IN THE

Supreme Court of the United States

October Term, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA, and INDIANA,
Intervening Plaintiffs,

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,
Defendants,

and the

STATE OF ARIZONA,
Intervening Defendant.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF AMERICAN EXPRESS COMPANY

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MOTION OF AMERICAN EXPRESS COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

American Express Company ("Amexco") respectfully moves this Court for leave to file the accompanying brief as *amicus curiae*. The Attorneys General of the States of Arizona, California, Connecticut, Florida, Indiana, Oregon, Pennsylvania and Virginia, and the General Counsel for the defendant Western Union Telegraph Company ("Western Union") have consented to the filing of this brief. The Attorney General of the State of New York has refused such consent.

Statement of Interest

Amexco, one of the largest issuers of travelers checks and commercial money orders in the nation, has supported since the beginning of this proceeding,[1] and for a number of years prior thereto, the promulgation of a single rule respecting the escheat of abandoned property which could be applied with fairness and ease to the widest possible range of commercial instruments for the transfer of money. The Special Master granted Amexco's motion for leave to file its brief *amicus curiae* in the proceedings before him, but noted at a conference on November 12, 1970:

> ". . . American Express could not ask for answers to its peculiar problems in the [instant case], except insofar as the rules applicable to telegraphic money orders would, by implication, apply to travelers checks. However, he stated that he thought it appropriate to consider the American Express travelers checks and any other similar instruments, insofar as the disposition of unclaimed funds from such transactions shed light on a proper disposition of unclaimed funds arising from Western Union telegraphic money orders." *Report,* p. 4.

For the reasons stated below this Court should grant Amexco's motion for leave to file the accompanying brief as *amicus curiae.*

I. Adoption of the Report of the Special Master without modification will result in serious injustices to issuers of commercial instruments and to the states involved.

Amexco urges that the conclusions and suggested decree of the Special Master be rejected by this Court because (1) they restrict the range of effect of the decision to telegraphic money orders issued by Western Union, (2) they portend future litigation in this Court respecting other forms of

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[1] *Report of the Special Master dated November, 1971 ("Report"),* pp. 4-5.

instruments where specific addresses of the purchasers are not kept as a matter of business practice, such as travelers checks and commercial money orders, (3) they may promote needless changes in corporate domiciles of issuers of commercial instruments to avoid the impact of escheat laws and (4) they result in a distortion of the principles of *Texas* v. *New Jersey,* 379 U.S. 674 (1965).

In its brief to the Special Master, Amexco urged the adoption of an escheat rule based upon the factually sound presumption that the residence of the sender of the telegraphic money order will be deemed to be in the state of origin of the transaction, until proved otherwise. The Special Master erroneously refused to consider this rule on its merits because he believed that its adoption would be inconsistent with the constitutional principles underlying *Pennoyer* v. *Neff,* 95 U.S. 714 (1877). This Court should have the opportunity to examine Amexco's objections to the *Report* and consider fully the impact of such a potentially limiting decision.

II. Amexco's financial interest in the decision of this case is substantial.

Amexco's immediate financial interest in the outcome of this case can be highlighted in monetary terms. Prior to the decision in *Texas* v. *New Jersey* in 1965, Amexco paid New York the entire proceeds (with two exceptions[2]) of its travelers checks and money orders deemed abandoned under New York's Abandoned Property Law,[3] regardless of the laws of the place where such instruments were sold. After that decision, Amexco began withholding from New York

[2] Proceeds from abandoned instruments sold in New York and Pennsylvania were not paid to New York because of litigation against Amexco in these states.

[3] N.Y. Abandoned Property Law, § 1309 (McKinney's 1969).

the proceeds of all travelers checks sold in any other state which had an applicable escheat statute. As a result, Amexco has withheld the sum of $2,221,200[4] representing proceeds of travelers checks deemed abandoned after 15 years pending a decision as to whether the state where the instrument was sold or New York, the state of Amexco's domicile, is entitled to the fund. With respect to the proceeds of travelers checks sold in New York and in any state which has no applicable statute, Amexco has continued to pay such funds to the State of New York.

