

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WALTER SCHRAMM; CHRISTINE
KYDD; MARK HILFERTY; LUDOVIC
BONNIN, on behalf of themselves and other
persons similarly situated,

Plaintiffs,

v.

BRENDA MAYRACK, individually and in
her capacity as the Delaware State Escheator,
BRIAN WISHNOW, in his capacity as the
Assistant Director Enforcement of the Office
of Unclaimed Property, RICHARD J.
GEISENBERGER, in his official capacity as
the Secretary of Finance for the State of
Delaware; and the STATE OF DELAWARE,

Defendants.

C.A. No.: _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiffs Walter Schramm, Christine Kydd, Mark Hilferty, Ludovic Bonnin (collectively, “Plaintiffs”), on behalf of themselves and members of the similarly situated Class described herein, file this Class Action Complaint for declaratory and injunctive relief against defendants Brenda Mayrack, individually and in her capacity as the Delaware State Escheator (“Mayrack” or “State Escheator”); Brian Wishnow, in his capacity as the Assistant Director Enforcement of the Office of Unclaimed Property (“Assistant Director”); Richard J. Geisenberger, in his official capacity as the Secretary of Finance for the State of Delaware (“Secretary”); and the State of Delaware (the “State” or “Delaware”) (collectively, the “Defendants”), and hereby allege as follows:

JURISDICTION AND VENUE

1. This lawsuit is brought pursuant to the following provisions of the United States Constitution: (a) U.S. Const., Amend. XIV, § 1 (Due Process Clause); and (b) the U.S. Const., Amend. V, Art. I, § 10 (Takings Clause). This action is also brought pursuant to 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

2. A substantial part of the events or omissions giving rise to the claims here at issue occurred in this District. A substantial portion, if not all, of the property seized by the Defendants is situated herein. Therefore, venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

3. Plaintiff Walter Schramm (“Schramm”) is an individual investor and resident of Italy, who was issued shares of stock. Plaintiff Schramm’s personal property (including shares of Amazon.com, Inc. stock) was seized, sold, and otherwise destroyed by Defendants without any notice whatsoever in violation of state and federal laws and the United States Constitution. Plaintiff Schramm brings this action on behalf of himself, and other foreign citizens injured by Defendants.

4. Plaintiff Christine Kydd (“Kydd”) is the executor to the estate of Jane Taylor Gretter and resident of Pennsylvania, who was issued shares of stock in PEPCO Holdings, Inc., Agere Systems, Inc., Sunoco, Inc., Anadarko Petroleum Corporation, New Jersey Resources Corporation, AT&T, Inc., and Bankers Life & Casualty Co., including cash in lieu, all accrued dividends, liquidated cash distribution(s), and cash for fractional shares thereof. Plaintiff Kydd brings this action on behalf of herself and other injured citizens. Plaintiff Kydd’s claim is as the administrator and heir to property belonging to her deceased mother Jane Taylor Gretter and her stepfather Ralph W. Gretter. Plaintiff Kydd’s shares of stock were seized without any notice whatsoever in violation of state and federal laws and the United States Constitution.

5. Plaintiff Mark Hilferty (“Hilferty”) is an individual investor and resident of Delaware, who was issued rebates for Inmar Brand Solutions, Inc. Plaintiff brings this action on behalf of himself and other injured citizens of the State of Delaware. Plaintiff Hilferty’s property was seized without any notice whatsoever in violation of state and federal laws and the United States Constitution.

6. Plaintiff Ludovic Bonnin is an heir to the Estate of Josephine Germaine Guenin (“Decedent”) and a citizen and resident of France. Plaintiff Bonnin’s shares of stock were seized without any notice whatsoever in violation of state and federal laws and the United States Constitution. Plaintiff brings this action on behalf of himself, and other French citizens injured by Defendants.

