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned.

Comment

Prior Uniform Act Provision:

Section 9.

Since the chance of locating the missing owner of a wage check materially decreases with the passage of time, this property is presumed abandoned at an earlier period than that for most other property.

§ 16. [Contents of Safe Deposit Box or Other Safekeeping Repository].

All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this State in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, which remain unclaimed by the owner for more than 5 years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

Comment

Prior Uniform Act Provision:

Section 2(d).

Section 16 parallels Section 2(d) of the 1966 Act. This Section is not intended to cover property left in places other than safekeeping repositories, for example, airport lockers or field warehouses. Its coverage is limited to safe deposit boxes in banks and other financial institutions. Most states have statutory provisions apart from the unclaimed property law for the disposition of property abandoned in such places as airport lockers.

§ 17. [Report of Abandoned Property].

(a) A person holding property tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this Act shall report to the administrator concerning the property as provided in this section.

(b) The report must be verified and must include:

(1) except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the

records of the holder to be the owner of property of the value of $25 or more presumed abandoned under this Act;

(2) in the case of unclaimed funds of $25 or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(3) in the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder;

(4) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under $25 each may be reported in the aggregate;

(5) the date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(6) other information the administrator prescribes by rule as necessary for the administration of this Act.

(c) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(d) The report must be filed before November 1 of each year as of June 30, next preceding, but the report of any life insurance company must be filed before May 1 of each year as of December 31 next preceding. On written request by any person required to file a report, the administrator may postpone the reporting date.

(e) Not more than 120 days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this Act shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to this Act if:

(i) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate,

(ii) the claim of the apparent owner is not barred by the statute of limitations, and

(iii) the property has a value of $50 or more.

Comment

Prior Uniform Act Provision:

Section 11.

The $25 minimum provided in subsection (b)(1)(2) and (4) represents an increase from $3.00 in the 1966 Act in order to minimize reporting expenses. Almost every state which enacted the prior Uniform Act now provides for a $25 minimum.

Before filing its report, the holder must send written notice to the apparent owner, if the owner's claim is not barred by the statute of limitations, the property has a value of $50 or more, and the holder's records do not disclose the address to be inaccurate. Other efforts to locate the owner are no longer required. Since most notifications under the 1966 Act were returned as undeliverable, and the administrator must also mail a notice under Section 18 to owners of property having a value of $50 or more, the holder should not be compelled to incur the expense of preparing and mailing notices under all circumstances.

The subsection now requires that the notice be sent not more than 120 days before the filing of the report. The previous subsection did not specify when the notice was to be given, and some holders felt that notices given years earlier were sufficient.

§ 18. [Notice and Publication of Lists of Abandoned Property].

(a) The administrator shall cause a notice to be published not later than March 1, or in the case of property reported by life insurance companies, September 1, of the year immediately following the report required by Section 17 at least once a week for 2 consecutive weeks in a newspaper of general circulation in the [county] of this State in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this State, the notice must be published in the [county] in which the holder of the property has its principal place of business within this State.

(b) The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:

(1) the names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the [county] as specified in subsection (a);

(2) a statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator; and

(3) a statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April 20, or, in the case of property reported by life insurance companies, before October 20, the property will be placed not later than May 1, or in the case of property reported by life insurance companies, not later than November 1, in the custody of the administrator and all further claims must thereafter be directed to the administrator.

(c) The administrator is not required to publish in the notice any items of less than $[50] unless the administrator considers their publication to be in the public interest.

(d) Not later than March 1, or in the case of property reported by life insurance companies, not later than September 1, of the year immediately following the report required by Section 17, the administrator shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property of the value of $[50] or more presumed abandoned under this Act and any beneficiary of a life or endowment insurance policy or annuity contract for whom the administrator has a last known address.

(e) The mailed notice must contain:

(1) a statement that, according to a report filed with the administrator, property is being held to which the addressee appears entitled;

(2) the name and last known address of the person holding the property and any necessary information regarding the changes of name and last known address of the holder; and

(3) a statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the administrator and all further claims must be directed to the administrator.

(f) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under Section 4.

Comment

Prior Uniform Act Provision:

Section 12.

Subsections (a) and (b)(3) set forth the dates by which the administrator must publish the names of missing owners and mail notification to the last known address of each owner. This section eliminates the requirement of the 1966 Act that a separate notification be given by the administrator to the holder to establish when the final report and remittance is required.

Subsections (c) and (d) have increased from $25 to $50 the minimum value required for advertising and notification. The amounts were increased because the costs of publishing newspaper advertisements now range from $12 to $22 per name. Because most mailed notifications are returned to administrators as undeliverable, the mailing minimum was also increased.

§ 19. [Payment or Delivery of Abandoned Property].

(a) Except as otherwise provided in subsections (b) and (c), a person who is required to file a report under Section 17, within 6 months after the final date for filing the report as required by Section 17, shall pay or deliver to the administrator all abandoned property required to be reported.

(b) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the administrator, and the property will no longer be presumed abandoned. In that case, the holder shall file with the administrator a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(c) Property reported under Section 17 for which the holder is not required to report the name of the apparent owner must be delivered to the administrator at the time of filing the report.

(d) The holder of an interest under Section 10 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the administrator. Upon delivery of a duplicate certificate to the administrator, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provision of Section 20 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the administrator, for any losses or damages resulting to any person by the issuance and delivery to the administrator of the duplicate certificate.

Comment

Prior Uniform Act Provision:

Section 13.

Subsections (a) through (c) restate the substance of Section 13 of the 1966 Act. The holder is required to pay over the property within 6 months after reporting its existence. However, if the holder does not know the owner's name or the value of the property is less than $25, then the property must be turned over to the administrator at the time of filing the report. The notification provisions of Sections 17 and 18 often stimulate owners to reclaim their property and the retention period of 6 months permits the holder to honor these claims.

Subsection (d) provides that the holder of an underlying stock interest presumed abandoned under Section 10 shall deliver a duplicate certificate to the administrator. Upon delivery the holder, in accordance with the provisions of Section 20, is relieved of all liability to any person occasioned by the reappearance of the original certificate or the issuance of the duplicate certificate. In this connection, see the comment to Section 10.

§ 20. [Custody by State; Holder Relieved from Liability; Reimbursement of Holder Paying Claim; Reclaiming for Owner; Defense of Holder; Payment of Safe Deposit Box or Repository Charges].

(a) Upon the payment or delivery of property to the administrator, the state assumes custody and responsibility for

the safekeeping of the property. A person who pays or delivers property to the administrator in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(b) A holder who has paid money to the administrator pursuant to this Act may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the administrator shall promptly reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a travelers check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder must be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under Section 29(a).

(c) A holder who has delivered property (including a certificate of any interest in a business association) other than money to the administrator pursuant to this Act may reclaim the property if still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(d) The administrator may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

(e) If the holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(f) For the purposes of this section, "good faith" means that

(1) payment or delivery was made in a reasonable attempt to comply with this Act;

(2) the person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him, that the property was abandoned for the purposes of this Act; and

(3) there is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(g) Property removed from a safe deposit box or other safekeeping repository is received by the administrator subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse or pay the holder out of the proceeds remaining after deducting the administrator's selling cost.

Comment

Prior Uniform Act Provision:

Section 14.

When property is turned over to the state, the holder is relieved of all liability for any turnover made in good faith. Subsection (f) sets forth a definition of good faith which inter alia allows the holder to rely on its records if they meet reasonable commercial standards of practice in the industry.

The section also permits the holder to obtain reimbursement for claims it elected to pay to owners who appeared after the property was turned over. If a state in enacting Section 24(c) provides for the payment of interest on property delivered to the administrator, then the holder will add such interest when paying the claim. See Section 24(d).

If after turnover, any person or another state makes a claim on the holder, the state, upon request, is required to defend the holder and indemnify him against any liability. This provision is particularly important in light of the underlying share provisions of Section 10. The comment to that section is pertinent here as well.

§ 21. [Crediting of Dividends, Interest, or Increments to Owner's Account].

Whenever property other than money is paid or delivered to the administrator under this Act, the owner is entitled to receive from the administrator any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money.

Comment

Prior Uniform Act Provision:

Section 15.

This section changes Section 15 of the 1966 Act which provided that the owner was not entitled to receive any income or other increment accruing after the delivery of unclaimed property to the administrator. This Act provides for some substantial retention periods by the administrator. For instance, securities obtained pursuant to Section 10 will generally be held for a 3-year period prior to sale. The owner will be entitled to dividends, interest or other increment realized or accruing on the property during this 3-year period.

§ 22. [Public Sale of Abandoned Property].

(a) Except as provided in subsections (b) and (c), the administrator, within 3 years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the administrator the most favorable market for the property involved. The administrator may decline the highest bid and reoffer the property for sale if in the judgment of the administrator the bid is insufficient. If in the judgment of the administrator the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least [3] weeks in advance of sale, in a newspaper of general circulation in the [county] in which the property is to be sold.

(b) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the administrator considers advisable.

(c) Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under Section 10, delivered to the administrator must be held for at least one year before he may sell them.

(d) Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under Section 10 and delivered to the administrator must be held for at least 3 years before he may sell them. If the administrator sells any securities delivered pursuant to Section 10 before the expiration of the 3-year period, any person making a claim pursuant to this Act before the end of the 3-year period is entitled to either the proceeds of the sale of the

securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to Section 23(b). A person making a claim under this Act after the expiration of this period is entitled to receive either the securities delivered to the administrator by the holder, if they still remain in the hands of the administrator, or the proceeds received from sale, less any amounts deducted pursuant to Section 23(b), but no person has any claim under this Act against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the administrator.

(e) The purchaser of property at any sale conducted by the administrator pursuant to this Act takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

Comment

Prior Uniform Act Provision:

Section 17.

In order to give additional protection to the missing owner of a security which has been presumed abandoned and is not subject to Section 10, this section directs the administrator to hold that security for at least one year.

If the security is one which has been presumed abandoned pursuant to Section 10 the administrator is expected to hold the security for 3 years. He is permitted to sell the security within this 3-year period, but if the missing owner appears and makes claim for the security within this 3-year period after the administrator has sold it, the missing owner is entitled to receive the proceeds of the sale or the market value of the securities at the time the claim is made. Thus there is a genuine incentive for an administrator to hold this property for the requisite 3-year period.

Subsection (b) permits an administrator to sell securities at prevailing prices directly to the issuing companies.

§ 23. [Deposit of Funds].

[(a)] Except as otherwise provided by this section, the administrator shall promptly deposit in the [general fund] of this State all funds received under this Act, including the proceeds from the sale of abandoned property under Section 22.

The administrator shall retain in a separate trust fund an amount not less than $[100,000] from which prompt payment of claims duly allowed must be made by him. Before making the deposit, the administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, the name of the company, and the amount due. The record must be available for public inspection at all reasonable business hours.

[(b) Before making any deposit to the credit of the [general fund], the administrator may deduct:

(1) any costs in connection with the sale of abandoned property;

(2) costs of mailing and publication in connection with any abandoned property;

(3) reasonable service charges; and

(4) costs incurred in examining records of holders of property and in collecting the property from those holders.]

Comment

Prior Uniform Act Provision:

Section 18.

This section increases from $25,000 to $100,000 the sum which is recommended to be retained in a trust account for payment of claims. Each state based on its own experience will establish a minimum amount to be kept on hand in order that claims will be quickly paid. If a state receives substantial amounts represented by underlying stock certificates pursuant to Section 10, it is contemplated that the amount of the trust fund which it selects will reflect its experience in paying owners' claims. The practice in most states is for the legislature in its appropriation bill to provide for a continuing appropriation of general funds to pay abandoned property claims.

§ 24. [Filing of Claim with Administrator].

(a) A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file

with him a claim on a form prescribed by him and verified by the claimant.

(b) The administrator shall consider each claim within 90 days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(c) If a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator, together with any additional amount required by Section 21. If the claim is for property presumed abandoned under Section 10 which was sold by the administrator within 3 years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the administrator also shall pay interest at a rate of [ ] percent a year or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of 10 years after delivery or the date on which payment is made to the owner. No interest on interest-bearing property is payable for any period before the effective date of this Act.

(d) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator, would be subject to subsection (c) shall add interest as provided in subsection (c). The added interest must be repaid to the holder by the administrator in the same manner as the principal.

Comment

Prior Uniform Act Provisions:

Sections 19 and 20.

If a valid claim to property turned over to the administrator is made, the administrator is to return the property or, if it has been sold, to pay the net proceeds of sale. If the claim is for an underlying share interest presumed abandoned under Section 10 and the administrator has sold the

property within 3 years, the claimant is entitled to the net proceeds of sale or the market value of the property at the time claim was made for it, whichever is higher, together with any additional amount payable under Section 21.

Several states have added to the 1966 Act a provision for paying interest on property which was interest-bearing to the owner. Subsections (c) and (d) set forth provisions which a state may wish to enact providing for the payment of interest.

Subsection (c) provides for the administrator to pay interest on property which was interest bearing to the owner. The rate of interest will be fixed by each state enacting the Act and should fairly reflect prevailing rates.

§ 25. [Claim of Another State to Recover Property; Procedure].

(a) At any time after property has been paid or delivered to the administrator under this Act another state may recover the property if:

(1) the property was subjected to custody by this State because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this Act, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(3) the records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(4) the property was subjected to custody by this State under Section 3(6) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(5) the property is the sum payable on a travelers check, money order, or other similar instrument that was subjected to custody by this State under Section 4, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The administrator shall allow the claim if he determines that the other state is entitled to the abandoned property under subsection (a).

(c) The administrator shall require a state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim for the property.

Comment

Paragraph 2 parallels Section 3(4), which permits the state of corporate domicile to take if the state of the last known address does not provide for the escheat or custodial taking of the property. If the state of the last known address subsequently enacts an unclaimed property law which covers the property, the taking state must turn it over.

Paragraph 4, parallelling Section 3(6), provides that property initially claimed under a "contacts" test because there was no last known address and the state of domicile had no applicable unclaimed property law may be reclaimed by the state of corporate domicile if it enacts an applicable unclaimed property law.

Prior Uniform Act Provisions:

None, but compare Sections 10 and 19.

Section 25 should be read together with Sections 3 and 4. Sections 3 and 25 are designed to carry out the priority scheme enunciated in Texas v. New Jersey, 379 U.S. 674 (1965). In general the state of last known address is entitled to claim abandoned property. Where there is insufficient information to

permit this assertion of custody, the state of the holder's domicile takes the property subject to a later claim by the state of the last known address.

Paragraph 1 provides that, if property was paid to the state of the holder's domicile because the last known address of the owner was unknown and it is later established that the last known address of the person entitled to the property was in another state, the state of domicile should pay over to the state of last known address.

Paragraph 2 parallels subsection (d)(3), which permits the state of corporate domicile to take if the state of the last known address does not provide for the escheat or custodial taking of the property. If the state of the last known address subsequently enacts an unclaimed property law which covers the property, the taking state must turn it over.

Paragraph 3 addresses the problem of Nellius v. Tampax, Inc., 394 A.2d 333 (Del.Ch.Ct.1978) in which the holder's records did not reflect the fact that the record owner had sold the property to another. The court concluded, under **Texas v. New Jersey**, that the holder's records were controlling and that the apparent and not actual owner state could initially claim the property. Paragraph 3 provides that the state of the actual owner can reclaim this property from the taking state.

Paragraph 4, parallelling subsection (3)(f), provides that property initially claimed under a "contacts" test because there was no last known address and the state of domicile had no applicable unclaimed property law may be reclaimed by the state of corporate domicile if it enacts an applicable unclaimed property law.

Subsection (c) provides that the state that initially receives the property and which is requested to remit it to another state should be indemnified by the claiming state.

§ 26. [Action to Establish Claim].

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may bring an action to establish the claim in the [ ] court, naming the administrator as a defendant. The action must be brought within [90] days after the decision of the administrator or within [180] days after the filing of the claim if he has failed to act on it. [If the aggrieved person establishes the claim in an action against the administrator, the court shall award him costs and reasonable attorney's fees.]

Comment

Prior Uniform Act Provision:

Section 21.

After property is presumed abandoned and reported to the administrator (Section 17) the administrator must attempt to locate the missing owner (Section 18). Thereafter, if the property has been delivered to the administrator (Section 19) and the owner or his representative appears, the administrator must pay the claim (Section 24). The owner's rights are never cut off. If one claiming to be the owner cannot satisfy the administrator of his right to claim the property in an administrative proceeding pursuant to Section 24, he retains a right to assert his claim in a court of appropriate jurisdiction under this section.

§ 27. [Election to Take Payment or Delivery].

(a) The administrator may decline to receive any property reported under this Act which he considers to have a value less than the expense of giving notice and of sale. If the administrator elects not to receive custody of the property, the holder shall be notified within [120] days after filing the report required under Section 17.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by him, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection must be held by the administrator and is not presumed abandoned until such time as it otherwise would be presumed abandoned under this Act.

Comment

Prior Uniform Act Provision:

Section 22.

Subsection (b) is new. It authorizes the administrator to assume custody of property prior to the time for presuming abandonment. Administrators have expressed a need for this authority to enable them to take possession of property, such as the contents of a safe deposit box repository, when the holder is terminating business but the property is not yet reportable. Additionally, other holders which have conducted business in the state and are ceasing operations might use the provisions of this section. The property must be held by the administrator until

the abandonment period runs and then the property will be subject to the other provisions of the Act.

