IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 13 ORIGINAL

STATE OF TEXAS, *Plaintiff*,

v.

STATE OF NEW JERSEY ET AL., *Defendants*,
and
STATE OF FLORIDA, *Intervenor*

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF LIFE INSURANCE ASSOCIATION OF AMERICA

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MOTION OF LIFE INSURANCE ASSOCIATION OF AMERICA FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Petitioner, Life Insurance Association of America, respectfully moves this Court for leave to file the accompanying brief in this case as *amicus curiae*. The Attorneys General for the respective states of Pennsylvania, Florida, and Texas and the General Counsel for the defendant Sun Oil Company have consented, in writing, to the filing of this brief. The Attorney General for the State of New Jersey has refused to give such consent.

STATEMENT OF INTEREST

While not a party to this action, Petitioner is none the less no stranger to the case, it having presented its views in a brief *amicus curiae* filed before the Special Master with his leave. The points which Petitioner will discuss in the brief, which it now seeks to file as an aid to this Court, are the same as those made in the amicus brief which the Special Master had before him.

Petitioner is an organization composed of 126 life insurance companies having 84% of the legal reserve life insurance in force in the United States and has a substantial interest in the subject of this action.

The interest of Petitioner arises because

(1) its member companies have paid over a period of 15 years, and will continue to pay, millions of dollars to a number of states, including Florida, New Jersey and Pennsylvania, under life insurance abandoned property laws providing for payment of unclaimed insurance proceeds to the state of last known address to the person entitled to the proceeds.

(2) states which are parties to this action assert competing claims to the abandoned property in issue and base their respective rights to such property on tests other than the last known address test,

(3) the Texas abandoned property law before the Court in this action contains an omnibus definition of "property" which includes amounts payable under insurance policies,

(4) one of Petitioner's member companies has challenged the constitutionality of the abandoned property laws of six states in separate actions in three-judge federal district courts in three of

which such actions stays have been entered[1] preventing enforcement of the challenged laws, including the law of the State of New Jersey, and

(5) twenty-three states [see Exhibit A attached] have enacted statutes providing expressly for the disposition of "unclaimed funds" of life insurance companies, in twenty-two of which, including Texas, New Jersey, Pennsylvania and Florida, the statutory test for escheat or taking custody of unclaimed life insurance proceeds specifically is the last known address, according to the records of the company, of the person entitled to be paid, and in the twenty-third of which (New York) the statute has been reviewed by this Court.[2]

Another reason for seeking leave to file the attached brief *amicus curiae* lies in certain statements made in the supporting brief filed on behalf of the State of New Jersey with this Court in connection with its exceptions to the report of the Special Master. It is the view of Petitioner that those statements have implications which could reach over into the field of abandoned property law with relation to life insurance proceeds. On page 16 of that brief these statements appear:

> "In trying to locate the property subject to this action the Master considered that the property followed the creditor and that:
>
> 'The last known address of the creditor as appearing on the books of the debtor corporation is adequate and sufficient to establish the residence of the owner of the intangible property for escheat purposes.' P. 20

[1] In the other three cases, one law was declared unconstitutional and in the other two enforcement of the laws has been suspended by agreement until this action is concluded.

[2] *Connecticut Mutual Life Ins. Co. et al* v. *Moore,* 333 U.S. 541 (1948).

> "*It is both factually and legally incorrect* to equate the last known address shown on the books of Sun with the domicile or residence of a creditor, *both as to the present as well as at the time when the last known address was placed on Sun's books.*" (Emphasis supplied)

It is of significance in this connection that, as Petitioner has shown in this statement of interest, the statute of New Jersey relating to abandoned property in the field of life insurance proceeds is on a basis of *last known address of the person entitled thereto according to the books of the insurance company.*

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BRIEF AMICUS CURIAE OF LIFE INSURANCE ASSOCIATION OF AMERICA

SUMMARY OF ARGUMENT

It is the position of Petitioner that

(1) the requirements of *Western Union* can be satisfied only by the adoption of a single test or standard which would eliminate the possibility of multiple taking, and

(2) the only such test or standard, and the only one which would give fair protection to the owner of the property, is the last known address test adopted herein by the Special Master.

