# A BILLION DOLLAR PROBLEM: THE INSURANCE INDUSTRY'S WIDESPREAD FAILURE TO ESCHEAT UNCLAIMED DEATH BENEFITS TO THE STATES

DEVIN HARTLEY*

***

*This note examines whether insurers are violating state unclaimed property statutes as well as unfair claims settlement practices statutes by failing to take affirmative steps to locate and pay beneficiaries of life insurance policies or, in the alternative, by failing to escheat the proceeds to the state. This note shows that the current claims settlement practices of the nation's largest insurers do indeed violate these statutes. Specifically, the insurance industry has used the Social Security Administration's Death Master File (DMF) to identify deceased annuitants and terminate annuity payments but has failed to use the same technology to identify deceased insureds and pay beneficiaries. Additionally, this note describes the industry's reaction to the regulatory scrutiny of its claims settlement practices and predicts a paradigm shift with respect to those practices; that is, a shift from an industry that only pays beneficiaries upon the filing of a claim to an industry that proactively seeks to identify deceased insureds and pay out the insurance benefits associated with those deaths.*

***

"I'm concerned that the [life] insurance industry is not holding up its end of the sacred bargain it struck with its clients when it issued life insurance policies in the first place."[1]

Since its inception, the life insurance industry has been relied upon by consumers as an ameliorating corollary to a tragedy; a type of financial

---

* I would like to thank Professor Jill Anderson for her valuable feedback on this note- it is much appreciated.

[1] *Metropolitan Life Insurance Company's Practices and Procedures Relating to the Use of the Death Master File Data and Related Information: Hearing Before the Insurance Commissioner of the State of California*, 11 (Fl. 2011) [hereinafter *California MetLife Hearing*] (statement of Dave Jones, California Insurance Commissioner).

safety net to be cast in the unfortunate event of a loved one's death. For most people, a life insurance policy represents a hard-earned effort to provide their loved ones with some measure of financial support, or at the very least, a means by which to cover funeral expenses.[2] In many cases, the foundation for these policies has been laid through decades of premium payments, paid by the insured with the understanding that the insured's heirs would one day reap the rewards.[3] Currently, however, there are widespread practices among the insurance industry which suggest that this understanding on the part of the consumer may be mistaken.

Specifically, it has been estimated that over 1 billion dollars in death benefits currently sit on the books of insurers,[4] unclaimed by the very beneficiaries that the insurer sought to protect, notwithstanding the fact that the industry has available to it the technology that would allow it to identify and reach out to those beneficiaries.[5] The situation is made more egregious by the fact that insurance companies regularly employ such technology to terminate annuity payments while failing to use this same technology to identify beneficiaries and pay death benefits.[6] Unfortunately, many of these same beneficiaries are further victimized when insurers rely on ambiguous contractual language to continue paying themselves premiums out of a policy's accumulated cash value long after

---

[2] *See* Paul Sullivan, *Tracking Down and Collecting Unclaimed Life Insurance*, N.Y. TIMES, Feb. 25, 2011, *available at* http://www.nytimes.com/2011/02/26/your-money/life-and-disability-insurance/26wealth.html.

[3] *See id.* (". . . most people expect the policies on which they have paid premiums for decades to help their heirs get by- or at the least cover funeral expenses").

[4] Ed Leefeldt, *$1 Billion in Life Insurance Unclaimed?*, MSN MONEY (May 19, 2011, 6:36 PM), *available at* http://money.msn.com/saving-money-tips/post.aspx?post=f24dc3b4-e3a9-495d-8bcc-8be7fe5090ea.

[5] *See California MetLife Hearing, supra* note 1, at 10 (statement of John Chiang, California State Controller).

[6] *Metropolitan Life Insurance Company: Hearing Before the Florida Office of Insurance Regulation*, 71-72 (Fl. 2011) [hereinafter *Florida MetLife Hearing*] (statement of Belinda Miller, Acting General Counsel, Florida Office of Insurance Regulation) ("Now you heard the issue is that . . . when the company is stopping payment, you use that file frequently and regularly; and then when it is a matter of paying someone a death benefit, it's later and not as consistent.").

the insured has stopped making premium payments on that policy.[7] Once the policy's cash value is depleted, the insurer then lapses the policy without ever paying out death benefits.[8]

This note will examine whether some of the largest life insurers in the U.S. are violating state insurance statutes and state unclaimed property statutes by failing to take affirmative steps to pay out on policies of life insurance or, alternatively, escheat the proceeds to the appropriate state. Part I of this note discusses the problem of unclaimed death benefits by providing statistics detailing just how significant this issue has become while also touching on the process of demutualization, the smoking gun that helped uncover the true extent of the problem. Part II discusses the legal basis for the concept of escheat and traces the development of escheat law from its early English common law roots through landmark twentieth century Supreme Court cases and up to the current version of escheat as it appears in modern unclaimed property laws. Part III examines insurance industry practices[9] such as the asymmetrical use of the Death Master File and the misapplication of contractual anti-forfeiture provisions, practices

---

[7] *In Re: Nationwide Insurance Company: Hearing Before the Florida Office of Insurance Regulation*, 36 (Fl. 2011) [hereinafter *Florida Nationwide Hearing*] (statement of Belinda Miller, Acting General Counsel, Florida Office of Insurance Regulation) ("But a lot of these policies aren't going to get to limiting age because they lapsed, because they [the insurers] paid the premium out of the accumulated cash in the policy and then it never gets to limiting age.").

[8] *Id.*

[9] It is important to note the extent to which the issues and practices discussed in this note truly are endemic to the insurance industry as a whole. This is not a situation where a few isolated insurers are acting as outliers, but rather, one where the majority of the nation's largest insurers are, to some degree, exhibiting these practices . For evidence of the pervasiveness of these practices within the insurance industry, one need look no further than the breadth and scope of the regulatory agreements that have already been entered into between regulators and insurers regarding the insurers' unclaimed property practices. MetLife, John Hancock, Prudential, AIG and Nationwide have all entered into regulatory agreements- and it is likely that others will soon follow; *see* Jack McDermott & Amy Bogner, *Florida Announces a $11 Million Multi-Agency Agreement with the AIG Companies to Protect Life and Annuity Beneficiaries*, FLA. OFFICE OF INS. REG. (Oct. 22, 2012), http://www.floir.com/PressReleases/viewmediarelease.aspx?id=1976. *See also The Probe Into Life Insurance Company Beneficiary Payouts*, GO INSURANCE RATES (Aug. 25, 2011), http://www.goinsurancerates.com/life-insurance/probe-into-life-insurance-company-beneficiary-payouts.

which contribute to the industry's failure to pay out death benefits, or alternatively, escheat them to the state. [10] Part IV examines industry wide violations of state unclaimed property laws stemming from the failure of insurers to adhere to statutory dormancy requirements. Part V discusses the extent to which industry practices such as the asymmetrical use of the DMF constitute violations of state unfair claims practices law in the wake of *Connecticut Mutual v. Moore*.[11] Part VI of the note examines recent developments concerning the insurance industry's unclaimed property practices and its concomitant failure to pay out or escheat unclaimed death benefits. And finally, the note concludes by predicting that, due to regulatory pressure, the insurance industry as a whole is trending towards a reformed model of business that utilizes a more proactive approach with respect to locating beneficiaries, paying out death benefits, and escheating unclaimed benefits to the state.

## I. UNCLAIMED DEATH BENEFITS UNDER LIFE INSURANCE POLICIES: THE INDUSTRY WIDE DILEMMA

### A. THE EXTENT OF THE PROBLEM

According to life insurers, approximately 1% of death benefits owed to beneficiaries are never claimed.[12] Even with only 1% of policies going unclaimed, however, the total value of unclaimed death benefits figures to

---

[10] *See California MetLife Hearing*, *supra* note 1, at 6 (statement by California Insurance Commissioner Dave Jones that "[s]ome insurers appear to use Death Master to cut off payments on annuities when an annuity owner dies, but do not use that information to identify life insurance policyholders who die and pay their beneficiaries.").

[11] Conn. Mut. Life Ins. Co. v. Moore, 333 U.S. 541 (1948).

[12] *See e.g., How to Find Lost Life Insurance Policies*, ARTICLESBASE.COM (May 25, 2007), http://www.articlesbase.com/insurance-articles/how-to-collect-on-lost-life-insurance-policies-357858.html ("Dave Potter, a spokesperson for Hartford Life said 'approximately less than 1% of all policies are never claimed by the beneficiary.'"); *see also California MetLife Hearing*, *supra* note 1, at 77-78 (statement of Todd B. Katz, Executive Vice President, U.S. Business Insurance Products, MetLife) ("If you looked over a period of time, about 99 percent of the claimed dollars paid came from the normal sources and about one percent of those claims never were submitted through the normal processes.").

be in the billions.[13] In terms of raw figures for unclaimed property around the country, it is estimated that roughly $351 million in unclaimed life insurance was transferred to the states in 2009.[14] But perhaps even more telling is the $1.3 billion in total unclaimed policy liability which is estimated to be on the books of the largest insurance companies.[15] New York has received $400,287,736 in unclaimed life insurance property since 2000 and, out of that sum, has paid out $64,772,228 to beneficiaries.[16] Since 1943, the state of New York has received $10.5 billion in unclaimed property, only 20% of which is claimed in any given year.[17] Once the states are in possession of this unclaimed property, they are able to use these proceeds in a way that actually benefits the state's general population. For instance, California uses this extra source of revenue to alleviate budget shortfalls and supplement its general fund.[18] Yet, budget concerns and tax reduction aside, the state's main concern is returning the property to its rightful owner.[19] This goal is in stark contrast with the

---

[13] Leslie Scism & Vauhini Vara, *Life Insurers Skimp on Payouts: States*, WALL ST. J. (Apr. 28, 2011), http://online.wsj.com/article/SB10001424052748703367004576289423732099868.html; Arthur D. Postal, *McCarty: Unclaimed Property Probe Could Bring in "North of $1 Billion"*, LIFEHEALTHPRO (May 19, 2011), http://edit.lifeandhealthinsurancenews.com/News/2011/5/Pages/McCarty-Unclaimed-Property-Probe-Could-Bring-in-North-of-1-Billion.aspx (according to Florida Insurance Commissioner Kevin McCarty, an investigation into life insurers' death benefits payment practices could help beneficiaries and state unclaimed property funds recover "north of $1 billion").