§ 28. [Destruction or Disposition of Property Having Insubstantial Commercial Value; Immunity from Liability].

If the administrator determines after investigation that any property delivered under this Act has insubstantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the administrator pursuant to this section.

Comment

Prior Uniform Act Provision:

None.

This section provides for the disposition of property which has no commercial value. As an example, the contents of safety deposit boxes often include such items as rent receipts, personal correspondence and lapsed insurance policies. In such cases, these contents might have some personal significance to the owner, which the administrator would take into consideration in determining for what period of time he will hold the property awaiting a claim by the owner. However, in the usual situation there will be no interest to be preserved by maintaining this property under state custody.

Under this section the administrator would be free to retain property having no commercial value. Further, the administrator could transfer it to other agencies or institutions which might have an interest in the property because of its historical value or other independent significance.

This section provides that the administrator in exercising his discretion in disposing of such property is not subject to a claim by the missing owner.

§ 29. [Periods of Limitation].

(a) The expiration, before or after the effective date of this Act, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being

presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator as required by this Act.

(b) No action or proceeding may be commenced by the administrator with respect to any duty of a holder under this Act more than 10 years after the duty arose.

Comment

Prior Uniform Act Provision:

Section 16.

Section 29 has an added provision that the expiration of time periods set forth in contracts will not prevent the property from becoming reportable. See People v. Marshall Field & Co., 83 Ill.App.3d 811, 404 N.E.2d 368 (1980); Screen Actors Guild, Inc. v. Cory, 91 Cal.App.3d 111, 154 Cal.Rptr. 77 (1979); State v. Jefferson Lake Sulphur Co., 36 N.J. 577, 178 A.2d 329 (1962). Section 2 abrogates another contractual condition often asserted as a defense to reporting property otherwise presumed abandoned, the failure to present the evidence of indebtedness.

Subsection (a) is written to insure that although the owner's claim against the holder may be barred by the statute of limitations prior to the effective date of the Act, the holder is not relieved of his obligation to pay abandoned property to the administrator. The comment to Section 16 of the 1966 Act noted that local law must be consulted in order to ascertain whether legislation constitutionally may be enacted reviving a cause of action barred by the statute of limitations. This issue has been litigated in several states, e.g., Country Mutual Insurance Co. v. Knight, 40 Ill.2d 523, 240 N.E.2d 612 (1968); Douglas Aircraft Co. v. Cranston, 24 Cal.Rptr. 851, 374 P.2d 819 (1962); cf. Standard Oil v. New Jersey, 5 N.J. 281, 74 A.2d 565 (1950). Even though the statute of limitations has run before the effective date of the Act, the holder must report and deliver the property to the state if the holder does not regularly enforce the statute. See South Carolina Tax Commission v. Metropolitan Life Insurance Co., 266 S.C. 34, 221 S.E.2d 522 (1975).

Subsection (b) provides that an administrator must commence an action against a holder within 10 years after the time the property was first reportable. Under existing law it is not clear that statutes of limitations apply to the state in compelling a holder to report or deliver unclaimed property. A holder may under the 1966 Act be subject to suit for an indeterminate period. Certain states have argued that Section 16 of the 1966 Act applies to states and thus there is no statute of

limitations. The 10-year limitation period will provide a holder with a cut-off date on which it can rely.

§ 30. [Requests for Reports and Examination of Records].

(a) The administrator may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this Act.

(b) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the provisions of this Act. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this Act.

(c) If a person is treated under Section 12 as the holder of the property only insofar as the interest of the business association in the property is concerned, the administrator, pursuant to subsection (b), may examine the records of the person if the administrator has given the notice required by subsection (b) to both the person and the business association at least 90 days before the examination.

(d) If an examination of the records of a person results in the disclosure of property reportable and deliverable under this Act, the administrator may assess the cost of the examination against the holder at the rate of $[ ] a day for each examiner, but in no case may the charges exceed the value of the property found to be reportable and deliverable. The cost of examination made pursuant to subsection (c) may be imposed only against the business association.

(e) If a holder fails after the effective date of this Act to maintain the records required by Section 31 and the records of the holder available for the periods subject to this Act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay such amounts as may reasonably be estimated from any available records.

Comment

Prior Uniform Act Provision:

Section 23.

This section is designed to facilitate compliance with the Act. Subsection (a) provides for the filing of a negative report

if the administrator requires such a report and will minimize disruption which would otherwise be caused to the holder if an examination of records instead were conducted by the administrator. Subsection (b) is based on Section 23 of the 1966 Act. The 1966 Act authorizes examination if the administrator has reason to believe the holder has failed to report property. To require as prerequisite for an examination that a state has reason to believe information has been withheld encourages litigation and imposes an unnecessary burden on the state.

Subsection (c) is intended to provide a useful method whereby the administrator can conduct a single examination of a dividend disbursing agent or transfer agent serving in such capacity for numerous business associations. Under the 1966 Act, dividend disbursing agents and transfer agents have refused to permit any examination of records unless the affirmative consent of the business association was first obtained. This procedure has proved unwieldy and very expensive to the enforcing states. By requiring prior notice to the dividend disbursing agent and the business association, the agent will have an opportunity to make the necessary arrangements with its principal, the business association, to provide the necessary information in the event that the business association elects not to report the property in question voluntarily. This section, together with Section 33, will enable several states to conduct joint examinations of numerous holders at one time, saving substantial expense and thus permitting examinations which might otherwise be economically unfeasible.

Subsection (e) permits the use of estimates in instances where the holder has failed to report and deliver property that is abandoned and no longer has records with which to prepare such a report. Additionally, if the holder fails to maintain records of the last known address, states can assert claims based on any other records which might exist. Resort may be had to computer codes. This subsection does not resolve the issue of whether the domiciliary state of the holder can also claim the property from the holder. See comment to Section 1(11). While the holding in Texas v. New Jersey is intended to prevent multiple liability of holders, this subsection, viewed as a penalty for failure to maintain records of names and last known address, is not inconsistent with that decision. Subsection (e) is prospective only.

§ 31. [Retention of Records].

(a) Every holder required to file a report under Section 17, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for 10 years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (b) or by rule of the administrator.

(b) Any business association that sells in this State its travelers checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this State, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for 3 years after the date the property is reportable.

Comment

Prior Uniform Act Provision:

None.

Many holders are not retaining records of addresses of owners. While Section 11(e) of the 1966 Act may be interpreted to require that those records be kept, this section makes express such a requirement if the holder initially had an address. The experience of several states has confirmed that substantial amounts of unclaimed property, for which at one time the holder had records of address, are now subject to claim only by the domiciliary state of the holder since the recorded address has not been retained.

This section does not require that the holder in the first instance obtain the address of the owner, a matter which each state may wish to consider as to specific types of property. For example, a record of the address of the purchaser or recipient of a gift certificate customarily is not obtained.

Initially, the period for which records of address must be obtained is established at 10 years from the date the property was first reportable as abandoned property. However, this section permits a state to shorten this period by rule. Because the reporting practices of holders vary, an administrator will want to consider such factors as the burden imposed on the holder in maintaining such records, the opportunity of returning the property, and the type of business of the holder. For example, in the case of property that would be reportable in the aggregate without the name and address of the apparent owner under Section 17, a state might adopt a rule providing for a relatively short record retention period on condition that the holder maintain a record sufficient to satisfy the requirements of Texas v. New Jersey that there be a last known address or that the state can prove that the last known address of the creditor was within its borders.

Subsection (b) is designed to insure that the information required for asserting a claim to travelers checks and money

orders specified in subsection 4(c) is retained by the issuers of travelers checks and money orders.

§ 32. [Enforcement].

The administrator may bring an action in a court of competent jurisdiction to enforce this Act.

Comment

Prior Uniform Act Provision:

Section 24.

Section 32 authorizes suit by the administrator in any court of competent jurisdiction. Although generally an administrator would be expected to sue in his own state, he can use the courts of another forum to enforce the Act. See Section 33. See also, Commonwealth of Pennsylvania v. Kervick, 60 N.J. 289, 288 A.2d 289 (1972).

§ 33. [Interstate Agreements and Cooperation; Joint and Reciprocal Actions With Other States].

(a) The administrator may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The administrator by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

(b) To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the administrator, so far as is consistent with the purposes, policies, and provisions of this Act, before adopting, amending or repealing rules, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

(c) The administrator may join with other states to seek enforcement of this Act against any person who is or may be holding property reportable under this Act.

(d) At the request of another state, the attorney general of this State may bring an action in the name of the administrator

of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this State of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(e) The administrator may request that the attorney general of another state or any other person bring an action in the name of the administrator in the other state. This State shall pay all expenses including attorney's fees in any action under this subsection. [The administrator may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action.] Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under this Act.

Comment

Prior Uniform Act Provision:

None-but compare, Section 10.

Cooperation among states is essential if abandoned property programs are to be efficiently administered. In recent years several states have joined together to audit major holders. Additionally, several states have entered into agreements to act as collection agents for each other. Interstate cooperation and the development of uniform reporting forms and uniform regulations will be of assistance to holders as well as program administrators. Section 33 encourages joint agreements and cooperation among the states.

In many instances holders apparently fail to report based on the correct assumption that individual and distant states will not go to the expense of auditing records. This section will permit spreading the very real expense of conducting audits among several collecting states and the pooling of information which should make enforcement of the Act less burdensome to the state and potentially less burdensome to major corporate holders. An agreement among the states might expressly relieve holders from reporting piecemeal to separate states. Instead, they might be able to file a single report of all abandoned property, wherever located, and regardless of the address of the owner.

Reciprocal agreements envisioned under subsection (c) do not require the consent of Congress under the Compact Clause of the Constitution, Art. I, § 10, cl. 3. The Supreme Court has held that the restriction of the Compact Clause is limited to combinations or agreements that tend to increase the political

power of the states to such an extent that it interferes with the supremacy of the United States. United States Steel v. Multi-State Tax Commission, 434 U.S. 452 (1978). In Multi-State Tax Commission the Court upheld a tax compact, that had not been approved by Congress creating a permanent administrative body to perform audits of multi-state taxpayer operations, and at the request of a member state, to sue to enforce the audits in the courts of the member states.

This section simply authorizes an economical approach to enforcing a state's claim under Texas v. New Jersey. Each state retains discretion to bring suit or to decide against such action, remaining free to adopt its own abandoned property policies. The position of the states will not be politically improved at the expense of the federal government although the process for claiming abandoned property will be more efficient.

Action by one state for another is expressly permitted by this section. In some cases the administrator of a state may deem it wise to seek counsel in a foreign jurisdiction. There may be small claims which would not justify individual action by the claimant state in a foreign forum, but if several states join forces and retain counsel in the holder state to sue for all of them, it might be administratively justified. This section expressly permits such joint action.

§ 34. [Interest and Penalties].

(a) A person who fails to pay or deliver property within the time prescribed by this Act [shall] [may be required to] pay to the administrator interest at the annual rate of [18 percent] [10 percent above the annual rate of discount, in effect on the date the property should have been paid or delivered, for the most recent issue of 52-week United States Treasury bills] on the property or value thereof from the date the property should have been paid or delivered.

(b) A person who willfully fails to render any report or perform other duties required under this Act shall pay a civil penalty of $[100] for each day the report is withheld or the duty is not performed, but not more than $[5000].

(c) A person who willfully fails to pay or deliver property to the administrator as required under this Act shall pay a civil penalty equal to 25 percent of the value of the property that should have been paid or delivered.

(d) A person who willfully refuses after written demand by the administrator to pay or deliver property to the administrator as required under this Act is guilty of a [ ] and upon conviction may be punished by a fine of not less than $[ ] nor more than $[ ], or imprisonment for not more than [ ] months, or both.

Comment

Prior Uniform Act Provision:

Section 25.

A major weakness of the 1966 Act was its ineffective penalty provision. Primary reliance on the criminal law as a compliance mechanism is misplaced. Often the reason for withholding property is economic, and economic sanctions in those cases are generally more effective in assuring compliance.

The experience of several states is that many holders find the economic incentive for noncompliance so great that violations of the law are frequent and extensive. The holder who neglects to report or pay has the use of property which is extremely valuable to it. The provision for civil penalties in subsection (a) is designed to give a holder sufficient incentive to report and pay over abandoned property. It is also designed to ensure that the true owners or their representatives, the states, receive the income from the property while it is wrongfully withheld. Similar provisions have been enacted by several states, for example, California (Cal.Civ.Pro.Code § 1577 (Supp.1981)) and Minnesota (Minn.Stat. § 345.55 subd. 3).

Criminal penalties are provided in subsection (d) for willful refusal, after written demand by an administrator, to pay or deliver property.

§ 35. [Agreement to Locate Reported Property].

All agreements to pay compensation to recover or assist in the recovery of property reported under Section 17, made within 24 months after the date payment or delivery is made under Section 19, are unenforceable.

Comment

Prior Uniform Act Provision:

None.

This section is in part based on Cal.Civ.Pro.Code § 1582 (Supp.1981).

§ 36. [Foreign Transactions].

This Act does not apply to any property held, due and owing in a foreign country and arising out of a foreign transaction.

Comment

Prior Uniform Act Provision:

None.

This provision is designed to exclude from the coverage of the Act wholly foreign transactions.

§ 37. [Effect of New Provisions; Clarification of Application].

(a) This Act does not relieve a holder of a duty that arose before the effective date of this Act to report, pay, or deliver property. A holder who did not comply with the law in effect before the effective date of this Act is subject to the applicable enforcement and penalty provisions that then existed and they are continued in effect for the purpose of this subsection, subject to Section 29(b).

(b) The initial report filed under this Act for property that was not required to be reported before the effective date of this Act but which is subject to this Act must include all items of property that would have been presumed abandoned during the 10-year period preceding the effective date of this Act as if this Act had been in effect during that period.

Comment

Prior Uniform Act Provision:

None.

This Act adds, amends, clarifies and repeals sections of the 1966 Act. The new Act may provide for the presumption of abandonment of one type of property that arguably was not subject to a presumption of abandonment under the 1966 Act. For example, the 1966 Act did not expressly cover underlying share certificates unless they were held or owing by business associations. Underlying share certificates are now expressly covered in this Act pursuant to Section 10. Additionally, the state of last known address under the 1966 Act perhaps could not reach property otherwise presumed abandoned where the holder was not doing business in the state of last known address.

Subsection (a) provides that if a state had an unclaimed property law prior to the adoption of this Act, a holder is not relieved of his duty to report and pay over the property abandoned under the Act then existing.

Subsection (b) deals with the problem of how far back a holder must check his records to determine what property not subject to the prior Act must be paid to the state under this Act. The period chosen is 10 years. A holder is required to pay to the state any property which 10 years before the date of enactment would have been payable in the enacting state if this Act had been in effect. For example, if a state enacts the new Act effective January 1, 1983 for property not previously presumed abandoned, the holder must report it if, as of January 1, 1973, it had been unclaimed for the abandonment period. A similar provision is found in Section 11(g) of the 1966 Act.

However, some property subject to this Act but which was not covered by the then existing Act may have been paid to another state. If a holder has already paid this property to another state under its then existing unclaimed or abandoned property laws, it is not required to pay again to this State. Nothing in this section, however, prohibits this State from making a claim on the state to which the property was originally paid.

§ 38. [Rules].

The administrator may adopt necessary rules to carry out the provisions of this Act.

§ 39. [Severability].

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 40. [Uniformity of Application and Construction].

This Act shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ 41. [Short Title].

This Act may be cited as the Uniform Unclaimed Property Act (1981).

§ 42. [Repeal].

The following acts and parts of acts are hereby repealed:

(a)

(b)

(c)

§ 43. [Time of Taking Effect].

This Act shall take effect .....

UNIFORM COMMERCIAL CODE

The American Law Institute

National Conference of
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1972 OFFICIAL TEXT

WITH COMMENTS
and
APPENDIX
Showing 1972 Changes

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PART 1

SHORT TITLE, FORM AND INTERPRETATION

§ 3—101. Short Title

This Article shall be known and may be cited as Uniform Commercial Code—Commercial Paper.

Official Comment

This Article represents a complete revision and modernization of the Uniform Negotiable Instruments Law.

The Comments which follow will point out the respects in which this Article changes the Negotiable Instruments Law, which was promulgated by the National Conference of Commissioners on Uniform State Laws in 1896, and was subsequently enacted in every American jurisdiction. Needless to say, in the 50 odd years of the history of that statute, there have been vast changes in commercial practices relating to the handling of negotiable instruments. The need for revision of this important statute was felt for some years before the present project was undertaken.

It should be noted especially that this Article does not apply in any way to the handling of securities. Article 8 deals with that subject. See Sec. 3—103.

§ 3—102. Definitions and Index of Definitions

(1) In this Article unless the context otherwise requires

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the per-

son to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance". Section 3—410.
"Accommodation party". Section 3—415.
"Alteration". Section 3—407.
"Certificate of deposit". Section 3—104.
"Certification". Section 3—411.
"Check". Section 3—104.
"Definite time". Section 3—109.
"Dishonor". Section 3—507.
"Draft". Section 3—104.
"Holder in due course". Section 3—302.
"Negotiation". Section 3—202.
"Note". Section 3—104.
"Notice of dishonor". Section 3—508.
"On demand". Section 3—108.
"Presentment". Section 3—504.
"Protest". Section 3—509.
"Restrictive Indorsement". Section 3—205.
"Signature". Section 3—401.