ARGUMENT

The Last Known Address Test

This brief will present the case for the single, and simple, test of last known address of the one whose property, the claim against Sun Oil in one form or another, is sought to be appropriated for his benefit (custody) or for the benefit of all of the citizen subjects of the sovereign state (escheat). Only this test can satisfy the requirements of constitutional law, basic and procedural, which apply to this problem.

In *Western Union Telegraph Co.* v. *Pennsylvania,* 368 U.S. 71, this Court recognized that rapidly multiplying state escheat laws as they have moved into the elusive and wide-ranging field of intangible transactions have presented problems of great importance to the States and to the persons who would be adversely affected by escheats, and pointedly said that no State could claim that the same debts or demands could be escheated by two states.[1]

In *Western Union* this Court took the view that it was imperative that controversies among States in this field be settled in a forum which would render a final, authoritative determination and that this Court has jurisdiction for that purpose. This Court also took the view that a judgment which did not give assurance against the obligor being required to discharge twice the same single obligation was offensive to the due process clause of the United States Constitution.

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[1] The opinion of the Court written by Mr. Justice Black said on page 75:

> "Pennsylvania does not claim and could not claim that the same debts or demands could be escheated by two States."

In doing so this Court overruled *Connecticut Mutual* (which permitted New York to take although it was not the State of domicile) and *Standard Oil* (which permitted New Jersey to take as the State of incorporation) insofar as those cases held that a state was entitled to escheat even though other states, which might assert claims on one theory or another, were not before the Court.

The requirement of *Western Union* that the obligor be protected against the vicissitudes of the confusing complex of state laws can only be applied in terms of a single standard which furnishes that protection. We suggest that the owner should likewise be protected. This Court can furnish the required protection only if it recognizes one, and only one, basis for the sovereign act of the taking of abandoned intangible personal property by the States.

The effect of *Western Union*, then, is that the State which, as sovereign, seeks to take custody of or escheat intangible personal property must not only establish its sovereign right to do so, but must also meet the fair and logical requirement that the obligor be protected against exposure to the possibility of a claim or claims by another State or States. It follows from this, as heretofore suggested, that the taking must be based upon the application of a single standard which involves a constitutionally proper assertion by the State of a right to act, as sovereign, to take custody of or escheat, the property of the one whose property is taken. Surely (a) the State may not act in the interests of a citizen subject of any other sovereign State or take his property for the benefit of its citizens and (b) it may not act unless the possibility of the asser-

tion of a claim or claims by another State or States against the obligor is eliminated.

We respectfully submit that, basically, this Court is dealing here with a problem of sovereign right and not with the question of whether any sovereign State happens to be in a position to have the obligor within its grasp, for that alone should not give the State the right to take. Stated another way, this case presents the question of whether it appears that the claiming State as sovereign is entitled to take custody in the interests of the owner of the property, or to escheat for the benefit of all of the citizens of the State.

Earlier decisions than *Western Union* have overlooked this salient consideration. However, in *Western Union* this Court gave recognition to it. In that case, the Western Union Company challenged the judgment of the Pennsylvania courts, which was before this Court for review, on two main grounds:

(1) that service by publication did not, for two reasons, give the State Court jurisdiction,

  (a) lack of presence of the property or the "res" in Pennsylvania and,

  (b) insufficiency of the notice by publication, and

(2) "that there might be escheats claimed by other States which would not be bound by the Pennsylvania judgment because they were not and could not be made parties to this Pennsylvania proceeding."

On page 74 of 368 U.S. the opinion of this Court said:

> "We find it unnecessary to decide any of Western Union's contentions as to the adequacy of notice to and validity of service on the individual claim-

> ants by publication. For as we view these proceedings, there is a far more important question raised by this record—*whether Pennsylvania had power at all to render a judgment of escheat* which would bar New York or any other State from escheating this same property." (Emphasis supplied)

It is the position of Petitioner that the issue before this Court can only be settled by the adoption by this Court of a single standard, which will define the reach of sovereign power in this area. Only if the last known address test be applied can it be unequivocally said that all requirements of due process have been satisfied.

