

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

STATE OF DELAWARE,

Plaintiff,

STATE OF TEXAS,

Plaintiff-Intervenor,

vs.

STATE OF NEW YORK,

Defendant.

ANSWER OF THE STATE OF NEW YORK TO THE
AMENDED COMPLAINT IN INTERVENTION OF
THE STATES OF ALABAMA, ALASKA, ARKANSAS,
FLORIDA, GEORGIA, HAWAII, ILLINOIS, INDIANA,
IOWA, KANSAS, LOUISIANA, MAINE, MISSISSIPPI,
MISSOURI, MONTANA, NEVADA, NEW HAMP-
SHIRE, NEW JERSEY, NORTH CAROLINA, NORTH
DAKOTA, OHIO, OKLAHOMA, RHODE ISLAND,
SOUTH DAKOTA, UTAH, VERMONT, WASHING-
TON, WEST VIRGINIA, AND WYOMING, AND THE
COMMONWEALTHS OF KENTUCKY AND
PENNSYLVANIA

JERRY BOONE
Solicitor General
Counsel of Record

ROBERT A. FORTE
Assistant Attorney General
Of Counsel

August 6, 1993

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendant
120 Broadway
New York, New York 10271
(212) 416-8018

IN THE
Supreme Court of the United States

OCTOBER TERM, 1993

STATE OF DELAWARE,

Plaintiff,

STATE OF TEXAS,

Plaintiff-Intervenor,

vs.

STATE OF NEW YORK,

Defendant.

**ANSWER OF THE STATE OF NEW YORK TO THE
AMENDED COMPLAINT IN INTERVENTION OF
THE STATES OF ALABAMA, ALASKA, ARKANSAS,
FLORIDA, GEORGIA, HAWAII, ILLINOIS, INDIANA,
IOWA, KANSAS, LOUISIANA, MAINE, MISSISSIPPI,
MISSOURI, MONTANA, NEVADA, NEW HAMP-
SHIRE, NEW JERSEY, NORTH CAROLINA, NORTH
DAKOTA, OHIO, OKLAHOMA, RHODE ISLAND,
SOUTH DAKOTA, UTAH, VERMONT, WASHING-
TON, WEST VIRGINIA, AND WYOMING, AND THE
COMMONWEALTHS OF KENTUCKY AND
PENNSYLVANIA**

The State of New York, defendant, by its counsel, for its Answer to the Amended Complaint in Intervention of the States of Alabama, Alaska, Arkansas, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia and Wyoming, and the Commonwealths of Kentucky and Pennsylvania (“Alabama, *et al.*”), says:

1. Admits paragraph 1.
2. Admits paragraph 2.
3. Admits paragraph 3.
4. Admits paragraph 4.
5. Admits paragraph 5.
6. Admits paragraph 6.
7. Admits only that paragraph 7 asserts the relief sought by Alabama, *et al.*
8. Admits the first sentence of paragraph 8 except denies that “Distributions” include “profits” and denies that there are “other nonbrokerage firm intermediaries.” Denies the second sentence of paragraph 8.
9. Denies paragraph 9.
10. Admits only that paragraph 10 asserts Alabama, *et al.*’s further claims for relief.
11. Admits only that paragraph 11 asserts Alabama, *et al.*’s alternative claims for relief.

AFFIRMATIVE DEFENSES

12. The affirmative defenses previously raised by New York to the complaints in intervention are repeated and realleged as though fully set forth herein.

13. Alabama, *et al.* fail to state a claim upon which relief can be granted under the Court's primary rule because they have not identified any owners of Distributions with last known addresses in their respective States on the debtor intermediaries' books and records whose property has been remitted to New York.

14. Alabama, *et al.* fail to state a claim upon which relief can be granted under the Court's backup rule because they have not identified any debtor intermediaries incorporated in their respective States who have remitted Distributions to New York when there are no last known addresses of creditors on the debtor intermediaries' books and records.

15. Alabama, *et al.* fail to state a claim upon which relief can be granted under the Court's backup rule or any equitable principle determined or to be determined by the Court because they have not identified any debtor intermediaries with principal places of business in the intervenors' respective States who have remitted Distributions to New York when there are no last known addresses of creditors on the debtor intermediaries' books and records and the debtor intermediaries are not incorporated in any State.

COUNTERCLAIMS

16. New York claims entitlement to the custodial possession of Distributions wrongfully taken by Alabama, *et al.* which are owed to creditors whose last known addresses on the debtor intermediaries' books and records are in New York.

17. New York claims entitlement to the custodial possession of Distributions wrongfully taken by Alabama, *et al.* from debtor intermediaries incorporated in New York when the creditors' last known addresses are not shown by the debtor intermediaries' books and records.

18. New York claims entitlement to the custodial possession of Distributions wrongfully taken by Alabama, *et al.* from debtor intermediaries whose principal places of business are in New York when the debtor intermediaries' books and records do not show the creditors' last known addresses and the debtor intermediaries are not incorporated in any State.

19. New York claims entitlement to the custodial possession of Distributions wrongfully taken by Alabama, *et al.* and owed to New York pursuant to any ruling, principle or determination announced or to be announced by the Court.

PRAYER FOR RELIEF

WHEREFORE, the State of New York prays:

1. Alabama, *et al.*'s prayer for relief be denied.

2. Judgment be entered on New York's counterclaims for any Distributions to which New York is entitled which were wrongfully taken by Alabama, *et al.*, plus prejudgment interest at the prevailing rate.

3. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
August 6, 1993

JERRY BOONE
Solicitor General
Counsel of Record

ROBERT A. FORTE
Assistant Attorney General
of Counsel

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendant
120 Broadway
New York, New York 10271
(212) 416-8018

COUNSEL PRESS

11 EAST 36TH STREET, NEW YORK, NEW YORK 10016

(212) 685-9800; (516) 222-1021; (914) 682-0992; (908) 494-3366; (716) 882-9800

(127486)