[14] Postal, *supra* note 13.

[15] Sullivan, *supra* note 2, at 2 (this is likely a conservative estimate as this data was drawn from a study performed by Joseph M. Belth, professor emeritus of insurance at Indiana University and editor of the Insurance Forum, which only considered the 20 largest insurance providers and their dealings with the 20 largest states); *see* Marc J. Musyl, Micah Schwalb & Sarah Niemiec Seedig, *Unclaimed Property Audits: No Laughing Matter*, NAT'L L. F. (Aug. 8, 2011), http://nationallawforum.com/2011/08/08/unclaimed-property-audits-no-laughing-matter/; *see also* Leefeldt, *supra* note 4.

[16] Paul Sullivan, *Tracking Down and Collecting Unclaimed Life Insurance*, N. Y. TIMES (Feb. 25, 2011), http://www.nytimes.com/2011/02/26/your-money/life-and-disability-insurance/26wealth.html (These figures were reported by Vanessa Lockel, a spokeswoman for the Office of the State Comptroller).

[17] *Id.*

[18] Scism & Vara, *supra* note 13.

[19] *Id.* at 2-3.

conduct of those insurers who hold onto unclaimed death benefits thereby allowing them to profit from the underlying investment income.[20] Certainly, insurers have incentives to escheat unclaimed death benefits in compliance with unclaimed property laws- namely to avoid having to pay the statutory interest on a late remittance[21]- but competing considerations, such as the profit insurers can realize by holding onto these benefits for years after the proceeds become due, are no doubt compelling.[22]

There are many reasons why this money goes unclaimed but the most prevalent seems to be the simple fact that the beneficiaries do not know the money exists.[23] Many cash-strapped states, intrigued by the magnitude of these figures, are now in the process of investigating the practices of life insurers with respect to unclaimed property. Specifically, they are looking into whether life insurers are doing enough to locate beneficiaries after a policyholder dies, and if they are complying with state laws which require insurers to turnover unclaimed money to the states.[24] Among other things, the states are attempting to ascertain what information life insurers have about their policyholders, whether the insurers are using this information properly and how vigilant the companies have been in attempting to track down beneficiaries. More specifically, they are looking to determine whether the insurers are using the DMF in a selective manner

---

[20] *Id.*

[21] *Florida Nationwide Hearing*, *supra* note 7, at 42 (statement of Eric Henderson , Senior Vice President of Individual Investments, Nationwide) ("[I]f you just go for pure financial interest, it's in our interest to do that [escheat] so we don't have that statutory interest.").

[22] *See California MetLife Hearing*, *supra* note 1, at 25 (statement of Adam Cole, General Counsel, California Department of Insurance) ("It should be noted that improper calculation of the dormancy period allows insurers unlawfully to retain millions of dollars in proceeds for years, if not decades, after they are due to be escheated.").

[23] Sullivan, s*upra* note 2, at 1 (Additional circumstances in which a policy may go unclaimed occur when the beneficiary dies before the policyholder, or when the beneficiary knows of the policy but is unable to locate it).

[24] Matthew Sturdevant, *Connecticut Joins Investigation into Unclaimed Life Insurance Funds*, COURANT.COM (Apr. 28, 2011, 3:52 PM), http://blogs.courant.com/connecticut_insurance/2011/04/ (a total of 36 states, including Connecticut, New York, and all New England states, are now investigating life insurers' actions in tracking down beneficiaries).

to avoid paying death benefits to policy beneficiaries.[25] Connecticut has been a recent addition to the growing list of states now in the midst of an investigation to uncover escheatable unclaimed property.[26] The states participating in the investigation view unclaimed property as a much needed source of revenue in the midst of budget shortfalls and trying economic times.[27] Additionally, from the insurer's point of view, failure to comply with these state unclaimed property laws could result in millions of dollars in interest and penalties being paid by the insurers.[28]

The unclaimed property figures, of course, raise the question: what happens to the billions of dollars of death benefits that go unclaimed? Unfortunately, this money is being used by insurers in ways that plainly disregard the state statutes governing unclaimed property.[29] When an insured stops paying the premiums on a policy, rather than turning to readily available information[30] to check whether the policyholder is

---

[25] *Id.*

[26] *Id.* (Connecticut Insurance Commissioner Thomas B. Leonardi has announced that he is launching a "formal inquiry into the business practices of life insurance companies regarding timely payments of death benefits- money paid to a beneficiary when a policyholder dies.").

[27] Marc J. Musyl, et al., Unclaimed Property Audits: No Laughing Matter, THE NATIONAL LAW FORUM (Aug. 8, 2011), http://nationallawforum.com/2011/08/08/unclaimed-property-audits-no-laughing-matter/ (In fact, during the last two years, some state legislatures have revised their unclaimed property statutes to reduce dormancy periods, which effectively speeds up the process by which states can receive and, ultimately, use this unclaimed property).

[28] *Id.*

[29] Although unclaimed property laws vary slightly on a state-by-state basis, most states use a modified version of one of the four Uniform Acts (Uniform Disposition of Unclaimed Property Act of 1954; Uniform Disposition of Unclaimed Property Act of 1966; Uniform Unclaimed Property Act of 1981; and the Uniform Unclaimed Property Act of 1995), which results in a baseline of uniformity among state unclaimed property laws; MICHAEL HOUGHTON, ESQ., ET AL., *Unclaimed Property, in* CORPORATE PRACTICE SERIES PORTFOLIO 74-2nd, A-1 (2006).

[30] *See Florida MetLife Hearing*, *supra* note 6 at 17-18 (statement of Belinda Miller, Acting General Counsel, Florida Office of Insurance Regulation) ("There are a variety of ways insurance companies become aware of [the] death of their insureds.... They [also] can use information contained in or derived from publicly available databases such as the Social Security Administration Death Master File.").

deceased, the insurer relies on so-called 'anti-lapse' or 'nonforfeiture' laws to pay itself premiums out of the built-up cash value of the policy.[31] The insurer continues to pay itself premiums until the cash value has been depleted, at which point it terminates the policy and avoids paying out any benefits.[32] Not only do the insurers fail to be proactive in terms of seeking out beneficiaries, they go so far as to use information on the United States Social Security Administration Death Master File [hereinafter DMF] to terminate annuity payouts yet ignore this exact same information on the life insurance side of their business.[33] The insurers regularly check the DMF for deceased annuitants because, when an annuitant dies, the insurers discontinue annuity payouts, but when it comes to life insurance policies, the insurers fail to utilize the DMF.[34] In other words, the insurance industry has embraced the practice of relying on the DMF when it is beneficial for them to do so, yet disregarding DMF information when its use would be to their detriment.

### B. DEMUTUALIZATION: THE SMOKING GUN

During the early 2000's many of the large insurers changed their form of ownership from a mutual company to a stock company.[35] A mutual insurance company is owned solely by the policyholders, whereas a stock insurance company is owned by members of the public. In order to accomplish this shift in ownership, they went through a process called "demutualization." In that process the companies were required to compensate the policyholders for their interest in the mutual company with stock, or in some cases, cash. When the companies tried to locate those policyholders in order to compensate them it was determined that a large amount of those policy holders were missing, or "lost". Prudential, for example, identified approximately 1 million policyholders as lost during

---

[31] For a fuller discussion of the insurance industry's questionable practices concerning anti-forfeiture provisions, *see infra* Part III, Section B.

[32] *See California MetLife Hearing*, *supra* note 1, at 6-7 (statement of Dave Jones, California Insurance Commissioner).

[33] *Id.* at 7 (statement of Dave Jones, California Insurance Commissioner).

[34] *Id.* (statement of Dave Jones, California Insurance Commissioner).