The last known address of the owner, establishing presumptive domicile, furnishes a constitutional, reasonable and equitable basis for the determination by this Court of the issue of which state is entitled to take the property of the owner. It is not necessary to resort to fiction when there exists a record of an owner's last known address. Such last known address is a fact. It furnishes a single standard which eliminates the possibility that the obligor will have to discharge the same single obligation twice and so meets the requirements laid down by this Court in *Western Union.* Equally important, it provides a standard which protects the constitutional right of the owner of the property sought to be taken against the very real possibility that some State in which he may never have resided might take his property and so assures his right of fair treatment.

There is no other test which, under our federal system of numerous state sovereignties, can meet the challenge of the constitutional requirements, with re-

spect to abandoned intangible personal property, as they have been laid down by this Court.

The Domiciliary Test

The domiciliary test, if applied, would give to the state of domicile of the obligor of a chose in action the power to escheat or take custody of an amount equivalent to the value of the chose. This test fails to meet constitutional requirements because (a) it is the right of the owner of a chose in action which is the property and not the liability of the obligor, (b) it gives the property to a state in which, in most cases, the owner never resided, and (c) in practical terms it affords the owner no protection.

The only property right in a chose in action is the right of the owner to be paid in accordance with the terms of the undertaking. It is only he, or one acting through him, who can exercise such a right. If such a right is abandoned, it is abandoned by him;[2] the place of abandonment would be where he was then residing. It is, therefore, the state where the owner resides which alone has sovereign power to act with respect to the property or property rights of its subject citizen.

As to consideration (c) above, fairness to the owner of the property is one of the governing factors. The constitutional rights of the owner, and the requirements of fairness, necessitate that he be given the fullest protection at all times and in all circumstances against the taking of his property. Requirements of

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[2] *Connecticut Mutual Ins. Co.* v. *Moore,* 333 U.S. 541. On page 551, in the majority opinion, the court said: "It is the beneficiary of the policy, not the insurer, who has abandoned the moneys."

notice, of the ability of the owner to claim his property from a state on the other side of the continent and other such factors, demand the rejection of the domiciliary test on this ground. The domiciliary test in this light must fail because, unlike the last known address test in the situations in which it would be applied, it does not in all instances afford a maximum standard of fairness and of protection of the constitutional rights of the owner.

That the last known address test, based upon the most natural starting point of any effort to locate the owner, remedies this particular deficiency of the domiciliary test is practically and forcefully illustrated by the experience of many of Petitioner's member companies. In connection with claims as to which companies have, after considerable effort, been unable to locate the claimants the advertising which has taken place under various last known address state laws has unearthed a great many of them. In the case of one company alone it has been able to pay the claims to the persons entitled to be paid in a total amount over the years of several hundred thousand dollars, rather than having been compelled to turn the money over to the states.

It is interesting to note the statement on page 9 of the brief before this Court, on behalf of the State of New Jersey, concerning the statute of New Jersey under which it claims here that:

> "Notice of the taking for custody is mailed to the *last known address of the owner* and the Attorney General of another state, if *the address* is in another state." (Emphasis supplied.)

Another weakness of the domiciliary test is dramatically illustrated here by the fact that defendant, Sun Oil Company, while incorporated in the State of New Jersey has its *de facto* principal office in the State of Pennsylvania.

The Last Known Address Test Has Become The Test Adopted By The States With Respect To Life Insurance Proceeds In The Field of Abandoned Property

It is also the position of Petitioner that, in the life insurance field, the constitutional test of last known address as the basis for taking the proceeds of life insurance policies has been recognized by this Court [3] and specifically adopted by The National Conference of Commissioners on Uniform State Laws for the purpose of the Uniform Disposition of Unclaimed Property Act, and specifically adopted by twenty-two of the twenty-three States having abandoned property laws relating to life insurance.

In twenty-two States today, as previously stated, with relation to proceeds of life insurance policies the specific test of last known address of the person to whom the money is owed is the test which is applied to determine the cases in which report and payment, for purposes of custody or escheat, is to be made to the state. In one, the State of New York, the provisions of the statute relate to the proceeds of "policies issued on the lives of residents of this state." [4]

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[3] *Connecticut Mutual Life Insurance Co., et al* v. *Moore,* 333 U.S. 541.

