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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1969

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**No. 40 Original**

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COMMONWEALTH OF PENNSYLVANIA,

*Plaintiff,**vs.*STATE OF NEW YORK, STATE OF FLORIDA,  
STATE OF OREGON, COMMONWEALTH OF VIR-  
GINIA, and THE WESTERN UNION TELEGRAPH  
COMPANY,*Defendants.*

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**BRIEF OF THE ATTORNEY GENERAL  
OF NEW JERSEY AS *AMICUS CURIAE***

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**Interest of *Amicus Curiae***

On or about March 30, 1970, the Commonwealth of Pennsylvania filed a Motion for Leave to File Complaint in the above Original Action, together with a copy of the Proposed Complaint, seeking to escheat money received by Western Union Telegraph Company for the trans-

mission of telegraphic money orders which for one reason or another were not delivered. Leave to file this complaint was granted on June 15, 1970. The Attorney General of New Jersey has reviewed this matter and has determined that the issues presented have such a potential impact on the State of New Jersey that New Jersey should participate in this litigation. In accordance with the Report of the Special Master on the Applications of the States of California, Arizona, and Indiana for leave to intervene, the Attorney General of New Jersey has determined that New Jersey's views should be presented as *amicus curiae* rather than by intervention.

Western Union Telegraph Company is a New York corporation which is, and was during the years 1943 to 1962 inclusive, authorized to do business in the State of New Jersey. Of the estimated \$1,500,000 which is allegedly still held by Western Union on account of money orders purchased from said company on or before December 31, 1962, based on a projection of the figures obtained by Western Union during its 1966 survey, it appears that approximately \$45,000 is held on account of money orders purchased from Western Union in New Jersey. A rule enabling the state of domicile of Western Union to escheat these unclaimed funds would deprive New Jersey of funds which are subject to escheat or custodial taking under the provisions of its laws. N.J.S.A. 2A:37-13 provides for the absolute escheat of property which has been unclaimed for 14 successive years. As an alternate method, N.J.S.A. 2A:37-30 provides for the custodial taking by the State Treasurer of personal property which has remained unclaimed for a period of 5 successive years.

## A R G U M E N T

In order to ensure an equitable distribution of abandoned intangibles, this Court should adopt the rule that the State of Origin of a telegraphic money order, as shown by Western Union's records, is the State entitled to the escheat or custody of unclaimed moneys arising from a money order.

The case of *Texas v. New Jersey*, 379 U. S. 674 (1965) established the rule that abandoned intangibles are subject to escheat or custodial taking by the State of the creditor's last known address as shown by the debtor's books and records. It is clear that the purchase of a telegraphic money order involves a debtor-creditor relationship. *Western Union Telegraph Co. v. Pennsylvania*, 368 U. S. 71 (1961); *New Jersey v. Western Union Telegraph Co.*, 17 N. J. 149, 110 A. 2d 115 (1964). However, due to the multi-stages of a telegraphic money order transaction and the fact that different states rely on different phases of the telegraphic money order transaction in determining who is the creditor, an individual state cannot ascertain the identity of the creditor of Western Union and therefore cannot escheat these monies in accordance with the *Texas* rule. In order to implement the *Texas* decision the Court must now adopt a rule which will enable the creditor to be identified.

New York urges the Court to apply to this controversy the *Texas* rule that the state of incorporation of the debtor is entitled to escheat or take into custody property owed persons as to whom there is no record of any address. However, whereas in the *Texas* case the debts consisted of money owed to creditors whose names were known, but whose last known address may or may not have

been listed on the records of the debtor corporation, in the case of abandoned intangibles arising from a telegraphic money order transaction, the creditor's identity, as well as his last address, is unknown. Rather than urging the Court to adopt a rule which would enable the creditor of a telegraphic money order to be identified, New York contends that since the identity of the creditor is unknown, his last known address is unknown and therefore, New York, as the state of incorporation of Western Union, is the state entitled to escheat or take into protective custody these intangibles. Acceptance of such a contention would permit New York to receive a windfall of approximately \$1,500,000 simply because Western Union happens to be incorporated there, and would deprive all the states involved in the telegraphic money order transaction of the benefits of the commercial transactions which took place in such states. Such a result would be contrary to the spirit of the *Texas* decision where the Court pointed out "that in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself." *Texas v. New Jersey*, *supra* at 680.

The State of New Jersey submits that the rule adopted for the escheat of these unclaimed funds should be an equitable one which would enable the many states involved in the commercial transactions of Western Union which gave rise to the unclaimed funds to share in these funds. *Texas v. New Jersey*, *supra* at 681. See, Note, *The Supreme Court, 1964 Term*, 79 Harv. L. Rev. 103, 204 (1965); *Conflict of Laws: Escheat of Intangible Property and Competing State Claims*, 65 Colum. L. Rev. 1100 (1965). The State of New Jersey therefore takes the position that



the rule advanced by the Commonwealth of Pennsylvania—that the state in which telegraphic money orders have been purchased from Western Union is the state entitled to the escheat or custody of the unclaimed funds held by Western Union on account of such telegraphic money orders—is fair and equitable. The state of origin is the state most intimately connected with the telegraphic money order transaction as it is the state where the money order is purchased and where the contract between the sender and Western Union is executed. In addition, payment for Western Union's service is made in the state of origin and the monies deposited with Western Union are not sent out of that state, but are mingled there with other funds of the company.

The state of origin rule is also advantageous from an administrative point of view. While Western Union's records generally provide information as to the names and addresses of the sender and sendee of a telegraphic money order, in all cases the records reveal the place of purchase. The place of origin can be readily obtained from Western Union's records without the necessity of attempting to ascertain the place of destination, the address of the sendee named in the money order, or the address of the payee of a draft issued in payment of a money order.

## CONCLUSION

For the reasons set forth above and in the brief of the plaintiff, it is respectfully submitted that the Court should declare that the state of origin of a telegraphic money order, as shown by Western Union's records, is, to the extent of that state's power under its own laws to escheat or to take custodially, the only state entitled to the escheat or custody of unclaimed moneys arising from the money orders.

Respectfully submitted,

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