(3) The following definitions in other Articles apply to this Article:

"Account". Section 4—104.
"Banking Day". Section 4—104.
"Clearing house". Section 4—104.
"Collecting bank". Section 4—105.
"Customer". Section 4—104.
"Depositary Bank". Section 4—105.
"Documentary Draft". Section 4—104.
"Intermediary Bank". Section 4—105.
"Item". Section 4—104.
"Midnight deadline". Section 4—104.
"Payor bank". Section 4—105.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Official Comment

Prior Uniform Statutory Provision: Sections 1(5), 128 and 191, Uniform Negotiable Instruments Law.

Changes: See below.

Purposes of Changes:

1. The definition of "issue" in Section 191 of the original act has been clarified in two respects. The Section 191 definition required that the instrument delivered be "complete in form" inconsistently with the provisions of Sections 14 and 15 (relating to incomplete instruments) of the original act. The "complete in form" language has therefore been deleted. Furthermore the Section 191 definition required that the delivery be "to a person who takes as a holder", thus raising difficulties in the case of the remitter (see Comment 3 to Sec. 3—302) who may not be a party to the instrument and thus not a holder. The definition in subsection (1) (a) of this Section thus provides that the delivery may be to a holder or to a remitter.

2. The definitions of "order" [subsection (b)] and "promise" [subsection (c)] are new, but state principles clearly recognized by the courts. In the case of orders the dividing line between "a direction to pay" and "an authorization or request" may not be self-evident in the occasional unusual, and therefore non-commercial, case. The prefixing of words of courtesy to the direction—as "please pay" or "kindly pay"—should not lead to a holding that the direction has degenerated into a mere request. On the other hand informal language—such as "I wish you would pay"—would not qualify as an order and such an instrument would be non-negotiable. The definition of "promise" is intended to make it clear that a mere I.O.U. is not a negotiable instrument, and to change the result in occasional cases which have held that "Due Currier & Barker seventeen dollars and fourteen cents, value received." and "I borrowed from P. Shemonia the sum of five hundred dollars with four per cent interest; the borrowed money ought to be paid within four months from the above date" were promises sufficient to make the instruments into notes.

3. The last sentence of subsection (1) (b) ("order") permits the order to be addressed to one or more persons (as drawees) in the alternative, recognizing the practice of corporations issuing dividend checks and of other drawers who for commercial convenience name a number of drawees, usually in different parts of the country. The section on presentment provides that presentment may be made to any one of such drawees. Drawees in succession are not permitted because the holder should not be required to make more than one presentment, and upon the first dishonor should have his recourse against the drawer and indorsers.

4. Comments on the definitions indexed follow the sections

in which the definitions are contained.

Cross Reference:

Point 3: Section 3—504(3)(a).

Definitional Cross References:

"Bank". Section 1—201.
"Delivery". Section 1—201.
"Holder". Section 1—201.
"Money". Section 1—201.
"Person". Section 1—201.

§ 3—103. Limitations on Scope of Article

(1) This Article does not apply to money, documents of title or investment securities.

(2) The provisions of this Article are subject to the provisions of the Article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9).

Official Comment

Prior Uniform Statutory Provision: None.

Purposes:

1. This Article is restricted to commercial paper—that is to say, to drafts, checks, certificates of deposit and notes as defined in Section 3—104(2). Subsection (1) expressly excludes any money, as defined in this Act (Section 1—201), even though the money may be in the form of a bank note which meets all the requirements of Section 3—104(1). Money is of course negotiable at common law or under separate statutes, but no provision of this Article is applicable to it. Subsection (1) also expressly excludes documents of title and investment securities which fall within Articles 7 and 8, respectively. To this extent the section follows decisions which held that interim certificates calling for the delivery of securities were not negotiable instruments under the original statute. Such paper is now covered under Article 8, but is not within any section of this Article. Likewise, bills of lading, warehouse receipts and other documents of title which fall within Article 7 may be negotiable under the provision of that Article, but are not covered by any section of this Article.

2. Instruments which fall within the scope of this Article may also be subject to other Articles of the Code. Many items in course of bank collection will of course be negotiable instruments, and the same may be true of collateral pledged as security for a debt. In such cases this Article, which is general, is, in case of conflicting provisions, subject to the Articles which deal specifically with the type of transaction or instrument involved: Article 4 (Bank Deposits and Collections) and Article 9 (Secured Transactions). In the case of a negotiable instrument which is subject to Article 4 because it is in course of collection or to Article 9 because it is used as collateral, the provisions of this Article continue to be applicable except insofar as

there may be conflicting provisions in the Bank Collection or Secured Transactions Article.

An instrument which qualifies as "negotiable" under this Article may also qualify as a "security" under Article 8. It will be noted that the formal requisites of negotiability (Section 3—104) go to matters of form exclusively; the definition of "security" on the other hand (Section 8—102) looks principally to the manner in which an instrument is used ("commonly dealt in upon securities exchanges . . . or commonly recognized . . . as a medium for investment"). If an instrument negotiable in form under Section 3—104 is, because of the manner of its use, a "security" under Section 8—102, Article 8 and not this Article applies. See subsection (1) of this Section and Section 8—102(1)(b).

Cross References:

Point 1: Articles 7 and 8; Sections 1—201, 3—104(1) and (2), 3—107.

Point 2: Articles 4 and 9; Sections 3—104 and 8—102.

Definitional Cross References:

"Document of title". Section 1—201.

"Money". Section 1—201.

§ 3—104. Form of Negotiable Instruments; "Draft"; "Check"; "Certificate of Deposit"; "Note"

(1) Any writing to be a negotiable instrument within this Article must

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is

(a) a "draft" ("bill of exchange") if it is an order;

(b) a "check" if it is a draft drawn on a bank and payable on demand;

(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

(d) a "note" if it is a promise other than a certificate of deposit.

(3) As used in other Articles of this Act, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable

within this Article as well as to instruments which are so negotiable.

Official Comment

Prior Uniform Statutory Provision: Sections 1, 5, 10, 126, 184 and 185, Uniform Negotiable Instruments Law.

Changes: Parts of original sections combined and reworded; new provisions; original Section 10 omitted.

Purposes of Changes and New Matter: The changes are intended to bring together in one section related provisions and definitions formerly widely separated.

1. Under subsection (1) (b) any writing, to be a negotiable instrument within this Article, must be payable in money. In a few states there are special statutes, enacted at an early date when currency was less sound and barter was prevalent, which make promises to pay in commodities negotiable. Even under these statutes commodity notes are now little used and have no general circulation. This Article makes no attempt to provide for such paper, as it is a matter of purely local concern. Even if retention of the old statutes is regarded in any state as important, amendment of this section may not be necessary, since "within this Article" in subsection (1) leaves open the possibility that some writings may be made negotiable by other statutes or by judicial decision. The same is true as to any new type of paper which commercial practice may develop in the future.

2. While a writing cannot be made a negotiable instrument within this Article by contract or by conduct, nothing in this section is intended to mean that in a particular case a court may not arrive at a result similar to that of negotiability by finding that the obligor is estopped by his conduct from asserting a defense against a bona fide purchaser. Such an estoppel rests upon ordinary principles of the law of simple contract; it does not depend upon negotiability, and it does not make the writing negotiable for any other purpose. But a contract to build a house or to employ a workman, or equally a security agreement does not become a negotiable instrument by the mere insertion of a clause agreeing that it shall be one.

3. The words "no other promise, order, obligation or power" in subsection (1) (b) are an expansion of the first sentence of the original Section 5. Section 3—112 permits an instrument to carry certain limited obligations or powers in addition to the simple promise or order to pay money. Subsection (1) of this Section is intended to say that it cannot carry others.

4. Any writing which meets the requirements of subsection (1) and is not excluded under Section 3—103 is a negotiable instrument, and all sections of this Article apply to it, even though it may contain additional language beyond that contem-

plated by this section. Such an instrument is a draft, a check, a certificate of deposit or a note as defined in subsection (2). Traveler's checks in the usual form, for instance, are negotiable instruments under this Article when they have been completed by the identifying signature.

5. This Article omits the original Section 10, which provided that the instrument need not follow the language of the act if it "clearly indicates an intention to conform" to it. The provision has served no useful purpose, and it has been an encouragement to bad drafting and to liberality in holding questionable paper to be negotiable. The omission is not intended to mean that the instrument must follow the language of this section, or that one term may not be recognized as clearly the equivalent of another, as in the case of "I undertake" instead of "I promise," or "Pay to holder" instead of "Pay to bearer." It does mean that either the language of the section or a clear equivalent must be found, and that in doubtful cases the decision should be against negotiability.

6. Subsection (3) is intended to make clear the same policy expressed in Section 3—805.

Cross References:

Sections 3—105 through 3—112, 3—401, 3—402 and 3—403.

Point 1: Section 3—107.

Point 3: Section 3—112.

Point 4: Sections 3—103 and 3—805.

Point 6: Section 3—805.

Definitional Cross References:

"Bank". Section 1—201.

"Bearer". Section 1—201.

"Definite time". Section 3—109.

"Money". Section 1—201.

"On demand". Section 3—108.

"Order". Section 3—102.

"Promise". Section 3—102.

"Signed". Section 1—201.

"Term". Section 1—201.

"Writing". Section 1—201.

§ 3—105. When Promise or Order Unconditional

(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

(a) is subject to implied or constructive conditions; or

(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or

(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

The Report of
The President's Commission
on
Financial Structure & Regulation

DECEMBER 1971

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COMMISSION ON FINANCIAL STRUCTURE AND REGULATION

1015 2nd Avenue
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The President
The White House
Washington, D.C.

December 22, 1972

Dear Mr. President:

The President's Commission on Financial Structure and Regulation herewith submits its report.

The Commission was charged with undertaking a thorough analysis of the structure and regulation of financial institutions. This task completed, we propose a number of fundamental changes in the nation's financial system.

The Commission viewed the financial sector as a unified whole. In its studies and deliberations it took account of the interdependence of the various institutions. The recommendations should therefore be considered and implemented in the same manner. The recommendations, taken together, would produce a structural and regulatory system which will efficiently and equitably serve the financial needs of the country in the coming decades.

The report reflects a consensus of the views of Commission members. Individual Commissioners, however, may not agree with all of the recommendations. The signatures of the Commissioners should be interpreted as an indication of their general agreement with the thrust of the report, not as full accord on the many issues discussed in it.

We respectfully submit our report in the hope that it will assist you, the Congress, other officials of the Government, and all Americans interested in improving the performance of the financial system.

Sincerely,

Reed O. Hunt
Chairman

THE COMMISSIONERS

Reed O. Hunt
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Retired Chairman of the Board
Crown Zellerbach Corporation

Atherton Bean
Chairman of Executive Committee
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Professor of Economics
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Chairman
First National Bank in Dallas

*Resigned September 1, 1971 to become a member of the Council of Economic Advisers.

The members of the Commission, though identified by title and principal occupation, have served and signed this report as individuals.

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Foreword

President Richard M. Nixon disclosed his plans to appoint a commission to study the nation's financial structure in the *1970 Economic Report of the President.* On February 19, 1970, then Secretary of the Treasury David M. Kennedy informed the Joint Economic Committee of the President's plans, emphasizing the long-range nature of the proposed commission's study.

My appointment as Chairman of the Commission on Financial Structure and Regulation was announced by the President on April 22, 1970. On April 28, the Treasury Department held a meeting to help identify issues deserving Commission attention and the approaches and methodology the Commission might use in dealing with them.

The Treasury meeting was led by Henry C. Wallich, Senior Consultant to the Treasury, with Under Secretary Charls E. Walker in attendance. Those invited included representatives from the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Office of the Comptroller of the Currency, the Bureau of the Budget and the Council of Economic Advisers. Leading scholars from universities and financial institutions also attended.

The meeting produced many valuable suggestions. Under Secretary Walker and I asked Samuel P. Chase, Donald P. Jacobs and Almarin Phillips to distill these suggestions and prepare a proposed study agenda for the first meeting of the Commission.

On June 16, 1970, President Nixon announced the names of the outstanding citizens who had agreed to serve as members of the Commission. The President gave them a broad mandate: to "review and study the structure, operation, and regulation of the private financial institutions in the United States, for the purpose of formulating recommendations that would improve the functioning of the private financial system."

The first meeting of the Commission was held in Washington on June 27, 1970. At this first meeting, it was agreed that the Commission would focus primarily on problems relating to commercial banks, mutual savings banks, savings and loan associations, credit unions, private pension plans and reserve life insurance companies. For these institutions, the Commission elected to study in detail their functional specialization, the effects of deposit rate regulations, chartering and branching, problems of deposit insurance, reserves and taxation, the effects of regulations on mortgage markets and residential construction, competitive problems and the framework of the financial regulatory agencies. As this report shows, these plans were little altered at subsequent meetings.

The Commission elected to operate as a committee-of-the-whole rather than divide into specialized groups. Materials relating to topics of meetings were mailed to the Commissioners in advance of each meeting. These consisted of statements and letters from individuals, trade groups and government agencies, articles from journals, books, government agency and Congressional hearings and reports, and 19 papers prepared specifically for the Commission by outside experts. Early meetings were devoted to general discussions of broad problems and policy alternatives. The development of an integrated set of recommendations occupied the meetings after March, 1971.

There were 15 meetings, and each was attended by all or nearly all of the Commissioners. At first the meetings were for one day, but as the drafting of the report progressed, meetings were extended. In the final two meetings, in November and December, 1971, the Commission met for several consecutive days in order to complete the report on schedule.

The report represents a consensus of views. Individual Commissioners may have somewhat divergent opinions on some issues but, considering the report as a whole, there is broad support among the Commissioners for its recommendations.

The roles played by members of the staff are gratefully acknowledged. Donald P. Jacobs and Almarin Phillips, the Co-Directors, gave intellectual direction to the Commission's work by providing alternative approaches for our consideration and preparing drafts of the report as the consensus of views emerged. They maintained continuous contact with Commission members and assumed a liaison role with government agencies and other parties interested in the Commission's progress. The absence of a single director may have violated conventional organizational practice, but Professors Jacobs and Phillips worked well together in tandem.

The Co-Directors were aided immeasurably by Lucille S. Mayne, who summarized and indexed the reading materials and prepared drafts of some sections of the report. Bertwing C. Mah also served as an economic expert, providing data and memoranda on many of the topics on the Commission's agenda. Neil B. Murphy was staff economist during the summer of 1971, the period when the first drafts of a complete report were being prepared.

Allen R. Rule served as Special Assistant to the Chairman, counsel and legal researcher. Mr. Rule was of great assistance to the Chairman, and most helpful in opening and staffing the Commission's offices in Seattle and Washington, D.C. He also helped in drafting the report. James T. Lynch also acted as counsel, did much of the legal research underlying the recommendations, and helped in drafting the report. Henry M. Shine, Jr., became Director of Government and Industry Relations in May, 1971. Mr. Shine was appointed to augment relations with the Congress, executive agencies, consumer groups and the financial industry as well as to provide continuity after the Commission's report was completed.

The support staff, too, has been exceptionally helpful. The Washington Office was headed by Clarence H. Scruggs. Mr. Scruggs handled administrative matters for the Commission and made arrangements for all the meetings. He was assisted during the first year by Patricia Watts and, from December, 1970, by Francine Oreto. The Washington Office has also included Veachel Ambrose, Patricia Bennett, Sheryl Kemerling, Patricia Sagon and Linda Winkler.

The staff of the Seattle Office included Maureen E. Hallgrimson, assisted by Stephanie Bourgette, Kristine Fransen, and Marilyn Meyer. The Commission extends to each member of the staff its profound thanks.

Finally, a word about the Commission members. After working closely with these gentlemen for over 18 months, I can only say they were well-chosen. They brought broad experience to the assignment and every meeting reflected their preparation, diligent work and keen interest.

It was a tremendous experience to act as Chairman for this group. We conclude with a strong hope that we have suggested changes which will be helpful to our country.

Reed O. Hunt
Chairman

A. The Regulation of Interest Rate Ceilings on Deposits

TIME AND SAVINGS DEPOSITS AND CERTIFICATES OF DEPOSIT

The Commission recommends that:

1 the power to stipulate deposit rate maximums be abolished for time and savings deposits, certificates of deposit and share accounts of $100,000 or more

2 the power to stipulate deposit rate maximums on time and savings deposits, certificates of deposit and share accounts of less than $100,000 at commercial banks, mutual savings banks, savings and loan associations, and credit unions be given to the Board of Governors of the Federal Reserve System for use on a standby basis, to be exercised only when serious disintermediation is threatened

3 the Board have discretionary power to reduce the $100,000 cut-off amount for the standby power

4 the standby power of the Board to establish interest rate ceilings on time and savings deposits, certificates of deposit and share accounts include the power to:

   a establish for a period of five years ceiling differentials between institutions providing third party payment services and institutions not providing such services [1]

   b establish for up to two years from the date these recommendations are adopted rate ceiling differen-

1 Third party payment services, as here defined, include any mechanism whereby a deposit intermediary transfers a depositor's funds to a third party or to the account of a third party upon the negotiable or non-negotiable order of the depositor. Checking accounts are one type of third party payment service. Escrow accounts incidental to loan agreements are not included as third party payments.

tials between commercial banks and deposit thrift institutions then offering third party payment services

c establish for up to two years from the date of inauguration of third party payments rate ceiling differentials between commercial banks and individual deposit thrift institutions that inaugurate third party payment services subsequent to the date these recommendations are implemented

5 after the limited period stipulated in recommendation 4a above, the Board may only establish uniform interest rate ceilings for depository institutions under its jurisdiction with no differentials based on whether or not third party payment services are provided or on the time such services were inaugurated

6 the standby power of the Board to establish interest rate ceilings be abolished at the end of a ten-year period following the implementation of these recommendations

Federal regulation of maximum rates that commercial banks can pay for time and savings deposits was first imposed by the Banking Act of 1933. The intent of the legislation was to reduce interest rate competition among banks, which was believed to increase bank costs and encourage banks to purchase high yielding, risky assets. The view at the time was that holdings of such assets had been a major factor in bank losses and failures after the crash of 1929.