In addition, Amexco began withholding from New York the proceeds of certain money orders deemed abandoned after 7 years. In 1969 when New York amended Section 1309 of its Abandoned Property Law to adopt the place of sale or purchase test for money orders sold on and after January 1, 1958[5], Amexco began paying the states, such as California, which had an applicable statute (see Appendix A), the proceeds of money orders sold within their borders on and after January 1, 1958.

III. Amexco is uniquely situated to advocate a fair and practical approach to the problem of which states should be allowed to escheat abandoned commercial instruments.

As one of the largest issuers of travelers checks and money orders in the world, Amexco has had many years of

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[4] This amount, which represents the proceeds of abandoned travelers checks sold in approximately 30 states (computed as of the latest available date), is subject to increase as additional travelers checks become abandoned each year and is subject to decrease as checks outstanding more than 15 years are cashed and redeemed by Amexco.

[5] N.Y. Abandoned Property Law, § 1309(3); (McKinney's 1970) as amended by L. 1969 c. 1114, § 3, effective May 27, 1969. This statute was amended again in 1970 by L. 1970, c. 706, eff. May 12, 1970.

practical experience with abandoned property laws. In *Texas* v. *New Jersey, supra,* this Court in an analogous situation granted the Life Insurance Association of America ("Association") permission to file its brief *amicus curiae* in this Court, and it appears from reading the Association's brief that the Association made a significant contribution to the ultimate decision. Amexco respectfully submits that it, like the Association in *Texas* v. *New Jersey,* can make a useful contribution to the decision in the instant case.

In summary, Amexco submits that this Court should grant Amexco's motion in order to consider its arguments in favor of adopting the rule advocated by the Commonwealth of Pennsylvania to the effect that the residence of the sender of a Western Union money order will be deemed to be in the state of purchase of that service, until proved otherwise by another state. The adoption of this rule will make this Court's decision apply with equity to the widest range of commercial instruments. Not only is the rule Amexco supports in accord with the underlying rationale of *Texas* v. *New Jersey,* but it will be fair to all the states, easy to administer and compatible with modern concepts of escheat jurisdiction.

Respectfully submitted,

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BRIEF AMICUS CURIAE OF AMERICAN EXPRESS COMPANY

Summary of Argument

American Express Company ("Amexco") respectfully submits that the Court should reject the conclusions and recommended decree as set forth in the Report of the Special Master dated November, 1971 (*"Report"*) because

they are based upon a misapplication of constitutional law to escheat jurisdiction and upon a misconception of the principles underlying *Texas* v. *New Jersey,* 379 U.S. 674 (1965). The Court should adopt the state of purchase rule advocated by the Commonwealth of Pennsylvania because (1) it is in accord with *Texas* v. *New Jersey* and *Western Union Telegraph Co.* v. *Pennsylvania,* 368 U.S. 71 (1961); (2) it can be applied equitably to a wide range of commercial instruments and (3) it is fair to all the states, easy to administer and in accord with modern concepts of escheat jurisdiction.

General Statement

Amexco is concerned that because the Western Union Telegraph Company ("Western Union") telegraphic money order service has certain features peculiar only to it, a rule could evolve from the instant case which could lead to further and wasteful litigation among the states and could be injurious to both their interests and the interests of Amexco and other issuers of commercial instruments. Therefore the salient features of Amexco's travelers check and money order services are compared below with the telegraphic money order service of Western Union.

A. *Western Union:*

This statement assumes for the purpose of illustration that the purchaser of the service (the sender) wants to send money from a place in State A to a person (the payee) in State B. The sender goes to a Western Union office in State A, fills out an application and gives it to the company clerk together with the money to be sent and the charges for sending it. Although the application has spaces for the