[35] *See California MetLife Hearing, supra* note 1, at 26 (statement of Dave Jones, California Insurance Commissioner).

their demutualization process[36] and Metropolitan Life, or MetLife, identified lost policyholders in excess of 1 million.[37] The companies recognized that the payment owed to these lost policyholders constituted unclaimed property and escheated those proceeds to the states pursuant to each state's unclaimed property laws.[38] Nevertheless, most companies[39] failed to investigate whether some of the policyholders who were lost, were lost because they were dead.[40] Because eligibility for a demutualization payment was conditioned upon the ownership of an underlying life insurance policy, each time a lost policyholder turned out to be deceased, death benefits were owed under the affiliated life insurance policy. To this end, regulators have been questioning insurers as to why they did not investigate whether these lost policyholders were dead, especially as some of the policies were over forty years old.[41] MetLife, for example, admitted that many of these policyholders were likely dead but could not explain why they failed to investigate which specific policies had benefits due.[42]

## II. UNCLAIMED PROPERTY STATUTES AND CASE LAW: THE PREVAILING INTERPRETATIONS

### A. THE CONCEPT OF ESCHEAT

The law of escheat has its roots in early English common law. The underlying philosophy of escheat was described by Blackstone: "[t]he

---

[36] *Lost Life Insurance – Missing Policyholder Claims*, DEMUTUALIZATION CLAIMS CLEARINGHOUSE (Mar. 28, 2013), www.demutualization-claims.com.

[37] *See California MetLife Hearing*, *supra* note 1, at 180 (statement of Todd B. Katz, Executive Vice President, U.S. Business Insurance Products, MetLife).

[38] *See Lost Life Insurance – Missing Policyholder Claims*, *supra* note 36.

[39] Prudential being a notable exception, as they did, in fact, investigate whether these lost policyholders were dead.

[40] *See California MetLife Hearing*, *supra* note 1, at 183 (statement of Todd Katz, Executive Vice President, U.S. Business Insurance Products, MetLife) ("Yeah. It's probably reasonable to assume some were dead.").

[41] *Id.* at 184 (statement of Dave Jones, California Insurance Commissioner); *see Florida MetLife Hearing*, *supra* note 6, at 127 (statement of Frank Cassandra, Senior Vice President, Insurance Products Financial, MetLife).

[42] *Id.* at 184-85 (statement of Todd B. Katz, Executive Vice President, U.S. Business Insurance Products, MetLife).

grand and fundamental maxim of all feudal tenure is this: that all lands were originally granted out by the sovereign, and are therefore holden, either mediately or immediately, of the crown."[43] Early common law escheat was the concept by which land held by tenants was returned to the owner, or lord, in the event that a tenant died without an heir.[44] Escheat law, however, has evolved over time, and the modern concept refers to a process where the state takes title to property, real or personal, that is unclaimed or, in the language of many current statutes, presumed abandoned by the rightful owner.[45] Unclaimed property laws retained their original common law form until the 19th century when states began enacting the first escheat statutes. Rhode Island, Pennsylvania, Massachusetts, Ohio, Alabama, Illinois, Georgia, New Jersey, Mississippi, Missouri, Maryland and North Carolina were the first states to codify some version of the common law escheat doctrine.[46]

In early English common law, escheat referred only to real property, but the concept of *bona vacantia*, literally "vacant goods", applied to personal property.[47] This concept allowed for the crown to take possession of personal property in the absence of any other rightful owner on the basis of its "royal prerogative."[48] Remnants of *bona vacantia* can be found in modern statutory law where the state is allowed to acquire title to property that is presumed abandoned because "possession by the crown was more equitable than that of a stranger."[49] Another rationale used to support the concept of *bona vacantia* was that the crown's ownership would preclude conflicting claims made by private parties for the same property .[50]

The English common law doctrines of escheat and *bona vacantia* provide the foundation for current state unclaimed property laws.[51] American states have adopted as their unclaimed property laws a

---

[43] HOUGHTON ET AL., *supra* note 29, at A-3.

[44] ANTHONY L. ANDREOLI & J. BROOKE SPOTSWOOD, UNCLAIMED PROPERTY: LAWS, COMPLIANCE, AND ENFORCEMENT 5 (2002).

[45] *Id.* at 5.

[46] HOUGHTON ET AL., *supra* note 29, at A-5.

[47] ANDREOLI & SPOTSWOOD, *supra* note 44, at 5.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] Michael I. Saltzman, *Providing Protection In State Unclaimed Property Audits*, *in* TAX ANALYSTS SPECIAL REPORT 1599, 1601 (2000).

combination of these two principles. In their current form, however, state escheat laws differ from the early English version in two significant aspects: first, the modern statutes presume all unclaimed property to be abandoned after it has remained unclaimed for a certain period of time; second, once the unclaimed property is escheated, the states act as the custodian of the property but not the owner.[52] The states hold the right to title against anyone except the missing owner, so, unlike its English predecessors, the state cannot claim absolute title to the property.[53] There are numerous justifications for the state serving as custodian of unclaimed property. For one, there is the fact that the state is a safer custodian of unclaimed property because businesses (such as insurance companies) could go bankrupt, or dissolve.[54] Also, there is the states' ability to better protect the interest of the owner, and the idea that a holder of unclaimed property should not benefit from property belonging to third parties.[55] Finally, state custody relieves the holder from any attendant liability while also preventing the possible misuse of funds by the holder.[56]

Current unclaimed property law, however, differs from the early common law concept of *bona vacantia* in that, at least in terms of intangible unclaimed property in the form of insurance policies, bank deposit accounts or dividend payments, it is not the possessor but rather the state who ultimately gains the right to these monies.[57] This divergence from early common law could be explained by the fact that the law of escheat originally applied only to real estate,[58] and additionally, in its earliest form, abandoned property was viewed mainly in terms of intentionally abandoned property.[59]

---

[52] *Id.*

[53] *Id.*

[54] ANDREOLI & SPOTSWOOD, *supra* note 44, at 7 (discussing the underlying purpose of the 1954 Uniform Act and noting that although the Act was amended by future Uniform Unclaimed Property Acts, the rationale of this 1954 Act still applies).

[55] *Id.*

[56] *Id.*

[57] Intangible unclaimed property includes items such as insurance policy proceeds, bank deposit accounts and dividend payments.

[58] HOUGHTON ET AL., *supra* note 29 at A-3.

[59] *Id.* at A-4.

## B. THE UNIFORM UNCLAIMED PROPERTY ACTS

Most states have adopted a version of one of the following uniform acts as their own unclaimed property law: the Uniform Disposition of Unclaimed Property Act of 1954, the Revised Uniform Disposition of Unclaimed Property Act of 1966, the Uniform Unclaimed Property Act of 1981 and the Uniform Unclaimed Property Act of 1995.[60] For the most part, unclaimed life insurance policy proceeds are escheatable three to five years after the policy becomes due and payable.[61] Both the 1981 Act and the 1995 Act are based on the original Uniform Unclaimed Property Act, which was proposed by the National Conference of Commissioners on Uniform State Laws [hereinafter NCCUSL].[62] The NCCUSL is a non-profit organization consisting of commissioners appointed by each state.[63] In 1954, the NCCUSL proposed the first uniform unclaimed property act, which became known as the Uniform Disposition of Unclaimed Property Act.[64] Thereafter, in 1966, the NCCUSL made small modifications to the 1954 Act and then again, in 1981, the NCCUSL made additional revisions.[65] The 1981 version is the version enacted by a majority of the states.[66] The 1995 Act, although it embodies the most recent revisions to the unclaimed property laws, has to this point been adopted by only a handful of states.[67]

---

[60] UNIFORM UNCLAIMED PROPERTY ACT (1995); Saltzman, *supra* note 51, at 1602.

[61] *See, e.g.* CAL. CIV. PROC. CODE § 1515(a) (1990); CONN. GEN. STAT. § 3-65a (1958).

[62] ANDREOLI & SPOTSWOOD, *supra* note 44, at 29.

[63] *Frequently Asked Questions*, UNIFORM LAWS (March 28, 2013), http://www.uniformlaws.org/narrative.aspx?title=Frequently%20Asked%20Questions.

[64] *Why States Should Adopt UUPA*, UNIFORM LAWS (Mar. 28, 2013), http://www.uniformlaws.org/narrative.aspx?title=Why%20States%20Should%20Adopt%20UUPA.

[65] *Unclaimed Property Act Summary,* UNIFORM LAWS (Mar. 28, 2013), http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act.

[66] *Why States Should Adopt the UUPA, supra* note 64.

[67] *Id.*

### C. CONNECTICUT MUTUAL LIFE INSURANCE CO. V. MOORE

In *Connecticut Mutual Life Insurance v. Moore*, the U.S. Supreme Court ruled that administrative hurdles such as the requirement of a death certificate and the filing of a formal claim, although appropriate in the context of a contractual insurer-insured relationship, cannot be applied to the states.[68] The Court rejected the insurers' argument that a New York abandoned property statute was unconstitutional because Article I, section 10 of the Constitution prevents the state from transforming a contractual obligation that was previously only conditional into one that is liquidated.[69] The insurer's argument was predicated on the fact that their obligation to pay out policy proceeds to a beneficiary was triggered only upon proof of death or the filing of a formal claim. The New York statute in question, however, would require that insurers, once the dormancy period has run, escheat the proceeds of unclaimed policies to the states, irrespective of whether or not the insurers had received proof of death or a formal claim.[70] In rejecting the insurer's Contract Clause argument, the Court recognized the long-standing right of the state to collect abandoned property while also emphasizing the inherent unreasonableness of requiring the state, acting as a conservator rather than a contracting party, to comply with contractual obligations which may properly be imposed on the contracting parties.[71] The Court reasoned that "the state may more properly be custodian and beneficiary of abandoned property than any person," before pointing out that if these unclaimed benefits are not escheated to the state, the insurance companies would end up retaining money which they normally would have been required to pay out.[72] *Connecticut Mutual Life Insurance Co. v. Moore* reflects a preference towards the states, rather than the insurer, as the holder of unclaimed death benefits not only because the states are in a better position to track down

---

[68] Conn. Mut. Life Ins. Co. v. Moore, 333 U.S. 541, 547 (1948).

