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**ESCHEAT? GESUNDHEIT. BUT FOR STATES, IT'S NOTHING
TO SNEEZE AT: *Delaware v. New York*, 113 S.Ct. 1550 (1993)**

*Cary B. Hall**

While unclaimed property law¹ may seem obscure to many, and academic to most, the operations surrounding abandoned property and its distribution quite often affect those who might rather ignore it. Recent developments have changed the law of escheat² not only for those who have chosen to make it their profession, but also for “ordinary” accountants, securities brokers, bankers, and the lawyers who advise them. While financial institutions and other businesses once enjoyed a windfall from abandoned or unclaimed funds fortuitously left in their possession, all fifty states are now laying claim to any and all wealth not collected by rightful owners.³ Though abandoned property constitutes only a tiny fraction of all transacted property,⁴ this small amount accounts for approximately \$1.2 billion annually in escheatable receipts for states.⁵ Not

* Articles and Comments Editor, BUSINESS LAW JOURNAL 1994, University of Miami School of Law. The author would like to thank Frank A. Mazlewski, Jr., Administrator of the Bureau of Unclaimed Property for the state of Delaware, for his invaluable knowledge and insight on the subject of escheat. The author would also like to thank his new wife, Jennifer Girone Hall, for her unyielding support and understanding throughout the research and writing process.

¹ This note deals specifically with *intangible* personal property which is left abandoned or unclaimed. Tangible real property left behind when a person dies intestate and without heirs poses relatively little regulatory problem and is easily regulated by the state exercising appropriate territorial jurisdiction. However, property such as inactive bank accounts, abandoned stocks and bonds, unpaid insurance proceeds, and others to be discussed *infra*, defies any notion of a distinct situs and cannot be so easily monitored. It is this latter, intangible personal property that is referred to as “unclaimed property” within this article.

² For purposes of this Note, any general reference to “escheat” includes traditional, or “true,” escheat, which vests actual title to any unclaimed property to claimant states, as well as custodial control of such by states. A more detailed and explanatory discussion of this distinction will follow in Section I below.

³ In the recent case, *Delaware v. New York*, 113 S.Ct. 1550, 1555 (1993), forty-seven states and the District of Columbia joined the two state parties as intervenors.

⁴ See *Id.*, at 1554 n.6 (only 0.02% of all intermediary-distributed funds, like interest or corporate dividends, is untraceable); U.S. GEN. ACCOUNTING OFFICE, UNCLAIMED MONEY: PROPOSALS FOR TRANSFERRING UNCLAIMED FUNDS TO STATES [hereinafter GAO REPORT] 33 (May 1989) (less than one-tenth of 1% of all U.S. Postal Service money orders sold between 1983 and 1987 were still payable as of September 30, 1987). Furthermore, one reputable source calculates that perhaps half of all unclaimed property is valued at less than \$50. 1 DAVID J. EPSTEIN ET AL., UNCLAIMED PROPERTY LAW AND REPORTING FORMS § 1.06[3][a] (Bender 1990) [hereinafter EPSTEIN ET AL.].

⁵ Figures estimating the value of abandoned property vary. A *Wall Street Journal* article dated January 22, 1962, assessed outstanding unclaimed property at an aggregate \$15 billion, growing at a rate of \$1 billion annually. Author, *Title*, WALL ST. J., January 22, 1962, at 1, col. 1. More recent sources appraise the amounts obtained annually under state escheat laws at over \$1 billion. See Report of the Special Master, *Delaware v. New York*, 113 S.Ct. 1550 (1993), (111, Original), available in LEXIS, Genfed Library, USplus File, at LEXIS 10 n.9 (since New York escheated \$360 million in unclaimed securities distributions between 1985 and 1989 alone, “the total escheatable funds for that period almost certainly far exceeds this amount”);

surprisingly, this current competition for what is arguably the largest available source of non-taxable revenue has sparked heated controversies between states that have implicated both Congress and the Supreme Court in an attempt to formulate a suitable solution. *Delaware v. New York*⁶ marks the most recent interstate crusade.

I. THE ESCHEAT TRADITION

The notion of sovereign escheat was born in feudal England around the twelfth century.⁷ The concepts of real property under the feudalism of the Middle Ages established vast hierarchies of ultimate ownership, with the Crown at its apex. When a tenant in fee died without heirs and was therefore unable to continue his occupancy, that real property "escheated," or reverted, to the mesne lord who was the next immediate owner in the chain of ownership.⁸ Thus, the origins of escheat law are grounded in the early precepts of real property title reversion and the medieval notions of ultimate ownership.

Unclaimed personalty was also collected, either by the mesne lords or the Crown, based on the rule of *bona vacantia*.⁹ This doctrine, however, functioned not on the premise that the Crown or lord was the ultimate owner of right, but rather that both had a more valid claim to abandoned chattels than any stranger.¹⁰ Moreover, the collection of unclaimed personal property under *bona vacantia* was initially custodial, as opposed to the immediate vesting of

Andrew W. McThenia, Jr. and David J. Epstein, *Issues of Sovereignty in Escheat and the Uniform Unclaimed Property Act*, 40 WASH. & LEE L. REV. 1429, 1432 n.13 (1983) [hereinafter McThenia and Epstein] (letter from Jim Lord, Minnesota State Treasurer (1982), estimating that states are holding \$1.2 billion in unclaimed property); Susan T. Kelly, Note, *Unclaimed Billions: Federal Encroachment on States' Rights in Abandoned Property*, 33 B.C. L. REV. 1037, n.2 (1992) [hereinafter Kelly] (telephone interview of March 11, 1992 with Patty White, Secretary of the National Association of Unclaimed Property Administrators [hereinafter NAUPA], declaring that states took custody of over \$1.2 billion in unclaimed property in 1991); Gerald A. Rosenberg and Mary B. Fisher, *States Go To War Over Unclaimed Funds*, 14 NAT. L.J. 17, col. 1 [hereinafter Rosenberg and Fisher] (according to NAUPA, for the year ending June 30, 1990, "more than \$1.2 billion was collected by the states pursuant to their unclaimed-property statutes").

⁶ 113 S.Ct. 1550 (1993). See Section II(D), *infra*.

⁷ See generally Note, *Origins and Development of Modern Escheat*, 61 COLUM. L. REV. 1319 (1961) [hereinafter *Origins*].

⁸ Of course, some land was owned directly by the Crown, making the reversion uncomplicated. More often, however, land ownership proceeded through a complex feudal chain of possession, with reversion occurring through a series of higher loyalties. These reversion maneuvers played a decisive role in formulating our present-day processes of real property succession.

⁹ See generally *Origins*, *supra* note 7. See also F. ENEVER, *BONA VACANTIA* (1927); Comment, *Bona Vacantia Resurrected*, 34 ILL. L. REV. OF NW. U. 171 (1939).

¹⁰ Under *bona vacantia*, the Crown held the most superior right to secure abandoned property, should a conflict with a lesser lord arise.

title under the "true" escheat of real property.¹¹ So while both real and personal abandoned property of yore were claimed by either the lord or Crown as of right, the theories underlying each type of succession substantially differed.¹²

Presently, all fifty states have enacted comprehensive laws regulating the succession of unclaimed or abandoned intangible property¹³ under the powers

¹¹ Should no rightful owner appear, however, title to abandoned personal property was eventually transferred to the holding lord or Crown. See *Origins*, *supra* note 7, at 1326-1327.

¹² As the early States began enacting laws governing the succession of unclaimed property, the principle of *bona vacantia* was absorbed by the traditional escheat power to create one action at law that could reach both real and personal abandoned property. See McThenia and Epstein, *supra* note 5, at 1430 n.3; Barbara C. Payne, *Abandoned and Escheated Property: How Long Is Long Enough?*, 64 CONN. B.J. 289, 290 (1990); Note, *Escheat of Corporate Intangibles: Will the State of the Stockholder's Last Known Address Be Able to Enforce Its Right?*, 41 NOTRE DAME LAW. 559, 560 (1966) [hereinafter NOTRE DAME LAW.]; Kelly, *supra* note 5, at 1042; Jo Beth Prewitt, Comment, *Unclaimed Property - A Potential Source of Non-Tax Revenue*, 45 MO. L. REV. 493 (1980) [hereinafter Prewitt].

