

# West Virginia Court Dismisses Lawsuits Challenging Life Insurers' Unclaimed Death Benefits Practices

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On December 27, 2013, a West Virginia court dismissed 63 separate lawsuits brought by the Treasurer of the State of West Virginia ("Treasurer") against life insurance companies doing business in West Virginia. The court upheld longstanding industry practice regarding the escheatment of death benefits under the state's Uniform Unclaimed Property Act ("UPA"). Consistent with the West Virginia Insurance Code, life insurers pay death benefits only in response to a claimant presenting a claim form and due proof of death to the insurer. Absent a valid claim, the UPA triggers an insurer's duty to escheat policy proceeds once the insured reaches the policy's "limiting age" – generally age 100 or age 120. 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 for deceased policyholders, such as the Social Security Administration's Death Master File ("DMF"), even where the insurer had received no claim and no notice of the insured's death. The Treasurer alleged that insurers violated the UPA and breached duties of good faith and fair dealing by failing to conduct annual searches of the DMF or similar databases for deceased policyholders. According to the Treasurer, the failure to conduct these searches resulted in the under reporting of abandoned property to the State. The court held that the viability of the Treasurer's claims raised a single "threshold question of law": 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. In its analysis, the court harmonized the West Virginia Insurance Code's requirement that life insurance policies condition an insurer's "obligation to pay" death benefits on the receipt of due proof of the insured's death with UPA provisions defining when life insurance death benefits become "property" that is "presumed abandoned." This Insurance Code requirement, which predated the UPA by almost 40 years, caused the court to reject the Treasurer's

contention that the UPA applied to life insurance proceeds before a claim had been filed. The court also found the Treasurer's argument that the UPA imposes a duty to search the DMF inconsistent with the UPA's "limiting age" escheatment trigger, which explicitly provides a mechanism for escheatment when no claim has been presented to the insurer. The court examined, and squarely rejected, several additional arguments by the Treasurer. First, the Treasurer asserted that, notwithstanding that life insurers are not obligated under their policies to pay death claims until a claim is presented, the UPA eliminates the claim presentation requirement for purposes of determining whether death benefits are escheatable to the state. The court noted that the UPA defines "property" as it relates to life insurance benefits as the "amount owed by an insurer ... after the obligation to pay arose," and held that if there is no reportable property, there is nothing to report under the UPA. The court also rejected 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 searches of the DMF. Finally, the court took note of recent legislation in other states, including the adoption by five states of the National Conference of Insurance Legislators ("NCOIL") Model Unclaimed Life Insurance Benefits Act, which statutorily mandates use of the DMF or similar searches. The court found that this new legislation imposing DMF or similar search requirements upon life insurers supported its finding that no such duty existed under the current version of the UPA. The court concluded by stating that it expressed "no opinion on the social utility of a duty to search the DMF," but that "the remedy sought lies with the Legislature, not with this Court." The court's decision, although decided under West Virginia law, construes a uniform unclaimed property act that has been adopted in many other states, and the court's analysis is consistent with several other decisions by courts around the country. Carlton Fields attorneys represented a number of life insurers in the West Virginia litigation.

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