7. Defendant Brenda Mayrack (“Mayrack”) is the Secretary’s delegate as the Delaware State Escheator, located at Carvel State Office building, 820 North French Street, Wilmington, Delaware. Defendant Mayrack is charged with enforcing the State of Delaware’s Unclaimed Property Law, 12 Del. C. §§ 1101, *et seq.* (the “Unclaimed Property Law” or “UPL”). Defendant Mayrack has authority to examine a company’s books and records, take testimony, and to issue and to enforce administrative subpoenas to determine compliance with the Delaware Escheat Law (12 Del. C. § 1171). Defendant Mayrack holds the authority to bring a court action in the Delaware Court of Chancery, or in a federal or state court having jurisdiction over a defendant for payment and delivery of abandoned property. *Id.* § 1180. Plaintiffs allege that Defendant Mayrack has instituted an arbitrary and capricious system that is used to block true owners from retrieving their property, which includes withholding information and denying access to the private property. Defendant Mayrack’s arbitrary and capricious system relies almost entirely

on verbal processes and orders that vary from claimant to claimant. Defendant Mayrack's actions are alleged to be in knowing violation of the law.

8. Defendant Brian Wishnow ("Wishnow") is the Delaware Assistant Director Enforcement of the Office of Unclaimed Property and reports directly to, and operates under the direction of, the State Escheator, and oversees the conduct of an examination of books and records and the process alleged herein.

9. Defendant Richard J. Geisenberger ("Geisenberger") is the Delaware Secretary of Finance, located at Carvel State Office Building, 820 North French Street, Wilmington, Delaware. Enforcement of the Delaware Escheat Law is vested in Defendant Geisenberger as the Secretary of Finance or his/her delegate.

NATURE OF ACTION

10. This proposed Class Action challenges the Defendants' misapplication of Delaware's Unclaimed Property Law, which requires banking organizations and other entities holding so-called "abandoned" property to transfer it to the Department of Finance Office of Unclaimed Property ("OUP"). Such property includes savings accounts, payroll checks, customer or vendor credits, gift cards or gift certificates, and stock and bond accounts, etc.

11. The UPL allows the State to escheat certain types of unclaimed property held by businesses chartered in the State, if the particular business holding the property is not the owner of it, and if there has been no contact with the owner for a specified period of time. *See Id.* § 1133 (stating when property is presumed abandoned); § 1136 (listing indications of owner interest in property).

12. Derived from feudal property concepts, "...escheat is a procedure by which 'a sovereign may acquire title to abandoned property if after a number of years, no rightful

owner appears.” *Univar, Inc. v. Geisenberger*, 409 F. Supp. 3d 273, 276 (D. Del. 2019) (quoting *Texas v. New Jersey*, 379 U.S. 674, 675 (1965)). No longer a tool of the nobility, escheat remains today a significant private property seizure process, though “the state [now] steps in the place of the feudal lord, by virtue of its sovereignty.” Escheat, Black’s Law Dictionary (11th ed. 2019) (quoting James Kent, Commentaries on American Law *423-24 (George Comstock ed., 11th ed. 1866)); see also *Marathon Petroleum Corp. v. Sec’y of Fin.*, 876 F.3d 481, 485- 86 (3d Cir. 2017). Plaintiffs allege that Defendants misapply the Unclaimed Property Law so that private property is seized, sold, and otherwise destroyed without notice to the owners so that the Delaware government acting as “feudal lord” may generate revenue.

13. When the rightful owner is not found by the Defendants, largely because he is never provided with constitutional notice to tell him that his property is about to be seized and sold as revenue, then the property remains in the State’s coffers. In theory, the United States Supreme Court notes: “Such property thus escapes seizure by would-be possessors and is used for the general good rather than for the chance enrichment of particular individuals or organizations.” *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 436 (1951). In fact, however, the State of Delaware has removed virtually every protection and safeguard to citizens, so that it can maximize the seizure and sale of private property as “revenue.” These state actor Defendants have also seized so much private property that it would be impossible for the State to return the private property if all the true owners stepped forward to claim it, because there are no financial reserves to account for the seized property; all of the private funds have been spent as though it were revenue.