¹³ ALA. CODE §§ 35-12-1 to -50 (Michie 1991 & Supp. 1993); ALASKA STAT. §§ 34.45.101 to .780 (Michie 1990 & Supp. 1993); ARIZ. REV. STAT. ANN. §§ 44-301 to -340 (West 1994); ARK. CODE ANN. §§ 18-28-201 to -232 (Michie 1987 & Supp. 1993); CAL. CIV. PROC. CODE §§ 1500 to 1599 (West 1982 & Supp. 1994); COLO. REV. STAT. ANN. §§ 38-13-101 to -134 (West 1990 & Supp. 1993); CONN. GEN. STAT. ANN. §§ 3-56 to -76 (West 1988 & Supp. 1994); DEL. CODE ANN. tit. 12, §§ 1130 to 1224 (Michie 1987 & Supp. 1992); D.C. CODE ANN. §§ 42-201 to -242 (Michie 1990 & Supp. 1993); FLA. STAT. ANN. §§ 717.001 to .1401 (West 1988 & Supp. 1994); GA. CODE ANN. §§ 44-12-190 to -235 (Michie 1991 & Supp. 1993); HAW. REV. STAT. ANN. §§ 523A-1 to -41 (Michie 1993 & Supp. 1993); IDAHO CODE §§ 14-501 to -543 (Bobbs-Merrill 1979 & Supp. 1993); ILL. ANN. STAT. ch. 765, act 1025, §§ 1 to 30 (Smith-Hurd 1993 & Supp. 1994); IND. STAT. ANN. §§ 32-9-1-1 to -45 (Burns 1980 & Supp. 1993); IOWA CODE ANN. §§ 556.1 to .30 (West Supp. 1994); KAN. STAT. ANN. §§ 58-3901 to -3933 (1983 & Supp. 1993); KY. REV. STAT. ANN. §§ 393.010 to .990 (Baldwin 1989 & Supp. 1993); LA. REV. STAT. ANN. §§ 9:151 to 188 (West 1991 & Supp. 1994); ME. REV. STAT. ANN. tit. 33, §§ 1801 to 1875 (West Supp. 1993); MD. COM. LAW. CODE ANN. §§ 17-101 to -326 (Michie 1990 & Supp. 1993); MASS. GEN. LAWS ANN. ch. 200A, §§ 1 to 17 (West 1990 & Supp. 1994); MICH. STAT. ANN. §§ 18.733(1) to .734(4) (Callaghan 1986 & Supp. 1993); MINN. STAT. ANN. §§ 345.31 to .60 (West 1990 & Supp. 1994); MISS. CODE ANN. §§ 89-12-1 to -57 (Law. Co-op. 1991 & Supp. 1993); MO. ANN. STAT. §§ 447.500 to .595 (Vernon 1986 & Supp. 1994); MONT. CODE ANN. §§ 70-9-101 to -316 (1993); NEB. REV. STAT. §§ 69-1301 to -1332 (1990 & Supp. 1993); NEV. REV. STAT. §§ 120A.010 to .450 (1991); N.H. REV. STAT. ANN. §§ 471-C:1 to 43 (Butterworth 1992 & Supp. 1993); N.J. STAT. ANN. §§ 46:30B-1 to -109 (West 1989 & Supp. 1993); N.M. STAT. ANN. §§ 7-8-1 to -40 (Michie 1993); N.Y. ABAND. PROP. LAW §§ 101 to 1502 (McKinney 1991 & Supp. 1994); N.C. GEN. STAT. §§ 116B-1 to -49 (Michie 1990); N.D. CENT. CODE ANN. §§ 47-30.1-01 to -38 (Michie Supp. 1993); OHIO REV. CODE ANN. §§ 169.01 to .99, §§ 1113.13 to .15, § 1157.20, §§ 1157.22 to .23, §§ 1165.20 to .22, §§ 2335.34 to .36 (Page 1990 & Supp. 1993); OKLA. STAT. ANN. tit. 60, §§ 651 to 687 (West 1994); OR. REV. STAT. ANN. §§ 98.302 to .436 (Butterworth 1990); PA. STAT. ANN. tit. 72, §§ 1301.1 to .29 (West Supp. 1991); R.I. GEN. LAWS §§ 33-21.1-1 to -41 (Michie Supp. 1993); S.C. CODE ANN. §§ 27-18-10 to -400 (Law. Co-op. 1991 & Supp. 1993); S.D. CODIFIED LAWS §§ 43-41B-1 to -38 (Michie Supp. 1993); TENN. CODE ANN. §§ 66-29-101 to -204 (Michie 1993); TEX. PROP. CODE ANN. §§ 72.001 to 75.102 (West 1984 & Supp. 1994); UTAH CODE ANN. §§ 78-44-1 to -40 (Michie 1992 & Supp. 1993); VT. STAT. ANN. tit. 27 §§ 1208 to 1238 (Butterworth 1989 & Supp. 1993); VA. CODE ANN. §§ 55-210.1 to -210.30 (Michie 1986 & Supp. 1993); WASH. REV. CODE ANN. §§ 63.29.010 to .905 (West Supp. 1993); W. VA. CODE §§ 36-8-1 to -31 (Michie 1985 & Supp. 1993); WIS. STAT. ANN. §§ 177.01 to .41 (West 1989 & Supp. 1993); WYO. STAT. §§ 34-24-101 to -139 (Michie Supp. 1993).

reserved them by the Tenth Amendment of the Constitution.¹⁴ Escheat statutes generally require holders of unclaimed property to report to the state the amount and type of such property held. In return, the statute provides for indemnification of the holder when the property is relinquished.¹⁵ Such statutes typically prescribe a number of years of dormancy after which property is presumed to have been abandoned; expiration of this allotted period triggers state escheat.

Most state statutes embody a custodial form of escheat,¹⁶ in which the state assumes the holder's obligation to repay the missing owner rather than the property title itself.¹⁷ Those states adopting custodial escheat cite several

¹⁴ See 1 EPSTEIN ET AL., *supra* note 4, at § 2.02; McThenia and Epstein, *supra* note 5, at 1445-1447. One source describes escheat rights as a state police power. *Id.*, at 1431 n. 5.

Moreover, there is no express federal power to escheat under the U.S. Constitution. See Kelly, *supra* note 5, at 1060-1079. *But cf.* 26 U.S.C.A. § 6408 (West 1989 & Supp. 1994) (unclaimed federal income tax refunds may not be escheated by states); 38 U.S.C.A. § 8520 (West 1991) (federal government may escheat the belongings of a deceased veteran who dies intestate and without heirs in a VA hospital); *United States v. Oregon*, 366 U.S. 643, 648-649 (1961) (upholding 38 U.S.C.A. § 8520 by applying the Necessary and Proper Clause to the constitutionally-delegated federal war powers); *Arizona v. Bowsher*, 935 F.2d 332, 334-335 (D.C. Cir. 1991), *cert. denied*, *Alabama v. Bowsher*, 112 S.Ct. 584 (1991) (unanimously holding that a federal escheat statute preempted any similar state law under the Supremacy Clause where the state law stands as an obstacle to the accomplishment and execution of Congressional objectives); Note, *Escheat of Corporate Dividends*, 65 HARV. L. REV. 1408, 1413 (1952) [hereinafter *Corporate Dividends*]; *Origins*, *supra* note 7, at 1336-1339 (1961).

Furthermore, Congress passed an amendment to the Federal Depository Insurance Act which granted custody of unclaimed FDIC-insured deposits to states for ten years to facilitate the reunion of the unclaimed deposits with their missing owners; if, however, any deposits are still unclaimed after the ten year period, title to the funds reverts permanently to the FDIC. Pub. L. No. 103-44, 107 Stat. 220 (June 28, 1993), *codified at* 12 U.S.C.A. § 1822(e) (West 1989 & Supp. 1994). For more on federalism and escheat, see GAO REPORT, *supra* note 4; S. 1612, 100th Cong., 1st Sess. (1987).

¹⁵ Rosenberg and Fisher, *supra* note 5, at 17.

¹⁶ Most states have more or less adopted the format of one of the three uniform statutes regulating unclaimed property proffered by the National Conference of Commissioners on Uniform State Laws. Alaska, Arizona, Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Louisiana, Maine, Maryland, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, the Virgin Islands, Virginia, Washington, Wisconsin and Wyoming have adopted the more current 1981 Uniform Unclaimed Property Act, 8B U.L.A. 567 (1993). The 1966 Uniform Disposition of Unclaimed Property Act, 8A U.L.A. 207 (1993), remains in effect in Arkansas, the District of Columbia, Illinois, Indiana, Kansas, Mississippi, Missouri, and Nebraska. Only West Virginia still retains the superseded 1954 Uniform Disposition of Unclaimed Property Act, 8A U.L.A. 267 (1993).

For a detailed discussion of the 1981 Uniform Act, see 1 EPSTEIN, ET AL., *supra* note 4, at §§ 12.00 to 12.40; McThenia and Epstein, *supra* note 5, at 1453-60. See also Kelly, *supra* note 5, at 1058-1059. For more on the 1954 and 1966 Uniform Act, see 1 EPSTEIN ET AL., *supra* note 4, at § 2.05[5][c]; McThenia and Epstein, *supra* note 5, at 1440-1441; Kelly, *supra* note 5, at 1053-1055, 1057-1058; Prewitt, *supra* note 12, at 497-502.

¹⁷ See Kelly, *supra* note 5, at 1044. Some, however, still cling to the "true" form of escheat and transfer title to the state either immediately or after a brief period of custody. See *id.*, at 1039 n.15; see also,

noteworthy justifications.¹⁸ The most compelling policy consideration is the protection of the property rights of the missing owner.¹⁹ State custody of unclaimed property prevents any adverse seizure and unjust enrichment by a third party,²⁰ and also ensures that a perpetually solvent guarantor — the state — will exist to honor any future claim by the rightful owner.²¹ State custody also alleviates for a holder of unclaimed property a potentially infinite liability on its company's accounting books.²² Finally, custodial escheat statutes provide an additional, if only temporary, source of revenue for the state,²³ and allows for the redistribution of the unclaimed property back into the commercial stream for the common good.²⁴

II. STATE ESCHEAT AND THE SUPREME COURT

Unclaimed real property poses relatively little administrative problems for states because the control is straightforward: if the land lies within a state's borders, that *res* is subject to state regulation.²⁵ Similarly, tangible chattels abandoned within a state are just as easily accounted for. A difficulty arises, however, in the governance of intangible unclaimed property that has no clear

e.g., IND. CODE ANN. § 32-9-1-36 (Burns 1980 & Supp. 1993); N.H. REV. STAT. ANN. § 471-C:30 (Butterworth 1992 & Supp. 1993).

