

FILE COPY

FILED  
DEC 27 1972

MICHAEL RODAK, JR., CLERK

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

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.*

---

SUPPLEMENTAL REPORT OF  
JOHN F. DAVIS, SPECIAL MASTER

---

December, 1972



IN THE  
SUPREME COURT OF THE UNITED STATES

---

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.*

---

SUPPLEMENTAL REPORT OF  
JOHN F. DAVIS, SPECIAL MASTER

---

To the Chief Justice and the Associate Justices of the  
Supreme Court of the United States:

On June 19, 1972, the Supreme Court handed down an opinion in this case adopting a formula for determining which States are entitled to escheat unclaimed funds in the possession of Western Union Telegraph Company as the result of aborted telegraphic money orders. In the concluding paragraph of that opinion it was stated: "We think that as a matter of fairness the claimant States, and not Western Union, should bear the cost of finding and recording the available addresses, and we shall remand to the Special Master for a hearing and recommendation as to the appropriate formula for distributing those costs. \* \* \*"

On June 27, 1972, the Special Master notified counsel for all of the parties that he would hold a hearing for the submission of evidence and oral argument on the subject of the remand if any party so desired. In the absence of such a request, he would consider the views of the parties on written submission, memoranda to be filed on or before August 1 with replies to be filed on or before August 15. Before this procedure could be carried out Florida and Pennsylvania filed petitions for rehearing with the Court. Thereupon, the Special Master informed the parties that he was of the opinion that it would be inappropriate to proceed while the petitions were pending. On October 10, 1972, the Supreme Court denied the petitions for rehearing. On October 12 the Special Master rescheduled the dates for memoranda and replies for November 15 and December 1, 1972.

No party has requested a formal hearing. Western Union, Indiana, New York, Oregon and Pennsylvania have filed memoranda.

The parties who have communicated their views to the Special Master agree that the search of the records should

be conducted by Western Union and that the resulting tabulation<sup>1</sup> should list not only the items as to which there are no addresses or in which the addresses place the creditors in the States which are parties to this proceeding, but should also list items showing addresses in all of the States. Since such a tabulation would provide a basis for the recovery by escheat, or custodial taking, by States not parties to this proceeding, the question is whether such States should share in the cost of the search. All of the parties who have been heard from agree that any State benefited by the search should share proportionally in its cost. It has also been proposed that the costs of these proceedings should also be so apportioned. The Special Master agrees that it is equitable that all States sharing in the benefits of the search should pay their share of the cost, but it does not seem appropriate that court costs in a proceeding should be assessed against States which are not parties. The Special Master therefore recommends a supplemental decree providing for a division of the cost of the search proportionate to the amounts of their recovery from the fund by all States, but that the costs of these proceedings, including the costs heretofore allowed and any costs hereafter allowed for the remand, should be

---

<sup>1</sup>Western Union has suggested that a material saving can be effected by not attempting to search out addresses for items of \$3.00 or less, but by merely totalling them and dividing the total in the same proportion as the larger items are divided. The parties generally agree on this procedure, but New York questions the use of \$3.00 as the cut-off figure. This seems to be a detail of the audit on which the Court should not be called to make a decision. If the parties can agree on such a procedure, the Special Master does not believe the proposed supplemental decree would prevent its being used.

divided pro rata only among the States which are parties to the case.

The Commonwealth of Pennsylvania has suggested that the search include not only the period covered by its complaint, that is through December 31, 1962, but also through December 31, 1965, since the use of that date would permit accounting for all full calendar years completed seven years before the audit. The Special Master does not believe that the Court should make an order covering periods not specified in the pleadings. However, if Pennsylvania should ask leave to amend its complaint to cover the additional three years, and if the other parties to the proceeding express no objection to such an amendment, the Special Master recommends that the Court accept the amendment and that its order then be deemed to cover the entire period.

In addition to the above matters, Western Union has made suggestions as to the methods it would use in making the search and as to its application of the Court's opinion to various factual situations. The States have disagreed as to some of these details, such, for example, as to whether a street address of a sender without identification of a city or State can be accepted without verification as fixing the sender's address in the State where the money order originated. The Special Master does not believe that it is appropriate for the Court to resolve this and other questions of interpretation in advance of the search. Hopefully, it will never be called on to do<sup>so</sup> since such questions can be resolved by agreement between the parties, or by submission of such details to an independent referee or arbitrator, or, if necessary, by the decision of the state courts in regular escheat proceedings. If irreconcilable conflicts do

develop, it will then be the appropriate time to ask the Court to decide such questions.<sup>2</sup>

## CONCLUSION

The Special Master recommends the entry of the following supplemental decree:

### RECOMMENDED SUPPLEMENTAL DECREE

Supplementing the Court's decree of June 29, 1972, it is further Ordered, Adjudged and Decreed as follows:

The reasonable cost of a search by Western Union of its records for the addresses of creditors in connection with aborted telegraphic money orders shall be deducted from the unclaimed fund in Western Union's possession and the amount payable to any State as a result of escheat or custodial taking of any part of the fund shall be reduced by a percentage of such cost equal to the percentage that that State's share of the fund bears to the total of the fund. As to the States who are parties to this proceeding, the amount of the fund which each may recover by escheat or custodial taking shall be further reduced by a share of the costs of this proceeding, including both the costs approved by the Court's order of June 26, 1972, and any costs for this supplemental

---

<sup>2</sup>Pennsylvania appears to assume that this proceeding will be continued to a final order by this Court apportioning the fund among the States. The Special Master does not believe that this original action should be utilized as a substitute for the regular escheat procedures under the individual State statutes. Rather it should be treated as a declaratory judgment action to reconcile the conflicting claims of the various States leaving the claims to the established escheat procedures from there on.

proceeding hereafter approved by the Court, proportionate to the total amount of the recovery of those States from the fund.

Respectfully submitted,

JOHN F. DAVIS

*Special Master*

December, 1972



5163 0846 18

12/07/05

MAR



