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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1993

STATE OF DELAWARE,  
and *Plaintiff,*

STATE OF TEXAS, *et al.,*  
*Intervening Plaintiffs,*

v.

STATE OF NEW YORK,  
*Defendant.*

**On Motion of Defendant, State of New York,  
for Leave to File Counterclaims**

**RESPONSE OF PLAINTIFF, STATE OF DELAWARE,  
TO MOTION OF DEFENDANT, STATE OF NEW YORK,  
FOR LEAVE TO FILE COUNTERCLAIMS**

CHARLES M. OBERLY, III  
Attorney General  
State of Delaware

J. PATRICK HURLEY, JR.  
Deputy Attorney General  
State of Delaware

DENNIS G. LYONS  
*Counsel of Record*  
1200 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 872-6700

*Of Counsel:*

ARNOLD & PORTER  
Washington, D.C., and  
New York, New York

KENT A. YALOWITZ  
399 Park Avenue  
New York, New York 10022  
(212) 715-1000

*Attorneys for Plaintiff,  
State of Delaware*

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No. 111 Original

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Delaware takes no position on New York's motion for leave to file counterclaims. None of them seeks relief against it. We observe, however, that New York's proposed counterclaims simply track the language of the claims against New York made by the Intervenor in their Amended Complaints. Although New York did not assert these counterclaims before, the similarly phrased claims of the Intervenor were not asserted earlier in the litigation, either. The Special Master permitted the

Amended Complaints to be filed and the Court denied a Motion by Delaware, largely joined by New York, to strike them.

Delaware, however, notes that its own claims against New York are in a considerably advanced state. They were first made in its Motion for Leave to File Complaint against New York, submitted in February 1988, and granted by the Court in May 1988. The Court's decision of March 30, 1993, after five years of litigation, removed the principal issues standing in the way of Delaware's recovery on its Complaint by reaffirming the Court's two leading precedents on the relative rights of the states to escheats of intangibles under the backup rule, and confirming their applicability to this case. The Court also held insufficient New York's initial attempt, over that five-year period, to prove the applicability of the "primary rule" to all of the escheats in issue between Delaware and New York. Subsequent discovery under the backup rule has indicated that New York owes in excess of \$300 million to Delaware, and the total number of intermediaries whose domicile is in dispute between Delaware and any other party in the case has been reduced, through the processes initiated by the Master in Litigation Management Order No. 6, to only two, and those two with relatively small amounts of escheats.

On the other hand, the "new beginning" theories put forward by the Intervenor in their Amended Complaints are either in a highly preliminary state (*e.g.*, their primary rule claims), or, as far as Delaware is concerned, in a state where very little needs to be resolved (*i.e.*, the one remaining Intervenor-Delaware conflict over domicile of an intermediary). New York's prosecution of its new theory of its primary rule claims is also in a highly preliminary stage, and its case for relief on its counterclaims is in an even more preliminary stage. It is, of course, in the interests of New York, as a defendant, to delay its day of reckoning to Delaware as long as possible; and

the Intervenor appear to be aligned with New York in this respect.

Delaware accordingly respectfully urges that if New York's motion is granted, the addition of those counterclaims not be permitted to delay the resolution of Delaware's claims, pending as they have been for close to six years, while the claims now being asserted in the Intervenor's Amended Complaints and New York's proposed counterclaims date only from 1993.

Delaware understands that under the Court's Order of October 4, 1993, New York's Motion and this and other responses thereto will be referred to the Special Master.

Respectfully submitted,

CHARLES M. OBERLY, III  
Attorney General  
State of Delaware

J. PATRICK HURLEY, JR.  
Deputy Attorney General  
State of Delaware

DENNIS G. LYONS  
*Counsel of Record*  
1200 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 872-6700

*Of Counsel:*

ARNOLD & PORTER  
Washington, D.C., and  
New York, New York

KENT A. YALOWITZ  
399 Park Avenue  
New York, New York 10022  
(212) 715-1000

*Attorneys for Plaintiff,*  
*State of Delaware*

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