[4] Section 700 New York Abandoned Property Law.

The Connecticut Mutual Case

In 1948 a challenge to the application of the New York law to life companies foreign to New York reached this Court.[3] In that case the sole ground upon which New York asked this Court to uphold its law was, as stated in the conclusion to the brief of the New York Attorney General, that:

> "A reversal (of the decision of the New York Court of Appeals in favor of New York) would lead to the *wholly unjustifiable result* that the proceeds of unclaimed or abandoned policies which 'were written and/or delivered in New York by New York agencies of the [foreign] companies and insured the lives of New York residents' (R. 51) would be paid over to other states *simply because the companies were originally there incorporated,* rather than to New York." (First parenthetical words and emphasis ours)

A majority of six of the Justices voted to hold in favor of New York, as a non-domiciliary state of plaintiffs, pointedly restricting the reach of the decision, by saying (page 549):

> "We do not pass upon the validity 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. As interests of other possible parties not represented here may be affected by our conclusions and as no specific instances of those types appear in the record, we reserve any conclusion as to New York's power in such situations."

and further saying (page 550):

> "Consequently a case or controversy arising from a statute interpreted by the state court is here with precise federal constitutional questions as to

> policies issued for delivery in New York upon the lives of persons then resident therein *where the insured continues to be a resident and the beneficiary is a resident at maturity of the policy* . . . We pass only upon New York's power to take over the care of abandoned moneys under those circumstances." (emphasis added)

Of great significance also, in terms of the application of abandoned property laws to life insurance proceeds, is the statement, appearing on page 551, toward the conclusion of the majority opinion that:

> "It is the beneficiary of the policy, not the insurer, who has abandoned the moneys."

Thus this Court recognized the sovereign right of New York to take custody of money owed to those who were last known to be residents of New York and that it was not denied that right by the fact that the life insurance companies involved here were not domiciled in New York. Because of the peculiar wording of the New York statute, this Court confined the reach of the New York law also to cases in which the policies had been issued to persons who were residents of New York at the time of issue.

The Uniform Act

Following *Connecticut Mutual,* in 1954 the National Conference of Commissioners on Uniform State Laws adopted the Uniform Disposition of Unclaimed Property Act. In an introduction to the Act, the authors referred to *Connecticut Mutual* saying:

> "Two recent decisions of the United States Supreme Court, *Connecticut Mutual Insurance Co.* v. *Moore,* 333 U.S. 541, 92 L. Ed. 863 (1947) and *Standard Oil Co.* v. *New Jersey,* 341 U.S. 428, 95

> L. Ed. 1078 (1951), . . . reveal that a troublesome problem of multiple liability for the holder of unclaimed property arises in case two or more states, each having jurisdiction over such property, enact statutes dealing with the subject. If two such statutes cover the same items of property, and if each state seeks to exercise its jurisdiction, it becomes likely that the holder may be subjected to double, or, perhaps, even more extensive liability for funds in its custody. Or, even though the statutes are so framed as to avoid multiple liability, a 'race of diligence' between states having jurisdiction may ensue, with each state trying to reach the funds first.
>
> "In the 1947 (sic) decision in *Connecticut Mutual Insurance Co.* v. *Moore,* the United States Supreme Court held that the State of New York may take possession of unclaimed funds due on insurance policies issued to persons in the state of New York, even though the insurance company holder of the funds is domiciled in another state. Jurisdiction is based upon the relationship of the policyholders to the state."

In the portion of the Act dealing with unclaimed proceeds of life insurance policies, the test of last known address of the claimant, according to the records of the insurance company, was adopted. A copy of the section of the Uniform Act directly bearing on this aspect of the Act is attached as Exhibit "B". The authors, in a formal comment, explained the rationale of the choice of this test in the life insurance field in this way:

> "In general, insurance companies qualify and are authorized to write insurance in many or most of the states of the Union. Therefore, jurisdiction over such companies as holders of unclaimed property is normally wide-spread throughout the

country, thus permitting and suggesting differentiation from ordinary business or industrial corporations and also from banking organizations. Indeed *reliance upon the state of incorporation or principal place of business* of the insurance company to take custody of unclaimed property *would be most undesirable,* both for the reason that it would concentrate the administrative burdens in the few states that incorporate most of the insurance companies, and also *because such reliance would result in the same few states obtaining the use of the bulk of the unclaimed funds regardless of the state of address of the persons entitled thereto.* The alternative used in Section 3 (Exhibit "B") is preferable, and accordingly, jurisdiction is conferred upon the state of the last recorded address of the person entitled. This practice has been adopted in the states which have most recently enacted legislation of this nature, notably Connecticut, Massachusetts, North Carolina and Pennsylvania." (Parenthetical words and emphasis ours)

In this way the authors, following *Connecticut Mutual* and the pattern of state action and public policy already developing, sought to give life insurance companies the "assurance" to which this Court later referred,[4] against the peril of *double* payment of a *single* obligation.

The Subsequent Action of The States

As we have seen, in the years that have intervend since *Connecticut Mutual* and the Uniform Act there has been a uniform adoption by the States of the principle of *Connecticut Mutual* and of the Uniform Act and of a *single public policy* with relation to the proceeds of life insurance as abandoned property.

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[4] *Western Union Telegraph Co.* v. *Pennsylvania,* 368 U.S. 71, 80 (1961).

The Texas Statute Here Involved

In the case of the statute of Texas here involved, the proceeds of insurance policies are grouped with all other intangibles in an omnibus definition of "personal property".

CONCLUSION

While cases, involving the question of a proper standard for determining the right to recover abandoned property have been before this Court in the past, this case is really one of first impression. For the first time this Court is being called upon to decide the issue among competing States.

Petitioner respectfully submits that

(1) the requirements of *Western Union* can be satisfied only by the adoption of a single test or standard which would eliminate the possibility of multiple taking, and

(2) the only such test or standard, and the only one which would give fair protection to the owner of the property, is the last known address test adopted herein by the Special Master.

Respectfully submitted,

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EXHIBIT A

State	*Statutory Reference*
Arizona	Ariz. Rev. Stat., §§ 44-351 to 44-378
California	Calif. Code of Civil Proc. §§ 1500 to 1527
Connecticut	Conn. Gen. Stat. §§ 3-56a to 3-75a
Delaware	Del Code, Tit 12 §§ 1180 to 1194
Florida	Fla. Stat. Ann. §§ 717-01 to 717-30
Idaho	Idaho Code, §§ 14-501 to 14-530
Illinois	Ill. Stat. Ann., Ch. 141, §§ 101 to 130
Kentucky	Ky. Rev. Stat., §§ 393.010 to 393.160
Massachusetts	Mass. Ann. Laws, Ch. 175, §§ 149A to 149D
Michigan	Mich. Stat. Ann., §§ 126.1053(5) to 26.1053(65)
Montana	Ch. 244, L. 1963
Nevada	Nev. Revised Stat., §§ 690.180 to 690.300
New Jersey	N.J. Stat. Ann., §§ 17:34-49 to 17:34-58
New Mexico	New Mex. Stat. Ann., §§22-22-1 to 22-22-29
New York	N.Y. Abandoned Property Law, §§ 700 to 706
North Carolina	N.C. Gen. Stat., §§ 116-23.1
Oregon	Oreg. Stat. §§98:302 to 98:436
Pennsylvania	Pa. Stat., Tit. 27, §§ 461 to 473
Tennessee	Tenn. Code Ann. §§ 56-238-56-249
Texas	Ch. 333, L. 1963
Utah	Utah Code §§ 78-44-1 to 78-44-28
Virginia	Va. Code, Tit. 55, §§ 55-210 to 55-210.29
Washington	Wash. Rev. Code §§ 63.28.070 to 63.28.920

EXHIBIT B

SECTION 3. [Unclaimed Funds Held by Life Insurance Corporations.]

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceeding seven years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Certificate of Service

I, Warren Elliott, one of the Attorneys for the Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on March 19, 1964, pursuant to Rule 33(1) and 33(3)(b), I served copies of the foregoing Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae on each of the following parties and persons by depositing said copies in a United States Post Office or mail box, with first class or air mail postage prepaid and addressed as follows:

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