[69] *Id.* at 545 ("[A]ppellants raised in their complaint and have consistently maintained that the statute impairs the obligation of contract within the meaning of Art. I, s 10, of the Constitution… Their argument under the Contract Clause is that the statute transforms into a liquidated obligation an obligation that was previously only conditional.").

[70] N.Y. ABAND. PROP. LAW § 703; *See also Moore*, 333 U.S. at 542 n.1.

[71] *Moore*, 333 U.S at 547.

[72] *Id.* at 546.

the beneficiary but also because, until the beneficiary is located, the unclaimed proceeds are used to supplement the state's general fund.[73]

### D. TEXAS V. NEW JERSEY

It is well settled in all jurisdictions that the state in which tangible property sits has the exclusive right and power to escheat.[74] However, with respect to intangible property such as life insurance benefits, the issue of which state holds the escheat right has historically been much less clear. Because the states themselves were powerless to decide a dispute between multiple states and there was no applicable federal statute, the burden of creating a rule fell on the Supreme Court. In 1965, the question of which state has the right to receive unclaimed intangible property when multiple states can assert ties to such property was settled in the case of *Texas v. New Jersey*.[75] In *Texas v. New Jersey*, four different states claimed title to various small debts owed by the Sun Oil Company to small creditors who had not come forward to claim them and could not be located.[76] Each state argued for the adoption of a different rule, but ultimately, the Court settled on the rule suggested by Florida that, because a debt is the property of the creditor as opposed to the debtor, "the right and power to escheat the debt should be accorded to the State of the creditor's last known address as shown by the debtor's books and records."[77] The Court reasoned that such a rule would eliminate the need to grapple with the often complicated legal concepts of residence and domicile while simplifying the administration

---

[73] *Id.*

[74] Texas v. New Jersey, 379 U.S. 674, 677 (1965).

[75] *Id.* at 680-81.

[76] *Id.* at 675, 677 (Texas filed suit against New Jersey, Pennsylvania and the Sun Oil Company for injunctive and declaratory relief but Florida was permitted to intervene because they "claimed the right to escheat the portion of Sun's escheatable obligations owing to persons whose last known address was in Florida.").

[77] *Id.* at 678-81 (Texas argued that exclusive jurisdiction to escheat should be given to the State with the most significant 'contacts' with the debt; New Jersey urged the court to grant the right to escheat to the State that served as the domicile to the debtor; and finally, Pennsylvania asked the Court to hold that the right and power to escheat should be accorded to the location of the principal place of business of the corporate debtor.).

and application of escheat laws.[78] Also significant was that Florida's rule afforded proper weight to the fact that a debt is the property of the creditor, not the debtor.[79]

*Texas v. New Jersey* is particularly relevant to any discussion of the escheatment of unclaimed death benefits because, until the decision was handed down in 1965, there was no way to determine which state could properly lay claim to which unclaimed death benefits.[80] However, applying the *Texas v. New Jersey* holding to the context of unclaimed death benefits, it is well settled that the state in which the beneficiary was last known to reside is the state with the exclusive right to escheat the unclaimed death benefits owed to that beneficiary.[81]

## III. INSURANCE INDUSTRY PRACTICES

### A. THE DEATH MASTER FILE

Unfortunately for the beneficiaries of insurance policies, insurance companies have failed to implement practices which would enable them to identify deceased insureds and pay out the insurance benefits associated with those deaths. In 1936, the Social Security Administration created the DMF for the purpose of providing the government, as well as multiple industries, with a tool to prevent fraud, verify death and ensure compliance with the USA Patriot Act. The DMF contains over sixty million records of death, each file containing information on the decedent's name, social security number, date of birth, date of death, state or country of residence, ZIP code of last residence and ZIP code of lump sum payment.[82] The DMF, despite being such a comprehensive database, is actually quite accurate in its information. In fact, Bill Gray, Deputy Commissioner of

---

[78] *Id.* at 681.
[79] *Id.* at 680.
[80] *See* ANDREOLI & SPOTSWOOD, *supra* note 44, at 54-55.
[81] *Id.*
[82] It should be noted that the DMF may not contain this complete list of information for each decedent as, occasionally, the Social Security Administration itself does not possess all of this information. Mark E. Hill & Ira Rosenwaike, *The Social Security Administration's Death Master File: The Completeness of Death Reporting at Older Ages*, 64 SOC. SECURITY BULL. 45, 45-46 (2001-02).

Systems at the Social Security Administration, testified in a Congressional hearing that "the death data that we maintain is 99.5% accurate overall."[83]

For the insurance industry, the DMF is a highly useful tool because it allows insurers to verify the deaths of policyholders and prevent identity fraud. There is evidence, however, that many insurance companies are using the DMF inconsistently. Regulators in multiple states have expressed concern that some of the nation's largest insurance companies have embraced the practice of rigorously combing the information contained in the DMF when it benefits them to do so, yet altogether ignoring this same information when it would work to their detriment.[84] Insurers frequently run their annuitants against the DMF to ensure that annuity payments are promptly cut-off in the event of the annuitant's death, yet their references[85] against the DMF are much less frequent on the life insurance side where a match would require death benefits to be paid to a beneficiary.[86] On the annuity side, life insurers benefit from the DMF by using it to learn of the death of an annuitant, thereby allowing the insurer to terminate monthly payouts owed to the annuitant. As a result of their access to the DMF, the insurers have information at their disposal which allows them to learn not only of annuitants who have passed away, but also life insurance policyholders who have passed away. Yet, they ignore this information on

---

[83] *California MetLife Hearing*, *supra* note 1, at 21 (statement of Adam Cole, Gen. Couns. for the California Department of Insurance).

[84] *Id.* at 22-23.

[85] In this context, a 'run against the DMF' essentially amounts to a cross-check of all computer-recorded policies for any one particular branch of the business (annuities, life insurance, etc.) against the DMF, looking for matches.

[86] All annuity policies are in one of two phases: the pay-in or deferred stage, which is the time period during which the annuitant pays premiums on the policy, building up the policy's savings without receiving any payments, and then the pay-out stage, where the annuitant no longer pays premiums and begins to receive monthly payments from the insurer which usually continue for the duration of the annuitant's life. It is important to note that annuities in the pay-out phase are matched against the DMF with even greater frequency than annuities in the deferred phase because deferred annuities are not yet costing the insurer monthly premium payments so there is less urgency on insurers part to uncover DMF matches with respect to deferred annuities. *California MetLife Hearing, supra* note 1, at 46 (statement by Robert E. Sollmann, Jr., Executive Vice President, Retirement Products, MetLife) ("In general, these sweeps are conducted monthly for payout annuities and quarterly for deferred annuities.").

the life insurance side, despite having already used this same information to terminate annuity payments.

In a May, 2011 hearing before the California Insurance Commissioner and the California State Controller, representatives from MetLife testified under oath to their practices and procedures relating to the DMF. It appears that this proceeding confirmed many of the regulator's concerns regarding the industry's asymmetrical use of the DMF. MetLife, which is currently the nation's largest insurance company in terms of asset size, revealed that, although they had access to the DMF in the late 1980's and began systematically running their group annuities policies against the DMF at that time,[87] it was not until 2007 that they first ran their life insurance policies against the DMF in any sort of comprehensive manner.[88] Additionally, it was not until 2010 that MetLife instituted policies and procedures to allow a DMF match on the annuities side to be communicated over to the life insurance side in an effort to determine whether this annuitant also had a life insurance policy.[89] Even then, MetLife admitted that the implementation of these new policies and procedures was at least partly due to investigations launched by state regulators into the industry's widespread practices in the area of unclaimed property.[90] When asked by state insurance commissioners at the investigative hearing to describe these newly instituted changes, none of

---

[87] *Id*. at 35 (statement by Todd B. Katz, Executive Vice President, U.S. Business Insurance Products, MetLife) ("MetLife first began to use Death Master in the late 80's. That usage was primarily in our group annuity business.").

[88] *Florida MetLife Hearing*, *supra* note 6, at 49 (statement of Mr. Todd B. Katz, Executive Vice President, U.S. Business Insurance Products, MetLife) ("In 2007, we ran the death index against a majority of our individual life business…"); *Id.* at 152 (statement of Adam Hamm, Insurance Commissioner, North Dakota Insurance Department) (Hamm directed a question to a MetLife representative asking why MetLife's use of the DMF for annuities can be traced back to the 1980's but was not used for the first time on life insurance policies until 2007.).

[89] *California MetLife Hearing*, *supra* note 1, at 49 (statement of Robert E. Sollmann, Jr., Executive Vice President, Retirement Products, MetLife).