14. Currently, the OUP theoretically holds over \$7.7 billion in “unclaimed” property. As a threshold matter, the owner of the property must be lost or unknown to the State of Delaware. In fact, property is owned by such purportedly “unknown” persons as United States President

Joseph Biden; First Lady Jill Biden; former Attorney General of Delaware Joseph R. (Beau) Biden III (deceased son of U.S. President Joseph Biden); Hallie Biden (Widow of former Attorney General of Delaware Joseph R. Biden III); President Biden's son Robert Hunter Biden; former Governor of Delaware Pierre S (Pete) DuPont (now deceased); WNBA Professional Basketball Player Elena Delle Donne; Los Angeles Rams Football Linebacker Troy Reeder; the famous 30-year Coach of University of the Delaware Football Team Harold R. "Tubby" Raymond (now deceased); Jeffrey Allen Townes (aka "DJ Jazzy Jeff" from musical group DJ Jazzy Jeff and the Fresh Prince); Hoda Kotb (NBC News and TODAY show host). The stark reality is that virtually none of the private citizens whose property was seized are "lost and unknown" prior to the act of property seizures and like the President of the United States and his wife, are very well known to the State of Delaware.

15. Operating in the leading domicile for corporations, Defendants, acting under color of law, have thus maximized the seizure elements, and have taken full advantage of the United States Supreme Court's *Texas* trilogy framework for identifying which state will be allowed to escheat intangible property,¹ albeit while ignoring the statutory and constitutional provision designed to protect owners and their property rights. In *Plains All Am. Pipeline L.P. v. Cook*, 866 F.3d 534, 536 (3d Cir. 2017), the Third Circuit stated: "[I]n recent years, state escheat laws have come under assault for being exploited to raise revenue rather than reunite abandoned property with its owners. Delaware's ... [UPL] is no exception; ... unclaimed property has become

¹ The Supreme Court, in the exercise of its original jurisdiction to resolve disputes between states, established, reaffirmed and explained the federal common law governing unclaimed property (also referred to under the feudal term as "escheat") in a trilogy of cases: *Texas v. New Jersey*, 379 U.S. 674 (1965), *Pennsylvania v. New York*, 407 U.S. 206 (1972), and *Delaware v. New York*, 507 U.S. 490 (1993) (collectively, the "*Texas* Trilogy"). The purpose of the federal law was to settle "the question of which State will be allowed to escheat intangible property." *Delaware*, 507 U.S. at 498 (citing *Texas*, 379 U.S. at 677). The *Texas* Trilogy expressly preempts conflicting state laws.

Delaware's third-largest source of revenue[.]” *See also Taylor v. Westly*, 402 F.3d 924, 926 (9th Cir. 2005), *reh’g and reh’g en banc den.* (May 13, 2005) (Discussing the evolution of the U.S. escheatment process) (hereafter, “*Taylor I*”); *Taylor v. Westly*, 488 F.3d 1197, 1200-02 (9th Cir. 2007) (Directing the District Court to enter a preliminary injunction enjoining state Defendants in that case from accepting property under color of the UPL until Controller satisfies Due Process Clause) (“*Taylor II*”); *Taylor v. Westly*, 525 F.3d 1288, 1291 (9th Cir. May 12, 2008) (awarding interim legal fees) (“*Taylor III*”); *Suever v. Connell*, 439 F. 3d 1142 (9th Cir. 2006) (“*Suever I*”) (following *Taylor I*, and reconfirming unconstitutional conduct).

16. The UPL does not require banks and other financial services institutions holding “abandoned” property of less than \$50 in value to provide any notice to its rightful owner before transferring it to the OUP. 12 Del. C. § 1150(b) (2021). Such property may be transferred to the OUP without any individualized notice or any published notice to its rightful owners at all. Thus, owners have no way to determine whether they are owed amounts less than \$50 by Defendants, and owners have no way to protect themselves from operation of these laws because they receive no notice of any kind from the Defendants before their property rights are disturbed.

