

Staking Claims: Unclaimed Property Update Q1 2013

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April 2, 2013 – Yesterday's litigation developments in West Virginia and Kentucky put an exclamation point on the abundant activity occurring in the first quarter of 2013 on the unclaimed property front. Below is a summary of first quarter developments potentially affecting insurance companies that issue life insurance, annuities, and retained asset accounts.

Litigation

West Virginia's Treasurer has sued 69 life insurance companies, alleging that they breached an implied good faith obligation to search the U.S. Social Security Administration's Death Master File (DMF) to identify deceased insureds and attendant obligations to pay death benefits, leading to noncompliance with escheat requirements under the state's unclaimed property laws. The defendant companies recently filed their responses to the complaints. Most companies have filed a motion to dismiss, with 39 companies filing a "common" brief in support of their motions on April 1, 2013.

Kentucky's enactment of an Unclaimed Life Insurance Benefits Act was challenged last year in *United Insurance Company of America et al. v. Commonwealth of Kentucky*. Whether the Act could lawfully apply to policies issued prior to the Act's effective date is the central issue in this litigation. Among other challenges, the plaintiff insurance companies have asserted that the Act violates the Contracts Clause of the U.S. Constitution and the Kentucky Constitution. On April 1, 2013, the court issued an opinion and order granting summary judgment to the State of Kentucky and denying the companies' motion for summary judgment.

In October 2012, **Ohio's** Court of Appeals in *Andrews v. Nationwide Mutual Insurance Company* (a putative class action) affirmed dismissal of the complaint, holding that defendants did not have a duty to search the DMF for potentially deceased insureds. The court reasoned that imposing such an obligation would be contrary to the terms of the insurance policies, which require beneficiaries to submit a claim and provide proof of death. The court concluded that the implied covenant of good faith and fair dealing cannot create rights or duties not otherwise provided for in the contract. After unsuccessfully seeking *en banc* review, Plaintiffs appealed to the Supreme Court of Ohio in January 2013.

Briefs have been filed on Defendants' pending motion to dismiss in *Feingold v. John Hancock Life Insurance Company (USA)*, a putative class action in the U.S. District Court for the **District of Massachusetts**. The suit alleges generally that defendants' failure to search the DMF constituted a pattern and practice of avoiding payment of life insurance benefits and untimely escheating of unclaimed benefits. The court has denied as "premature" a motion for class certification.

Legislative and Regulatory

In March 2013, **Montana's** legislature passed and sent to the Governor for signature an Unclaimed Life Insurance Benefits Act, which requires, among other things, that companies search the DMF, or comparable record, at least semiannually. Similar steps were taken earlier this year in **Nevada, Rhode Island, North Dakota, Vermont, and New Mexico**. In February, a bill was introduced in **Alabama's** legislature to establish DMF search requirements for life insurance policies, annuity contracts, and retained asset accounts issued or entered into on or after January 1, 2016.

Effective February 6, 2013, **New York** re-adopted, with amendments, emergency Rules 11 NYCRR 226.0 - 226.6 concerning payment of unclaimed life insurance benefits. Legislation was enacted in March that modifies and purportedly clarifies the statutory procedures life insurers must follow under New York's Section 3213-a (Unclaimed Benefits), which was signed into law on December 17, 2012, and will take effect on June 15, 2013.

In March, a bill was introduced in the **Minnesota** legislature to enact and modify the Uniform Unclaimed Property Act of

1995. **Mississippi** introduced a bill to enact the 1995 Act in January.

Noting "many technological developments in recent years that are not addressed in the current Uniform Act," the **Executive Committee of the Uniform Law Commission** (ULC) authorized the appointment of a new Study Committee on Revision of or Amendments to the Uniform Unclaimed Property Act. This Committee "will consider the need for and feasibility of drafting and enacting a revision of or amendments to the Uniform Unclaimed Property Act."

Certain states are revising laws relating to their holding and use of escheated funds. **Georgia's** H.B. 359 proposes to change the law by requiring that *a//* unclaimed property funds be placed into the general fund. The law currently requires the commissioner of revenue to retain – in a separate trust fund – a sum sufficient to make prompt payment to persons claiming an interest in unclaimed property. **Oklahoma** Senate Bill 1108 seeks to dedicate \$10 million of the state's unclaimed property fund to the Oklahoma Teachers' Cost of Living Benefits Adjustment Fund. **South Dakota** Senate Bill 235, signed by the Governor in late March, calls for the state treasurer to transfer into the "building South Dakota fund" 25% of the unclaimed property deposited in the general fund pursuant to the state's unclaimed property act in 2015, and 50% in 2016 and each year thereafter.

Companies continue to report being the subject of **audits** conducted on behalf of state unclaimed property regulators and state insurance departments with respect to compliance with unclaimed property laws and insurance claims payment practices.

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