¹⁸ See David C. Auten, Note, *Modern Rationales of Escheat*, 112 U. PA. L. REV. 95, 96-111 (1963) [hereinafter Auten]; EPSTEIN ET AL., *supra* note 4, at § 1.07. The reasons for prescribing custodial escheat rather than traditional escheat will become clearer in light of the Supreme Court decisions cited below in Section II.

¹⁹ See Kelly, *supra* note 5, at 1047.

²⁰ For example, unclaimed dividends remaining at a corporate dissolution are most often redistributed to those stockholders who *are* known. See Auten, *supra* note 18, at 99-100. Likewise, a bank may assume title of checking or savings accounts left dormant for an extended period of time. This may be also be accomplished indirectly by imposing infinite service charges on inactive accounts.

While it is possible that an intermediary holder of unclaimed property may absorb it for purposes of lowering rates, or increasing dividends or interest payments, it is far more likely that the assumed property would be regarded as a fortunate windfall in order to boost profits. *Id.* at 101.

²¹ *Id.* at 98-99. This rationale loses force, however, when the security of the abandoned property is not at risk. The most obvious examples are bank accounts insured by the Federal Depository Insurance Corporation (FDIC) under 12 U.S.C.A. §§ 1811 to 1834 (West 1989 & Supp. 1994).

²² See Kelly, *supra* note 5, at 1047-48.

²³ See *id.* at 1048-49. For statistics on the substantial monetary value of unclaimed property escheated by states, see generally *supra* note 5.

²⁴ See *id.*, at 1042. These latter justifications echo those inherent in the earlier doctrine of *bona vacantia*.

²⁵ An early Supreme Court case embodying this accepted principle is *Pennoyer v. Neff*, 95 U.S. 714 (1878).

situs.²⁶ The confusion intensifies when the intangible property, e.g., stock certificates, has no inherent worth itself, but is representative of some value redeemable elsewhere.²⁷ Most importantly, perhaps, successful ascription of situs to an intangible does not necessarily confer jurisdiction or enforcement powers upon the situs state, but merely the "right" to escheat.²⁸

The Supreme Court has played an active role in defining the parameters of state escheat of unclaimed property during the past eighty years.²⁹ Two discernible periods exist regarding cases involving state escheat controversies.³⁰ Cases decided prior to World War II center on the state's power to escheat and obtain custody of unclaimed intangible property, and conflicts were largely between one state and the intermediary left holding the abandoned property. Post-World War II cases deal with interstate controversies, and focus on the development of a practical scheme for the distribution of unclaimed property.³¹

A. Escheat Litigation Prior to World War II

In 1911, the escheat controversy began when a Massachusetts unclaimed property statute was challenged in *Provident Institution for Savings v. Malone*.³² The statute, which provided for custodial escheat of inactive savings accounts, was contested by the holder as exceeding the state's authority over

²⁶ Justice, then Judge, Cardozo once summarized this predicament:

The situs of intangibles is in truth a legal fiction, but there are times when justice or convenience requires that a legal situs be ascribed to them. The locality selected is for some purposes, the domicile of the creditor; for others, the domicile or place of business of the debtor, the place, that is to say, where the obligation was created or was meant to be discharged; for others, any place where the debtor can be found. . . . At the root of the selection is generally a common sense appraisal of the requirements of justice and convenience in particular conditions.

Severnoe Sec. Corp. v. London & Lancashire Ins. Co., 255 N.Y. 120, 123-24, 174 N.E. 299, 300 (1931), cited in *McThenia and Epstein*, *supra* note 5, at 1434 n.27, and *NOTRE DAME L. R.*, *supra* note 12, at 575. See also *McThenia and Epstein*, *supra* note 5, at 1434-35.

²⁷ See Joseph P. Giljum, Comment, *A Survey of State Abandoned or Unclaimed Property Statutes*, 9 ST. LOUIS U. L.J. 85 (1964).

²⁸ *NOTRE DAME L. R.*, *supra* note 12, at 576.

²⁹ See *Provident Institution for Savings v. Malone*, 221 U.S. 660 (1911); *First National Bank of San Jose v. California*, 262 U.S. 366 (1923); *Security Savings Bank v. California*, 263 U.S. 282 (1923); *Anderson National Bank v. Luckett*, 321 U.S. 233 (1944); *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541 (1948); *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951); *United States v. Oregon*, 366 U.S. 643 (1961); *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71 (1961); *Texas v. New Jersey*, 379 U.S. 674 (1965); *Pennsylvania v. New York*, 407 U.S. 206 (1972); *Delaware v. New York*, 113 S.Ct 1550 (1993).

³⁰ See *McThenia and Epstein*, *supra* note 5, at 1436-38.

³¹ *Id.*; see also 1 EPSTEIN ET AL., *supra* note 4, at § 2.03.

³² 221 U.S. 660 (1911).

private banking affairs. Nonetheless, the Supreme Court upheld the statute as a proper exercise of state sovereignty,³³ opening the door for similar legislation in other states and subsequent escheat litigation. The Court further reasoned that the custodial nature of the statute was beneficial since it left open indefinitely the possibility of reunion between the rightful owner and the unclaimed deposits.³⁴

*First National Bank of San Jose v. California*³⁵ applied the principles of federalism to an early California escheat statute which transferred titles of dormant bank accounts to the state.³⁶ At issue was whether or not the state statute could also be applied to unclaimed funds held by a *national* bank. The Court held that such state escheat would unduly interfere with the implied powers under the Constitution³⁷ to institute a federal bank.³⁸ As such, *First National Bank* constituted the first blow to the newly established state power to acquire unclaimed property under escheat legislation.

That same year, the Supreme Court had another opportunity to review the California escheat statute in *Security Savings Bank v. California*.³⁹ This time, the challenge was brought by a state bank which questioned the due process of “true” escheat statutes, citing *First National Bank*. The statute, however, was upheld as a legitimate exercise of state sovereignty when applied to unclaimed deposits in *state* banks.⁴⁰ Moreover, the Court explained that if a state escheat statute satisfies minimum due process requirements — in this case, publication, a liberal intervention policy, and a five-year reclamation period — it did not matter whether the statute transferred custody or actual title of the abandoned property to the escheating state.⁴¹

Twenty years later, *Anderson National Bank v. Lockett*⁴² reevaluated state action to escheat unclaimed funds held under federal jurisdiction.⁴³ Kentucky sought to apply its custodial escheat statute to abandoned accounts left in a

³³ *Id.* at 664.

³⁴ *Id.* at 664-65.

³⁵ 262 U.S. 366 (1923).

³⁶ The California statute was of the “true” escheat type, immediately vesting title of the unclaimed accounts to the state.

³⁷ For more on the legitimacy of national banks, see *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 401-25 (1819).

³⁸ 262 U.S. 366, 368-70.

³⁹ 263 U.S. 282 (1923).

⁴⁰ *Id.* at 285-86.

⁴¹ *Id.* at 286-90.

⁴² 321 U.S. 233 (1944).

⁴³ See McThenia and Epstein, *supra* note 5, at 1436; Kelly, *supra* note 5, at 1063-64.

national bank. The Court distinguished *First National Bank*, noting that the earlier California statute was a "true" escheat law, while the Kentucky statute at bar was custodial.⁴⁴ The opinion asserted that mere custody of the funds did not interfere with the bank's federal charter, so Kentucky would be allowed to assume custody of the unclaimed accounts held by the national bank.⁴⁵ The *Luckett* Court, however, cushioned its opinion by reaffirming its prior judgment in *Security Savings Bank*⁴⁶ that as long as the requisite due process procedures are followed, the distinction between traditional escheat and custodial statutes is technical at best.⁴⁷

B. The Race of Diligence

A new era of escheat litigation began in 1948 with *Connecticut Mutual Life Insurance Co. v. Moore*.⁴⁸ Until then, the Supreme Court had primarily concerned itself with the legitimacy of state escheat of unclaimed property within its own borders. In *Connecticut Mutual*, New York sought to obtain custody of unclaimed proceeds of insurance policies issued on its citizens by corporations incorporated in states other than New York.⁴⁹ Nine insurance companies brought suit to declare such application of the statute invalid on grounds that it violated the Contracts Clause of the Constitution,⁵⁰ and that it exceeded the due process requirements of the Fourteenth Amendment.⁵¹ In a 6-3 decision, the Court rejected the petitioners' Contracts Clause argument and reasoned that a state acting under a custodial escheat statute functions merely as a "conservator," rather than a party under contract.⁵² As for the due process claim, Justice Reed determined that New York had "sufficient contacts" with the out-of-state insurance companies to assert custody over the uncollected policies issued on its residents.⁵³ The majority opinion stressed that the sole

⁴⁴ 321 U.S. 233, 249-52 (while states have the sovereign right to escheat unclaimed property, such statutes may not be so zealous that they would discourage potential depositors). Surprisingly, the Court did not seem concerned that the Kentucky statute also provided for ultimate escheat after the requisite custody period lapsed.

⁴⁵ *Id.* at 252.

⁴⁶ *Supra* note 40.

⁴⁷ 321 U.S. 233, 245-46.

⁴⁸ 333 U.S. 541 (1948).

⁴⁹ *Id.* at 542-44.

⁵⁰ U.S. Const., Art. I, § 10, cl. 1.

⁵¹ 333 U.S. 541, 545.

⁵² *Id.* at 545-48.

