



No. 111, Original

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**In the  
Supreme Court of the United States**

October Term, 1993

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STATE OF DELAWARE,  
*Plaintiff,*

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

v.

STATE OF NEW YORK,  
*Defendant.*

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RESPONSE OF PLAINTIFF-INTERVENOR,  
COMMONWEALTH OF MASSACHUSETTS, TO  
MOTION OF DEFENDANT, STATE OF NEW YORK,  
FOR LEAVE TO FILE COUNTERCLAIMS

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November 30, 1993



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The Commonwealth of Massachusetts  
files this response to the State of New  
York's Motion for Leave to File

Counterclaims, wherein New York seeks to assert claims against plaintiffs for allegedly taking unclaimed funds properly owed to New York because: the creditor's last known address is in New York; the debtor intermediary is incorporated in New York; the debtor intermediary is unincorporated and has a principal place of business in New York; or said funds are "owed to New York pursuant to any ruling, principle or determination announced or to be announced by the Court." Motion of the State of New York for Leave to File Counterclaims, p. 2 (Oct. 29, 1993) ("New York Motion").

With the exception of the last category of counterclaim, which is, at best, premature and which does not state a claim upon which relief may be granted, Massachusetts does not oppose

New York's motion. Massachusetts is concerned, however, that litigation of New York's counterclaims not be permitted to delay resolution of Massachusetts' pending claims against New York.

In its First Amended Complaint, Massachusetts seeks recovery from New York of amounts wrongfully taken by New York in violation of this Court's rules on escheats of intangibles. Despite New York's mischaracterization of Massachusetts' First Amended Complaint as alleging (like the other Intervenor) "for the first time" escheat under the secondary rule based on state of incorporation, see New York Motion ¶ 11, p. 7, Massachusetts' claim has always been based upon New York's taking of unclaimed funds wrongly remitted to New York by intermediaries

incorporated in Massachusetts. Because of its narrow scope, Massachusetts' claim requires only completion of ongoing informal discovery relating to amounts remitted by such intermediaries to New York, less claims repayments.

In contrast, prosecution of New York's counterclaims against forty-nine states and the District of Columbia will surely be protracted. New York's expansive counterclaims include primary rule claims instigated largely because the Intervenors other than Massachusetts commenced primary rule claims against New York after this Court's decision of March 30, 1993. See New York Motion ¶ 13. Especially since New York could have asserted its counterclaims before or at the same time as the intervening plaintiffs amended their complaints, it would be inequitable for prosecution of

Massachusetts' claims to be delayed awaiting the outcome of New York's setoff claims against Massachusetts (if New York has any) or any other state. At a minimum, New York's setoff claims against Massachusetts should be limited to application of the secondary rule, and as New York itself urges, discovery by New York should be limited to the secondary rule. See id. ¶ 16, p. 10. Massachusetts notes that New York has not supported its Motion by identifying a single New York domiciliary that remitted or may have remitted funds to any other state, much less to Massachusetts.

Massachusetts accordingly respectfully requests that, if New York is permitted to prosecute its counterclaims in these proceedings, Massachusetts be permitted to obtain

final judgment on its claims against New York without awaiting resolution of New York's counterclaims against Massachusetts or any other state.

Respectfully submitted,

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