Federal maximums for savings and loan associations and mutual savings banks were established in 1966. Since then, the regulation of maximum interest rates on time and savings accounts has had an entirely different purpose. These ceilings have been used since 1966 to protect the liquidity positions of the deposit thrift institutions, life insurance companies and some commercial banks during periods of rising interest rates. One objective has been to hold down deposit rates and insulate deposit institutions from forces in the money markets that might drain funds from them. Another has been to maintain a differential between the rates paid by commercial banks and deposit thrift institutions in order to prevent a shifting of deposits among the intermediaries.

For extended periods of time between 1966 and 1971, deposit rate maximums were below the market interest rates. During such periods, depositors who left their funds with commercial banks or deposit thrift institutions received a lower

return on their funds than they might have received through direct investment. This fact gradually became known to an increasing number of depositors, a learning process assisted by borrowers who developed instruments attractive to depositors and other holders of funds. Funds that otherwise would have remained as deposits, or would have been deposited with intermediaries, were withdrawn or withheld because of the availability of higher yielding direct investments. As a result, the regulations failed to achieve a primary objective.

The disintermediation between the institutions and other parts of the money and capital markets had several undesirable consequences. As deposit thrift institutions became unable to attract funds, the private mortgage market shrank and interest rates rose, adversely affecting consumers. The housing crisis prompted direct federal intervention on a massive scale in the mortgage market.

Large commercial banks that had relied heavily on large certificates of deposit and time and savings deposits were faced with redemptions and deposit withdrawals. Smaller banks, although less drastically affected, also felt a liquidity pinch as depositors became more aware of competing returns. The loss of deposits limited the ability of all banks to serve their customers' credit needs. Large businesses with the skill and the credit rating to borrow in the commercial paper market continued to have access to credit. Small and medium sized businesses did not have attractive alternatives to borrowing at banks and therefore found their ability to acquire funds restricted.

Because of the enlarged borrowing through the commercial paper market and the reduced importance of intermediaries in credit flows, the liquidity position of an important segment of business was weakened. The loss of liquidity caused serious concern to many businesses. Even more important, sharp market fluctuations raised fears of a liquidity crisis which might well have produced a collapse of confidence and serious financial losses throughout the economy.

The disintermediation also affected the ability of the Federal Reserve to control credit through conventional monetary policy techniques. With large and increasing credit flows moving outside the commercial banking sector, the Federal Reserve's restrictive policies were required to become more and more stringent even as they became less and less effective.

Depositors who withdrew their funds and invested directly received a yield higher than the deposit rates. If intermediaries could have paid the market value for these funds and handled the investment process they would have fared

better. There is a positive relationship between the size of a deposit and the rapidity of disintermediation; therefore, interest rate regulations have discriminated against small savers. In addition, since a growing number of depositors have learned of ways to take advantage of alternative direct investments and borrowers have developed new instruments that lessen the difficulties of direct investments, the regulations afford diminishing shelter.

The Commission believes for these reasons that rate regulations on time and savings deposits should be removed. Their precipitous removal, however, would cause harm to the deposit thrift institutions, life insurance companies and many banks. These firms have substantial holdings of long term investments and, in the case of insurance companies, have contracts with their policyholders to make loans at low fixed rates. These commitments make them sensitive to the interest rate risks of a fully de-regulated market. Thus, except for deposits of $100,000 or more, the Commission's recommendations aim at a gradual phasing-out of these ceilings, with the Board of Governors of the Federal Reserve System having the power for a period of ten years to impose ceilings in case of future emergency conditions (Recommendations 1, 2 and 6).

The maximums on large certificates of deposit and on large deposits—those of $100,000 or more—should be removed immediately. The Board of Governors should be given the power to reduce the size of the deposit in this category. Large depositors are almost certain to disintermediate when market rates go above the maximum rates. Retention of these maximums would force disintermediation from the deposit intermediaries and would encourage funds to be redirected through less efficient channels (Recommendations 1 and 3).

The additional powers recommended for deposit thrift institutions in the next section of Part II should eliminate the necessity of a differential between rate ceilings for the thrift institutions and commercial banks. But a period of transition is required. The authority for a differential would be maintained for two years after third party payment services are inaugurated by a deposit thrift institution; and, for those currently offering the services, for two years after the implementation of these recommendations. After the two years it is recommended that no differential be permitted for such institutions. In five years, all of the deposit thrift institutions and other intermediaries should have made asset and liability adjustments. Whether or not third party payment services have been introduced by individual deposit thrift institutions, it is recommended that the authority for maintaining any differential be removed after five years (Recommendations 4 and 5).

After a period of time, all institutions will have had the incentive as well as the opportunity to alter their mix of assets, liabilities and services. The regulations, especially if they have been used several times, will probably be unable to prevent disintermediation of even small deposit accounts. Accordingly, the Commission recommends that the standby authority to establish rate ceilings be abolished in ten years (Recommendation 6).

DEMAND DEPOSITS

The Commission recommends that:

7 the prohibition against the payment of interest on demand deposits be retained

The prohibition of interest payments on demand deposits, imposed by the Banking Act of 1933, was intended to achieve the same purpose as the interest rate ceilings on time deposits. The problems involved with prohibition of interest payments on demand deposits are somewhat different, however, and the Commission recommends against the removal of the prohibition at this time.

The regulatory changes recommended by the Commission imply extensive changes in the operations of the depository institutions. A phasing-in process will be needed to provide for an orderly transition to the new system. Immediate abolition of the prohibition of interest payments on demand deposits, with all the other changes recommended, would create a situation that might cause deposit thrift institutions to experience disintermediation. This would have adverse effects on the flow of mortgage funds. To combat this, the deposit thrift institutions might be forced to shift to extensive third party payment services more rapidly than many are capable of doing in an orderly way. The phasing-in process necessary to the success of the Commission's recommendations would be lost.

Nonetheless, the Commission believes that its recommendation against the removal of the prohibition should be reviewed in the future. There are important trends in the use of demand deposits and other third party payment services that should be noted. Large businesses have improved cash management techniques in recent years and reduced the amount of deposit balances held for given levels of transactions. Deposit balances have been shifted into short-term, highly liquid interest bearing instruments. Because of the strong competition for business accounts, banks have encouraged this trend by

aiding in the investment of corporate funds in commercial paper, bankers acceptances, government bills and similar money market instruments. In effect, large businesses now receive interest on assets serving the same purpose that demand deposit balances served a few years ago. The accounts of smaller businesses and individuals cannot be so easily transferred to interest bearing assets.

Some banks have experimented with devices to transfer funds from savings accounts to checking accounts as required when checks written by depositors are presented for payment. These devices generally have been ruled evasions of the prohibition of interest payments on demand deposits. Still, the accepted practice of permitting withdrawals from savings accounts on demand and of paying interest on savings accounts from day of deposit to day of withdrawal blurs any clear distinction between demand and time deposits. The ingenuity of bankers seeking ways for customers to receive interest on demand balances will continue to be shown in the future, especially if interest rates are high and customers' options are the liabilities of institutions other than commercial banks.

Some savings and loan associations and mutual savings banks currently offer non-negotiable third party payment services using customers' interest bearing accounts. A number of states permit mutual savings banks to offer checking accounts. Again, it is likely that these institutions will find ways to pay interest on what are really transactions balances. Technical changes may make these methods more efficient and thereby more widespread.

Many credit unions provide third party payment services for their members through variations of the negotiable order service. The State of Rhode Island has passed legislation allowing credit unions to offer checking accounts, though the act specifically prohibits interest payments on checking account balances.

Finally, there is the problem of "non-price" competition. Interest payments are means by which financial institutions attract funds. When interest is prohibited or limited, substitute rewards for depositors are found. The substitutes are in the forms of convenience—especially branching in states where it is permitted—and in the provision of "free" services. Non-price competition in convenience and services leads to uneconomic increases in operating costs and forces some customers to use services when they would prefer interest payments. The interest rate prohibition, therefore, causes resources to be misallocated.

Even so, the Commission concluded the potential deleterious effects of the immediate abolition of prohibition of interest on demand deposits would be larger than the costs imposed by its continuation (Recommendation 7).

The Hunt Commission: An Appraisal
By ROBERT E. KNIGHT
Wall Street Journal (1923 - Current file); Jul 3, 1972;
pg. 4

The Hunt Commission: An Appraisal

By ROBERT E. KNIGHT

In the spring of 1970, President Nixon organized the Commission on Financial Structure and Regulation The commission, headed by Reed O. Hunt, was charged with reviewing the existing financial and regulatory structure and providing recommendations to improve the future performance of the nation's financial institutions The report of the Hunt Commission was released in December 1971

To ensure that financial institutions will be responsive to the economic and social needs of the future, the commission generally recommended that regulatory barriers be lowered and that increased reliance be placed on competition. Thus, nonbank depository institutions would be permitted to offer third-party payment privileges (checking accounts, automatic bill paying, credit cards), but would be subject to the same rules, restrictions, tax burdens and reserve requirements as commercial banks However, only commercial banks would be permitted to make commercial and industrial loans or allowed to accept deposits from businesses. Thrift institutions wishing to offer these services to businesses would be readily able to convert to commercial bank charters. Federal Reserve System membership would be mandatory for all commercial banks and for all savings and loans and mutual savings banks offering third-party payment services. Regulatory barriers on the types and characteristics of loans would also be relaxed or removed.

An Increase in Competitors

Adoption of these recommendations would make a significant contribution toward increasing the number of competitors offering typical consumer services and would make the financial system more responsive to the needs of the public. Despite recent easing, many of the regulations specifying geographic restrictions and maximum terms and amounts on individual mortgage loans are unnecessarily limiting. They serve to minimize the risk exposure of institutions rather than serve the public need. Consumers in many instances would prefer offices more conveniently located which could handle all of their financial needs at a single stop. Moreover, allowing nonbank intermediaries to offer typical consumer services would provide a significant offset to the increased concentration which has developed in the banking industry in recent years.

Implicit in these recommendations is the possibility that financial institutions would specialize by the type of customer served rather than by the type of asset acquired. Thrift institutions, for example, may specialize in family finance while commercial banks would focus on service to the business community. Such a shift would not occur quickly, but it would tend to move the U.S. financial system in the direction of its European counterparts.

The commission recommended broader powers for thrift institutions so that they would be able to compete more actively for funds during periods of restrictive monetary policy and thus smooth the cyclical flow of funds into the mortgage market. The commission also proposed removing interest-rate ceilings on mortgages, prohibiting points and discounts, and encouraging the development of both variable rate mortgages and a second market for conventional mortgages.

Removal of artificial restrictions on interest rate charges would probably prove beneficial since lenders have devised numerous methods of avoiding the intent of the regulations. Encouraging variable-rate mortgages would shift some of the risk presently borne by lenders to borrowers. If it resulted in a general lowering of interest rates, which is unlikely, the effects would be beneficial. However, most homebuyers are not sufficiently sophisticated in the workings of mortgage markets or in forecasting mortgage-rate movements to be able to evaluate the potential risks. If rates were to increase greatly, some homebuyers might experience severe financial difficulty either in meeting current payments or in achieving long range savings objectives. Moreover, lenders would have a natural preference for pushing variable rate mortgages when rates are low and insisting on flat rate mortgages with high prepayment penalties when rates are high. In the housing and construction markets, "competition" is frequently ineffective in protecting the interests of buyers.

A Variety of Subsidies

Had the commission's recommendations for the mortgage market stopped here, the report would have been strengthened. However, the commission also recommended a variety of consumer and lender subsidies. Congress was requested to consider an insurance program guaranteeing lenders a rate of return on holdings of long-term debt instruments whenever market rates rose above some level. For example, if the Treasury bill rate were to rise above the yield on previously negotiated mortgages, the federal government could pay lenders the rate differential. A tax credit on gross interest income from residential mortgages was recommended for investors in such loans. This credit would be available to lenders even if they did not increase mortgage lending. Finally, if the previous provisions were not sufficient to meet national housing goals, Congress should provide direct consumer subsidies.

These recommendations represent a very strong stimulus toward an already highly protected and subsidized industry. Moreover, they aim at the symptoms of the difficulties rather than the causes.

The problems experienced by the mortgage and construction markets in recent years are due to a variety of causes. Exceptionally high levels of interest rates have been fostered by continuing inflationary expectations, huge government deficits, and restrictive monetary policies. Had appropriate stabilization actions with greater emphasis on fiscal restraint been undertaken when initially required, the financial distortions of recent years might have been avoided. Furthermore, the rate of inflation in the price of new housing has exceeded price increases in other industries substantially. Many families have been priced out of the type of housing they anticipated. Progress toward stimulating housing production could be made by attacking the foundation of the problem. Attempting to mask past abuses through tax credits and subsidies will only lead to future difficulties.

Does the mortgage market really need subsidies of the sort proposed by the commission? Is the mortgage market the only industry with high social priority? What about loans for environmental problems? Small businesses and state and local governments are widely held to be discriminated against by restrictive monetary policies. Why not subsidize them or seek solutions to their problems? The demand for farm credit has been growing much more rapidly than the lending limits of most banks Why not assist the farmers? These questions are of a political nature and require sound answers, but the commission's report provides no solutions or direction In fact, many are not even mentioned. What is needed to solve these problems is the development of financial institutions and markets which would permit all sectors of the economy to compete equally for the limited supply of funds. In part, these goals could be reached through the development of national markets for a wider range of debt instruments. Subsidies and tax credits are a poor substitute for improving the allocation of resources.

Portfolio diversification is likely neither to increase nor smooth the cyclical flow of funds into the mortgage market The principal argument in favor of diversification is that it would permit thrift institutions to pay higher rates of interest and thus attract additional funds during periods of restrictive monetary policy.

Unless the increase in loanable funds, however, exceeds the expansion of nonmortgage loans, the ultimate effect would be a reduction in the supply of mortgage credit and an increase in mortgage interest rates.

The Hunt Commission recommended that all interest-rate ceilings on time and savings deposits be phased out over a 10-year period. A persuasive case can be made for removing interest rate ceilings on large time and savings accounts These funds are the most likely to be withdrawn when market rates exceed the ceilings. To impose interest rate ceilings on savings accounts under $100,000 discriminates against small savers, particularly during periods of high money market interest rates Unless it can be shown that the ceilings perform or could perform a useful function, economic welfare criteria suggest they should be abolished.

In recent years, particularly during periods of tight money, it has become increasingly popular to argue that interest rate ceilings are unnecessary, that they distort financial flows and reduce housing construction, and that they force higher money market interest rates Implicit in these arguments is the belief that competitive pressures will never force financial institutions to compete for funds by rapidly escalating rates payable on deposits or that such an event would not result in severe liquidity and earnings strains for large classes of institutions. However, one need look no further than 1966 when interest rate ceilings were temporarily ineffective to question this analysis.

The experiences of 1969 may not have been very comfortable for deposit institutions, but they largely occurred without the crisis atmosphere of 1966, despite much higher money market rates. If interest rate ceilings could be removed without serious adverse consequences, the result would be desirable. Predicting the likely effects, however, requires analysis and study which to date has not been performed. Consideration also needs to be given to the possibility that by altering rate differentials among depository institutions the monetary authority might be able to smooth the cyclically variable flow of loanable funds to alternative sectors of the economy.

Among the commission's recommendations is a proposal to abolish reserve requirements on all time and savings accounts If interest rate ceilings on these accounts were removed one might anticipate deposit rates would rise during periods of tight money and decline during periods of easy money. Thus as monetary policies became more restrictive funds would shift from demand to time deposits, releasing reserves and making possible an expansion of bank credit and the broad money supply. To prevent undesired credit and monetary growth, monetary policy would be forced to offset the potential expansion. The converse would occur during easy money periods The result could be to force wider fluctuations in money market interest rates and perhaps to accentuate the uneven impact of monetary policies on different sectors of the economy. To an extent these developments occur under present arrangements as funds shift between demand and time categories, but the effect would be magnified if reserve requirements on time and savings deposits were removed altogether.

Could Affect Credit Costs

Many of the Hunt Commission proposals are sound and merit adoption Examples would be relaxing some of the regulatory restraints on loans and investments; permitting thrift institutions to offer a full line of consumer oriented services, provided they are subject to the same rules and restrictions as commercial banks; further developing a secondary market for conventional mortgages. However, a gradual approach toward many of the broader recommendations would appear desirable in view of the somewhat uncertain consequences. Adoption of the proposals could have far reaching consequences on the cost and availability of different types of credit, the nature of competition among financial institutions, the allocation of resources, and the ability of the financial system to adapt to the changing needs of the country promptly and smoothly.