[90] *Florida MetLife Hearing, supra* note 6, at 87 (statement of Todd B. Katz, Executive Vice President, U.S. Business Insurance Products, MetLife) ("we were in discussions with regulators about this very topic, and I can assure you we are most interested in… what's on their minds… So I don't want to sit here and tell you that the discussion with our regulators wasn't part of that, too, because it was.").

the MetLife representatives were able to articulate what these policies and procedures, in fact, were.[91] Instead, MetLife requested to enter into the record a two page document that provided a "description of the processes" by which this information was shared between various business lines within the company.[92] Even now, insurers who have begun to run the DMF systematically across product lines still run their annuity policies against the DMF with much greater frequency than they do their life insurance policies. In fact, both MetLife and Nationwide have testified that, although they run all annuities in the pay-out phase against the DMF on a monthly basis, they run their life insurance policies against the DMF only once a year.[93] In other words, for every time these two insurers check the DMF for possible matches on the life insurance side, they perform twelve such checks on the annuities side. To provide further perspective, insurers first gained access to the DMF in the 1980's. They began using the DMF on a monthly basis for annuities in the late 80's, and they continue to use the DMF on a monthly basis for annuities.[94] Yet, some insurers[95] waited until the late 2000's to first run their individual life insurance policies against the DMF, and it was not until 2010, in the wake of regulatory crackdowns, that they instituted any sort of systematic use of the DMF on the life insurance side.[96] Regulators have also pointed to the aggressive marketing

---

[91] *California MetLife Hearing*, *supra* note 1, at 50 (statement of Todd B. Katz, Executive Vice President, U.S. Business Insurance Products, MetLife).

[92] *Id.* at 51 (statement of Robert E. Sollmann, Jr., Executive Vice President, Retirement Products, MetLife).

[93] *Id.* at 129 (statement of Dave Jones, California Insurance Commissioner) (asking MetLife witnesses to explain the difference in frequency between DMF usage on the annuities side compared to the life insurance side); *Florida Nationwide Hearing*, *supra* note 7, at 20 (statement of Eric Henderson, Nationwide representative).

[94] *Id.*

[95] Prudential was the exception here as they ran their policies against the DMF for the first time shortly after their demutualization process concluded in 2002. *Reg. Settlement Agreement*, N.H. INS. DEPT. (Feb. 1, 2012), http://www.nh.gov/insurance/consumers/documents/prsa.pdf.

[96] *California MetLife Hearing*, *supra* note 1, at 49 (statement of Robert Sollmann, Jr., Executive Vice President, Retirement Products, MetLife) (when asked to provide the date at which MetLife first started using the DMF on a regular basis to identify matches on the life insurance side, Sollmann said: "Systematically on a more formal basis, we began that process within the last year.").

and selling campaigns of insurers and expressed displeasure at certain insurers to the extent that their selective DMF use suggests a greater emphasis on selling products than on following through on the terms of these products once they are sold, by locating and paying beneficiaries the death benefits they are owed.[97]

When asked to account for their inconsistent use of the DMF across product lines, insurers have offered a variety of responses. First, they argue that the DMF is used on the annuity side to prevent expensive and time consuming[98] "duration errors", errors where an annuitant who is no longer alive receives a payment in violation of the annuity contract.[99] Ironically, insurers are quick to point to the terms of the contract when, in a given situation, those terms call for the termination of payouts, but much more reticent to discuss contractual obligations in different circumstances where they may be required to pay out death benefits.[100] Easily lost in the argument that the DMF must be used more frequently for annuities to prevent duration errors is the fact that an insurer's contractual right to stop annuity payments upon the death of an annuitant is no stronger than their obligation to pay out death benefits under a life insurance policy. If the DMF must be used frequently on the annuity side to avoid violating the

---

[97] *Florida MetLife Hearing, supra* note 6, at 8 (statement by Kevin McCarty, Insurance Commissioner for the State of Florida) ("We know that life insurance companies work very hard to sign up people to purchase their products and accept billions of dollars a year in premium payments. We also know, based on information widely available in the public domain, that many beneficiaries go unpaid for a variety of reasons.").

[98] It is important to note that these duration errors impose little to no burden on consumers, rather, it is only expensive and time consuming for the insurers to have to recoup these amounts.

[99] Under an annuity contract, the annuitant must be alive in order to receive the benefits. So, a duration error occurs when an annuity payment is sent out after the death of the annuitant. *California MetLife Hearing*, *supra* note 1, at 37-38 (statement of Todd B. Katz, Executive Vice President, U.S. Business Insurance Products, MetLife). In such a situation, the insurer would be within its rights to recover the amount incorrectly paid out. *Id.* at 129-30 (statement of Frank Cassandra, Senior Vice President, Insurance Products Financial, MetLife).

[100] *Id.* at 129 (statement of Frank Cassandra, Senior Vice President, Insurance Products Financial, MetLife) ("We believe that the frequency needs to consider the underlying contractual provisions and the promises that are embedded in those policies.").

terms of the contract, then it should be used just as frequently on the life insurance side where the terms of the contract are no less clear and of equal weight. By saying that the DMF must be used more frequently for one than the other, the insurance industry is assigning greater value to contractual provisions which create a beneficial right for the company, and lesser to those provisions which create a liability for the company.

Perhaps even more inexplicable, however, is the insurers' argument that the DMF should be utilized less frequently on the life insurance side so that the insurance company does not interfere with the grieving process of the victim's family.[101] MetLife testified that one of the reasons for their sporadic use of the DMF for life policies was their belief that beneficiaries prefer to "take a little bit of time to get their loved one's affairs in order before they actually make a claim for life insurance benefits."[102] MetLife suggested that if they used the DMF as often on the life insurance side as they did on the annuities side, they would be "matching almost in real time" thereby inappropriately rushing grieving families into making a claim. However, the insurers have no problem "injecting themselves into that process"[103] when it comes to sending a letter to a deceased annuitant's family informing them that they will no longer be receiving annuity payments. In fact, MetLife and Nationwide, among others, have said it is their policy to send such a letter immediately following the death of an annuitant to inform the victim's family that, as a result of the annuitant's death, they will no longer be receiving annuity payments.[104] It did not take long for the regulators to pick up on these

---

[101] *Id.* at 130-31 (statement of Frank Cassandra, Senior Vice President, Insurance Products Financial, MetLife).

[102] *Id.*; *Florida MetLife Hearing, supra* note 6, at 77-78 (statement of Frank Cassandra, Senior Vice President, Insurance Products Financial, MetLife) ("the practical reason is we don't want to insert ourselves into the process…[w]e believe that beneficiaries should be given an appropriate amount of time to get their loved ones' affairs in order.").

[103] *California MetLife Hearing, supra* note 1, at 131 (statement of Frank Cassandra, Senior Vice President, Insurance Products Financial, MetLife).

[104] *Id.* at 37 (statement of Todd Katz, Executive Vice President, U.S. Business Insurance Products, MetLife) ("[I]t certainly was used as a means to prevent duration errors by sending a letter of notification to an individual where we had an indication of death, advising that individual of such indication and that the payments were suspended."). *Florida MetLife Hearing*, *supra* note 6, at 34 (statement of Todd Katz, Executive Vice President, U.S. Business Insurance

inconsistencies. After hearing MetLife representatives testify to this effect, John Chiang, California State Controller, expressed his incredulity on the record when he stated: "But I don't personally find it invasive if, in the event that somebody passed away, my family received notice that we may be the beneficiary of the proceeds."[105] Additionally, the insurance industry has conducted no research on this matter and can provide no data to substantiate their claim that consumers would generally be opposed to hearing from insurers at this stage regarding potential death benefits.[106] Moreover, the very fact that insurance companies routinely send letters to annuitants' families immediately following the annuitants death renders this supposed concern towards grieving families disingenuous at best.

### B. ANTI-FORFEITURE PROVISIONS

Another issue of growing concern to state regulators is the insurance industry's questionable practices relating to the anti-forfeiture provisions in life insurance contracts. Most life insurance policies contain a provision, designed to be a consumer protection tool, which allows for premiums to be paid automatically out of the built up cash value of a policy in the event that a premium payment is missed.[107] This becomes especially useful should an insured, for whatever reason, miss a monthly premium payment. Without the anti-forfeiture provision in the contract, one missed payment could result in the policy being terminated but, with it, the missed premium would automatically be paid out of the policy's accrued cash value and the policy would remain in force.[108]

However, the insurance industry has been using these non-forfeiture provisions to pay themselves monthly premiums after an insured has died. The insurers continue to collect monthly premiums until the

---

Products, MetLife) ("For a group annuity, we consider a match an indication of death. We suspend the annuity payment. We write to the family indicating that we have done that.").

[105] *Id.* at 161.

[106] *California MetLife Hearing*, *supra* note 1, at 163 (statement of Frank Cassandra, Senior Vice President, Insurance Products Financial, MetLife).

[107] *Id.* at 94 (statement of Todd Katz, Executive Vice President, U.S. Business Insurance Products, MetLife) (Anti-forfeiture provisions may vary slightly by contract but, for the most part, the specific kind used by insurers to continue paying themselves premiums out of the policy's built up cash value are commonly referred to as automatic premium loans, or APL's.).