sender's and the payee's names and addresses, in many cases the sender omits his address and the precise street address of the payee. *See Report,* Findings of Fact No. 7, p. 9; Stipulation of Facts, pp. 4-5. The sender gets a receipt and a telegraphic message is transmitted to the company's office in State B nearest to the payee directing that office to pay the money order to the payee. No instrument is issued during any part of the above-described step in the transaction. The payee is then notified by the State B office and, upon properly identifying himself, is given a negotiable draft which he can either endorse and cash at once or keep for use in the future. If, within 72 hours, the payee cannot be located for delivery of the notice or fails to call for the draft, the office of destination in State B notifies the sending office in State A. The sending office then attempts to notify the sender of the failure to deliver and, if successful in locating the sender, makes a refund to him by means of a negotiable draft which may be either cashed immediately or kept for use in the future.[1] Stipulation of Facts, p. 6; *Report,* p. 7. If the sending office is unsuccessful in locating the sender, the funds are held by Western Union to be disposed of ultimately as abandoned property.

B. *American Express Company:*

Amexco's travelers check and money order services present a much simpler situation (involving fewer relevant jurisdictions for escheat purposes) than the Western Union service. Since by its nature a travelers check[2] is designed for use in the future, there is no payee when Amexco or its

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[1] *See Western Union Telegraph Co.* v. *Pennsylvania, supra.*

[2] Amexco's travelers checks are issued in denominations of $10, $20, $50, $100 and $500.

selling agent (most of which are banks) delivers the instrument to the purchaser. In the case of a travelers check, Amexco or its selling agent usually requires the purchaser to fill out an application form which Amexco keeps for three years. In many cases the purchaser does not insert his address in the space provided on the application. However, Amexco or the selling agent inserts the serial numbers of the checks on the application at the time of sale and since Amexco has a computer record of the office or agent to which all its checks have been distributed for sale, Amexco knows, as the application forms are returned, the place of sale of its travelers checks.

When a commercial money order is sold, Amexco or its selling agent inserts the amount involved on the money order form and hands it to the purchaser, who fills in the payee's name at his convenience. Consequently, Amexco has no record of the name or address of the payee; nor of the purchaser as well.[3] However, the serial number of each money order distributed by Amexco is listed on a sales report which the selling agent completes by inserting the amount involved at the time of sale. This report is then returned to Amexco on a weekly or other regular basis with the net proceeds of the agent's money order sales.

Thus, from the information taken from the forms and reports[4] above mentioned and transcribed onto computer tapes, Amexco can readily determine the state in which each travelers check and money order is sold.

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[3] *See* footnote 10, p. 27 of the Stipulation of Facts.

[4] Amexco's paper records are ultimately destroyed in accordance with the Company's record retention and disposal procedures.

ARGUMENT

I. This Court Should Adopt the Rebuttable Presumption That Where no Specific Address is Available, the Residence of the Purchaser of a Money Order or Other Instrument for the Transmission of Money Will be Deemed to be in the State of Purchase of the Service as Shown by the Books and Records of the Issuer of such Instrument, Until Proved Otherwise.

The Special Master Erred in Foreclosing Factual Consideration of the Purchase-Residence Presumption.

The only question presented by this case is "which State has jurisdiction to take title to certain abandoned intangible personal property through escheat". *Texas* v. *New Jersey, supra,* 675.

Amexco asserts that the best answer to this question is to adopt the last known address or residence rule of *Texas* v. *New Jersey* and the presumption that the residence of the purchaser of a check, draft or money order or other instrument for the transmission of money will be deemed to be in the state of purchase of the instrument or service involved. Although the Special Master concedes that the domicile of the purchaser and the place or office of purchase will, "[F]requently, perhaps usually", coincide, *Report,* p. 18, he rejects the presumption and the state of purchase rule based thereon because he sees the choice of such rule as cutting off the individual owner's rights in the property. As he stated on page 18 of the *Report:*

> "The principle [sic] difficulty with this solution is that it gives rise to a serious question as to the legality of cutting off or impairing an individual's property rights by an *in rem* proceeding in the state of origin. *This is stretching the reasoning of Texas* v. *New Jersey to a perhaps unreasonable limit."* (Emphasis added)

Again in footnote number 14 on pages 19 and 20 of the *Report,* he states:

> "Pennsylvania alleges in a Supplemental Memorandum at pages 1 and 2 that the issue of constitutionality is not involved in the present proceeding. *The Special Master believes that the validity of the taking from the viewpoint of the former owners must be a factor in choosing among possible takers.*" (Emphasis added)

The Special Master rejected the state of purchase rule because he confused the requirement of due notice to the owner of the property with the issue of which state has the right to escheat the property involved. This confusion is evident in the following statement from pages 15 and 16 of the *Report:*

> "It can be argued that since in custodial taking only the right to hold and use the money will be shifted from Western Union to a State the interests of the prior owners are not affected. Even in the case of mere custodial taking the property interests of the claimants are vitally affected. Possession is a very real element of ownership. *Moreover, this is the time, if ever, that they will receive notice and an opportunity to be heard. After a custodial taking there is no indication that a State will undertake further proceedings and therefore the owners will practically be divested of their interests.*" (Emphasis added)

A reading of the statutes listed in Appendix A annexed hereto, wherein notice by publication to the owners is required whenever the states invoke their escheat laws, makes it abundantly clear that the position taken by the Special Master is erroneous.

Contrary to the Special Master's conclusion, this case does not involve the cutting off of property rights of the individual owner in such a manner as to invoke the rule of *Pennoyer* v. *Neff*, 95 U.S. 714 (1877). *Cf. Connecticut Mutual Life Insurance Co., et al.* v. *Moore, Comptroller of the State of New York*, 333 U.S. 541, 547 (1947). **The issue for decision here is only which state has *the superior power* to invoke its escheat laws.** As the Supreme Court said in *Texas* v. *New Jersey, supra,* on this very question:

> "We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply and in the long run will be the most generally acceptable to all the States." 379 U.S. 674, 683.

See Western Union v. *Pennsylvania, supra.*

Having raised a constitutional issue where none existed, the Special Master erred in foreclosing consideration of the state of purchase rule on its merits. In fact, the effect of the Special Master's decision is to distribute escheats to the state of corporate domicile which has no rational connection with the residence of the owner. Thus, the result of his recommended decision is to make it all the more certain as a practical matter that the owner, who is more than likely to reside in some other state, will miss seeing publication of the notice of escheat when the state of corporate domicile proceeds to take possession of the individual items in the fund.

Since federal constitutional considerations are not involved in this case, Amexco urges this Court to adopt the state of purchase rule supported by the Commonwealth of Pennsylvania and most of the other states in this proceeding. This rule is that the residence of the purchaser of a

money order or travelers check will be deemed to be in the state of purchase of the instrument or service as shown by the books and records of the issuer or supplier of the instrument or service, until proved otherwise.

II. Adoption of the Purchase-Residence Presumption is Factually Sound and in Accord with Texas v. New Jersey.

In *Texas* v. *New Jersey, supra,* this Court held that the right to escheat intangible obligations of the types involved in that case should be accorded to the state of the creditor's last known address as shown by the debtor's books and records. The rationale of the Court's decision, in its own words, was "to distribute escheats among the States in the proportion of the commercial activities of their residents" 379 U.S. 674, 681. The Court then went on to hold that where there is no address on the books and records of the debtor, the state of corporate domicile of the debtor could escheat the property, and that it could also escheat the property if the state of the last known address did not have an applicable escheat statute. In both the latter situations, the escheating state would be allowed to keep the property until some other state came forward with proof that it had a superior right to escheat; i.e., proof that the last known address of the creditor was within its borders and that its law made provision for escheat of such property.