Nevertheless, the report is disappointing. If the proposals were to be fully implemented, the primary beneficiaries would be financial institutions and the construction industry. Lasting solutions to financial problems experienced by other sectors of the economy are not seriously considered and only a slight attempt is made to improve the integration of financial markets generally With little justification, equal treatment of financial institutions stops short of subjecting credit unions to the obligations and restrictions which would be experienced by other depository institutions Competition among financial institutions within geographic areas is emphasized rather than a continued development of a national and international network for transferring and allocating funds efficiently. Aside from the housing industry, the report gives little direction to financial institutions in solving national and regional financial problems or in paving the way to meet future needs in a capital short economy.

Mr. Knight is a financial economist.

Nixon Administration Readies Bank System Overhaul

By James L. Rowe Jr. Washington Post Staff Writer

The Washington Post, Times Herald (1959-1973); Jan 14, 1973;
pg. G2

Nixon Administration Readies Bank System Overhaul

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The Nixon administration is readying a legislative package designed to substantially overhaul the nation's banking system.

The package will have as its base, but not totally embrace, the recommendations of a presidential commission on "Financial Structure and Regulation," which reported in late 1971. That commission—commonly called the Hunt Commission after its chairman, retired West Coast businessman Reed O. Hunt—took as its premise the desirability of fostering increased competition among the various financial institutions in the nation.

To that end, the commission urged among other things that:

- Savings and loan associations be given the power to offer checking accounts, but only to individuals.
- Ceilings on interest rates that banks and savings and loans may pay on savings accounts be eliminated within 10 years.
- Thrift institutions (such as savings and loans) which act to expand into the transaction field of the more generalized financial institutions, be taxed in the same manner that commercial banks are taxed (read: more heavily).

In all, the Hunt Commission made about 90 major recommendations that touched on commercial banks, savings and loan associations, mutual savings banks (which are similar to S&Ls), credit unions, life insurance companies and trust departments of banks.

But to some critics of the commission, its recommendatons did not go far enough. To institute a truly competitive financial system, they say, there should be no barriers to entry

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(within certain limits of soundness) nor should there be interest ceilings.

Highly placed administration sources say that it is highly unlikely that the legislation will touch at all on the notion of branch banking—a prerogative that has been left to the states by law since the McFadden Act in the 1930s.

But whatever the legislation contains, its emergence has been delayed by the departure of Treasury Deputy Secretary Charles E. Walker. Walker, former executive director of the American Bankers Association, had shepherded the Hunt Commission proposals.

Restructuring a system as arcane as the nation's financial setup is an issue without "great political sex appeal," an administration official conceded. While deciding whether to fight or advocate the Hunt proposals may send shivers down the spine of an S&L president (should he give up his tax advantage for a chance at a larger share of the market) or a bank president (most of whom have taken the statesmanlike position of "welcoming" the competition provided all institutions are treated the same taxwise), most consumers have neither heard of the Hunt Commission nor, if they have, care much about it.

Proponents of the commission's proposals see little but good things for the consumer. Critics see very little change except a potential diversion of billions of dollars away from the housing market.

Savings and loan associations, which have traditionally paid higher savings rates than banks to attract deposits for the housing market, would be permitted to channel 10 per cent of their assets ($238 billion at the end of October) into consumer loans and another 10 per cent into equity investments.

That is about $50 billion now available for home mortgage lending that would likely go elsewhere, critics charge.

Banks have shied away from the housing market, basically because they do not like tying themselves into long-term loans with fixed percentages.

In 1945, savings and loan associations had $5.4 billion in mortgage loans outstanding, commercial banks $4.7 billion, and mutual savings banks $4.2 billion. In 1970, savings and loans had increased their mortgage lending thirty-fold to $150 billion and in another two short years had upped that by another $50 billion. At the end of October mortgages outstanding at S&Ls totalled $200 billion.

Bank real estate lending totalled $89 billion at the end of June, while mutual savings banks had $65.8 billion in mortgages at the end of September.

The Hunt Commission recognized the importance

CHARLS WALKER

of S&Ls to the housing market and recommended that the government interest banks, S&Ls and mutual savings banks in housing loans by providing either subsidies or tax credits for socially useful lending.

Proponents of the Hunt Commission argue that while S&Ls might pour less money into housing as a result of newly acquired lending powers, the commission proposals would induce banks to make more mortgage loans as well as moderate the intensely cyclical nature of home mortgage lending.

During periods of rising interest rates, the housing market is usually the first to feel the pinch. That is why thrift institutions are permitted to pay higher rates on savings than banks:

In 1966 and 1969, however, there was a substantial "disintermediation" of funds. It does S&Ls little good to pay 6 per cent on savings versus 4 per cent at banks, when savers put their money in neither.

The interest rate ceilings forced on banks and S&Ls kept these financial intermediaries (hence the term "disintermediation") from being able to attract enough funds to lend as savers and borrowers sidestepped the institutions in favor of direct dealing.

Commercial paper outstanding—essentially corporate IOUs—rose from $8.4 billion at the end of 1964 to $39.2 billion in mid-1970.

The housing market dried up. S&Ls had neither money to lend nor the inclination to do so to any extent: why lock yourself into a 30-year loan at 7 per cent if interest rates might rise to 8 per cent tomorrow?

Hunt Commission proponents contend that coupling subsidies or tax credits with consumer lending and broadened investment powers for S&Ls will stabilize the mortgage market.

The reasoning goes thus: Consumer loans have shorter maturities and rates are better able to be adjusted to current costs of acquiring capital.

Hence, in the absence of interest ceilings, and income from investments, S&Ls will better be able to attract savings. Further, S&Ls will have a new source of funds, checking accounts, for which they will not have to pay interest.

Hunt Commission advocates point to some other potentially worthwhile consumer benefits:

- Higher rates on savings as more institutions clamor for the same dollar.
- Acceleration of the move toward free checking accounts nationwide.
- Lower interest rates for borrowers—at least consumers—who could pick and choose among more institutions for their loans.

The commission proposals—and their impending inclusion in some sort of legislative reccommendation—has had the industry lobbyists active to be sure.

REP. WRIGHT PATMAN

The American Bankers Association, after an initial "wait and see" period, now professes to back the proposals provided the competition is taxed as heavily as commercial banks.

"I wouldn't say we're exactly eager," one banking official said. He said that banks would like to be able to pay the same savings rate that S&Ls pay, but noted that as part of the package banks will lose some of the checking account money that they now pay no interest on.

Neil McKay, senior vice-president and cashier of the First National Bank of Chicago, said he guessed the Hunt proposals would put on "some pressure," but said he was not worried.

The proposals will "put a premium on management," McKay said in a recent interview. "Banks are in a better position to manage the whole money transfer system than they (savings and loan associations) are."

Bankers in states which do not permit banks to have more than one office, however, are reassessing their position, at least partially as a result of Hunt Commission pressures.

Fifteen states, including Illinois and Texas, do not permit banks to operate under more than one roof. Sixteen restrict branching to some degree, while 20 permit statewide branching.

Branching laws lend themselves to peculiar inconsistencies. The nation's largest bank—Bank of America in San Francisco—has hundreds of offices throughout the state. The nation's eighth largest bank—Continental Illinois of Chicago—has one.

In Illinois, a coalition of rural banking interests has prevented the large Chicago banks from encroaching into rural districts by its so-called unit branching statute. Savings and loan associations in the state, however, are permitted to operate from more than one office. The Illinois Bankers Association has just reversed itself and now recommends that banks be permitted to branch.

While bankers are supporting the Hunt Commission because they feel they can handle the competition, savings and loan associations have been more reluctant. Reports have surfaced recently that S&L opposition may scuttle the Hunt proposals.

Savings and loan associations (as well as credit unions which pay no taxes at all) enjoy a decided advantage over commercial banks on the tax scene.

But federal officials discount the tenacity of S&L opposition. "Sure," one said, "I'd try to get all the marbles without giving up anything, but they know they can't do that. S&Ls are now beginning to be convinced that they'll need third party payments."

Third party payment today means essentially a checking account although bank credit cards are rapidly rising in importance.

By the end of the decade, the Federal Reserve Board has said, checks will be passe. And, in 20 years, even cash will be hard to pawn off on the local merchant. Most transactions will be dealt with by a special card that will be inserted in the merchant's computer hookup debiting the consumer's checking account and crediting the merchant's.

"To stay in the game, S&Ls will need a third party payment, and they know it," a knowledgeable federal official said.

Whatever support the Hunt Commission may generate, however, it has a long way to go before it becomes the law of the land.

"Before we can say 'go' on the substantive provisions, we have to get a tax package to accommodate it," one official said. He predicts that will take two years. After the tax package is worked out, he said, "It will be at least two years, maybe more before anything resembling the Hunt Commission (proposals) become the law of the land."

House Banking and Currency Committee chairman Wright Patman (D-Tex.) is known to be readying his own proposals for reforming the banking system—one that will put more emphasis on the housing market.

"My God," one federal official said, "even if all the vested interests—the industry, the administration, the regulatory agencies, Congress and consumers—agreed, this thing would take two years. They do not."

"Don't expect a full-service savings and loan before 1978," he cautioned.

SUPREME COURT OF THE UNITED STATES

DELAWARE, Plaintiff, v. ARKANSAS, et al., Defendants.	Nos. 22O145 & 22O146 (Consolidated)

EXPERT REPORT OF RONALD MANN

September 19, 2018

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I. INTRODUCTION AND SUMMARY OF REPORT

1. I have been asked to prepare an opinion regarding various aspects of the MoneyGram products at issue in this matter.

2. In general, subject to the assumptions described below, and as explained in more detail below, my opinion is as follows:

(a) Neither a bank nor MoneyGram is directly liable on the MoneyGram official checks evaluated in this report.

(b) Official checks differ from money orders in the indirect liability of banks to pay them and the terms and conditions that they bear on their face.

(c) The statutory reference to "third party bank checks" is obscure, and would not naturally be used to describe personal checks indorsed to third parties, but it could describe the checks that banks issue to pay bills for their customers.

II. BACKGROUND AND QUALIFICATIONS

3. Before explaining my opinion and the basis for it, I start with a brief discussion of my background and of the research that puts me in a position to offer the opinion below. In general, I am a law professor who specializes in the study of commercial law, with a focal emphasis on payment systems. At Appendix 2, I attach a resumé that includes a complete list of my academic publications and an abbreviated description of my employment history. I am being compensated at an hourly rate of $900 per hour. My compensation in this matter does not depend upon either the substance of my opinions or the outcome of this dispute.

4. I have provided expert reports, depositions, or testimony in litigation related to various aspects of business and consumer payment systems in numerous previous cases.[1] The attached resumé identifies all of my trial and deposition testimony in the last four years.

[1] District of Columbia v. Bank of America, N.A., Civil Division No. 2008 CA 007763 (D.C. Superior Ct. 2016); Heartland Payment Systems, Inc. v. Mercury Payment Systems, LLC, No. C 14-0437 (N.D. Cal. 2015); DB NPI Century City, LLC v. Legendary Investors Group No. 1, No. BC494921 (Super. Ct. Los Angeles County (Central) 2015); NML Capital, Ltd. v. Republic of Argentina, No. 08 Civ 6978 (S.D.N.Y. 2014); Rosewood Cancer Care, Inc. v. PNC Financial Services Group, Court of Common Pleas, No. 11944 CD 2010 (Indiana County, PA 2014); Saint Bernard School of Montville, Inc. v. Bank of America, Superior Court, No. CV-08-5006676-S (New London, CT 2012) (result affirmed on appeal at 312 Conn. 811 (2014)); Merrill Lynch v. Choy, FINRA Arbitration No. 09-06111 (Honolulu, HI 2011); Walker Digital v. Capital One Services, LLC, No. 1:10cv212 (JFA) (E.D. Va. 2010); Emmett v. Wachovia Securities, LLC, Court of Common Pleas, No. GD05-25678 (Allegheny County, PA 2008); FTC v. Neovi, Inc., Civil No. 06 CV 1952 (S.D. Cal. 2008) (result reported at 598 F. Supp,. 2d 1104 (S.D. Cal. 2008)); ACLU v. Gonzales, No. 98-CV-5591 (E.D. Pa. 2006) (result reported at 478 F. Supp. 2d 775 (E.D. Pa. 2007)); Wachtell v. Capitol One Financial Corp., 4th Judicial Dist. Ct., No. CV 0C 0304972D

5. I hold a B.A. (1978) from Rice University in History (Magna Cum Laude) and a J.D. (1985) from the University of Texas, where I was first in my class and managing editor of the *Texas Law Review*. I subsequently clerked for Joseph T. Sneed on the United States Court of Appeals for the Ninth Circuit and Lewis F. Powell, Jr. on the United States Supreme Court. I also served for three years as an Assistant to the Solicitor General in the United States Department of Justice.

6. I currently am the Albert E. Cinelli Enterprise Professor of Law at Columbia Law School, where I am the Co-Director of the Charles E. Gerber Program in Transactional Studies. I previously have held tenured positions at the law schools at the University of Texas, the University of Michigan, and Washington University in St. Louis. I also have taught courses in various aspects of commercial law as a visitor at Harvard Law School and at the Faculty of Law at Tokyo University.

7. Of relevance to this matter, the study of payment systems has been a focal point of my research and teaching for the last twenty years. I regularly have taught courses in payment systems and am the author of a widely adopted casebook on that subject (*Payment Systems and Other Financial Transactions* (6th ed. WoltersKluwer 2016)). Those materials are distinctive (as compared to most law school materials) for their relatively heavy emphasis on commercial practice, as opposed to statutory doctrine. The methodology for preparing (and updating) the course and casebook involves ongoing interviews with industry participants about their ordinary operating procedures and the reasoning that supports them.

8. I have published frequently in law reviews on subjects related to various aspects of modern payment systems. Papers in that line of work have appeared, among other places, in the *Michigan Law Review*, the *Texas Law Review*, the *Georgetown Law Journal*, the *UCLA Law Review*, and the *Lewis & Clark Law Review*. Details of those publications appear on the resumé attached to this report.

9. I served as Reporter for the Drafting Committee that prepared the two most recent sets of amendments to UCC Articles 3, 4, and 4A and presently serve as an ALI adviser to the committee considering further revisions to UCC Articles 3, 4, 8, and 9. I am a member of the American Law Institute and a conferee of the National Bankruptcy Conference. In recent years, I have been invited on three different occasions to serve as the moderator for the three-day annual meeting of the Financial Lawyers Conference in Ojai.

10. The analysis in my report reflects general familiarity with the customs and practices involved in the use and design of payment instruments, resulting from the academic studies and teaching activities summarized above.

(Idaho 2006); LaBarge Pipe & Steel Co. v. First Bank, No. 03CV382-C-M3 (M.D. La. 2005) (result reported at 550 F.3d 442 (5th Cir. 2008)); Shinitzky v. Boston Securities N.A., 15th Jud. Circuit Court, No. CL 00-2328 AJ (Palm Beach County, FL 2004).

III. FACTUAL BACKGROUND AND ASSUMPTIONS

11. In general, I have been asked to opine about the legal and practical attributes of a variety of instruments marketed by MoneyGram Payment Systems, Inc. ("MoneyGram") and distributed through various channels at financial institutions and retailers. My opinion rests on my review of samples of those instruments that appear in the record in this matter, viewed through the expertise and experience summarized above. The opinion that I provide below assumes that the samples I have reviewed accurately portray and represent the instruments in question; I have no reason to doubt the accuracy or representativeness of the samples I have reviewed.

12. Although the record includes quite a few samples, most seem to differ only in irrelevant details. For practical purposes, it is useful to discuss four distinct categories: agent checks, teller's checks, retail money orders, and agent check money orders.

13. In describing the basic features of those instruments, I identify the role of the various parties by the way in which they are described on the face of the instrument itself; applicable legal rules generally rely on indications apparent from the face of the instrument because those indications are the only information available to those that acquire the instrument.

A. AGENT CHECKS

14. The first product is the agent check; a representative example appears at MG0000004. The check would be purchased by a consumer from a bank selling the product, the so-called "agent" bank. The instrument states in small type just to the left of the top center of the instrument that the drawer of the instrument is MoneyGram. When purchased, an authorized officer of the agent bank signs at the bottom right-hand corner of the instrument. The agent bank (or the purchaser) would fill in the name of the party to be paid in the blank marked "pay to the order of." Finally, to obtain payment, the named payee presents the instrument to the drawee, indicated in small type just to the left of the top center of the instrument as First Interstate Bank in Montana.[2]

15. There apparently is some variation in this category in the delineation of the relation between the bank signing the check and MoneyGram. In at least one example in the documents that have been provided to me for review, there is no evidence on the face of the check that the bank signing the check acts as an agent of MoneyGram. Specifically, the item appearing at MG0002396 is captioned "OFFICIAL CHECK," lists Independent Bank at the top center of the item, and apparently bears an "authorized signature" from a responsible officer of Independent Bank affixed when the item is purchased. In contrast to the template discussed in the preceding paragraph (and other samples apparent in the record, such as the item appearing at DE0000220 (discussed in detail below)), nothing on the face of MG0002396 identifies Independent Bank as an agent of MoneyGram.