17. Moreover, Delaware previously used a short, *three*-year “dormancy” period (which is now five years) to determine whether a bank account may be deemed dormant and hence “abandoned.” Thus, if an account is inactive for three years (now five years) – for example, if a customer uses a savings account as a “rainy day” fund and makes no deposits or withdrawals for three (five) years – then the property owner is listed as “unknown” and the account is considered “abandoned.” Its contents are seized by private auditors who are paid a commission based on the volume of private property that is seized. 12 Del. C. § 1136.

18. After property is transferred to the OUP, the Defendants continue to deny owners any individualized notice, even after they have been deprived of their property. Instead, Defendants operate a searchable Internet website that property owners may visit, if they become aware that this property has been taken. *See* Defendants' website found at: <https://unclaimedproperty.delaware.gov/>. In theory, claimants may submit claim forms seeking the return of certain types of property online (at <https://unclaimedproperty.delaware.gov/>) or otherwise by mail. However, Defendant Mayrack has issued oral instructions to block and to frustrate the claim process. Defendant Mayrack's theory is that she is protecting the injured citizens from "fraud," thereby further frustrating the return of property that should never have been seized in the first place.

19. However, it is difficult or impossible for owners to reclaim their property because: (a) the unsearchable public website hides the identifying information from the owner; (b) there is no legal claim process; and (c) the Defendants fail to verify owner information with the other Delaware state databases (such as the Department of Motor Vehicles or voter registration lists). It is especially difficult if the property is listed with last name first or if the name is misspelled or abbreviated or if a nickname is used (such as "Bill" for "William" or "Dave" for "David), or if the property is listed by the name of the institution holding it, rather than the individual owner.

20. In addition to failing to provide constitutional and statutory notice to owners prior to the seizure, destruction and/or sale of their private property, Defendants also fail and refuse to convey any property information to the owner about the seized property after the seizure without the owner first completing the Defendants' claim form. The Defendants' failure and refusal to provide post-deprivation property information, such as its identification (what was taken), value, and the address of the account whether on their website or otherwise, makes it impossible for the

owners to determine what property was taken during Defendants' unnoticed seizure process and for the owner to confirm that the property is theirs and to determine if the claim process is worth their time, effort, and legal expense of filing and perfecting a claim to recover the property stolen by the Defendants.

21. Further, the OUP may reject claims if, for example, Defendants arbitrarily deem documentation inadequate based on the unpublished or verbal claim process. Moreover, with no constitutional notice of any kind, many individuals are simply unaware that their property has been transferred to the OUP or are unaware of the procedure for seeking its return. Accordingly, property owners are highly unlikely to avail themselves of the Defendants' UPL procedure. In fact, only a small portion of seized property is ever returned. In addition, owners of unclaimed property are not entitled to receive interest. 12 Del. C. § 1154 (2022).

22. In 2016, two Justices of the U.S. Supreme Court – Justice Alito, joined by Justice Thomas – expressed constitutional concern about state abandoned property laws, in a separate opinion concurring in the denial of *certiorari* in a case presenting the central question of whether “California law provides property owners with constitutionally sufficient notice before escheating their financial assets.” *Taylor v. Betty T. Yee*, 136 S. Ct. 929 (2016) (“*Taylor v. Yee*”). The Justices explained that “[t]he Due Process Clause requires States to give adequate notice before seizing private property. When a State is required to give notice, it must do so through processes ‘reasonably calculated’ to reach the interested party—here, the property owner.” *Id.*

23. In the *Taylor* case, Justices Alito and Thomas explained that because the seizure of private property is no small thing, notification procedures may not be empty rituals: “[P]rocess which is a mere gesture is not due process.” Whether the means and methods employed by a State to notify owners of a pending escheat meet the constitutional floor is an important question.” *Id.*

(citations omitted). The Justices noted that, “[i]n recent years, States have shortened the periods during which property must lie dormant before being labeled abandoned and subject to seizure.” *Id.* at 930. “This trend—combining shortened escheat periods with minimal notification procedures—raises important due process concerns. As advances in technology make it easier and easier to identify and locate property owners, many States appear to be doing less and less to meet their constitutional obligation to provide adequate notice before escheating private property. Cash-strapped States undoubtedly have a real interest in taking advantage of truly abandoned property to shore up state budgets. But they also have an obligation to return property when its owner can be located. To do that, States must employ notification procedures designed to provide the pre-escheat notice the Constitution requires.” *Id.* The Justices concluded that “the constitutionality of current state escheat laws is a question that may merit review in a future case.” *Id.* [Emphasis added].