[108] *Id.*

policy's cash value has been depleted, at which point, the policy is allowed to lapse with no value.[109] The argument is also made by the insurers, again somewhat ironically, that the problem of incorrectly lapsed policies can be rectified by running a DMF match against all policies, both in force and lapsed, which would uncover any policy where the date of death preceded the date at which the policy lapsed.[110] Insurance companies have assured regulators that anytime a DMF match indicates an incorrectly lapsed policy they will restore the value of the policy to whatever it was at the time of the insured's death. However, even if insurers are able to identify these lapsed policies, restore the value and locate the beneficiaries, tasks which in themselves seem unlikely, this fails to offset what could be decades of waiting in the case of some beneficiaries.[111] MetLife testified that they ran lapsed policies from as far back as the mid-1960's in their 2007 DMF match, which means that even if those policies were restored to their proper value and the beneficiary was located, the death benefits would have been received more than forty years after the death of the insured.[112] Given this timeframe, it is not inconceivable that the beneficiary would have passed away long before receiving death benefits that were owed to him decades earlier. Regulators have uncovered this industry wide practice and expressed their disapproval: "Anti-forfeiture provisions are a consumer protection device. They should not be used to usurp the value of a policy after [an insured's] death or result in people not getting the proceeds of the policy when the person [the insured] has actually died."[113]

---

[109] Both MetLife and Nationwide admitted this does occur with their policyholders although neither would provide a figure as to how frequently. *See id.* at 95 (statement of Todd Katz, Executive Vice President, U.S. Business Insurance Products, MetLife) ("could there ever be a situation where an individual doesn't make a premium and there's cash value in that policy and the policy ultimately lapsed? That certainly could happen.").

[110] *Id.* at 95.

[111] 2007 was the first year in which life insurance policies were run against the DMF, so this would have been the earliest possible year which the insurers could have detected incorrectly lapsed policies. So, for all policies lapsed in the 90's or earlier, the waiting period for beneficiaries to receive their death benefits could be measured in decades.

[112] *Florida MetLife Hearing*, *supra* note 6, at 127 (statement of Frank Cassandra, Senior Vice President, Insurance Products Financial, MetLife).

[113] *Id.* at 21 (statement of Belinda Miller, Acting General Counsel, Florida Office of Insurance Regulation).

## IV. INDUSTRY WIDE VIOLATIONS OF STATE UNCLAIMED PROPERTY LAW

Unfortunately, asymmetrical use of the DMF is not the only industry-wide practice which has come under regulatory fire of late. State Controllers and Treasurers throughout the country are looking into whether insurers are violating unclaimed property laws by holding onto abandoned funds long after they should have been escheated to the state.[114] Although many of these investigations are still in progress, an analysis of industry practices against the backdrop of unclaimed property statutes reveals that insurers may be violating these state laws.[115]

Perhaps the most glaring violation of unclaimed property law centers on the industry's interpretation and, ultimately, exploitation of the statutory dormancy period. As California Insurance Commissioner Dave Jones stated: "[I]mproper calculation of the dormancy period allows insurers unlawfully to retain millions of dollars in proceeds for years, if not decades, after they are due to be escheated."[116] Each state's unclaimed property laws reference a dormancy period, which is the length of time that property must remain unclaimed before it is considered abandoned and becomes escheatable to the State. Most dormancy periods are either three or five years. Florida, for example, has a five year dormancy period, whereas Connecticut, New Jersey and Indiana all have dormancy periods of three years.[117] For insurance companies, this means that any unclaimed death benefits must be escheated to the state once the dormancy period has run. With this in mind, the crucial question then becomes: what triggers the dormancy period? The insurers claim that the dormancy period does not begin to run until the beneficiary has provided them with a death certificate and a full claim has been filed.[118] This interpretation, however, runs

---

[114] *See California MetLife Hearing*, *supra* note 1, at 25 (statement of Adam Cole, General Counsel, California Department of Insurance).

[115] See *infra* Part VI for a fuller discussion of these state led investigations of the insurance industry and recent regulatory developments relating to unclaimed property.

[116] *California MetLife Hearing, supra* note 1, at 25.

[117] CONN. GEN. STAT. § 3-58a (2011); FLA. STAT. § 717.107 (2005); IND. CODE § 32-34-1-20 (2010); N.J. STAT. ANN. § 46:30B-28.1 (West 2004).

[118] *See Florida MetLife Hearing*, *supra* note 6, at 154-55 (statement of Todd Katz, Executive Vice President, U.S. Business Insurance Products, MetLife) ("[I]n virtually all of our forms… proof of death is a requirement for a liability.").

counter to the Supreme Court ruling in *Connecticut Mutual v. Moore* where it was determined that contractual obligations, such as the filing of a claim, may properly be required of a beneficiary but are not appropriate when applied to the states.[119] The holding in *Moore* was essentially codified when Congress passed the Uniform Disposition of Unclaimed Property Acts. In fact, the 1981 Act contained a provision which stated: "Property is payable or distributable for the purpose of this Act notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment."[120] In their comment, the Commissioners described as the underlying purpose of this subsection "to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his entitlement to property, fails to present evidence of his ownership to the holder or to make a demand for payment."[121]

The state unclaimed property laws, having derived almost exclusively from the Uniform Acts, closely mirror the language contained in those Acts. Most of the state statutes, for example, label the point at which a life insurance policy becomes "due and payable" as the start of the dormancy period.[122] Again, there is disagreement between the insurance industry and regulators as to what constitutes "due and payable." The regulators maintain that a life insurance policy becomes so on the actual date of death of the insured.[123] The insurers assert that "due and payable" is the point at which a formal claim is made and a death certificate is

---

[119] *See* Conn. Mutual Life Ins. Co. v. Moore, 333 U.S. 541, 547 (1948) ("When the state undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the state to comply with conditions that may be quite proper as between the contracting parties.").

[120] UNIF. UNCLAIMED PROP. ACT § 2(b), 8C U.L.A. 185 (1981). Also, it is important to note that the beneficiary of a life insurance policy becomes the "owner" of the policy proceeds upon the death of the insured.

[121] ANDREOLI & SPOTSWOOD, *supra* note 44, at 231.

[122] CONN. GEN. STAT. § 3-58a (2011) ("As used in this section, "unclaimed funds" means all moneys held and owing by any insurance company unclaimed and unpaid for more than three years after the moneys became due and payable as established from the records of a life insurance company . . . .").

[123] *Florida Nationwide Hearing, supra* note 7, at 42 (statement of Belinda Miller, Acting General Counsel, Fla. Office of Ins. Regulation) ("[U]nder the Unclaimed Property Law you don't necessarily need to have a death certificate certified from the beneficiary.").

presented to the insurer.[124] If, for example, an insured died in 1992 but the insurer fails to run their policyholders against the DMF until 2010, depending on which interpretation of "due and payable" is used, there would be different outcomes as to when the property becomes escheatable. The insurers would likely construe "due and payable" to mean the date at which they learned of the death (2010), thereby allowing them to hold onto the funds for an additional three or five years.[125] The regulators would say that the policy proceeds became "due and payable" on the date of death of the insured (1992), which would mean the dormancy period would have long ago expired and the proceeds would be immediately escheatable to the state.

Given the large amounts of money at stake, the lack of case law directly addressing the "due and payable" issue is somewhat surprising. Nevertheless, the holding in *Moore*, the language of the Uniform Acts and the clear intent behind those Acts all lend support to the conclusion that a policy becomes "due and payable" on the date of death of the insured. This interpretation is bolstered by the fact that insurers now have access to the actual date of death of all policyholders through the DMF.[126] Also, as California State Controller John Chiang pointed out, the insurers definition of "due and payable" cannot be correct simply because, in many instances, it would result in the dormancy period never being triggered, thereby allowing insurers to retain unclaimed death benefits indefinitely.[127]

Also instructive in determining what constitutes "due and payable" for the purpose of triggering the dormancy period is a closer look at the underlying purpose of dormancy statutes in general. The dormancy period is the time during which the owner (the beneficiary of the policy) can come forward and claim his benefits. The problem with the industry argument that "due and payable" means the point at which the insurer receives a

---

[124] *See California MetLife Hearing*, *supra* note 1, at 169 (statement of Frank Cassandra, Senior Vice President, Ins. Prods. Fin., MetLife) ("[W]ithout someone submitting a claim without the facts around the debt… that in and of itself may not be sufficient for the company to know it has a liability.").

[125] This time period would depend on the state, as the dormancy period varies by state but is usually either three or five years.

[126] *See California MetLife Hearing*, *supra* note 1, at 35 (statement of Todd B. Katz, Exec. Vice President, US Bus. Ins. Prod., MetLife).

[127] *Id.* at 169 (statement of John Chiang, Cal. State Controller) ("Your view of when the obligation is triggered, the extreme… is that in certain instances, you would never have a triggering responsibility.").

death certificate and a full claim is that it assumes the dormancy period is for the benefit of the holder, which it is not. The purpose of the dormancy period is to provide a time period, after the passing of which, it is presumed that the owner of the property—here, the beneficiary—has abandoned his property.[128] In light of this purpose, "due and payable" must mean the date of death of the insured because the beneficiary becomes the owner of the property upon the insured's death.

## V. INDUSTRY WIDE VIOLATIONS OF STATE UNFAIR CLAIMS PRACTICES LAW

On August 15, 2011 the National Association of Insurance Commissioners [hereinafter NAIC] formed a special task force to investigate a number of life insurance companies focusing on their settlement practices related to unclaimed death benefits and their handling of unclaimed property.[129] Presumably, the task force will be analyzing whether the failure to proactively identify deaths among policyholders and subsequently look for beneficiaries constitutes a violation of various state unfair insurance claims settlement practices. Whether the insurance industry is operating in violation of these unfair claims practices laws will depend heavily on regulators' determinations regarding the industry's use of the DMF.[130] As previously discussed, regulators have expressed concerns about the industry's selective use of the DMF. Certainly, these ongoing investigations will look very closely into the DMF practices of the insurance industry. Florida Insurance Commissioner Kevin McCarty framed the issue of DMF usage within the context of unfair claims settlement practices when he stated: "We want to have a clear

---

[128] *See* ANDREOLI & SPOTSWOOD, *supra* note 44, at 231 (discussing the Commissioners' Comment to Section 2 of the 1981 Uniform Disposition of Unclaimed Property Act regarding the statistical evidence used to determine what length dormancy period provided the owner with the optimum chance to come forward and claim his funds).