[2] As with any instrument, it would be up to the payee to decide whether it would seek payment by taking the instrument directly to the party on or through whom it is to be paid or instead by depositing it at the payee's own bank and allowing that bank to seek collection through ordinary banking channels.

B. TELLER'S CHECKS

16. The second product is the teller's check; a representative example appears at MG0000008. The check would be purchased by a consumer from a bank selling the product. The drawer of the instrument is the selling bank, as indicated just above the signature line in the bottom right-hand corner; it is apparent from the record that when this template is completed the full name of the selling bank is filled in above the signature line. *See* MG0002395 (instrument identifying "Elizabethton Federal Savings Bank" as the "drawer"). The instrument, though, also indicates that it is issued by MoneyGram. When purchased, an authorized officer of the agent bank (the drawer) signs at the bottom right-hand corner of the instrument. The agent bank (or the purchaser) fills in the name of the party to be paid in the blank marked "pay to the order of." Finally, to obtain payment, the named payee presents the instrument to the drawee, indicated in small type near the bottom left-hand corner of the instrument as a branch of the Bank of New York Mellon located in Massachusetts.[3]

C. RETAIL MONEY ORDERS

17. The third product is the retail money order; a representative example appears at MG002690. Its designation as a money order is apparent from the title in large-and-small capital letters to the right of center near the top of the image ("MONEY ORDER"). The issuer or drawer of the instrument is MoneyGram, indicated in small type near the lower left-hand corner of the instrument. The retail customer purchasing the money order signs for the drawer on the signature line on the lower right-hand corner. The purchaser identifies the name of the party being paid by filling in (or having the seller fill in) the blank marked "pay to the order of." Finally, to obtain payment, the named payee presents the instrument to Wells Fargo Bank, N.A., through whom the instrument is payable, as indicated in small type near the lower left-hand corner of the instrument.

D. AGENT CHECK MONEY ORDERS

18. The second group of documents are agent check money orders; a representative example appears at MG002704. Its designation as a money order is apparent from the title in capital letters near the top right-hand corner of the image ("AGENT CHECK MONEY ORDER"). The money order would be purchased from a bank selling the product – the so-called "agent" bank. The issuer or drawer of the instrument is MoneyGram, indicated in small type near the lower left-hand corner of the instrument. The retail customer purchasing the money order signs for MoneyGram on the signature line on the lower right-hand corner. The purchaser identifies the name of the party being paid by filling in (or having the seller fill in) the blank marked "pay to the order of." Finally, to obtain payment, the named payee presents the instrument to the drawee, indicated in small type near the bottom left-hand corner of the instrument as a branch of the Bank of New York Mellon located in Massachusetts.

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[3] The Declaration of Jennifer Whitlock accompanying MG0000004 and MG0000008 refers to both the agent check and the teller's check as a "MoneyGram Official Check." MG0000001. Following that usage, I use the term "official check" to refer to both MoneyGram agent checks and MoneyGram teller's checks.

IV. OPINION

19. In general, subject to the assumptions explained above and as explained in more detail below, my opinions are as follows:

(a) Neither a bank nor MoneyGram is directly liable on the MoneyGram official checks or MoneyGram money orders evaluated in this report.

(b) Official checks differ from money orders in the indirect liability of banks to pay them and in the terms and conditions that they bear on their face.

(c) The statutory reference to "third party bank checks" is obscure, and would not naturally be used to describe personal checks indorsed to third parties, but it could describe the checks that banks issue to pay bills for their customers.

A. NO RELEVANT ENTITY IS DIRECTLY LIABLE ON THE INSTRUMENTS IN QUESTION

20. 12 U.S.C. § 2503 establishes rules that determine which State is entitled to escheat the funds payable on any "money order, traveler's check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable." Of the four types of instruments discussed in Part III, I understand the retail money orders (discussed in subpart III(c)) and agent check money orders (discussed in subpart III(D)) to be money orders within the language of the statute and thus not a matter of dispute in this litigation. Application of Section 2503 to the remaining types of instruments (the agent checks discussed in subpart III(A) and the teller's checks discussed in subpart III(B)) depends in part upon whether "a banking or financial organization or a business association is directly liable" on the instrument in question. It is my opinion that no banking or financial organization or business association is liable on those instruments; the most common payment instrument on which such an entity is directly liable is a cashier's check.

21. As an introductory matter, I note that 12 U.S.C. § 2502 provides definitions of "banking organization," "financial organization," and "business association." A "banking organization" is "any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in the United States," and a "business association" is "any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals." I see no reason to doubt that MoneyGram is a business association and that the various banks that market the products and on which they are drawn qualify as banking organization. The only question, then, is whether any of those entities are directly liable on the instruments in question. I explain below why they are not.

i. General Principles of Liability on Instruments

22. Although the framework of obligations that the Uniform Commercial Code (the "UCC") prescribes for various types of checks might seem arcane at first glance, it reflects longstanding tradition and the need for those obligations to support practical use of the instruments to which they apply. Because that framework is central to the application of Section 2503, it is useful to summarize the general system before turning to the specific products that MoneyGram has marketed.

23. The starting point is an ordinary check written by a party with no connection to a bank. For such a check, the bank on which the check is drawn – the bank at which the check-writer has an account – has no obligation to pay the check. A moment's consideration shows why this should be so: if the bank on which the check was written was obligated to pay any check written by its depositor, then it would be exposed to losses whenever the depositor wrote checks that exceeded the balance of funds available in the depositor's account. Accordingly, UCC §§ 3-408 & 3-409 provide that the bank on which a check is drawn is not liable on any check until it agrees in writing to accept liability.[4]

24. To be sure, the bank would be liable to its customer for wrongful dishonor if it declined to pay a properly payable instrument presented in a timely manner without a stop-payment order against an account including sufficient funds. *See* UCC § 4-402. But that does not give the payee any rights to enforce the instrument against the check-writer's bank; as between the payee and the bank, the bank is free to decline payment for any reason or indeed for no reason at all.

25. Those rules were the same under the 1972 version of the UCC, in effect when Congress adopted Section 2503. *See* UCC § 3-409(1) (1972) ("A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee * * * , and the drawee is not liable on the instrument until he accepts it."); UCC § 4-402 (1972) ("A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item.").

26. In just the same way, the person that wrote the check – the "drawer" – has no direct liability on the instrument. That makes sense as a practical matter, because the drawer's intent in giving the check is that the person to which the check is given (the payee) will obtain payment by presenting the check to the check writer's bank. It is reasonable for the drawer to expect the payee to look first to the drawee bank, because in the ordinary course of business drawee banks honor far more than 99% of all checks presented to them. It is only in the rare case, when a drawee bank refuses to pay a check, that a drawer would expect the payee to seek recourse against the drawer. Again, the UCC implements that rule by providing in UCC § 3-414 that the drawer is liable only indirectly, contingent on the refusal of the drawee bank to honor the check.

27. That rule was the same under the 1972 version of the UCC. *See* UCC § 3-413(2) (1972) ("The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up.").

28. To put those rules in context, there is one common banking product on which a banking organization is directly liable – a cashier's check. The point of a cashier's check is to give the payee an enforceable assurance that a bank is directly obligated on the instrument, and the UCC's rules for cashier's checks illustrate what direct liability would mean in this context: "The

[4] I refer for convenience to the official text of the Uniform Commercial Code as currently promulgated by the American Law Institute and the Uniform Law Commission. The numbering and, in some cases, the phrasing of the provisions differ in some respects from State to State, but so far as I know all of the rules that I discuss in this report are substantively identical in all United States jurisdictions.

issuer of a * * * cashier's check * * * is obliged to pay the instrument * * * according to its terms."[5] UCC § 3-412.[6] The distinction between that rule and the liability of drawers on ordinary checks is the difference between the direct and unconditional liability of the issuer of a cashier's check and the indirect and conditional liability of the drawer of an ordinary check.

ii. Application to MoneyGram Products

29. Against that background, I turn now to the MoneyGram products described in Part III.

a. *Agent Checks*

30. The business entities involved in the agent check are the drawer (MoneyGram), the drawee (First Interstate Bank in the principal sample to which I refer for convenience), and the so-called "agent bank" that sells the instrument to the consumer. None of those entities is directly liable on the instrument.

31. First, the drawee is not directly liable because under UCC § 3-408 the drawee has no obligation to pay an instrument until it has accepted it. *See* UCC §§ 3-408 ("[T]he drawee is not liable on the instrument until the drawee accepts it.") & 3-409 (explaining that a drawee accepts an instrument by a signed agreement in which the drawee agrees to pay the instrument); *see also* UCC § 3-410(1) (1972) (defining acceptance as "the drawee's signed engagement to honor the draft as presented" and explaining that "[i]t must be written on the draft").

32. The status of the selling bank on those instruments is unclear, though the seller would not be directly liable in any of the relevant formats. In both the principal sample ('0004) and the variant ('2396), the seller signs the instrument in the lower right-hand corner, an action that ordinarily would justify treating the seller as the drawer. *See* UCC § 3-204 cmt. 1 ("[B]y long-established custom and usage, a signature in the lower right hand corner of an instrument indicates an intent to sign as the maker of a note or the drawer of a draft."); *see also* UCC § 3-402 cmt. (1972) (same). Yet both variants indicate in the fine print that MoneyGram is the drawer, a fact that could suggest that the seller should not be liable as the drawer. In any event, that question is irrelevant for present purposes because it is plain that the seller could be liable ***at most*** as a drawer. For the reasons explained above, the liability of the drawer under UCC § 3-414(b) is indirect, not

[5] The full text of § 3-412 reads:

> The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under Section 3-415.

[6] That rule was the same under the 1972 version of the UCC. UCC §§ 3-118(a) (1972) ("A draft drawn on the drawer is effective as a note."), 3-413(a) (1972) ("The maker * * * engages that he will pay the instrument according to its tenor at the time of his engagement * * * ."); *see* UCC § 3-412 cmt. 1 (comparing the 1972 provisions to current law).

direct. Specifically, the drawer is liable only "[i]f an unaccepted draft is dishonored." In context, what that means in either case is that the drawer would be obligated to pay the instrument only if it were first presented to the drawee and the drawee declined to pay it in a timely manner.

33. For similar reasons, the status of MoneyGram on the agent checks is unclear. On the one hand, both variants include marginal notations identifying MoneyGram as the drawer of the instrument. MoneyGram does not, though, sign either instrument, unless we regard the agent bank as signing as the agent of MoneyGram, a circumstance that would leave MoneyGram liable as the drawer of the instrument. *See* UCC § 3-402(a). That might make sense on the principal sample ('0004) but it would be harder to justify on a variant like '2396, which does not indicate any agency capacity for Independent Bank. In any event, in either case, MoneyGram is not directly liable because under UCC § 3-414(b), the liability of the drawer is contingent or indirect. Specifically, the drawer is liable only "[i]f an unaccepted draft is dishonored." In context, what that means is that the drawer would be obligated to pay the instrument only if it were first presented to the drawee and the drawee declined to pay it in a timely manner.

b. *Teller's Checks*

34. The business entities involved in the teller's check are the drawer (the institution selling the check), the issuer (MoneyGram), and the drawee (the Bank of New York Mellon). For reasons similar to those detailed above, none of those entities is directly liable on the instrument.

35. As with the agent checks, the drawer is not directly liable because under UCC § 3-414(b), the liability of the drawer is contingent or indirect. Specifically, the drawer is liable only "[i]f an unaccepted draft is dishonored." In context, what that means is that the drawer would be obligated to pay the instrument only if it were first presented to the drawee (the Bank of New York Mellon) and that bank declined to pay it in a timely manner.

36. The status of MoneyGram on the teller's check is unclear for reasons quite similar to those described in the discussion of agent checks. On the one hand, the instrument in its lower left-hand corner indicates that the instrument is "issued by" MoneyGram. On the other hand, the lower right-hand corner of the instrument indicates that the institution is the drawer of the instrument. Ordinarily, under UCC § 3-105, the issuer of a check is the drawer: "Issuer * * * means a * * * drawer of an instrument."[7] Because MoneyGram has not signed the instrument, it cannot be the drawer. In any event, even if MoneyGram were the issuer of the draft, it would at most have the liability of a drawer of the draft. For the reasons explained repeatedly in the preceding paragraphs, that would not make MoneyGram directly liable; it would have at most the indirect liability of a drawer.

37. As with the instruments discussed above, the drawee (Bank of New York Mellon in this case) is not directly liable because under UCC § 3-408 the drawee has no obligation to pay an instrument until it has accepted it. *See* UCC §§ 3-408 ("[T]he drawee is not liable on the

[7] The omitted text in UCC § 3-105 states that an issuer in some cases is the "maker" of an instrument, but that is irrelevant to any of the instruments discussed here, because "maker" is a term that applies only to notes. *See* UCC § 3-103(a)(7) ("'Maker' means a person who signs or is identified in a note as a person undertaking to pay").

instrument until the drawee accepts it.") & 3-409 (explaining that a drawee accepts an instrument by a signed agreement in which the drawee agrees to pay the instrument).

c. *Retail Money Orders*

38. The business entities involved in the retail money order are the drawer (MoneyGram), the agent that sells it, and the bank through which it is payable (Wells Fargo). For reasons quite similar to those repeated above, none of those entities is directly liable on those instruments.

39. As explained several times above, the drawer is not directly liable because under UCC § 3-414(b), the liability of the drawer is contingent or indirect. Specifically, the drawer is liable only "[i]f an unaccepted draft is dishonored." In context, what that means is that the drawer (MoneyGram) would be obligated to pay the instrument only if it were first presented to the drawee through Wells Fargo and the drawee declined to pay it in a timely manner.[8]

40. The agent is not directly liable because it is not a party to the instrument. Because the agent does not sign the instrument in any capacity, it can have no liability on it. *See* UCC § 3-401(a) ("A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument.").[9]

41. The party through which the item is payable has no liability because it has not signed it in any capacity. *See* UCC § 3-401(a) ("A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument."). Indeed, because the item is only "payable through" that bank, the entity is not even authorized to pay the instrument. *See* UCC § 4-106 ("If an item states that it is "payable through" a bank identified in the item, * * * the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item."); *see also* UCC § 3-120 (1972) ("An instrument which states that it is 'payable through' a bank * * * designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.").

[8] The retail money order template does not explicitly identify the drawee. Under UCC § 3-501 & -502, dishonor occurs only if the instrument is presented to the drawee. I note the requirement under Regulation CC that a bank arranging for checks on which it is the drawee to be payable through another bank must identify itself by name and location on the instrument. *See* 12 C.F.R. § 229.36(e). The only routing number that appears on the retail money order template is a routing number for Wells Fargo (the bank through which the money order is payable). That arrangement leaves open the possibility that MoneyGram is the intended drawee of the item, though the face of the item does not make that status explicit.

[9] That rule was the same under the 1972 version of the UCC. UCC §§ 3-118(a) (1972) ("No person is liable on an instrument unless his signature appears thereon.").

d. *Agent Check Money Orders*

42. The business entities involved in the agent check money order are the drawer (MoneyGram), the drawee (Bank of New York Mellon), and the agent. Again, as with the instruments discussed above, none of those entities is directly liable on those instruments.

43. First, the drawer is not directly liable because under UCC § 3-414(b), the liability of the drawer is contingent or indirect. Specifically, the drawer is liable only "[i]f an unaccepted draft is dishonored." In context, what that means is that the drawer (MoneyGram) would be obligated to pay the instrument only if it were first presented to the drawee (Bank of New York Mellon) and that bank declined to pay it in a timely manner.

44. Second, the agent is not directly liable because it is not a party to the instrument. Because the agent does not sign the instrument in any capacity, it can have no liability on it. *See* UCC § 3-401(a) ("A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument."). Indeed, because the instrument identifies the agent explicitly as an agent, it would have no liability on the instrument even if it had signed it; the signature of an agent for a disclosed principal creates liability only for the principal. *See* UCC § 3-402(b).[10]

45. Finally, the drawee (Bank of New York Mellon) is not directly liable because under UCC § 3-408 the drawee has no obligation to pay an instrument until it has accepted it. *See* UCC §§ 3-408 ("[T]he drawee is not liable on the instrument until the drawee accepts it.") & 3-409 (explaining that a drawee accepts an instrument by a signed agreement in which the drawee agrees to pay the instrument); *see also* UCC § 3-410(1) (1972) (defining acceptance as "the drawee's signed engagement to honor the draft as presented" and explaining that "[i]t must be written on the draft").

B. AGENT CHECKS AND TELLER'S CHECKS DIFFER FROM MONEY ORDERS IN IMPORTANT WAYS.

46. The previous section of the opinion discussed the extent to which a listed entity "is directly liable" on any of the MoneyGram products. This section discusses the extent to which agent checks and teller's checks are "similar" to money orders. I express no opinion on the legal question of precisely what degree of "similar[ity]" would be relevant under Section 2503. Rather, my purpose is to analyze practical ways in which the various products do and do not resemble each other.

i. Bank Liability

47. One notable difference between agent checks and tellers checks on the one hand and money orders on the other is that a bank ordinarily is indirectly liable on an agent check or a teller's check; ordinarily no bank is directly or indirectly liable on a money order. Having said

[10] That rule was the same under the 1972 version of the UCC. UCC § 3-403 & cmt. 3 (1972).

that, I discuss below the possibility that some of the MoneyGram agent checks do not involve even indirect liability on the part of a bank.