In *Texas* v. *New Jersey,* the likelihood that the debtor would not have the addresses of the creditors of such items as corporate dividend checks, employee paychecks and refunds of payroll deductions and checks payable to suppliers of goods and services (the type of intangible personal property involved in that case) was practically nil. Accordingly, this Court could anticipate that the effect of its decision would be that the state of last known address would have the superior right to escheat most of the property involved in that case and that the state of corporate domicile

would escheat only a very small proportion of such property in those relatively few instances where a last known address was not available or where the state of last known address did not have an applicable escheat law. Amexco is concerned that because a last known address for a significant proportion of Western Union money orders can be ascertained from that company's books and records (although with the expenditure of considerable time and money), this Court might apply the rule of *Texas* v. *New Jersey,* without the purchase-residence presumption, on the theory that the state of corporate domicile would only be empowered to escheat those Western Union money orders where no address was furnished by the sender. *Infra,* p. 16. But Amexco desires to emphasize to the Court that there are also many situations where the use of addresses is not a necessary concomitant to the relationship between the parties and accordingly addresses are not kept as a matter of business practice. These range from Western Union telegraphic money orders and Amexco's travelers checks, where a substantial percentage of senders do not supply their addresses, to Amexco's money orders, to bus tokens, to refunds on tickets and to many other types of cash purchases, where no addresses at all are available. The gist of our argument is that by adopting the rebuttable presumption which Amexco is advocating, the Court can follow the primary rule of last known address of *Texas* v. *New Jersey* with fairness and can accomplish the important result in another large category of cases of distributing escheats among the states in proportion to the commercial activities of their residents.

As this Court recognized in *Texas* v. *New Jersey,* the rule of last known address is itself a legal presumption that the residence of the owner of the abandoned property is in the state of last known address. If it is reasonable to

presume that the residence of the owner of the abandoned property of the kind involved in *Texas* v. *New Jersey* is in the state of last known address until proved otherwise, it is also reasonable to presume (as demonstrated below) that the residence of the owner of a telegraphic or commercial money order or travelers check is in the state where he purchased the instrument or service involved.

Since the issuers of travelers checks and money orders maintain computer records of the offices and agents to which their instruments are distributed and where they are sold, such issuers know the place of sale and therefore the state of sale of each of their travelers checks and money orders. Amexco submits that most people buy travelers checks and money orders locally, in the same area where they live and work.[5] In the case of travelers checks, they are usually sold by or through banks and since it can be proved that people tend to bank where they reside,[6] it fol-

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[5] Amexco requested the parties to stipulate certain facts as to the purchasers of its travelers checks and money orders and it was prepared to submit evidence that people tend to buy these instruments where they reside. This request was objected to by one of the parties and therefore the proof was not included in the stipulation.

[6] A number of recent Federal Reserve Bank surveys support the conclusion that people tend to bank where they reside. R. Bowers, "Businesses, Households, and Their Banks", (Federal Reserve Bank of Philadelphia 1969); G. Kaufman, "Customers View Bank Markets and Services: A Survey of Elkhart, Indiana", (Federal Reserve Bank of Chicago 1967); G. Kaufman, "Business Firms and Households View Commercial Banks: A Survey of Appleton, Wisconsin", (Federal Reserve Bank of Chicago 1967); L. Stiles, "Businesses View Banking Services: A Survey of Cedar Rapids, Iowa" (Federal Reserve Bank of Chicago 1967); R. Gelder, G. Budzieka, "Banking Market Determination—The Case of Central Nassau County" (Federal Reserve Bank of New York 1970). The common denominator of these surveys is the proposition that "the demand for the services of commercial banks tends to be highly localized." Bowers, *supra*. *See United States* v. *Phillipsburg National Bank & Trust Co., et al.*, 399 U.S. 356 (1970).

lows that the residence of purchasers of travelers checks will usually be in the state of purchase.

In the case of commercial money orders, Amexco submits that they are used for the most part to pay bills by persons who do not have checking accounts and therefore they are bought at outlets near the purchaser's home, or where he works or where he buys his groceries. Consequently, since the issuers of such instruments have records showing the place of purchase, the books and records of the issuer afford a means of determining the state of purchase of the individual travelers checks and money orders.

In the evidence submitted to the Special Master Western Union showed that out of 2,951 escheatable transactions surveyed for the year 1963, the address of the sender was given in 1,740 instances as the same state as the state in which the application originated; in 145 instances the address of the sender was given as being in a different state from where the application originated, and in the balance of 1,066 instances the sender's address was not given. In other words, of those instances where addresses were given, 93% resided in the state where the transaction originated. There is, therefore, a rational factual basis in the evidence submitted to the Court for the presumption that in the absence of proof to the contrary the state of residence of the purchaser of a Western Union money order is the same as the state where the service was sold.