[129] The following states are among those involved in the NAIC investigation: Alabama, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Indiana, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island and West Virginia.

[130] See *supra* Part III.A for a fuller discussion of the insurance industry's practices relating to the DMF.

understanding of what is an appropriate claims-settlement practice. It is hard for me to get my arms around the concept that a company would use a database to terminate an annuity, but fail to use that same database to investigate whether a claim exists on a life policy."[131]

It seems clear that the insurance regulators, acting under the authority of the newly formed NAIC task force, have the power to investigate and take action against those insurance companies who are acting in violation of state law. Most states, under their insurance laws, have adopted similar, if not identical, unfair insurance claims settlement practice acts.[132] For example, in California, an insurance company violates the Unfair Claims Practices Act if it "fail[s] to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies."[133] It is possible that any asymmetrical use of the DMF uncovered by the NAIC task force would fall within the scope of activities prohibited by unfair claims practice statutes.[134] California Insurance Commissioner Dave Jones hinted as much in the investigative hearing he led in May of 2011: "Let's be perfectly clear. The insurance companies know about these policies, even if the beneficiaries don't."[135] To the extent companies have information in their books and records that allows them to identify deceased individuals but only use that

---

[131] Scism & Vara, *supra* note 13.

[132] *See* CAL. INS. CODE § 790.03(h)(3) (2010) ("[f]ailing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies" constitutes unfair claims settlement practice); FLA. STAT. ANN. § 626.9541(1)(i)(3)(a) (West 2006) ("[f]ailing to adopt and implement standards for the proper investigation of claims" constitutes unfair claims settlement practice); 215 ILL. COMP. STAT. 5/154.6(c) (2010) ("[f]ailing to adopt and implement reasonable standards for the prompt investigations and settlement of claims arising under its policies" constitutes unfair claims settlement practice).

[133] CAL. INS. CODE § 790.03(h)(3) (2010).

[134] *See California MetLife Hearing, supra* note 1, at 10 (statement of John Chiang, Cal. State Controller) ("I was concerned that the life insurance industry was ignoring information that it had access to which would identify deceased clients and enable[d] the company to pay those benefits to either the insured's beneficiaries or to the State of California so that we could return those benefits to the beneficiaries.").

[135] *Id.* at 10.

information when it benefits them, an unfair claims settlement practice is implicated.

The issue of the insurance industry's use of the DMF is an area that is ripe for regulatory intervention. However, the question of whether the insurance companies' failure to properly interpret and follow state unclaimed property statutes amounts to a violation of unfair claims laws is not easily answered. It can be argued that the jurisdiction of the insurance regulators extends only to the prompt investigation and processing of claims arising under insurance policies and that, in the event no beneficiary has been located after a search, the companies have satisfied their obligation under those acts. Such a determination, while undoubtedly propounded by the insurance companies, does not adequately address the symbiotic relationship between the Unfair Insurance Claims Settlement Acts and the Unclaimed Property Acts.[136] The purpose of the Unclaimed Property Acts is not to enrich the treasuries of the states, as many insurers would argue, but rather to entrust money to the states in their role as *parens patriae* for citizens of those states.[137] The goal of these unclaimed property statutes is to get the unclaimed funds in the hands of the most able conservator; the conservator most likely to return the unclaimed funds to the rightful owner.[138] *Connecticut Mutual v. Moore* has decisively ruled that the state, and not the insurance company, is the conservator best suited for this important task: "The State may more properly be custodian and beneficiary of abandoned property than any person."[139] In effect, the Supreme Court held that, with respect to abandoned life insurance proceeds, the State must step into the shoes of the beneficiary until such

---

[136] ANDREOLI & SPOTSWOOD, *supra* note 44, at 241 (The Commissioners' Comment for subsection (c) of Section 7 of the 1981 Uniform Disposition of Unclaimed Property Act explains "that proceeds of a life insurance policy are presumed abandoned if the insurer is aware that the insured has died even though actual proof of death has not been furnished to the insurer." This is similar in effect to provisions of unclaimed property acts that require insurers "to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under life insurance policies" as both call for a reasonable amount of due diligence on the part of insurers once they have knowledge of a claim or of an insured's death.).

[137] *Moore*, 33 U.S. at 546.

[138] *Id.* at 546.

[139] *Id.* at 546-47 ("The State is acting as a conservator, not as a party to a contract.").

time as the beneficiary comes forward to claim his or her policy proceeds. Viewed through the prism of *Connecticut Mutual v. Moore*, the insurance industry's failure to escheat unclaimed death benefits to the states, despite having information indicating that such benefits are due, may constitute a violation of unfair claims practices law.

## VI. RECENT DEVELOPMENTS

Beginning around 2008, various state treasurers and controllers joined in a multi-state audit of the John Hancock Life Insurance Company and Prudential Insurance Company, specifically for the purpose of identifying abandoned death benefits under policies of life insurance and annuities. On June 1, 2011, Hancock entered into what was termed a Global Resolution Agreement [hereinafter Hancock Agreement] with a list of states that now totals at least thirty-five.[140] On January 11, 2012, Prudential entered into a similar Global Resolution Agreement [hereinafter Prudential Agreement].[141] The Hancock and Prudential Agreements,

---

[140] California State Controller John Chiang has made both Global Resolution Agreements (The Hancock Agreement and the Prudential Agreement) public on the California State Controller's Office Website under the press release section. *Controller Reaches Settlement with Insurer John Hancock and Settlement (Global Resolution Agreement),* CALIFORNIA STATE CONTROLLER'S OFFICE (Apr. 22, 2011), http://www.sco.ca.gov/eo_pressrel_9934.html [hereinafter *Hancock Agreement*]. As of this date, the following states have signed on to the Hancock Agreement: Arizona, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington and Wisconsin.

[141] *Controller Reaches Settlement with Prudential Insurance* and *Multi-State Agreement (Global Resolution Agreement)*, CALIFORNIA STATE CONTROLLER'S OFFICE (Jan. 13, 2012), http://www.sco.ca.gov/eo_pressrel_11429.html [hereinafter *Prudential Agreement*]. As of this date, the following states have signed onto the Prudential Agreement: Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming.

entered into by state controllers and treasurers together with the insurers, are significant for multiple reasons. First, they provide that, for the purpose of the Agreements, the date of death of the insured begins the dormancy period.[142] This is a concession that accepts the regulator interpretation of the unclaimed property statutes that dormancy begins upon the death of the insured and not formal notice and proof of death as the insurance companies contended. Second, the Hancock and Prudential Agreements provide that the states will be free to audit the books and records of Hancock and Prudential going back to 1992 in an effort to determine if those books and records contain evidence of unpaid death benefits.[143] And finally, the Hancock and Prudential Agreements provide that, to the extent that abandoned death benefit proceeds are identified and escheated to the states, those proceeds will be escheated with 3% interest compounded annually from 1995 or date of death of the insured, whichever is later.[144] This interest component could arguably be considered a penalty for non-compliance with the state unclaimed property statutes notwithstanding the fact that the language of the Hancock and Prudential Agreements describes it simply as interest included on top of unclaimed death benefits when they are turned over to the states.[145]

On February 2, 2012, the NAIC Task Force, led by California, Florida, Illinois, New Hampshire, North Dakota, Pennsylvania and New Jersey, entered into a Regulatory Settlement Agreement which calls for Prudential to pay an assessment of $17 million to state insurance departments.[146] Under the terms of this Agreement, Prudential must

---

[142] *See Hancock Agreement*, *supra* note 140, at 9 ("The death benefit under life insurance policies shall be determined in accordance with the policy terms as of the date of death of the insured"); *see also Prudential Agreement*, *supra* note 141, at 11 ("Proceeds under life insurance policies shall be determined in accordance with the policy terms as of the date of death").

[143] *See Hancock Agreement*, *supra* note 140, at 4; *see also Prudential Agreement*, *supra* note 141, at 6.

[144] *See Hancock Agreement*, *supra* note 140, at 9; *see also Prudential Agreement*, *supra* note 141, at 11.

[145] Most state unclaimed property statutes provide for interest and penalties for late reported property. *See, e.g.*, FLA. STAT. ANN. § 717.134 (West 2010).

[146] The California Department of Insurance has made this regulatory agreement available under the press release section of their website by clicking on the link for 'agreement.' *See "Death Master" Investigation Results in National Settlement With Major Life Insurer*, CALIFORNIA DEPARTMENT OF INSURANCE

regularly run its book of in-force life insurance policies and annuities against the DMF to make a determination as to whether the policy holders or annuity holders have died.[147] Additionally, Prudential is then required to make efforts to locate beneficiaries of policy holders in order to pay them policy proceeds.[148] If those policy holders cannot be located, this Regulatory Settlement Agreement requires Prudential to turn over those proceeds to states as required by state unclaimed property laws.[149] The Regulatory Settlement Agreement, entered into by Prudential along with state insurance departments, effectively closes the loop that was begun with the multi-state Global Resolution Agreement (Prudential Agreement) between Prudential and the state treasurers and controllers. The Prudential Agreement, recognizing that the controllers and treasurers have jurisdiction for unclaimed property, sets out requirements for identifying and reporting such property to the states.[150] This is effectively a retrospective agreement, looking backwards through 1992 to identify death benefits that should have been paid and are overdue for escheatment to the states. The Regulatory Settlement Agreement, on the other hand, deals with the insurer's conduct prospectively. Dictating the steps Prudential must take going forward, the Regulatory Settlement Agreement specifies what best practices the insurer must implement in order to avoid repeating past violations.

