No. 111 Original

IN THE SUPREME COURT OF
THE UNITED STATES

October Term, 1987

STATE OF DELAWARE,
Plaintiff

v.

STATE OF NEW YORK,
Defendant

On Motion For Leave To
File Complaint

BRIEF OF STATES OF PENNSYLVANIA, FLORIDA, RHODE ISLAND, NEW JERSEY, ARIZONA, UTAH AND ARKANSAS

AS AMICI CURIAE IN
SUPPORT OF THE PLAINTIFF

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DATED: May 9, 1988
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QUESTIONS PRESENTED

1. Whether the Court should exercise original jurisdiction over the complaint filed by Delaware against New York involving escheat of unclaimed intangible property held in New York by firms incorporated in Delaware?

2. Whether New York may disregard the holding in Texas v. New Jersey, 379 U.S. 674 (1974), in order to escheat unclaimed intangible property held by firms doing business in New York but incorporated in Delaware?

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Interest of Amici States

Many brokerage firms do business in New York but are incorporated elsewhere. Each year millions of dollars in dividends and interest remain unpaid because these brokerage firms are unable to trace the beneficial owners. New York, which has a three-year escheat law, escheats this unclaimed intangible property from both brokerage firms incorporated in New York and those incorporated in other states. Delaware, which has a seven-year escheat law, complains that as to firms incorporated in Delaware, New York is escheating property which by right ought to go (eventually) to Delaware.

The amici States all have escheat statutes similar to Delaware's. The amici States support Delaware's position that, under Texas v. New Jersey, 379

U.S. 674 (1965), and Pennsylvania v. New York, 407 U.S. 206 (1972), New York is not entitled to escheat unclaimed intangible property held by brokers conducting business in New York but incorporated elsewhere. Amici States have a significant interest in this matter because they rely upon the rules of priority established by the Court to govern situations in which laws of two or more states permit escheat of the same intangible property. Adherence to these equitable standards enables amici States to avoid litigation resulting from inconsistent claims to the same property. The relief sought by Delaware is compatible with the rules followed by amici States.

Amici believe that New York's actions are an unjustified departure from this Court's well-established principles of priority among states with

competing escheat interests, which will create substantial practical problems for the States, not the least of which will be an unseemly competition to establish the shortest possible escheat period. For this reason, amici urge this Court to accept jurisdiction over this matter, permit the filing of Delaware's complaint and affirm the salutary ruling of Texas v. New Jersey, 379 U.S. 674 (1965).

SUMMARY OF ARGUMENT

1. A controversy between two states claiming entitlement to escheat the same intangible property is properly resolved by the exercise of this Court's original and exclusive jurisdiction under Article III, Section 2 of the Constitution of the United States, and Title 28, Section 1251(a) of the United States Code.

2. This Court established rules of priority to govern situations in which the laws of two or more states permit escheat of the same unclaimed intangible property. In Texas v. New Jersey, 379 U.S. 674 (1965), and Pennsylvania v. New York, 407 U.S. 206 (1972), the Court prescribed easily administered, equitable guidelines to determine which state was entitled to escheat abandoned intangible property.

The Court determined that the state with priority over intangible property was the state in which the holder's records placed the beneficial owner. If no record is available, or if the state with priority had no escheat law, then the state of the holder's incorporation was entitled to escheat the property. In this matter, Delaware seeks to prohibit New York from countermanding this standard by escheating unclaimed intangible property held by firms conducting business in New York but incorporated in Delaware.

ARGUMENT

I. THE COURT HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER A CONTROVERSY BETWEEN TWO STATES CLAIMING THE RIGHT TO ESCHEAT THE SAME INTANGIBLE PROPERTY.

Both New York and Delaware claim the right to escheat unclaimed intangible property held by firms incorporated in Delaware and doing business in New York. The amici States concur with Delaware that, pursuant to 28 U.S.C. §1251(a), this Court is the appropriate forum for resolution of this controversy between the two states.

The similarity between this matter and cases previously heard by the Court in its original jurisdiction is apparent. See Pennsylvania v. New York, 407 U.S. 206 (1972); Texas v. New Jersey, 379 U.S. 674 (1965). In Western Union Telegraph Co. v. Pennsylvania, 368 U.S.

71 (1961), the Court noted that a state court judgment of escheat cannot protect the holder from an escheat claim of another state, and directed states with conflicting escheat claims to seek settlement of their controversies by invoking the Court's original and exclusive jurisdiction. Delaware's complaint requests precisely such a settlement and, therefore, amici believe it is imperative that this Court grant Delaware's motion for leave to file its complaint against New York.

II. NEW YORK SHOULD BE RESTRAINED FROM ESCHEATING UNCLAIMED INTANGIBLE PROPERTY WHICH PROPERLY REVERTS TO DELAWARE UNDER THE RULES OF PRIORITY ESTABLISHED IN TEXAS V. NEW JERSEY, 379 U.S. 674 (1965), and PENNSYLVANIA V. NEW YORK, 407 U.S. 206 (1972).

Delaware maintains that New York is attempting to escheat unclaimed intangible property held by brokerage firms conducting business in New York but incorporated in Delaware. New York's action disregards the holdings of Texas v. New Jersey, 379 U.S. 674 (1965), and Pennsylvania v. New York, 407 U.S. 206 (1972), governing situations in which the laws of two or more states permit escheat of the same intangible property. Those cases hold that the state with priority over intangible property is the state in which the holder's records place the beneficial

owner. If the holder's records do not contain this information, or if the beneficial owner's state has no provision for escheat of intangible property, then the intangible property reverts to the holder's state of incorporation.

The system established by these cases has proven to be both equitable and easy to administer. It enables states with inconsistent claims to the same escheatable property to avoid the time and expense of filing and attempting to perfect their claims. It virtually eliminates the burden that such competing claims placed upon holders of such property. Finally, it obviates the due process problems which can result from competing claims to the same intangible property (see Western Union Telegraph Co. v. Pennsylvania, 368 U.S. 71 (1961)).

Amici States believe that the practical benefits resulting from the rules established by the Court underscore the continuing vitality of those rules. These benefits will be eliminated if states can disregard the rules of priority in order to benefit their individual fiscal requirements. If New York can disregard this Court's holdings, so can other states. The results will be an unseemly scramble among the states to establish priority over escheated property by the simple expedient of being the first to grab it, and an unhealthy uncertainty among the holders of such property. The amici States therefore urge the Court to grant Delaware's motion and to affirm the salutary holding of Texas v. New Jersey.

CONCLUSION

For the foregoing reasons, the amici States urge the Court to accept jurisdiction over this matter, permit filing of the complaint by the State of Delaware and affirm Texas v. New Jersey, 379 U.S. 674 (1965).

Respectfully submitted,

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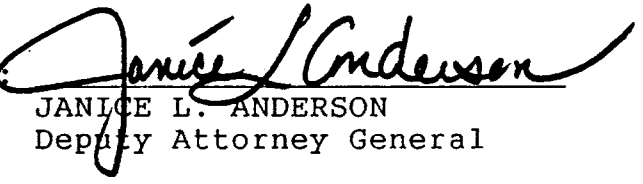
By: 
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