Despite the fact that little proof has been offered and accepted in this proceeding as to who are the actual purchasers of Western Union money orders, Amexco submits that most personal services, from banking to groceries, are purchased locally, by residents of the particular state where the service is obtained and that from a pragmatic point of

view the burden of proving the contrary should be on the person asserting the contrary. Furthermore, any exceptions to the presumption, as noted by the Special Master in footnote 7 on page 11 and on page 18 of the *Report,* are practically dispelled as *de minimis* by the Special Master himself since the *Report* concedes that the office of purchase and the domicile of the purchaser "[F]requently, perhaps usually," coincide. In any event, the very purpose of a presumption is to economize factual investigation by presuming a fact to be true when there is a demonstrable basis for doing so. For example, in *Texas* v. *New Jersey,* this Court reasoned that since in a large number of abandoned dividend cases the corporate debtor's records reflected creditors' addresses, it could adopt the last known address test. The presumption that the residence of a dividend creditor accords with the last known address of such creditor appeared to the Court to be a reasonable one. Furthermore, the Court noted that exceptions to the presumption would undoubtedly cancel each other out:

> "And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified. It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception, and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out." 379 U.S. 674, 681.

Similarly, Amexco urges here that this Court should adopt the rebuttable presumption that the residence of the purchaser of a Western Union money order be deemed

to be in the state of purchase. This presumption is in full accord with the last known address concept of *Texas* v. *New Jersey* and would, in addition, carry out with the greatest possible fidelity the mandate of that case to distribute escheats equitably among the states. Furthermore, the presumption forms the basis for those statutes which have adopted Section 2(c) of the Revised Uniform Disposition of Unclaimed Property Act.[7] 9A U.L.A. (1967 Supp.). Section 2(c) provides the following test for escheat of commercial instruments:

> "(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, . . ."

In the Commissioner's Note on the criteria for the presumption of abandonment of the various categories of property specified in Sections 2(a) through 2(d) of the Uniform Act the following statement appears:

> "In each instance the jurisdictional test for presumption of abandonment within the enacting state bears direct relationship to events taking place within that state, e.g., deposits 'made in this state,' funds 'paid in this state,' written instruments 'issued in this state,' property removed from safe deposit boxes 'in this

[7] *See* Revised Uniform Disposition of Unclaimed Property Act drafted by the National Conference of Commissioners on Uniform State Laws and approved by it and recommended for enactment in all the states at its annual conference meeting at Montreal, Canada, July 30–August 5, 1966; approved by the American Bar Association at its meeting in Montreal, Canada, August 9, 1966.

> state.' These qualifications are explicitly included both for the legal reason that there must be a jurisdictional basis for the claiming of the property within the state, and also for the practical reason that the presence of the events within the state means that the convenience of various parties in interest will be best served in this way.''

The parties referred to are the purchasers of the instruments or services involved and the state of purchase. Implicit in the choice of such jurisdictional tests is the assumption that most of the purchasers will be residents of the state in which the purchases are made.

Finally, the states of California, Indiana, North Carolina and Pennsylvania have made the purchase-residence presumption explicit in the abandoned property laws of those states.[8]

Amexco respectfully submits that the statutory presumptions referred to above carry out the purpose underlying the rule in *Texas* v. *New Jersey* and have a rational basis in fact. Failure to adopt the purchase-residence presumption would have the effect of invalidating the laws of the plaintiff Pennsylvania, North Carolina and intervening plaintiffs California and Indiana and casting serious doubt as to the validity of the several state laws which embody § 2(c) of the Uniform Act. This Court should not invalidate such a large body of state legislation without extremely good cause for doing so, and none has been shown in this case.

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[8] California C.C.P. § 1511 (West Supp. 1970); Burns Anno. Ind. St. § 51-704(d) (Supp. 1970); North Carolina G.S. Ch. 116A § 116A-4.1(a) (1971); Pennsylvania, Act 74 (1971 New Laws p. 371 (CCH 1971)).