⁵³ *Id.* at 548-51.

issue was the constitutionality of state custody of unclaimed funds belonging to its *own* citizens, and limited its holding to that effect.⁵⁴ Justices Frankfurter and Jackson wrote dissenting opinions, chiding the majority for issuing a declaratory judgment on the New York statute.⁵⁵ Justice Jackson particularly attacked the competency of the “sufficient contacts” test as applied to a hypothetical controversy, and recognized that under this same analysis several other states might also qualify to escheat the present insurance proceeds.⁵⁶ Justice Frankfurter underscored the Court’s function as a tribunal for state conflicts through original jurisdiction,⁵⁷ and counseled that the Court ought not “peck at the problem” until original jurisdiction is invoked.⁵⁸

In *Standard Oil Co. v. New Jersey*⁵⁹, the Supreme Court considered a state statute which escheated unclaimed dividends and stocks of corporations formed in that state. Standard Oil contested New Jersey’s escheat of corporate unclaimed property on jurisdictional and due process grounds, arguing that an adverse decision could subject the company to multiple liabilities from various state escheat claims. Again, Justice Reed penned a 5-4 majority opinion, upholding the New Jersey statute under the *Connecticut Mutual* “sufficient contacts” test.⁶⁰ The Court opined that New Jersey obtained valid jurisdiction over the unclaimed stocks and dividends since the debtor corporation was amenable to process through its registered office within the state, and that the intangible nature of the abandoned property could not impede state escheat.⁶¹

⁵⁴ Justice Reed wrote that the Court did not pass on the statute’s application “in instances where insured persons, after delivery, cease to be residents of New York or where the beneficiary is not a resident of New York at maturity of the policy.” *Id.* at 549.

⁵⁵ *Id.* at 551-56 (Frankfurter, J., dissenting), 556-57 (Jackson, J., dissenting).

⁵⁶ *Id.* at 557-64 (Jackson, J., dissenting). Justice Jackson predicted the subsequent escheat litigation which would stem from the majority’s opinion:

It seems to me that the constitutional doctrine we are applying here, if we are consistent in its application, leaves us in this dilemma: In sustaining the broad claims of New York, we either cut off similar and perhaps better rights of escheat by other states or we render insurance companies liable to two or more payments of their single liability.

Id. at 560 (Jackson, J., dissenting).

⁵⁷ U.S. CONST. art. III, § 2, cl. 2.

⁵⁸ 333 U.S. 541, 555-56 (Frankfurter, J., dissenting).

⁵⁹ 341 U.S. 428 (1951).

⁶⁰ *Id.* at 442.

⁶¹ Justice Reed cited to a *Harvard Law Review* article expounding on the nature of debtor-creditor relationships. Joseph H. Beale, *The Exercise of Jurisdiction In Rem to Compel Payment of a Debt*, 27 HARV. L. REV. 107 (1913). Professor Beale explained that since a debt is a forced relation between parties and has no real situs anywhere, the law obtains control by making use of the underlying relationship that created the debt. In other words, the law controls the debt by simply controlling the debtor-creditor parties themselves. *Id.* at 115-116. See *supra* note 25.

Regarding the corporation's concern about possible escheat by more than one state, the majority pointed to the Full Faith and Credit Clause⁶² as preventing multiple states from claiming such unclaimed property held by intermediaries such as Standard Oil.⁶³

Two dissents were filed.⁶⁴ Justice Frankfurter, joined by Justice Jackson, objected to escheat by the state of incorporation as opposed to the escheat by the state of the owner's last known address upheld in *Connecticut Mutual*.⁶⁵ The sovereign right to escheat unclaimed property, he argued, is not created simply because a state may subject a corporation to process within its courts.⁶⁶ Justice Frankfurter further noted that New Jersey's statute assumed title rather than custody, and subsequently extinguished any future claim by the state of an owner's last address as upheld in *Connecticut Mutual*.⁶⁷

Justice Douglas, joined by Justice Black, also criticized the statute's effect on the claims of other states. He again catalogued potential state claimants based on the "sufficient contacts" test, observing that only one of these states was present in this litigation.⁶⁸ Furthermore, while a custodial statute would enable other states to come forward with a greater claim, New Jersey's "true" escheat statute hastily appropriated the unclaimed property for that state's exclusive use.⁶⁹

Reading *Connecticut Mutual* and *Standard Oil* together, many states aptly ascertained that in order to assume unclaimed property within their jurisdictions, they must necessarily be the first to claim it.⁷⁰ This epiphany inspired a myriad of state legislatures to amend their escheat statutes, reducing the number of years necessary to presume intangible property abandoned.⁷¹ The "race of diligence" to escheat unclaimed property, as foreseen by Justice Frankfurter,⁷² persisted for a decade until the Supreme Court once again had

⁶² U.S. CONST. art. IV, § 1.

⁶³ 341 U.S. 428, 442-43.

⁶⁴ *Id.* at 443-45 (Frankfurter, J., dissenting), 445 (Douglas, J., dissenting).

⁶⁵ *Id.* at 443-44 (Frankfurter, J., dissenting).

⁶⁶ *Id.* at 444 (Frankfurter, J., dissenting).

⁶⁷ *Id.* at 444-45 (Frankfurter, J., dissenting) ("The Constitution ought not to be placed in an unseemingly light by suggesting that the constitutional rights of the several States depend on, and are terminated by, a race of diligence.").

⁶⁸ *Id.* at 445 (Douglas, J., dissenting).

⁶⁹ *Id.*

⁷⁰ See Prefatory Note, 1981 Uniform Unclaimed Property Act, *supra* note 16, at 570; McThenia and Epstein, *supra* note 5, at 1439-1440; Kelly, *supra* note 5, at 1053.

⁷¹ See Kelly, *supra* note 5, at 1053. Such amendments also reflected the eagerness of states to gain control over fallow intangible property sooner.

⁷² *Supra* note 68.

occasion to address a state escheat statute in *Western Union Telegraph Co. v. Pennsylvania*.⁷³

In a situation similar to *Connecticut Mutual*, Pennsylvania applied its escheat statute to undispersed money orders bought in Pennsylvania from Western Union, a New York corporation. Western Union sued, not to claim the unclaimed property for itself, but for relief from multiple escheat liability in other states.⁷⁴ In an unanimous opinion, Justice Black reversed the Supreme Court of Pennsylvania and its decision upholding the statute's application.⁷⁵ The Court ruled that the Pennsylvania state court judgment need not be afforded full faith and credit by parties not subject to Pennsylvania jurisdiction, and was therefore unable to protect Western Union from multiple escheats.⁷⁶ Instead Justice Black, recalling past dissents, invited Pennsylvania to file suit under the Court's original jurisdiction.⁷⁷

C. *Texas v. New Jersey and its Progeny*

In 1965, the state of Texas accepted the Court's invitation and filed an original action against New Jersey and Pennsylvania over unclaimed property held by the Sun Oil Company.⁷⁸ Texas claimed escheat rights on two counts, relying on the "sufficient contacts" test utilized in *Connecticut Mutual* and *Standard Oil*: either the property was owed out of Sun's Texas offices, or it was owed to persons having a last known address in Texas, or both. New Jersey sought control over the funds as Sun's state of incorporation. Since Sun's principle business offices were located in Pennsylvania, Pennsylvania asserted its contacts were sufficient to grant it the power to escheat. Finally, because some of the unclaimed property was last owned by Florida residents, Florida

⁷³ 368 U.S. 71 (1961).

⁷⁴ This fear of multiple liability was not merely hypothetical, for New York had already seized under its own escheat laws a part of the very funds now sought by Pennsylvania. *Id.* at 74.

⁷⁵ *Id.* at 80.

⁷⁶ *Id.* at 75.

⁷⁷ *Id.* at 79-80. See also 1 EPSTEIN ET AL., *supra* note 4, at § 2.03[3] ("In effect, *Western Union* forced any state facing an actual dispute with a sister state to bring an original action in the Supreme Court for a declaration of its rights before it could take the property.").

Justice Stewart briefly concurred in the reversal because he felt that only New York, as the state of incorporation, could escheat the disputed unclaimed property. 368 U.S. 71, 80 (Stewart, J., concurring).

⁷⁸ *Texas v. New Jersey*, 379 U.S. 674 (1965). The property consisted of unclaimed debts to approximately 1,730 creditors, totalling approximately \$26,500.00. *Id.* at 675.

was permitted to intervene⁷⁹ and argued that the last known address of the creditor alone should be dispositive of a state's power to escheat.

The Court-appointed Special Master⁸⁰ recommended Florida's position, that unclaimed property should escheat only to the state where the owner last resided, and the Supreme Court approved.⁸¹ In an 8-1 opinion, Justice Black conceded that, though it may have served its purpose where a single state was involved, the "sufficient contacts" test proved unworkable when two or more states sought to escheat the same property.⁸² Furthermore, the contacts test relied on by Texas bred uncertainty as to which state had a higher claim to escheat, and fostered a case-by-case approach whenever an interstate disagreement arose.⁸³ The same problems were inherent in locating a company's principal place of business to determine an escheat right as insisted by Pennsylvania.⁸⁴ Moreover, it seemed strange to convert a corporate debt into an asset by granting the right to escheat to the state in which a corporation happened to settle.⁸⁵

The remaining choices — the state of incorporation as proposed by New Jersey, and the state of the owner's last known address offered by Florida — both presented an uncomplicated, bright-line test for determining state escheat. The Court noted, however, in order to award escheat to the state of incorporation would be to "exalt a minor factor" that may result from mere coincidence.⁸⁶ Florida's position, upholding escheat rights for the owner's state

⁷⁹ 373 U.S. 948. Though it claimed no right to escheat this property, Illinois unsuccessfully attempted to intervene to argue for the escheat rights of the state in which the indebtedness originated. 372 U.S. 973. See 379 U.S. 674, 677 n.6.