48. The commonplace distinction between the two groups of instruments follows directly from the discussion above regarding the liability of a drawer, which explained that the drawer is only indirectly liable for payment of an instrument. The corollary of that rule, though, is that the drawer can be called upon to pay in any case in which the drawee dishonors the instrument. What that means is that the payee that accepts a teller's check or an agent check ordinarily can be sure that it will be able to obtain payment from the bank that is the drawer of the instrument unless that bank fails before the instrument can be processed.

49. In the case of money orders, by contrast, no bank is directly or indirectly liable on the instrument, because the drawer of the instrument is MoneyGram, which is not a bank. As the discussion above illustrates, that is true for both retail money orders and agent check money orders. Given MoneyGram's substantial and longstanding financial position, the distinction between an instrument on which a bank is liable and an instrument on which MoneyGram is liable might seem irrelevant or technical at first glance. In the context of payments, though, that distinction is quite important, generally reflecting the reality that as a class the likelihood that a bank liable on an instrument will become insolvent before it is paid is quite remote, both because of the supervision of bank solvency by responsible regulators and because of the reality of bank liquidity. Because the solvency of entities that are not banks is much less regularized and reliably evident to the market, instruments on which banks are liable are treated in the marketplace quite differently than those on which no bank is directly or indirectly liable.

50. The distinction between instruments on which a bank is liable and those on which no bank is liable is important in a variety of contexts. For example, the UCC includes rules that govern the relationship between an instrument and the obligation for which the instrument is taken. Ordinarily, those rules provide that the obligation is suspended when the payee accepts the instrument and discharged only when the instrument is honored. So, for example, if a tenant gives its landlord a check to pay the rent, the obligation to pay that month's rent is suspended when the landlord receives the check and discharged only when the check is honored. The same rule would apply if the tenant paid the landlord with a money order. *See* UCC § 3-310(b).

51. The rule is different, however, for cashier's checks and teller's checks, on which a bank is directly or indirectly liable. If a party accepts one of those instruments, the obligation is discharged immediately. *See* UCC § 3-310(a). That rule by its terms applies to teller's checks and also applies to many of the agent checks at issue in this litigation,[11] because a bank signs those

[11] That rule is broader than it was in 1972. Like the current version of UCC § 3-310, UCC § 3-802 (1972) drew a distinction between instruments on which a bank is directly or indirectly liable and those on which a bank is not liable. The category of instruments that would produce an immediate discharge, though, was effectively limited to certified checks. *See* UCC § 3-802(1)(a) (1972) ("Unless otherwise agreed where an instrument is taken for an underlying obligation (a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor"); *see also* UCC § 3-802 cmt. 2 (suggesting that the purpose of the provision was to discharge the obligation owed by the drawer of a certified check). The provision was broadened to its current range of coverage in 1990. *See*

checks as the drawer (which makes them qualify as teller's checks for purposes of the UCC). *See* UCC § 3-104(h) (defining "teller's check" to include any item drawn by one bank on another bank). The only exception applies to the agent check templates completed in a way that designates the bank on the face of the instrument as the agent of MoneyGram. *E.g.*, DE0000220 (designating the institution signing as drawer ("Pennstar, Division of NBI Bank") as an "agent for MoneyGram"). For instruments of that type, the bank (signing as agent for a disclosed principal) would not be directly or indirectly liable on the instrument. *See* UCC § 3-402(a); *see also* UCC § 3-403 & cmt. 3 (1972) (same outcome under 1972 UCC).

52. A similar distinction appears in the rules that govern when an institution must make funds available against an item that a customer deposits. The low-risk rules in 12 U.S.C. § 4002(a)(2) (implemented in Regulation CC 12 C.F.R. § 229.10(c)), apply when customers deposit specific "low-risk" items in their account. The "low-risk" rules obligate banks to provide available funds sooner than they must provide available funds based on the deposit of ordinary personal checks. As relevant here, low-risk rules for cashier's and teller's checks obligate the bank at which the item is deposited to provide funds on the next business day, an obligation the depositary bank would not have if a customer deposited a personal check. With one narrow exception, though, those rules do not apply to money orders. *See* 12 U.S.C. § 4002(a)(2)(F) (low-risk exception for cashier's and teller's checks); 12 C.F.R. § 229.10(c)(1)(ii) (low-risk exception for Postal money orders), (v) (low-risk rule for cashier's and teller's checks). Thus, when a customer deposits a conventional money order like the MoneyGram products involved here, the customer is not entitled to available funds the next day; the customer would have that entitlement, though, if the customer deposited a cashier's check or a teller's check.

53. The exclusion of money orders from the low-risk rules (leaving them to the same treatment as personal checks) is not accidental. Commenters during the notice-and-comment development of Regulation CC requested an express exclusion of money orders from the low-risk rules, but the Federal Reserve declined, concluding that money orders differed so substantially from the covered instruments that their exclusion was clear even without an explicit mention in the regulation. Among other things, the Federal Reserve explained that money orders "are generally signed by the purchasing customer, not by an officer of the issuing bank and therefore are not cashier's checks subject to the [low-risk rules]." 53 Fed. Reg. 19372, 19396.

54. A similar distinction also has been implemented in the operation of Regulation D (12 C.F.R. Part 204), which governs the reserve requirements for depositary institutions. The regulation requires covered institutions to maintain reserves against any "deposit," a term that 12 C.F.R. § 204.2(a)(1) defines in detail. The concept is that the deposits a bank holds for its customers are effectively liabilities of the bank, against which the bank must maintain a reserve of assets adequate to satisfy the requests for withdrawal a bank might face on any particular day. Among other things, that definition includes any "outstanding teller's check, or an outstanding draft, certified check, cashier's check, money order, or officer's check drawn on the depository institution." The premise of that provision is that once a bank has issued an item of that nature, drawn on itself, the item effectively becomes a liability of the institution, against which it must

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UCC § 3-310(a) (1990); UCC § 3-310 cmt. 2 (1990) (comparing the 1990 revisions to the earlier statute).

maintain reserves. Importantly, it applies only to items on which the bank is directly or indirectly liable. Thus, it would include the teller's checks and official checks at issue here, but it would not include the MoneyGram money orders discussed above, because those items are not drawn by (or signed by) any depository institution.

55. As discussed above, MoneyGram also has an "agent check money order" product, on which a bank signs as an agent of MoneyGram. On such a product, as with the more conventional money orders discussed above, no bank would be directly or indirectly liable; rather, by signing as an agent of MoneyGram, the bank would sign only to create for MoneyGram the indirect liability as a drawer.

56. In sum, a variety of legal and practical considerations make an important distinction between instruments that a bank has signed on its own behalf (such as cashier's checks, teller's checks, and agent checks that do not indicate the bank's status as an agent), and those that no bank has signed (such as the money orders marketed by MoneyGram and the agent checks signed by the bank only as an agent).

ii. Contractual Conditions

57. Another distinction between teller's checks and agent checks on the one hand and money orders on the other appears in the terms and conditions printed on the back of a standard MoneyGram money order. Two important terms describe the limited recourse and the service charge.

58. The "Limited Recourse" term emphasizes the inability of the holder to force any financial institution to pay the instrument. Specifically, that term states in large bold-face type that the only "recourse" on the money order is "against the presenter. This means that persons receiving this money order should accept it only from those known to them and against whom they have effective recourse." That term appears to mirror the discussion above of the effect of the absence of any bank signature under the UCC. Apparently, MoneyGram thought it important to emphasize those attributes in writing on the instrument to ensure that disappointed purchasers would have little basis for claiming that they had been misled into thinking that the instruments were more robustly enforceable than they were.

59. The second term of relevance is the "Service Charge" term, which describes a service charge of one dollar and fifty cents per month if the money order is not used within one year of the purchase date. That has the effect of steadily absorbing the value of the money order if it is not promptly used. So far as I can tell from the instruments that I have seen, banks ordinarily do not impose such charges on the bank-signed MoneyGram instruments (the official checks), which instead retain their value until they escheat to the relevant jurisdiction. Thus, the MoneyGram official checks contain no such "Service Charge" term.

C. "THIRD PARTY BANK CHECK[S]" IS AN OBSCURE TERM, WHICH COULD REFER TO CHECKS THAT BANKS ISSUE TO PAY BILLS FOR THEIR CUSTOMERS.

60. Section 2503 excludes from the group of "other similar written instrument[s]" a category of instruments that the statute describes as "third party bank check[s]."

61. As a matter of history, of course, the source of the term seems clear. First, a November 1, 1973 letter from Edward Schmults, General Counsel of the Department of the Treasury, commenting on the bill that would become Section 2503, suggested that the legislation should exclude "third party payment bank checks." S. Rep. 93-505, 93rd Cong., 1st Sess. 5 (Nov. 15, 1973). Then, apparently in an imprecise response to the letter, the bill was amended to exclude "third party bank checks." *Compare* S. 1895 § 2, 93rd Cong., 1st Sess. (May 29, 1973) (no exclusion, predating the Schmults letter), *with* S. 2705 § 3, 93rd Cong., 1st Sess. (Nov. 15, 1973) (draft after the Schmults letter including exclusion for "third party bank check[s]"); S. 2705 § 3, 93rd Cong., 2nd Sess. (House version dated Mar. 4, 1974) (same). Neither the Schmults letter nor any other provision of the report or legislative history of which I am aware offers any guidance as to the product intended to be excluded.

62. As a matter of commercial law, the term is obscure. The modern UCC does not use the terms "bank check" or "third party check," much less the more specific terms "third party bank check" or "third party payment bank check." Nor am I familiar with either of those specific terms in the common parlance of industry professionals or literature. Similarly, the designation of the MoneyGram products as "official" checks is not a designation with a source in the modern UCC; thus it seems to me to bear only the general trade connotation of a check that is more reliable than a check that is not "official."[12]

63. Attempting to make some sense out of the term itself, the idea of a "bank check" logically suggests a check on which a bank is directly or indirectly liable. All checks are drawn on banks. *See* UCC § 3-104(f) (defining "check" as "(i) a draft * * * payable on demand and drawn on a bank or (ii) a cashier's check or teller's check"). So if the reference to "bank check" is to convey anything different from an unadorned reference to a "check," the most likely connotation would be a reference to a check issued by a bank as opposed to a garden-variety "check" issued by a person other than a bank.

64. Strong support for that idea comes from the text of the UCC at the time that Section 2503 was adopted, which used the terms "bank check" and "non-bank check" to distinguish between checks on which some bank is liable and those on which no bank is liable. *Compare* UCC § 4-211(1)(d) (1972) (requiring banks to accept as settlement "a cashier's check, certified check

[12] The term "official bank check" did appear in an early draft of what eventually became the 1990 revisions to UCC Article 3 and amendments to Article 4 (discussed in the next footnote). In that draft, the term was defined to include what are now known as teller's checks and cashier's checks. *See* UCC § 3-104(d) (1987 Exploratory Draft) (defining "official bank check" as "(i) a draft payable on demand drawn by a bank on another bank, or (ii) a draft payable on demand with respect to which the drawer and the drawee are the same bank or branches of the same bank"). That draft used the term in UCC § 3-310 in the same way that the current UCC refers to teller's checks and cashier's checks – to describe the instruments that discharge an obligation as soon as they are "taken" by the payee "as payment of an obligation." *Compare* UCC § 3-310(1) (1987 Exploratory Draft) *with* UCC § 3-310(a).

or other bank check or obligation") *with* UCC § 4-211(3)(b) (1972) (describing process for a bank that voluntarily has agreed to accept "a non-bank check or obligation").[13]

65. It is less clear what to make of the additional qualification that the exclusion refers to "third party" bank checks (or, in the phrasing of the Schmults letter, "third party payment" bank checks). The overwhelming majority of checks are written to "third parties," in the sense that they are written to a party distinct both from the party that writes the check and from the party on which the check is drawn. Similarly, the overwhelming majority of checks are written to make "payment" to that third party. To make sense of the reference to "third parties," logically there should be an additional party to the transaction beyond the payor, payee, and the payor's bank.

66. The statutory context also suggests an additional qualification in making sense of the term. Because "third party bank checks" (or "third party payment bank checks") are to be excluded from the category of "similar written instruments * * * on which a [listed entity] is directly liable," the relevant product should be a product on which some listed entity is directly liable. Because the excluded category is third party ***bank*** checks, logically it should be a product on which a bank is liable.

67. One possibility that is easy to discard is that the designation refers to a personal check (that is, a check drawn by an individual) that the payee has indorsed to a third party.[14] The discussion above suggests one obvious problem with application of that term to the scenario – why would anybody use the term "third party bank check" as opposed to the term "third party check" to refer to a check on which a bank has no cognizable role. More specifically, though, that application would make no sense in the context of Section 2503. The problem is that the escheating party has no way of telling if an instrument has been indorsed to a third party until the indorsed item is presented for payment. Section 2503, though, applies only to instruments that are not ever presented for payment. Thus, to read the statutory reference to "third party bank checks" as excluding only indorsed checks is to read it as excluding checks to which Section 2503 would not apply in any event.

68. Another possibility, mentioned in a September 29, 2015 letter from David Gregor, the Delaware State Escheator (ALF00002365), is that the term refers to teller's checks. That makes sense of the "bank check" part of the term – because a teller's check is a check that is drawn by a bank. It treats the "third party" portion of the term as reflecting the difference between the bank that draws a check and the bank on which the check is drawn, which means that the instrument involves three parties. That is a possible interpretation, though the use of "third party" to indicate a difference between the identity of the issuer and the drawee seems a little odd; that term usually refers to checks that end up being paid to a party distinct from the original parties to the check transaction. Moreover, as explained above, a teller's check is not a check on which a

[13] The references to "bank checks" and "non-bank checks" were removed in the 1990 version of Article 4, which substituted references to cashier's checks and teller's checks, terms added at the same time to UCC Article 3. *See* UCC §§ 3-104(g) & (h) (1990) (definitions of cashier's check and teller's check), 4-213 (1990) (replacing UCC § 4-211 (1978)).

[14] Pennsylvania suggested that possibility in its May 30, 2017 "Bench Memorandum on the Disposition of Abandoned Money Orders and Traveler's Checks Act."

bank is directly liable; it is a bit odd, then, to include a phrase excluding teller's checks from a group of instruments on which a financial institution "is directly liable."

69. Recognizing the reality that it may be difficult to understand precisely what Schmults (or Congress) intended by the term at the time, another possibility is that the term refers to the checks that banks write at the direction of their customers through their bill-payment services. For several decades, banks have offered bill-payment services, under which banks pay bills to identified payees at the request of their customers. Traditionally, banks made those payments either by making ACH transfers (which are quite inexpensive) to the identified payees if possible, or by issuing paper checks (which are much more expensive) to payees for which it is not practical to complete an ACH transfer. In recent years, banks complete an increasing share of those payments by ACH transfers.

70. In the early years of those products, however, the banks of customers commonly effected a large share of the payments by issuing paper checks. Conventionally, those checks were signed (and thus issued by) the customer's bank, and drawn on the same bank. Thus, though in my experience they have not been issued on the common forms for cashier's checks (which state prominently that the instrument is a cashier's check), they are cashier's checks in legal contemplation (in the same way that the agent checks described above are teller's checks in legal contemplation even if they do not bear that designation on their face). *See* UCC § 3-104(g) (defining "cashier's check" as "a draft with respect to which the drawer and drawee are the same bank or branches of the same bank"). Because those checks are checks on which a bank is directly liable, and because they involve an additional party not present at the issuance of the check, they meet the basic requirements of a sensible interpretation of the reference in Section 2503 to a "third party bank check."

V. CONCLUSION

71. Because discovery is continuing as of the date of this report, I expect that I will continue to review documents and testimony related to the topics discussed in this report. Accordingly, I reserve the right to supplement my report based on materials not available at the time I prepared it, including any reports that other experts might submit.

