

Unclaimed Property Round Up

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The battle over unclaimed property continues to spawn increased litigation and regulatory activity.

Litigation Highlights In December 2013, a West Virginia court dismissed 63 lawsuits brought by the Treasurer of the State of West Virginia (Treasurer) against life insurance companies doing business in West Virginia. The court rejected the Treasurer's attempt to accelerate when a life insurer's obligation to escheat policy proceeds arises. The lawsuits sought to create a duty on the insurance industry to search public records, such as the Social Security Administration's Death Master File (DMF), for deceased policyholders, even where the insurer received no claim or notice of the insured's death. The Treasurer alleged that insurers violated the Unclaimed Property Act (UPA), underreported abandoned property, and breached duties of good faith and fair dealing by failing to conduct annual searches of the DMF or similar databases for deceased policyholders. The court held that the viability of the Treasurer's claims raised a threshold legal question: whether "the UPA creates a statutory duty obligating life insurance companies to periodically search the DMF or other similar database to determine if any of their policy holders have died." **The court ruled that no such duty exists under West Virginia law, rejecting the Treasurer's arguments that the UPA created general duties to act with "good faith" and pursuant to "reasonable commercial standards" which, in turn, required insurers to conduct annual DMF searches.** Finally, the court found that recent legislation imposing DMF or similar search requirements upon life insurers supported its finding that no such duty existed under the current UPA. The Treasurer filed a notice of appeal to the Supreme Court of West Virginia on January 24, 2014. Elsewhere, unclaimed property litigation is rising. The Controller of the State of California filed separate actions against four insurers and their subsidiaries accusing them of failing to use the DMF to determine if life insurance benefits were payable. The Controller seeks injunctive relief against several of the companies for their alleged failure to cooperate with audits conducted by Verus Financial LLC. Most of these actions are in the preliminary pleading stages, although the Superior Court granted a motion for preliminary injunction filed by the Controller, requiring an insurer to turn over in-force life insurance policyholder records related to the Verus unclaimed property audit. The insurer has appealed the ruling. The industry is also carefully watching several actions pending in Florida.

Legislative and Regulatory Updates Multiple carriers entered into settlements of multi-state unclaimed property examinations in late 2013 and early 2014. In December 2013, the U.S. Government Accountability Office (GAO) released its final report on the DMF, which raised numerous concerns and questioned the "accuracy and usefulness" of its data. The report further noted that the SSA does not verify all death reports before including them in

the DMF and found that its "methods for processing death reports may result in inaccurate, incomplete, or untimely information for users of its death data," which "could lead to improper payments if benefit-paying agencies rely on this data." Federal legislation imposing restrictions on DMF access was subsequently enacted in December 2013. The legislation prohibits disclosure of information contained in the DMF for three years following an individual's death, unless the person seeking the information is certified under a program to be established by the Secretary of Commerce. To be eligible for certification they must have a legitimate fraud prevention interest or business purpose in accessing the information, and established procedures to safeguard the information. In early 2014, several states, including Indiana, Iowa, Mississippi, Oklahoma, Pennsylvania, and Rhode Island, introduced legislation requiring insurers to undertake routine DMF searches, a sure sign that states have not relented in their fight to accelerate escheatment of unclaimed property.

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