III. The State of Purchase Rule is Fair to all the States, is Easy to Administer, and Accords With Modern Concepts of Escheat Jurisdiction.

The result in monetary terms of adopting the state of purchase rule is that escheats will be distributed in accordance with the commercial activities of presumed residents of the state in which the transaction originated. The state of purchase test also avoids the arbitrariness inherent in the adoption of the New York or corporate domicile rule which would, in effect, be the rule adopted for a substantial number of transactions if the *Report* is approved. That rule has no meaningful connection with the transaction involving the instrument presumed to be abandoned. In fact, the Court has recognized this important failing and has rejected the rule more than once because:

> "... 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,* 680.

Cf. Connecticut Mutual Life Insurance Co. v. *Moore, supra.* The corporate domicile rule must remain a secondary rule so long as there is a rational way of finding the residence of creditors. Thus, in order to achieve the greatest degree of fairness consistent with the complexities of this case, the Court should adopt the state of purchase rule advocated by Pennsylvania.[9]

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[9] Presumably, the state of corporate domicile of the debtor would still have secondary jurisdiction to escheat the property if there was no way of establishing from the books and records the state in which the transaction originated or if the state of purchase did not have an applicable escheat statute.

It should also be noted that the problem of windfalls to tourist states would be avoided by having the escheat jurisdiction allied as closely as possible to people's homes, not their vacation spots.

As to ease of administration, adoption of the state of purchase rule will result in the avoidance of wasteful litigation in the future and the monumental administrative burdens which will confront Amexco and other issuers in record keeping alone. As indicated above, Amexco has no way of knowing the addresses of the payees of its travelers checks and money orders and in the case of travelers checks it would be physically impossible to sort out the millions of application forms to find the names and addresses on those forms which represent checks still outstanding after the abandonment period had elapsed. And this assumes that the purchaser supplied an address in the first place. Adoption of the purchase-residence presumption would obviate the need for additional state record-keeping laws for escheat purposes which could be a severe burden on interstate commerce. *See In re Debs,* 158 U.S. 564 (1895). No other rule suggested in this case can achieve such ease of administration. In addition, the presumption would avoid the administrative morass likely to be encountered when dealing with such entities as Western Union which is the successor by consolidation or merger to 34 separate issuers of postal telegraphic money orders, each of which was incorporated in a different state. Stipulation, p. 3.

Finally, it should be noted that adoption of the state of purchase rule accords with the most modern and widely accepted concepts of escheat jurisdiction. Thirty-five states have adopted abandoned property laws which may be con-

strued to include travelers checks and money orders within their scope, *see* Appendix A, and of those, sixteen states expressly employ the jurisdictional test of place of issue or sale. *See* Appendix B. This is the rule which Amexco is urging here and which is the test employed in Section 2(c) of the Revised Uniform Disposition of Unclaimed Property Act. The same test was also adopted by New York with respect to money orders sold on and after January 1, 1958. As noted above, four states—including the principal plaintiff here—have codified the purchase-residence presumption in their escheat statutes.

Conclusion

The practical effect of adopting the *Report's* suggested decree will be to elevate the corporate domicile rule to primary status with respect to a substantial portion of Western Union money orders and, perhaps, all Amexco travelers checks and money orders. As pointed out above, the corporate domicile rule is purely arbitrary in terms of the actual residence of the owners of abandoned commercial instruments. Furthermore, the corporate domicile rule will be more difficult to administer and will be unfair to the vast majority of states.

The sounder course for this Court is to adopt the rebuttable presumption that the residence of a purchaser of a money order will be deemed to be in the state where the money order was purchased. This presumption is both factually sound and legally compatible with the principles of *Texas* v. *New Jersey.*

For the foregoing reasons, Amexco respectfully urges that this Court hold that the state of purchase be accorded

primary jurisdiction to escheat proceeds from commercial instruments for the transmission of money which have been deemed abandoned under the laws of the state of purchase of such instruments.

