No. 111 Original

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

STATE OF DELAWARE,

Plaintiff

against

STATE OF NEW YORK,

Defendant

REPORT OF THE SPECIAL MASTER ON MOTIONS TO INTERVENE

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Special Master

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September 13, 1989

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This case commenced as a suit by the State of Delaware ("Delaware") against the State of New York ("New York), in which Delaware asserts a right to unclaimed property, mainly dividend and interest payments by corporations of various locations, held or formerly held by brokers located in New York and incorporated in Delaware. Involved, in the main, is the appropriateness and application of two cases on the issue of escheating of unclaimed property, Texas v. New Jersey, 379 U.S. 674 (1965), and Pennsylvania v. New York,

407 U.S. 206 (1972). The Court granted Delaware's motion for leave to file a complaint on May 31, 1988 and appointed the undersigned Special Master on December 12, 1988.

Shortly after this, other jurisdictions began to take more than a passing interest in this case. The State of Texas ("Texas") was the first to file a motion for leave to file a complaint in intervention, and its motion was granted by the Court on February 21, 1989. Numerous other states (plus the District of Columbia) have since then filed motions (variously labeled) to intervene, and, by order dated June 12, 1989, all of these motions filed as of that date were referred to the Special Master. These jurisdictions assert that portions of the monies at issue, attributable in the first instance to issuers incorporated in those jurisdictions, should escheat to them under their unclaimed property laws and under what they assert to be the correct interpretation of applicable precedents in this area.

New York has moved for judgment on the pleadings against Texas, and has opposed further motions to intervene by subsequent jurisdictions on the ground that "[t]he state applicants for intervention are not entitled to intervene as of right unless the Court decides to overrule *Texas v. New Jersey* and subsequently determines that Texas would not adequately represent them in establishing the amount of their claims." State of New York, Brief in Opposition to Motions for Leave to Intervene 6 (May 18, 1989). Furthermore, New York has requested that the Court should defer deciding the motions to intervene by the various jurisdictions until it decides the motion for judgment on the pleadings against Texas. *Id.* New York's motion for judgment on the pleadings was also referred to the Special Master by order dated June 12, 1989.

Although the number of jurisdictions seeking intervention is indeed large, I am convinced that New York's request to defer ruling on the motions to intervene should be denied.

Among other things, those jurisdictions seeking to intervene should be entitled to present their own defenses to a motion for judgment on the pleadings that is likely to affect their posture in this case as well. For, whether their stake in this lawsuit depends on the overruling of *Texas v. New Jersey* and *Pennsylvania v. New York* is, at bottom, an issue to be resolved, at the earliest, at the time of deciding the motion for judgment on the pleadings. It is enough for now to note that the jurisdictions seeking intervention purport to rely on these cases. Given that, they should be entitled to be heard on the motion for judgment on the pleadings, and that requires intervention before rather than after deciding such motion. Moreover, even in terms of judicial economy, the savings occasioned by proceeding the way suggested by New York are problematic. Should New York's motion against Texas on the pleadings be granted, it is at least conceivable that other states would then seek intervention, asserting that their basis for intervention differed substantively from Texas'. And, if New York's motion is not granted, the principal basis to reject intervention by other jurisdictions would then be that "applicant's interest is adequately represented by existing parties," FRCP 24(a), or "the intervention will unduly delay or prejudice the adjudication of the rights of the original parties," FRCP 24(b).

These issues are ripe for determination now. Intervention at this point will not unduly delay this case. And, while adequate representation of all the jurisdictions by a limited number of states seems possible, given that this is an original action and that states are sovereign entities, a generous intervention standard should be used, as the Court has appeared to use in the past. *See* Maryland v. Louisiana, 451 U.S. 725, 745 n. 21 (1981); United States v. Louisiana, 354 U.S. 515, 515-16 (1957). That way, such states have maximum latitude in presenting their own case. In saying this, I fully expect and hope that the various jurisdictions seeking

intervention can agree on methods for coordinating their positions. I view such agreed-upon coordination preferable, however, to a refusal to permit intervention. Accordingly, I recommend that the Court grant the various motions to intervene by the jurisdictions that have, to this point, filed such motions. A proposed order is attached.

Respectfully submitted,

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PROPOSED ORDER

The motion of Alabama, et al. for leave to file a complaint in intervention is granted. The motion of Arizona for leave to file a complaint in intervention is granted. The motion of Connecticut for leave to intervene is granted. The motion of the District of Columbia to intervene is granted. The motion of Idaho for leave to file a complaint in intervention is granted. The motion of New Mexico for leave to intervene is granted. The motion of Tennessee for leave to intervene is granted. The motion of Virginia for leave to intervene is granted. The motion of Wisconsin for leave to intervene is granted. The parties are allowed sixty days within which to answer.