Also significant is MetLife's announcement in October of 2011 that they will take a charge of $125 million on their quarterly earnings report to account for life insurance claims that need to be paid.[151] MetLife is quick to point out that this set-aside is a result of the company's recent comprehensive policy sweep and is not a penalty assessed by regulators.[152] Even so, it is clear that regulators are now paying close attention to the

---

(Feb. 2, 2012), http://insurance.ca.gov/0400-news/0100-press-releases/2012/release010-12.cfm [hereinafter *Regulatory Settlement Agreement]*.

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *See Hancock Agreement*, *supra* note 140, at 7-10; *see also Prudential Agreement*, *supra* note 141, at 9-12.

[151] Arthur D. Postal, *MetLife to Take $125M Unclaimed Property Charge*, LIFEHEALTHPRO (Oct. 7, 2011), http://www.lifehealthpro.com/2011/10/07/metlife-to-take-125m-unclaimed-property-charge.html.

[152] *Id.* at 1 (statement of John Calagna, vice president, public affairs, MetLife) ("We did not take a charge for a regulatory investigation. We took a charge for a policy record sweep we began in 2010 before any regulator was investigating the topic.").

unclaimed property practices of life insurers.[153] In fact, the State of New York, despite neither being a member of the ten-state NAIC task force nor having signed onto the Global Resolution Agreements, is taking strong action of their own. The New York Attorney General's office has issued subpoenas to nine large insurers related to unpaid claims that need to be turned over to the state.[154] Additionally, the New York State Insurance Department has requested information from all 172 life insurers that conduct business in the state.[155]

At the time of this Note's publication, the industry trend towards resolution with state treasurers and controllers, as well as with state insurance regulators, has continued. Subsequent to the Hancock and Prudential Agreements, a number of other major insurers entered into similar Global Resolution Agreements with state controllers and treasurers. Additionally, subsequent to the Regulatory Settlement Agreement entered into by Prudential with the NAIC Task Force, other major insurers entered into similar Regulatory Settlement Agreements with the NAIC Task Force. On April 19, 2012, MetLife entered into both a Global Resolution Agreement with state treasurers and controllers and a Regulatory Settlement Agreement with the NAIC task force.[156] On October 10, 2012, AIG entered into a Global Resolution Agreement and then, on October 19, 2012, also entered into a Regulatory Settlement Agreement.[157] Nationwide

---

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] For the MetLife Global Resolution Agreement, see *Controller Chiang Announces Settlement with MetLife (Global Resolution Agreement),* CALIFORNIA STATE CONTROLLER'S OFFICE (Apr. 23, 2012), http://www.sco.ca.gov/eo_pressrel_9934.html; For the MetLife Regulatory Settlement Agreement, see *Florida Announces a $40 Million Multi-Agency Agreement with MetLife Insurance Companies*, FLORIDA DEPARTMENT OF FINANCIAL SERVICES (Apr. 23, 2012), http://www.myfloridacfo.com/sitePages/newsroom/allReleases.aspx?year=2012.

[157] For the AIG Global Resolution Agreement, see *Controller Chiang, Insurance Commissioner Jones Announce Settlement with AIG Insurance (Global Resolution Agreement)*, CALIFORNIA STATE CONTROLLER'S OFFICE (Oct. 22, 2012), http://www.sco.ca.gov/eo_pressrel.html#Apr2012; For the AIG Regulatory Settlement Agreement, see *Controller Chiang, Insurance Commissioner Jones Announce Settlement with AIG Insurance,* CALIFORNIA DEPARTMENT OF INSURANCE, (Oct. 22, 2012), http://www.insurance.ca.gov/0400-news/0100-press-releases/2012/.

entered into a Global Resolution Agreement on October 9, 2012 and a Regulatory Settlement Agreement on October 11, 2012.[158] Finally, Lincoln Financial entered into a Global Resolution Agreement on December 19, 2012.[159]

Even more recently, on April 1, 2013, a Kentucky trial court ruled, in the case of *United Insurance Corporation of America v. Kentucky*, that a state statute requiring life insurers to search the DMF is a valid exercise of the legislature's powers to regulate the insurance industry.[160] The plaintiff insurers filed a declaratory judgment action challenging the constitutionality of the state statute on the basis of its alleged impairment of the insurers' Contract Clause rights under both the U.S. and Kentucky Constitutions. The court rejected the argument that the statute[161] impaired any vested contractual rights of the insurers while affirming the legitimate purpose of the state in regulating this aspect of insurers' business.[162] The court, using strong language, supported the notion that the industry should undertake proactive steps to locate beneficiaries:

> Here, the legislature has sought to remedy the problem of insurance companies holding on to funds that should be paid to beneficiaries upon the death of the insured. The traditional industry practice allows insurance companies to stick their heads in the sand and ignore publicly available

---

[158] For the Nationwide Global Resolution Agreement, see *Chiang Announces Settlement with Nationwide (Global Resolution Agreement)*, CALIFORNIA STATE CONTROLLER'S OFFICE (Oct. 11, 2012), http://www.sco.ca.gov/eo_pressrel.html #Apr2012; For the Nationwide Regulatory Settlement Agreement, see *Insurance Commissioner Dave Jones Announces Settlement in Death Master Investigation*, CALIFORNIA DEPARTMENT OF INSURANCE, (Oct. 11, 2012), http://www.insurance.ca.gov/0400-news/0100-press-releases/2012/.

[159] For the Lincoln Financial Global Resolution Agreement, see CALIFORNIA STATE CONTROLLER'S OFFICE (Dec. 19, 2012), http://www.sco.ca.gov/serp.html? q=Lincoln+Financial+Global+Resolution+Agreement&cx=001779225245372747 843%3Ajzcl_x9eh9w&cof=FORID%3A10&ie=UTF-8.

[160] Marlys A. Bergstrom et al., *Constitutional Challenge to Kentucky's Death Master File Statute Rejected*, SUTHERLAND, 1 (Apr. 4, 2013), http://www. sutherland.com/files/upload/ConstitutionalChallengetoKentuckysDeathMasterFile StatuteRejected.pdf.

[161] The statute at issue was KY. REV. STAT. § 304.15-420.

[162] *See* Bergstrom et al., *supra* note 160.

> data regarding the deaths of their insureds, to the detriment of the beneficiaries (and the public).[163]

## VII. CONCLUSION

Now that Hancock, Prudential, MetLife, AIG, Nationwide and Lincoln Financial have agreed to turn over unclaimed death benefits with interest to the states based on a date of death calculation for dormancy, there has been a seismic shift in the way some of the nation's leading insurers will conduct their business.[164] These companies are not only some of the largest insurers in the country but also, as brand name insurers, they are synonymous with life insurance in the United States. With this in mind, we may see the insurance industry as a whole trending towards this new paradigm. Of course, the far reaching effect of the above mentioned agreements will only be revealed with time, but it is certainly plausible that other insurers follow the example set by these six and agree to escheat unclaimed death benefits to the states using the parameters set forth in these agreements.

The insurance industry should, and likely will, adopt a course of conduct similar to that of Hancock, Prudential, MetLife, AIG, Nationwide and Lincoln Financial. In fact, this Note predicts that, ultimately, the insurance industry will be required (by regulatory enforcement and legislative enactment) to shift from a notice based life insurance payment process to a more proactive approach requiring insurers to determine whether their insureds are deceased irrespective of whether notice has been provided from a beneficiary or family member. There are a number of reasons for insurers to follow this new model. First, the insurance regulators, and to a lesser extent the state controllers and treasurers, have the ability to affect the way insurers do business in this country through regulatory intervention. Second, it is no secret that the regulators look unkindly upon the industry's asymmetrical use of the DMF.[165] The regulators will not be shy in taking steps to prevent this type of conduct, as

---

[163] *See id.* at 2.

[164] *See Hancock Agreement*, *supra* note 140, at 11; *see also Prudential Agreement*, *supra* note 141, at 9.

[165] See *supra* Part III Section A for a fuller discussion of the insurance industry's selective use of the DMF; see *supra* Part V for a fuller discussion of the regulators thoughts on the industry's selective use of the DMF.

well as any other industry conduct which they deem violative of state laws. Finally, state treasurers and controllers, while having no explicit regulatory authority, do have the ability to bring suit to force compliance with their unclaimed property laws.[166] Together, these two entities can exert enormous pressure on the industry to reform their questionable practices and comply with the laws of the various states. Now more than ever, the insurance industry finds itself under the intense glare of the regulatory microscope. Yet, in the midst of regulatory investigations and nationwide audits, there is no better time for the insurance industry to honor the "sacred bargain"[167] it has struck with so many millions of customers. There is no better time for the insurance industry to do the right thing.

---

[166] CAL. CIV. PROC. CODE § 1515 (WEST 2007); FLA. STAT. § 717.1331 (2010).
[167] *See California MetLife Hearing, supra* note 1, at 11.