Respectfully submitted,

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January 27, 1972

APPENDIX A

Alabama—Act 63, Laws 1971, House Bill 68, First Special Session

Arizona—A.R.S. § 44-351-378 (1967)

California—C.C.P. § 1500 et seq. (West Supp. 1970)

Connecticut—C.6.5.A. §§ 3-56a et seq. (1969)

Delaware—House Bill 468, 1971 New Laws, p. 357

Florida—F.S.A. § 717.01–.30 (1969)

Idaho—I.C. §§ 14-501-532 (Supp. 1969)

Illinois—S.H.A. Ch. 141 §§ 101-146 (1964)

Indiana—Burns Anno. Ind. St. §§ 51-701-743 (Supp. 1970)

Iowa—I.C.A. §§ 556.1–.29 (Supp. 1970)

Kentucky—K.R.S. §§ 393.010-.990 (1970)

Louisiana—LSA-R.S. 9:151-156 (1965)

Maryland—Anno. Code of Md., Art. 95C, §§ 1-26 (Supp. 1969)

Massachusetts—Anno. Laws of Mass., ch. 200A, § 1-17 (1969)

Michigan—M.C.L.A. §§ 567.11-.76 (1967)

Minnesota—M.S.A. §§ 345.31-.60 (Supp. 1970)

Montana—R.C.M. §§ 67-2201-2230 (1970)

Nebraska—Laws of Nebraska, Vol. 2, Ch. 611 (1969)

New Hampshire—R.S.A. 471-A:1-28 (1968)

New Jersey—N.J.S.A. 2A:37-11—37-44 (Supp. 1970)

New Mexico—N.M.S.A. §§ 22-22-1—22-29 (Supp. 1969)

New York—N.Y. Abandoned Property Law, § 1309 (McKinney's Supp. 1970)

APPENDIX A

(cont.)

North Carolina—G.S. Ch. 116A (1971)

Oklahoma—60 Okl. St. Ann. §§ 651-687 (Supp. 1970)

Oregon—O.R.S. §§ 98.302-.436 (1969)

Pennsylvania—Act 74 (1971 New Laws pp. 368 et seq. (CCH 1971))

Rhode Island—G.L. § 33-21-11—21-40 (1969)

South Carolina—House Bill 1057, ratification no. 562, Laws 1971

Texas—Vernon's Ann. Civ. St. Art. 3272a (1968)

Utah—U.C.A. §§ 78-44-1—44-29 (Supp. 1969)

Vermont—7A V.S.A. §§ 27-1208—1236 (1967)

Virginia—Code of Virginia §§ 55-210.1-.210.29 (1969)

Washington—RCWA 63.28.070-63.28.920 (1966)

West Virginia—W. Va. Code §§ 36-8-1—36-8-31 (Supp. 1970)

Wisconsin—W.S.A. §§ 177.01-.30 (Supp. 1970)

APPENDIX B

Alabama—Act 63, Laws 1971

California—C.C.P. § 1513(c) (West Supp. 1970)

Indiana—Burns Anno. Ind. St. § 51-704(d) (Supp. 1970)

Iowa—I.C.A. § 556.2 3. (Supp. 1970)

Maryland—Anno. Code of Md., Art. 95C, § 2(c) (1969)

Minnesota—M.S.A. § 345.32(c) (Supp. 1970)

Montana—R.C.M. § 67-2202(c) (1970)

Nebraska—Laws of Nebraska, Vol. 2, Ch. 611, § 2(c) (1969)

New Mexico—N.M.S.A. § 22-22-3C (Supp. 1969)

North Carolina—G.S. § 116A-4.1

Oregon—O.R.S. § 98.306(3) (1969)

Pennsylvania—Act 74 § 3(2)(iii) (1971 New Laws p. 371 (CCH 1971))

Rhode Island—G.L. § 33-21-12(c) (1969)

South Carolina—House Bill 1057 § 14(B)(3), Laws 1971

West Virginia—W. Va. Code § 36-8-2(c) (Supp. 1970)

Wisconsin—W.S.A. § 177.02(3) (Supp. 1970)