⁸⁰ 372 U.S. 926. In light of the Court's limited ability to conduct hearings or take extensive testimony normally shouldered by a trial court in the early stages of litigation, it usually appoints a fact-finding Special Master in cases brought under original jurisdiction. The Special Master drafts and submits a report containing any conclusions or recommendations as necessary. The Court is not bound by the findings of the Special Master, but may choose in its discretion to adopt parts or all of the report in its opinion. Rosenberg and Fisher, *supra* note 5, at 20; Lawrence A. Kobrin and Dean Ringel, *Conflict Over Escheat Funds*, N.Y. L.J., March 30, 1992, at 1, 4 [hereinafter Kobrin and Ringel].

⁸¹ This is known as the "primary rule" espoused by *Texas v. New Jersey*.

⁸² 379 U.S. 674, 678-79.

⁸³ *Id.*

⁸⁴ *Id.* at 680. This analysis also applied to Illinois' proposition that the state wherein the debt transpired be allowed to escheat. *Id.* For an earlier discussion, see Corporate Dividends, *supra* note 14, at 1417-18.

⁸⁵ 379 U.S. 674, 680.

⁸⁶ *Id.* at 679-80. *But cf.* Corporate Dividends, *supra* note 14, at 1418; Note, *Texas v. New Jersey*, 379 U.S. 674 (1965) - *Escheat of Intangibles*, 60 NW. U. L. REV. 550, 555-58 (1965).

Justice Stewart dissented on precedential grounds, adhering to the earlier decisions in *Security Savings Bank v. California*, 263 U.S. 282 (1923), *Anderson National Bank v. Lockett*, 321 U.S. 233 (1944),

of last known residence, proved most equitable.⁸⁷ By discerning that the unclaimed corporate debts symbolized the assets of the missing owners, Florida's plan redistributed escheatable property in proportion to the business activities of a state's citizens.⁸⁸ The opinion defined the owner's residence as the last known address as listed on the records of the debtor to avoid technical legal concepts of domicile and to promote the ideals of clarity and ease of administration.⁸⁹

In the event that the owner's state of last known address was unable to escheat,⁹⁰ the Court held that the state of incorporation would be permitted to assume custody and/or title of any remaining unclaimed property.⁹¹ This secondary rule⁹² of *Texas v. New Jersey*, however, was subject to any superior right to escheat, *i.e.*, the state of the owner's last known address, which might later be brought.⁹³ Justice Black concluded the Court's opinion with this exegesis:

and *Standard Oil v. New Jersey*, 341 U.S. 428 (1951), which held that the state of incorporation may rightly escheat. 379 U.S. 674, 683 (Stewart, J., dissenting).

⁸⁷ Cf. Corporate Dividends, *supra* note 14, at 1413-16.

⁸⁸ 379 U.S. 674, 680-81. This was also consistent with the common law tradition of *mobilia sequuntur personam*, *i.e.*, that personal property is found at the domicile of its owner. *Id.* at 680 n.10; *see also* McThenia and Epstein, *supra* note 5, at 1443 n.80.

⁸⁹ 379 U.S. 674, 680-681.

⁹⁰ This could occur when either the owner's address is not available, or when the laws of the state of last known address do not provide for escheat of the abandoned property. *Id.* at 682.

⁹¹ *Id.*

⁹² Indeed, one may question this "secondary" rubric since recent sources indicate that half of all unclaimed property reported does not contain a last known address. 1 EPSTEIN ET AL., *supra* note 4, at § 2.05[4][a][i]; McThenia and Epstein, *supra* note 5, at 1453 n.135, 1456.

⁹³ *Id.* David J. Epstein and Andrew W. McThenia, Jr., co-reporters of the 1981 Uniform Unclaimed Property Act, *supra* note 16, paraphrase the holding of *Texas v. New Jersey* as follows:

When two or more states, exercising valid claims of power to take custody of abandoned property assert conflicting claims to the same property, priority shall be given to the state of the creditor.

1 EPSTEIN ET AL., *supra* note 4, at § 2.04[2]; McThenia and Epstein, *supra* note 5, at 1444.

By characterizing the holding as such, Epstein and McThenia have argued that *Texas v. New Jersey* does not deny any state the sovereign right to escheat unclaimed property within its jurisdiction. 1 EPSTEIN ET AL., *supra* note 4, at § 2.05[4][b]; McThenia and Epstein, *supra* note 5, at 1444-48. Instead, *Texas v. New Jersey* would apply *only* when disagreeing states take their respective cases to the Supreme Court under original jurisdiction. In other words, so long as a state is *not* brought before the Supreme Court by another state, it may escheat unclaimed property within its grasp under its sovereign power to do so, *without* regard to the hierarchy created in *Texas v. New Jersey*. *Id.*

Though this view may seem unnecessarily officious to some, Epstein and McThenia's position would, however, reconcile *Texas v. New Jersey* with past escheat precedents such as *Connecticut Mutual* and *Standard Oil*, *supra* notes 48 and 59, respectively. *See supra* note 86; *see also* *Sperry & Hutchinson v. O'Connor*, 488 Pa. 340, 412 A.2d 539 (1980), and *State v. Liquidating Trustees of Republic Petroleum Co.*, 510 S.W.2d 311 (Tex. 1974), *discussed in* McThenia and Epstein, *supra* note 5, at 1448-50.

We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States.⁹⁴

The rules of *Texas v. New Jersey* constituted an initial panacea⁹⁵ for interstate escheat competition until Pennsylvania sought to resurrect its previous *Western Union*⁹⁶ litigation by bringing a declaratory suit against New York, Florida, Oregon and Virginia in *Pennsylvania v. New York*.⁹⁷ *Pennsylvania v. New York* addressed the retroactive application of *Texas v. New Jersey* to abandoned money orders sold by Western Union prior to 1963, and additionally functioned as a general challenge to the primary and secondary escheat rules previously enumerated by the Supreme Court in *Texas v. New Jersey*.

Pennsylvania observed that some companies, like Western Union, do not establish any persons as "creditors," nor is it standard practice to record the addresses of purchasers. Since the missing owner's last known address is unknown — indeed, it was never retained in the first place — the secondary rule of *Texas v. New Jersey* would dictate that the power to escheat any unclaimed money orders be conferred on the state of incorporation, in this case New York. Pennsylvania argued that where no address is retained on unclaimed money orders, the state of *purchase* of the money order ought to be presumed the state of the sender's last known address for escheat purposes.⁹⁸

⁹⁴ 379 U.S. 674, 683.

⁹⁵ This Note does not attempt to discuss the logistical difficulties that may be associated with *Texas v. New Jersey*. However, much has been written on the enforcement problems inherent in the Court's holding, and these materials focus generally on states' limited power and jurisdiction to compel and enforce companies' reporting of unclaimed property, varying business practices of holders of unclaimed property, and collection costs associated with state escheat. See generally 1 EPSTEIN ET AL., *supra* note 4, at § 2.05[4][a][v] and § 2.05 generally; Prewitt, *supra* note 12, at 502-09; Robert E. Berkley, Jr., *supra* note 12, at 565-77. Many commentators point out that there is no initial requirement for businesses to acquire addresses of its creditors, and many corporations never retain addresses. *Id.*; see also *supra* note 93. Statutes of limitations may also potentially prove problematic. 1 EPSTEIN ET AL., *supra* note 4, at §§ 3.01 to 4.08; cf. *Developments in the Law—Statutes of Limitations*, 63 HARV. L. REV. 1177 (1950).

⁹⁶ *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71 (1961).

⁹⁷ 407 U.S. 206 (1972). Western Union was also enumerated as a defendant to the suit. The Supreme Court allowed Connecticut, California and Indiana to intervene as party plaintiffs. 400 U.S. 811, 924, 1019 (1970). Arizona was permitted to intervene as a defendant. *Id.* at 1019.

⁹⁸ 407 U.S. 206, 212. Connecticut, California and Indiana also advanced this proposition.

New York, on the other hand, argued for a strict application of the *Texas v. New Jersey* rules, but against its retroactivity.⁹⁹

The Special Master recommended that the rules devised in *Texas v. New Jersey* should be followed as written, based on their suitability as easily-administered guidelines and clear precedent, and also be retroactive in implementation.¹⁰⁰ In a 6-3 decision, the Supreme Court agreed.¹⁰¹ Justice Brennan, writing for the majority, noted that granting escheat rights to a state of purchase may permit states with no continuing relationship to either sender or payee to abridge the property rights of the parties at bar.¹⁰² More importantly, however, adoption of a new escheat scheme would undermine the ease of administration promoted in *Texas v. New Jersey*: to uphold Pennsylvania's objections would succumb to the very case-by-case approach that had generated the bulk of escheat litigation and interstate dispute.¹⁰³

Justice Powell dissented, charging that the majority had sacrificed justice for administrative comfort. Because *Texas v. New Jersey* was brought under original jurisdiction, it need not be followed as precedent and may abdicate when justice directs otherwise.¹⁰⁴ If anything, the *principles* upon which *Texas v. New Jersey* was founded, rather than the outcome itself, ought to be considered most persuasive. The Court had previously rejected the state of incorporation because it placed too much focus on minor details, and also because it disregarded the intent to distribute unclaimed property in proportion to the amount of business transacted by a state's citizens.¹⁰⁵ Justice Powell concluded that by applying the spirit, rather than the letter, of *Texas v. New Jersey* to the case at bar, it would be most equitable to assume that the state in which a money order is purchased is also the state of the creditor's residence for escheat purposes.¹⁰⁶

At the insistence of companies transacting money orders and traveler's checks, Congress passed legislation in 1974 which constructively annulled the

⁹⁹ *Id.* By arguing against retroactivity, New York could then retain control of all pre-*Texas v. New Jersey* unclaimed money orders, regardless of the creditor's address, as the state of incorporation under *Standard Oil v. New Jersey*, 341 U.S. 428 (1951).