RONALD MANN

APPENDIX – CURRICULUM VITAE

RONALD MANN

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ACADEMIC APPOINTMENTS:

Albert E. Cinelli Enterprise Professor of Law (2011-date)

Co-Director, Charles E. Gerber Program in Transactional Studies, Columbia Law School (2007-date)

Ben H. & Kitty King Powell Chair in Business & Commercial Law, University of Texas School of Law (2004-2007)

William Stamps Farish Professor in Law, University of Texas School of Law (2002-2004)

Professor of Law, The University of Michigan Law School (1999-2002)

Assistant Professor of Law, The University of Michigan Law School (1997-1999)

Professor of Law, Washington University School of Law (1997)

Associate Professor, Washington University School of Law (1994-1997)

OTHER LEGAL EMPLOYMENT

Law Clerk to Judge Joseph T. Sneed, United States Court of Appeals for the Ninth Circuit, San Francisco, California (1985-1986)

Law Clerk to Justice Lewis F. Powell, Jr., United States Supreme Court, Washington, D.C. (1986-1987)

Assistant to the Solicitor General, United States Department of Justice, Washington, D.C. (1991-1994) (argued eight Supreme Court cases and wrote briefs on the merits in forty Supreme Court cases)

Office of the Independent Counsel (1998-2000) (appellate litigation of various matters, including *United States v. Hubbell*, 530 U.S. 27 (2000))

Dow, Cogburn & Friedman (1987-1991) (real estate and commercial law)

SCHOLARLY WORKS:

Books:

BANKRUPTCY AND THE U.S. SUPREME COURT (Cambridge U. Press 2017)

CHARGING AHEAD: THE GROWTH AND REGULATION OF PAYMENT CARD MARKETS AROUND THE WORLD ***"Winner of 2006 annual book prize from the American College of Consumer Financial Services Lawyers"*** (Cambridge U. Press 2006)

COMMERCIAL FINANCE (Foundation 2017)

PAYMENT SYSTEMS AND OTHER FINANCIAL TRANSACTIONS (6th ed. Wolters Kluwer 2016) (5th ed. 2011; 4th ed. 2008; 3rd ed. 2006; 2nd ed. 2003; 1st ed. 1999)

ELECTRONIC COMMERCE (4th ed. Wolters Kluwer 2011) (3rd ed. 2008; 2nd ed. 2005; 1st ed. 2002) (with Jane K. Winn)

COMMERCIAL TRANSACTIONS: A SYSTEMS APPROACH (6th ed. Wolters Kluwer 2016) (5th ed. 2012; 4th ed. 2009; 3rd ed. 2006; 2nd ed. 2003; 1st ed. 1998) (with Robert M. Lawless, Lynn M. LoPucki, Elizabeth Warren & Daniel Keating)

COMPREHENSIVE COMMERCIAL LAW: STATUTORY SUPPLEMENT (Wolters Kluwer 2003-2017) (with Elizabeth Warren & Jay Lawrence Westbrook)

Articles:

Balancing Bankruptcy and Environmental Law: Midlantic National Bank v. New Jersey Department of Environmental Protection, 42 J. SUP. COURT HIST. 101 (2017)

Putting Stored Value Cards in Their Place, 18 LEWIS & CLARK L. REV. 989 (2014) (with Liran Haim)

A Fresh Look at State Asset Protection Trust Statutes, 67 VAND. L. REV. 1741 (2014)

The Idiosyncrasy of Patent Examiners: The Effects of Experience and Attrition, 92 TEXAS L. REV. 2149 (2014)

Assessing the Optimism of Payday Loan Borrowers, 21 SUP. CT. ECON. REV. 105 (2013)

After the Great Recession: Regulating Financial Services for Low- and Middle-Income Communities, 69 WASH. & LEE L. REV. 729 (2012)

A New Look at Patent Quality: Relating Patent Prosecution to Validity, 9 JOURNAL OF EMPIRICAL LEGAL STUDIES 1 (2012) (with Marian Underweiser)

Anticompetitive Regulation in the Payment Card Industry, 7 COMPETITION POLICY INTERNATIONAL, Autumn 2011, at 44.

Adopting, Using, and Discarding Paper and Electronic Payment Instruments: Variation by Age and Race, Federal Reserve Bank of Boston Public Policy, Discussion Paper No. 11-2 (2011)

Saving up for Bankruptcy, 98 GEO. L. J. 289 (2010) (with Katherine Porter)

Making Sense of Nation-Level Bankruptcy Filing Rates, in CONSUMER CREDIT, DEBT AND BANKRUPTCY: COMPARATIVE AND INTERNATIONAL PERSPECTIVES 225 (J. Niemi-Kiesiläinen et al., eds., 2009)

Patterns of Credit Card Use Among Low- and Moderate-Income Households, in INSUFFICIENT FUNDS 257 (M. Barr & R. Blank eds., 2009)

A Requiem for Sam's Bank, 83 CHI.-KENT L. REV. 953 (2008)

Just One Click, 108 COLUM. L. REV. 984 (2008) (with Travis Siebeneicher)

The Disputed Quality of Software Patents, 85 WASH. U. L. REV. 297 (2007) (with John R. Allison)

Software Patents, Incumbents, and Entry, 85 TEXAS L. REV. 1579 (2007) (with John R. Allison & Abe Dunn)

The Supreme Court, the Solicitor General, and Bankruptcy: BFP v. Resolution Trust Corporation, in BANKRUPTCY STORIES 77 (Robert K. Rasmussen ed. 2007)

Just Until Payday, 54 UCLA L. REV. 855 (2007) (with Jim Hawkins)

Patents, Venture Capital, and Software Startups, 36 RESEARCH POL'Y 193 (2007) (with Thomas W. Sager)

Bankruptcy Reform and the "Sweat Box" of Credit Card Debt, U. ILL. L. REV. 375 (2007)

"Contracting" for Credit, 104 MICH. L. REV. 899 (2006), *excerpted version published in* BOILERPLATE: THE FOUNDATION OF MARKET CONTRACTS 106 (2007)

The Commercialization of Open-Source Software: Do Property Rights Still Matter?, 20 HARV. J. L. & TECH. 1 (2006)

Optimizing Consumer Credit Markets and Bankruptcy Policy, 7 J. THEORETICAL INQUIRIES IN LAW 395 (2006)

The Promise of Internet Intermediary Liability, 47 WILLIAM & MARY L. REV. 239 (2005) (with Seth Belzley), updated and abbreviated version published as *Emerging Frameworks for Policing Internet Intermediaries*, J. INTERNET L., Dec. 2006, at 3

Making Sense of Payments Policy in the Information Age, 93 GEO. L. J. 633 (2005)

Do Patents Facilitate Financing in the Software Industry?, 83 TEXAS L. REV. 961 (2005), summarized and updated in WORKING WITHIN THE BOUNDARIES OF INTELLECTUAL PROPERTY: INNOVATION POLICY FOR THE KNOWLEDGE SOCIETY 295 (Rochelle Dreyfuss et al., eds., 2009)

An Empirical Investigation of Liquidation Choices of Failed High-Tech Firms, 82 WASH. U. L. Q. 1375 (2004)

Contracts – Only with *Consent*, 152 U. PA. L. REV. 1873 (2004)

The Rise of State Bankruptcy-Directed Legislation, 25 CARDOZO L. REV. 1805 (2004)

Regulating Internet Payment Intermediaries, 82 TEXAS L. REV. 681 (2004)

Credit Cards and Debit Cards in the United States and Japan, 55 VAND. L. REV. 1055 (2002) – shorter version published at 20 MONETARY & ECON. STUDIES 123 (2002); excerpted as *Credit Cards in the United States and Japan*, LAW QUADRANGLE NOTES, April 2001, at 81

Information Technology and Non-Legal Sanctions in Financing Transactions, 54 VAND. L. REV. 1627 (2001) – excerpted in Japanese as *IT to Yuushi Torihiki ni okeru Ho ni yoranai Sankushon* (*Non-Legal Sanctions in IT Finance Transactions*), 1193 JURISUTO 72 (2001)

The Role of Letters of Credit in Payment Transactions, 98 MICH. L. REV. 2494 (2000) – reprinted at 2001 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE, 117; excerpted versions appear as *Discrepancies in Presentations Against Commercial Letters of Credit*, DOCUMENTARY CREDIT WORLD, Nov./Dec. 2000, at 21; and *Point of View: Ronald J. Mann Wonders Why, in View of High Discrepancy Rates, Business Continues to Use Letters of Credit*, DOCUMENTARY CREDITS INSIGHT, Winter 2001, at 3-4; and *Just Can't Break the Habit*, TRADE & FORFAITING REV., Apr. 2001, at 20-21

Secured Credit and Software Financing, 85 CORNELL L. REV. 134 (1999)

Verification Institutions in Financing Transactions, 87 GEO. L. J. 2225 (1999)

Strategy and Force in the Liquidation of Secured Debt, 96 MICH. L. REV. 159 (1997)

The Role of Secured Credit in Small-Business Lending, 86 GEO. L. J. 1 (1997) – reprinted at 40 CORP. PRACTICE COMMENTATOR 81 (1998); excerpted in LAWLESS, LOPUCKI & WARREN, SECURED CREDIT (6th ed. 2016); included in 10 Best Corporate and Securities Articles (selected by *Corporate Practice Commentator* for 1998)

Searching for Negotiability in Payment and Credit Systems, 44 UCLA L. REV. 951 (1997)

Explaining the Pattern of Secured Credit, 110 HARV. L. REV. 625 (1997) – awarded the 1997-98 Grant Gilmore Award by the American College of Commercial Finance Lawyers

The First Shall Be Last: A Contextual Argument for Abandoning Temporal Rules of Lien Priority, 75 TEXAS L. REV. 11 (1996)

Bankruptcy and the Entitlements of the Government: Whose Money Is It Anyway?, 70 N. Y. U. L. REV. 993 (1995)

RECENT INVITED PRESENTATIONS:

Bankruptcy and the Supreme Court: Columbia (March 2015); Michigan (September 2014)

Patents in the Supreme Court: New York State Bar Association Annual Meeting (spring 2015); Supreme Court Intellectual Property Review, Chicago-Kent (fall 2014)

Patent Quality and Policy: Texas Law Review IP Symposium (January 2014); Empirical Patent Law Conference (September 2013)

Consumer Regulatory Policy: Harvard Law School, Program on International Financial Systems (March 2015); Tokyo University Faculty of Law (June 2014); Columbia Business School Conference on Mobile Payments and Virtual Currencies (April 2014); Vanderbilt Law School (February 2014); CFPB (September 2013)

Financial Law Conference – Seminar Moderator (March 2013, March 2006)

PROFESSIONAL AFFILIATIONS:

American Law Institute (member)
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SCOTUSBlog, IP and Banking Law Commentator
Reporter, Amendments to UCC Articles 3, 4, and 4A (2000-2003)
Member, ALI Advisory Group on UCC and Holder in Due Course Policy (2014)
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J.D. 1985, University of Texas at Austin
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LANGUAGES: Greek, Latin, Biblical Hebrew, Old English

CONSULTING ACTIVITIES:

Trial and Arbitration Testimony

- Residential Capital, LLC v. UMB Bank, N.A. (In re Residential Capital, LLC), Case No. 12-12020, Adv. Case No. 13-01343 (Bankr. S.D.N.Y. 2013) – interpretation of security agreement and indenture (preceded by expert report and deposition), successful result reported at 501 B.R. 549 (Bankr. S.D.N.Y. 2013)

- Saint Bernard School of Montville, Inc. v. Bank of America, Superior Court, No. CV-08-5006676-S (New London, CT 2012) – check fraud dispute involving employee defalcation (preceded by deposition), successful result affirmed on appeal at 312 Conn. 811 (2014)

- Patiomats.com, LLC v. Keeco, LLC, AAA Arbitration (Tampa, FL 2012) – sale of goods dispute regarding credit terms under UCC Article 2

- Merrill Lynch v. Choy, FINRA Arbitration No. 09-06111 (Honolulu, HI 2011) – Action to enforce note; testimony regarding negotiability, completeness, and tender

- ACLU v. Gonzales, No. 98-CV-5591 (E.D. Pa. 2006) -- Challenge to constitutionality of statute regarding online pornography (preceded by expert report and deposition), successful result reported at 478 F. Supp. 2d 775 (E.D. Pa. 2007), *aff'd*, *ACLU v. Mukasey*, 534 F.3d 181 (3rd Cir. 2008)

- Application of AEP Texas Central Company, Texas PUC Docket No. 31056 (2005) – Regulatory proceeding to set fees following deregulation (preceded by expert report)

- Ann Arbor (ca. 2001) – State court case involving challenge to federal bankruptcy proceeding (preceded by deposition)

- St. Louis (ca. 1996) – State court case involving effect of foreclosure on a hotel (preceded by deposition)

Depositions

- In re Think Finance, LLC, Case No. 17-33964 (Bankr. N.D. Tex. 2018) – nature of small-dollar installment loan transactions (preceded by expert reports)

- Peabody Energy Corp. v. Citibank, N.A. (In re Peabody Energy Corp.), Case No. 16-42529-399, Adv. Proceeding No. 16-04068-399 (Bankr. E.D. Mo. 2016) – common understanding of indenture (preceded by expert report)

- DB NPI Century City, LLC v. Legendary Investors Group No. 1, No. BC494921 (Super. Ct. Los Angeles County (Central) 2015) – dispute over effect of draft on letter of credit

- Walker Digital v. Capital One Services, LLC, No. 1:10cv212 (JFA) (E.D. Va. 2010) – patent infringement action involving patent on credit card customization (preceded and followed by expert report)

- Acosta v. Trans Union, LLC, No. CV06-5060 SJO (C.D. Cal. 2007) – Class action related to practices of credit reporting agencies regarding bankruptcy discharge (preceded by expert report)

- Wachtell v. Capital One Financial Corp., 4th Judicial Dist. Ct., No. CV 0C 0304972D (Idaho 2006) – Contract case related to data-analysis product developed by credit-card issuer (preceded by expert report)

- Shinitzky v. Boston Securities N.A., 15th Jud. Circuit Court, No. CL 00-2328 AJ (Palm Beach County, FL 2004) – Dispute involving error in wire transfer

- St. Louis (ca. 1997) – State court malpractice case (consumer bankruptcy)

Expert Reports

- Commonwealth of Pennsylvania v. Think Finance, Inc., Civil Action No. 14-cv-7139 (E.D. Pa. 2018) – nature of small-dollar installment loan transactions

- In re Essar Steel Algoma, Inc., No. 15-CV-0011169-00CL (Commercial List, Ontario Superior Court of Justice 2016) – interpretation of intercreditor agreements

- District of Columbia v. Bank of America, N.A., Civil Division No. 2008 CA 007763 (D.C. Superior Ct. 2016) – check fraud dispute involving employee defalcation

- Heartland Payment Systems, Inc. v. Mercury Payment Systems, LLC, No. C 14-0437 (N.D. Ca. 2015) – dispute between two merchant acquirers

- Overseas Shipholding Group, Inc. v. Proskauer Rose, LLP, No. 650765/2014 (N.Y. Sup. Ct. 2015) – interpretation of liability provisions of indenture

- SPV OSUS Ltd. v. HSBC Inst'l Trust Services (Ireland) Limited, No. 2014/1026 (High Court, Ireland 2015) – assessing whether assignment of claim was champertous, successful result reported at [2015] IEHC 602 (High Court of Ireland)

- *In re* DTEK Finance B.V., No. 2569 of 2015 (High Court of Justice, Chancery Division, Companies Court, U.K. 2015) – interpretation of indenture, availability of recognition and relief under Chapter 15, comity to foreign judgments

- Kaupthing hf. v. Credit Suisse Securities (Europe) Limited (and related cases), No. 70/2012 (Reykjavik District Court 2014-15) – multiple reports regarding effect of purchases of securities by issuer under indenture, New York law and UCC Article 8; avoidance actions in Chapter 11, Chapter 15, and FDIC receiverships, successful results reported in Judgment of

the District Court of Reykjavík of 3 May 2016 in Case No. E-2742/2012 (relying on my report) and 10 June 2016 in Case No. E-2760/2012

- U.S. Bank Nat'l Ass'n v. Wilmington Savings Fund Society, FSB (In re MPM Silicones, LLC), Case No. 14-22503, Adv. Proc. No. 14-08238 (Bankr. S.D.N.Y. 2014) – interpretation of indenture

- NML Capital, Ltd. v. Republic of Argentina, No. 08 Civ 6978 (S.D.N.Y. 2014) – dispute over acceptance and rejection of wire transfers

- Rosewood Cancer Care, Inc. v. PNC Financial Services Group, Court of Common Pleas, No. 11944 CD 2010 (Indiana County, PA 2014) – dispute over processing and payment of checks

- Tarkay v. Park West Galleries, AAA Arbitration (Miami, FL 2014) – interpretation of a contract for the exploitation of works of art

- Sweet v. PNC Bank, Court of Common Pleas, No. 2013-14 (Washington County, PA 2013) – UCC Article 3 question about bank's release of funds in account owned by child "c/o" parent

- Greene v. Georgia Cash America, Inc., No. 2004A 7104-6 (Cobb County, GA 2013) – analysis of payday lending transactions

- Union Bank of California, N.A. v. CBS Corporation, No. 08 CIV 8362 (D. Nev. 2009) – UCC Article 8 question related to rescission of funds transfer

- Stewart Title Guaranty Co. v. Arvis C. & Anna L. Forrest Trust, No. 07-cv-01342 (D. Nev. 2009) – agency question in title insurance dispute

- Emmett v. Wachovia Securities, LLC, Court of Common Pleas, No. GD05-25678 (Allegheny County, PA 2008) – dispute about propriety of bank's reliance on check endorsement

- FTC v. Neovi, Inc., Civil No. 06 CV 1952 (S.D. Cal. 2008) – enforcement action related to Internet check product, successful result reported at 2008 U.S. Dist. LEXIS 2230 (S.D. Cal.), 598 F. Supp. 2d 1104 (S.D. Cal. 2008), *reconsideration denied,* 2009 U.S. Dist. LEXIS 649 (S.D. Cal. 2009), aff'd, 2010 U.S. App. LEXIS 9888 (9th Cir.)

- Levine v. DSW, Inc., Court of Common Pleas, No. 586371 (Cuyahoga County, OH 2006) – Class action related to payments data breach at large retailer

- LaBarge Pipe & Steel Co. v. First Bank, No. 03CV382-C-M3 (M.D. La. 2005) – Dispute involving failure to honor letter of credit (successful summary judgment reversed on other grounds at 550 F.3d 442 (5th Cir. 2008))

- United States v. Tucker, No. 4:01 CR 89 (N.D. Tex. 2005) – 2255 motion related to financial crimes convictions involving security interests in financial assets