

A Constitutional Challenge to Florida's New Unclaimed Property Act Amendments

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In April, Florida amended its Disposition of Unclaimed Property Act (“Act”) to require life insurers to perform Death Master File (DMF) searches for all policies issued since 1992. The amended Act also provides that a DMF match creates a presumption of death, which starts the Act’s unclaimed property reporting timetable based on date of death. By contrast, Florida law has long required insurance policy forms to state that death benefits are not due and payable until after the insurer receives due proof of death. During the legislative process, the insurance industry argued the Act would unconstitutionally apply retroactively. Seeking to bulletproof the new law against this challenge, the Florida Legislature stated in the Act, “The amendments made by this act are remedial in nature and apply retroactively.” Four life insurers, led by United Insurance Company of America, immediately sued Florida CFO Jeff Atwater and Florida’s Department of Financial Services to invalidate the Act as violating the Florida Constitution’s due process requirements and its prohibition against impairment of contracts. The insurers also asked the court to enjoin the Act’s retroactive enforcement. Three of these four insurers previously sued to invalidate a 2013 Kentucky law that also retroactively required DMF searches and used date of death as the unclaimed property reporting trigger. At trial, a Kentucky court found the law was “remedial” and thus could be applied retroactively, and that it did not impair vested contractual rights. A Kentucky appeals court reversed, finding the new law “substantive,” not “remedial,” because it shifted the burden to the insurer to obtain evidence of death following a DMF match, which also commenced the time for payment. Having reached that conclusion, the appellate court did not address the constitutional “impairment” issue. How Florida’s courts resolve these issues remains to be seen.

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