¹⁰⁰ I EPSTEIN ET AL., *supra* note 4, at § 2.04[3].

¹⁰¹ 407 U.S. 206, 215.

¹⁰² *Id.* at 213.

¹⁰³ *Id.* at 215.

¹⁰⁴ *Id.* at 216 (Powell, J., dissenting). Justice Powell also characterized the majority opinion as a "Cinderella-like compulsion to accommodate this ill-fitting precedential 'slipper.'" *Id.* at 222 (Powell, J., dissenting).

¹⁰⁵ *Id.* at 217-19 (Powell, J., dissenting).

¹⁰⁶ *Id.* at 219-21 (Powell, J., dissenting).

Supreme Court's decision in *Pennsylvania v. New York*.¹⁰⁷ The federal statute, declaring that a "substantial majority" of purchasers of money orders and traveler's checks live in the state in which such instruments are bought,¹⁰⁸ decreed that if the books and records of the debtor business contains the state of purchase of an abandoned money order or traveler's check, then that state may escheat.¹⁰⁹ If, however, no address exists or the state of purchase does not have applicable escheat legislation, the escheat rights are relinquished to the state containing the debtor corporation's *principle place of business*, conditional upon any future superior right.¹¹⁰

D. *Delaware v. New York*

Two decades passed before the Supreme Court heard another case involving state escheat. In the recent case of *Delaware v. New York*,¹¹¹ Delaware brought an original action against New York, alleging that New York had illegally escheated unclaimed property rightfully owed to Delaware as the state of incorporation under the secondary rule of *Texas v. New Jersey*.¹¹² The property at issue consisted primarily of unclaimed dividends, interest and other corporate debts held by financial intermediaries in "street name" accounts.¹¹³

The proceeds of these "street name" accounts were usually considered unclaimed when the financial intermediary could not locate the true, beneficial owner himself. This may occur through bookkeeping errors by either the

¹⁰⁷ Pub. L. No. 93-495, 88 Stat. 1525 (October 28, 1974), *codified at* 12 U.S.C.A. §§ 2501 to 2503 (West 1989 & Supp. 1994).

¹⁰⁸ 12 U.S.C.A. § 2501(2).

¹⁰⁹ 12 U.S.C.A. § 2503(1).

¹¹⁰ 12 U.S.C.A. § 2503(2), (3).

¹¹¹ 113 S.Ct. 1550, 123 L.Ed.2d 211 (1993).

¹¹² By the date of oral argument, however, every other state and the District of Columbia had sought and was granted leave to intervene, making *Delaware v. New York* the first Supreme Court case which involved every state of the union. See 113 S.Ct. 1550, 1555.

¹¹³ The Court, through Justice Thomas, explained that as record owners, intermediaries (such as banks, brokers and depositories) often collect corporate distributions *in their own name* for later disbursement to the beneficial securities owners. These "street name" accounts allow a financial broker to offer various services to shareholders, such as brokerage margin accounts, dividend reinvestment programs, and the like. Moreover, these accounts provide invaluable efficiency for quick transfer of beneficial ownership through computerized book entries rather than the physical transfer of stock certificates. 113 S.Ct. 1550, 1554. See also SECURITIES AND EXCH. COMM'N, Division of Market Regulation, PROGRESS AND PROSPECTS: DEPOSITORY IMMOBILIZATION OF SECURITIES AND USE OF BOOK-ENTRY SYSTEMS 4 (1985); BLACK'S LAW DICTIONARY 1421-22 (6th ed. 1990); J. Robert Brown, Jr., *The Shareholder Communication Rules and the Securities and Exchange Commission: An Exercise in Regulatory Utility or Futility?*, 13 J. CORP. L. 683, 688-91 (1988); Rosenberg and Fisher, *supra* note 5, at 20.

corporate issuer, the financial intermediary, or even the beneficial owner. A recent article explained how this may happen:

From time to time, however, [intermediary] institutions receive a greater amount of a particular distribution from the issuer than their own records show is owed to their customers.

In most instances, these excess distributions are attributable to a change in beneficial ownership of the securities underlying the distribution before the record date without a contemporaneous transfer of record ownership. Thus, on the pay date, the issuers make the distributions to the institutions that are owners of record on the books of the issuer but which, in fact, had sold or transferred the securities prior to the record date.

The institutions receiving excess distributions attempt to check for internal bookkeeping errors. But unless a claim for payment of the excess distribution is made, the institution may not know to whom the money is owed and may simply retain it.¹¹⁴

Between 1985 and 1989, New York had escheated \$360 million¹¹⁵ in unclaimed corporate distributions held by New York intermediaries¹¹⁶ regardless of the beneficial owner's last known address or the intermediaries' state of incorporation under the rules of *Texas v. New Jersey*.¹¹⁷ The escheat laws of most states, including Delaware, maintain a presumption of abandonment of unclaimed property after five to seven years.¹¹⁸ Under the New York Abandoned Property Laws, however, unclaimed property was generally presumed to be abandoned after only *three* years.¹¹⁹ Consequently, New York had already exercised and concluded its escheat campaign in an attempt to

¹¹⁴ Rosenberg and Fisher, *supra* note 5, at 20.

¹¹⁵ Representative Henry B. Gonzalez (D-TX) estimated that between 1985 and 1991, New York had seized "more than \$630 million of unclaimed dividend and interest payments." 139 CONG. RECORD H3776 (daily ed. June 17, 1993). Another report indicated that New York was holding approximately \$800 million in unclaimed funds subject to superior escheat claims by other states. Kobrin and Ringel, *supra* note 80, at 4.

¹¹⁶ It is worth noting that most of the securities intermediaries, acting either as depositories or holding "street name" accounts, have located their principal places of business in New York, primarily due to the amount of securities trading that takes place within the state.

¹¹⁷ 113 S.Ct. 1550, 1554-55.

¹¹⁸ See *supra* note 13.

¹¹⁹ N.Y. ABAND. PROP. LAW § 511 (McKinney 1991).

circumvent *Texas v. New Jersey* long before most other states' unclaimed property procedures even became applicable.¹²⁰

Several arguments were heard by the Court-appointed Special Master.¹²¹ As plaintiff, Delaware argued for a strict application of the secondary rule of *Texas v. New Jersey*, i.e., that when a creditor's last known address is unavailable, the state of the debtor's incorporation may escheat any abandoned or unclaimed property. Delaware theorized that the financial intermediaries holding the "street name" accounts were the relevant "debtors" in the present transactions because corporate issuers had already discharged their distribution responsibilities when payment was disbursed to the intermediaries as record owners. This position was furthered by the reality that the financial intermediaries are ultimately accountable to the true "creditors," the beneficial owners, under a contractual obligation.¹²²

Conversely, New York had a different interpretation of the debtor-creditor relationship. New York referred to the typically complex chain of ownership and distribution in securities transactions, and argued that any communication breakdown resulting in unclaimed funds hardly ever trickled down to the ultimate beneficial owner. Rather, most abandoned claims or incomplete information occurred between multiple financial intermediaries — thus, limiting the debtor-creditor relationship almost exclusively to transactions between the intermediaries themselves. When the distributions were declared abandoned, the usual "creditors" were in fact the intermediaries within the chain of corporate disbursement, rather than the ultimate beneficial owner. Since most of these "creditor" intermediaries had ascertainable trading addresses in New York, the Empire State contended that those addresses represented the creditor's last known address under the first prong of *Texas v. New Jersey*. Moreover, New York argued that since the "creditors" in this conflict are predominantly other financial intermediaries, a statistical sampling of these brokerage relationships — rather than an expensive, time-consuming examination of each recorded transaction — should suffice a conclusion that virtually all of the "creditor" intermediaries have New York addresses.

¹²⁰ Rosenberg and Fisher, *supra* note 5, at 17. Perhaps even more distressing was while New York's escheat legislation was custodial on its face, the underlying reality was that New York generally transferred its escheats directly into its general treasury. The New York legislature had established only a paltry fund of \$750,000 in which to pay out escheated funds eventually claimed by reappearing owners, when in fact the annual value of unclaimed property escheated by the state was many times higher. Kobrin and Ringel, *supra* note 80, at 4.

¹²¹ The Supreme Court appointed Thomas H. Jackson, Dean of the University of Virginia School of Law, as Special Master. 488 U.S. 990 (1988).

¹²² Rosenberg and Fisher, *supra* note 5, at 20. See also U.C.C. § 8-207(1), 2C U.L.A. 339 (1991).

Consequently, New York possessed the most superior right to escheat the unclaimed corporate distributions held by the “creditor” intermediaries.¹²³

Other states also proffered their own proposals which would entitle them to a portion of the funds escheated by New York. Texas, along with forty-one other states, insisted that the principles of fairness and clarity embodied in *Texas v. New Jersey* and *Pennsylvania v. New York* mandated the recognition of the most obvious “debtor” — the issuing corporation — for purposes of determining the state of rightful escheat.¹²⁴ These states pointed out that securities depositories and brokerage houses had developed for the efficiency and convenience of beneficial shareholders *only*. The Special Master summarized this legal theory:

[T]he intermediaries are simply way-stations in a system that distributes funds from the debtor (the issuer) to the creditor (the beneficial owner), and the happenstance of where along this route a holder realizes that the intended payee cannot be located should not be determinative for purposes of escheat law’s application.¹²⁵

Another small group of states, headed by California, proposed a *new* secondary rule for the case at bar, and suggested that the unclaimed funds be distributed over time to *all* states in proportion to the commercial activities of their respective citizens.¹²⁶ It was argued that the entire phenomenon of securities trading was national in scope, and that the Court need not nor ought not undertake the difficult job of assigning a situs to the intangible funds at all. Moreover, the proposition of California et al., followed the original analysis advanced in *Texas v. New Jersey*¹²⁷ that such redistribution provided the most equitable escheat system.¹²⁸

¹²³ Rosenberg and Fisher, *supra* note 5, at 20.

¹²⁴ Rosenberg and Fisher, *supra* note 5, at 20. Though the majority of the unclaimed funds would still escheat to Delaware by applying the secondary rule of *Texas v. New Jersey* under this proposal, some of the abandoned property would still escheat to other states of incorporation. Moreover, government bonds issued by states and municipalities would become escheatable by the sovereign which solicited them. *Id.* See Report of the Special Master, *Delaware v. New York*, 113 S.Ct. 1550 (1993) (111, Original), available in LEXIS, Genfed Library, USplus File, at LEXIS 24 [hereinafter Report of Special Master].

¹²⁵ Report of Special Master, *supra* note 124, at LEXIS 11.

¹²⁶ Rosenberg and Fisher, *supra* note 5, at 20.

¹²⁷ *Supra* note 88.

¹²⁸ Rosenberg and Fisher, *supra* note 5, at 20.

After hearing all of the arguments, the Court-appointed Special Master issued his report containing the following recommendations.¹²⁹ Rejecting New York's argument, the Special Master found that the unclaimed distributions did not have any last known addresses under the primary rule of *Texas v. New Jersey*; consequently, the secondary rule allowing the debtor's state of incorporation the right to escheat was applicable.¹³⁰ As to which institution was the most appropriate "debtor" — the intermediary or the corporate issuer — the Special Master concurred with the proposal offered by Texas et al., and considered the original issuer to be the fairest interpretation, in part because it would tend to distribute the abandoned funds more uniformly among the states.¹³¹ In coming to his conclusion, the Special Master conducted an exhaustive analysis of state concepts of debtor-creditor law, ultimately deciding that the right to escheat ought not be determined by either legal semantics or differing state ideologies.¹³²

Instead, the Special Master proposed *sua sponte* that the secondary rule of *Texas v. New Jersey* be updated by allowing the state of the *issuer's principle place of business*, rather than the debtor's state of incorporation, to escheat unclaimed securities distributions when the beneficial owner's last known address is unavailable.¹³³ He observed that while a great percentage of companies are incorporated in only a few states, corporate headquarters are more evenly situated among the states.¹³⁴ This variation would more fairly reward states whose escheat would benefit the "company whose business activities made the intangible property come into existence."¹³⁵ Accompanying this departure from *Texas v. New Jersey* was the further recommendation that his new secondary rule be applied retroactively to the unclaimed funds recently escheated by New York.¹³⁶ The Special Master considered these modifications

¹²⁹ Report of Special Master, *supra* note 124. The Report was filed on January 28, 1992.

¹³⁰ California's proposal for the proportional escheat of unclaimed funds to states was rejected by the Special Master.

¹³¹ Report of Special Master, *supra* note 124, at LEXIS 24. In reaching his conclusion, it seems that the Special Master found a greater amount of financial intermediaries incorporated in only a few states than were the aggregate of all corporations issuing publicly-traded stock. See *supra* note 124.

¹³² Report of Special Master, *supra* note 124, at LEXIS 26.

¹³³ *Id.* at LEXIS 28-33. The "principle place of business" of a corporate issuer is determined by the address of the corporation's headquarters as indicated on the cover sheet of the periodic filings required by and submitted to the Securities and Exchange Commission.

¹³⁴ *Id.* at LEXIS 31.

¹³⁵ *Texas v. New Jersey*, 379 U.S. 674, 680 (1965).

¹³⁶ This corollary would have each state claiming a portion of the \$360 million in unclaimed distributions held by New York if that state could prove it contained within its borders any corporate headquarters, and thus a more superior escheat right under the Special Master's proposed rule. Moreover,

to be “minor,” appearing “congruent, in both letter and spirit, with the Court’s original goals in fashioning equitable rules in this area in *Texas v. New Jersey*.”¹³⁷

Both Delaware and New York objected to the debtor-creditor analysis of the Special Master. Delaware filed an exception to the Special Master’s departure from the original secondary rule of *Texas v. New Jersey*. Delaware also petitioned the Court to enter judgment against New York solely on the Special Master’s adoption of the secondary rule. New York renewed its stance that most of the “creditors” were financial intermediaries themselves with ascertainable addresses, and that no more than a sampling of these intermediaries was necessary to determine the predominance of them to be within its state for purposes of escheat. In a 6-3 decision, the Supreme Court staunchly upheld its prior rulings in *Texas v. New Jersey* and *Pennsylvania v. New York*, and sustained two of Delaware’s exceptions in their entirety, one of Delaware’s exceptions in part, and one of New York’s exceptions.¹³⁸

In an opinion authored by Justice Thomas, the majority reaffirmed the primary and secondary rules espoused in *Texas v. New Jersey*, applying plain meanings of “debtor” and “creditor” as ascertained from the positive law creating such relationships.¹³⁹ Since the issuing corporations had already discharged their payment liabilities to financial intermediaries as record owners,¹⁴⁰ the Court agreed with Delaware that the financial intermediaries left holding unclaimed corporate distributions, rather than issuing corporations, were the relevant “debtors” for purposes of escheat priority.¹⁴¹ Justice Thomas explained that allowing the state of the issuer’s principle place of business to escheat such unclaimed funds might “permit intangible property rights to be cut

the Special Master solicited further argument on the issue of retroactivity since it was not debated within the initial party briefs.

¹³⁷ Report of Special Master, *supra* note 124, at LEXIS 49. For the practical effects the report would have on the various states, see Kobrin and Ringel, *supra* note 80, at 4; Rosenberg and Fisher, *supra* note 5, at 20.

¹³⁸ 113 S.Ct. 1550, 1550-62. Justice White, joined by Justices Blackmun and Stevens, wrote a terse dissent stating he would uphold the Special Master’s Report as most equitable and overrule all exceptions to it. *Id.* at 1562 (White, J., dissenting).

¹³⁹ *Id.* at 1558-59 (“Our rules regarding interstate disputes over competing escheat claims cannot be severed from the law that creates the underlying creditor-debtor relationships.”).

¹⁴⁰ See U.C.C. § 8-207, comment 1, 2C U.L.A. 341 (1991), and *supra* note 122.

¹⁴¹ 113 S.Ct. at 1559. Because the Court did not adopt New York’s interpretation of the relevant “debtors” and “creditors,” the further proposition that a statistical sampling of intermediary transactions would be sufficient to presume most last known addresses to be in New York was inapposite. Justice Thomas did comment, however, that a similar presumption was propounded and rejected in *Pennsylvania v. New York*. *Id.* at 1561.

off or adversely affected by state action . . . in a forum having no continuing relationship to any of the parties to the proceedings."¹⁴²

Furthermore, the majority questioned the Special Master's use of equity to support his divergence from the existent secondary rule. Since a considerable number of financial intermediaries are incorporated in Delaware, all parties recognized that the secondary rule provided Delaware a great windfall. However, to shift secondary escheat rights to the state of the debtor's, *i.e.* the financial intermediary's, principle place of business would simply shift Delaware's windfall to New York, since most securities intermediaries have their main offices in that state. Thus, allowing the state of incorporation to escheat abandoned securities distributions under *Texas v. New Jersey* dispersed them no more unequally than under escheat by the state of the issuer's principle place of business. The Court therefore held, as it did in *Pennsylvania v. New York*,¹⁴³ that there were no compelling reasons to reject the efficiency and ease of administration inherent in the existent secondary rule of *Texas v. New Jersey*.¹⁴⁴

The majority, however, declined Delaware's invitation to rule against New York on the face of the Special Master's adoption of the secondary rule.¹⁴⁵ Instead, the case was remanded to the Special Master to determine if any of the unclaimed distributions seized by New York did in fact have actual last known addresses in that state.¹⁴⁶ Justice Thomas concluded the majority opinion with a suggestion that any dissatisfied states may air their grievances before Congress, as was done following *Pennsylvania v. New York*.¹⁴⁷ The Court opined that while Congress may be willing to address certain policy considerations through federal legislation, the Supreme Court would continue to adhere to the interstate escheat rules established by *Texas v. New Jersey*, and now reaffirmed by *Delaware v. New York*.¹⁴⁸

¹⁴² *Id.* at 1559, citing *Pennsylvania v. New York*, *supra* note 97, at 213 (internal quotation marks omitted).

¹⁴³ *Id.* at 1556.

¹⁴⁴ *Id.* at 1560. Justice Thomas addressed the proposed secondary rule after he had rejected the Special Master's debtor-creditor analysis. It does seem, however, that had the Supreme Court adopted the Report's position that the issuing corporation was the appropriate "debtor," the proposed secondary rule *would* have distributed the escheated funds more equitably. *Id.* (the Special Master's plan "cannot survive independent of his erroneous decision to treat the issuers as the relevant 'debtors.'")

¹⁴⁵ *Id.* at 1561.

¹⁴⁶ *Id.*

¹⁴⁷ See *supra* part II(C).

¹⁴⁸ 113 S.Ct 1550, 1562. Since the *Delaware v. New York* decision has been handed down, New York and Delaware have settled the litigation. The settlement called for New York to pay Delaware \$200 million to account for the prior unclaimed corporate distributions wrongfully escheated by New York.

III. Pending Legislation

Encouraged by the Court's invitation in *Delaware v. New York*, as well as previous legislative success,¹⁴⁹ those states disgruntled by the majority opinion have taken their case to Capitol Hill. Bills have been introduced in both houses of Congress that would sanction as federal law the recommendations made by the Special Master in his report before the Supreme Court, namely that any unclaimed securities distributions held by financial intermediaries will escheat to the state of the issuer's principle place of business when the last known address of the beneficial owner is unavailable.¹⁵⁰

H.R. 2443 was introduced by Representative Henry B. Gonzalez (D-TX) two-and-a-half months after the *Delaware v. New York* decision, and is presently co-sponsored by a majority of the House of Representatives.¹⁵¹ Rep. Gonzalez introduced the act as a bipartisan effort to redistribute windfalls presently enjoyed by both Delaware and New York at the expense of the remaining states.¹⁵² Legislating the tenets of the Special Master's Report, he claimed, would uphold the basic value of fairness, and also reward states' efforts to generate local economic gain by attracting corporate headquarters.¹⁵³ As of May 1994, H.R. 2443 has been referred to the House Committee on Banking, Finance and Urban Affairs,¹⁵⁴ and a hearing has been conducted by the House Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance.¹⁵⁵

S. 1715 was introduced five months later by Senator Kay B. Hutchison (R-TX), and is presently co-sponsored by an overwhelming majority of the Senate.¹⁵⁶ In her introductory remarks, Sen. Hutchison said that the goal of S.

Delaware will also be eligible to escheat those future funds presumed abandoned under the secondary rule of *Texas v. New Jersey*, as interpreted by *Delaware v. New York*. Sources indicate that Delaware's right to escheat under the secondary rule will account for approximately \$24 million annually in unclaimed stock dividends and other profits. Penny Bender, *Delaware Duo's Claim to Fame*, SUN. NEWS J. (Wilmington, Del.), February 6, 1994, at A1, A17.

¹⁴⁹ See *supra* part II(C).

¹⁵⁰ H.R. 2443, 103d Cong., 1st Sess. (1993); S. 1715, 103d Cong., 1st Sess. (1993).

¹⁵¹ H.R. 2443 was introduced on June 17, 1993. Three hundred thirty-one representatives are listed as co-sponsors of record. Available in LEXIS, Legis Library, Bltrck File.

¹⁵² 139 CONG. REC. H3776 (daily ed. June 17, 1993)(statement of Rep. Gonzalez).

¹⁵³ *Id.* at H3777.

¹⁵⁴ 139 CONG. REC. H3782 (daily ed. June 17, 1993).

¹⁵⁵ 140 CONG. REC. D306 (daily ed. March 22, 1994).

¹⁵⁶ S. 1715 was introduced on November 19, 1993. The bill is co-sponsored by 78 Senators. Available in LEXIS, Legis Library, Bltrck File.

1715 was to return unclaimed securities distributions to their states of origin, and that the Court's decision in *Delaware v. New York* benefitted only two, maybe three, states at most.¹⁵⁷ As an original co-sponsor, Senator Paul Simon (D-IL) also commented on the bill, noting that all fifty states ought to benefit from abandoned securities funds instead of the present three.¹⁵⁸ As of May 1994, the act was referred to the Senate Banking, Housing and Urban Affairs Committee,¹⁵⁹ and no further action had been taken.¹⁶⁰

The companion bills are virtually identical, and would both add amendments to Title VI of Public Law 93-495,¹⁶¹ the earlier legislation passed by Congress to overrule *Pennsylvania v. New York*.¹⁶² While the primary rule of *Texas v. New Jersey* granting escheat rights to the state of the creditor's last known address is left intact, both acts would create an exception to the secondary rule for unclaimed securities distributions, deferring escheat rights to the state of the issuer's principle executive offices rather than the domicile state of the financial intermediary left holding the property.¹⁶³ As suggested by the Special Master in *Delaware v. New York*,¹⁶⁴ corporate headquarters would be those designated by the corporation itself in its governmental filings, usually with the Securities and Exchange Commission.¹⁶⁵

Should the state of the issuer's principle place of business be unable to escheat the unclaimed distributions, the legislation also provides for a *tertiary* rule for escheat hierarchy by allowing the state of the *holder's* principle place of business to assume the unclaimed funds.¹⁶⁶ This situation would occur when the financial intermediary holding the unclaimed distribution does not have the

¹⁵⁷ 139 CONG. REC. S16463-64 (daily ed. November 19, 1993). The third state mentioned is Massachusetts, since it is the state of incorporation of several large banks and depositories.

¹⁵⁸ 139 CONG. REC. S16847 (daily ed. November 20, 1993).

¹⁵⁹ 139 CONG. REC. S16432 (daily ed. November 19, 1993).

¹⁶⁰ *Supra* note 156.

¹⁶¹ 88 Stat. 1525 (October 28, 1974), *codified at* 12 U.S.C.A. §§ 2501 to 2503 (West 1989 & Supp. 1994).

¹⁶² Since each bill is in the form of an amendment, footnote references to particular portions of these bills will be made by first listing the section of the actual legislation itself, and then indexing within quotation marks the section of Public Law 93-495 to be amended.

¹⁶³ H.R. 2443, *supra* note 151, § 2(a), "§ 613(a)"; S. 1715, *id.*, § 2, "§ 613(a)". Similar to the Supreme Court precedents, however, this legislated escheat right would be subject at any time to another state's superior escheat right that may later be brought.

¹⁶⁴ Report of Special Master, *supra* note 134.

¹⁶⁵ H.R. 2443, *supra* note 151, § 2(a), "§ 612(1)"; S. 1715, *id.*, § 2, "§ 612(5)". In the event a corporation has its principle executive offices in more than one state, each state so indicated shall escheat on a "pro-rata basis." H.R. 2443, *supra* note 151, § 2(a), "§ 613(e)"; S. 1715, *id.*, § 2, "§ 613(d)".

¹⁶⁶ H.R. 2443, *supra* note 151, § 2(a), "§ 613(b)"; S. 1715, *id.*, § 2, "§ 613(b)".

last known address of the corporate issuer,¹⁶⁷ or when the state containing the issuer's principle executive offices is unable to accept the property under its present escheat laws.¹⁶⁸ This tertiary rule, like the proposed new secondary rule, would also yield to any greater escheat right brought forward by another state.

Despite a majority of Congressional delegates having declared their co-sponsorship of these pending acts,¹⁶⁹ both H.R. 2443 and S. 1715 may die in committee if prompt action is not taken before the end of this legislative session. Several reasons may exist for the present inaction. First, the emphasis on and push for both a crime bill and President Clinton's health-care legislation may be monopolizing all Congressional functions to the fullest extent possible. Second, despite general support in both Houses,¹⁷⁰ there may be dissension as to specific portions of each bill.¹⁷¹ Third, Congress may be content to stay its regular bureaucratic course via circuitous committee action, as opposed to a quick and impulsive vote, before the session's end. But perhaps the most plausible basis for Congressional inactivity may be that individual legislators are understandably confused about the frequently intricate webs that permeate escheat processes, and simply need more time to acquaint themselves with the requisite information in order to make an intelligent decision.

It may very well be that there is no quick and easy answer to the escheat dilemma. Though *Texas v. New Jersey* supposedly ended the confusion surrounding state escheat, the Supreme Court continues to hear cases defining interstate hierarchies. Even now the National Conference of Commissioners on Uniform State Laws is in the process of drafting yet a fourth measure concerning the disposition of abandoned or unclaimed intangible property. So long as the possibility of lining state coffers with tax-free capital coexists with

¹⁶⁷ As long as the holder uses "reasonable efforts" to locate the last known address of a corporate issuer and is unsuccessful, those attempts by the financial intermediary are considered presumptive of the absence of an issuer's last known address. H.R. 2443, *supra* note 151, § 2(a), "§ 613(d)"; S. 1715, *id.*, § 2, "§ 613(c)". A state, however, may challenge this presumption at its own expense. *Id.*

¹⁶⁸ See *supra* note 90.

¹⁶⁹ *Supra* notes 152 and 157.

¹⁷⁰ It is worth noting that the legislation is staunchly opposed by Delaware, New York and Massachusetts. Through their legislators, these states presently enjoy vast influence in Congressional circles, which may alone account for any hesitation to pass the measures. Penny Bender, *Lawmakers Ward Off a Reversal of Fortune*, SUN. NEWS J. (Wilmington, Del.), Feb. 6, 1994, at A16.

¹⁷¹ A likely point of contention may prove to be the issue of retroactivity. To legislate a full-scale reversal of the past escheats of all fifty states would create an administrative catastrophe that might ultimately cost more than the potential value of that unclaimed property sought. Moreover, while a majority of states would likely gain a new source of revenue under the new law, presumably each state would also have to surrender at least a portion of its past escheats in exchange.

a multitude of escheat ideologies, it seems that controversies involving state escheat will remain a source of interstate contention. And unless a fitting solution is promptly confirmed by either the Supreme Court or Congress, or both, the escheat dilemma may be the only discernable partner we can count on as we enter the twenty-first century.