24. Under the Defendants’ guidance and dictatorial conduct, Delaware is generally considered to have the most aggressive abandoned property statutes in the nation. The Council on State Taxation (“COST”) graded all 50 states based on the aggressiveness of their abandoned property laws. Delaware, along with Mississippi and New York, received the COST’s lowest grade: a “D-.”² It bears repeating: Defendants have achieved a “D -” among all 50 states, which is the lowest grade in the class.

25. The Plaintiffs in this case received no constitutional notice before their property was seized by the Defendants and transferred to the OUP. All of the Plaintiffs subsequently were

² The Best And Worst of State Unclaimed Property Laws COST Scorecard On State Unclaimed Property Statutes found at: <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/cost-scorecard--the-best-and-worst-of-state-unclaimed-property-laws-october-2013.pdf>.

unsuccessful in seeking return of their property pursuant to the post-deprivation procedures. Post seizure, the private property was not restored; instead, Plaintiffs received an arbitrary amount of cash without interest.

26. The loss of their property in violation of their constitutional rights has caused irreparable harm to Plaintiffs. There is no way for a citizen to protect his or her property from such an unnoticed seizure program. In issuing a Federal Injunction Order in 2007, the Honorable Judge William B. Shubb observed in *Taylor v. Chiang*:

[T]he primary purpose of the UPL is not supposed to be to raise revenue for the state. The Controller's webpage says the law was enacted 'to prevent holders of unclaimed property from using your money and taking it into their business income.' If the purpose of the law is, as the Controller has reportedly said, to reunite owners with their [property, it would] generate little or no revenue at all for the state.

Taylor v. Chiang, U.S. Dist. LEXIS 43711, 43715 (E.D. Cal. June 1,2007) (Bracketed insert added).

27. This Complaint presents the following issues:

(1) Whether the Defendants may seize private property outside the borders of the State from individuals and businesses with no nexus to the State of Delaware, such as Plaintiff Schramm in Italy and Plaintiff Bonin in France.

(2) Whether the Defendants seize property from individuals who do not fit the definition of "lost and unknown" and/or have no nexus with the forum state and therefore fall outside the scope of the statutory scheme. For instance, many individuals are, in fact, very well known (like the sitting President of the United States Joe Biden and his wife Dr. Jill Biden). Moreover, they pay taxes, own property, and register vehicles in the State of Delaware. In other words, they are easily locatable by these same Defendants when they owe a parking ticket but unlocatable when Defendants must comply with their

constitutional duty and statutory duty to provide notice and to avoid seizing the private property of known citizens.

(3) Whether Defendants make no effort and have no means or the ability to provide Constitutional Notice and Due Process prior to taking the property for use by the government, in violation of the Supreme Court's opinions in *Jones v. Flowers*, 547 U.S. 220 (2006) ("*Jones*") (citing *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950) ("*Mullane*")); *Taylor v. Yee*; and see *Taylor I, II, III*.

(4) Whether the Defendants are unable to return the private property because they do not ask for the names and other identifying information of the owners, so that Defendants cannot verify payment of a claim or the amount that is owed.

(5) Whether the property owners are prohibited from claiming their property because the State Escheator does not list their names on her "searchable website," i.e., citizens cannot see their names or property on the website, which is broken.

(6) Whether the Defendants pay no interest on the private property that has been taken in cases where the property is returned to the owner, in violation of the UPL and the Constitution.

(7) Whether the Defendants retain privately commissioned "Auditors" (a term that is used loosely here) when they have no constitutional or statutory authority for them to do so, and who are paid a percentage of the seized private property with no notice to the owners.

(8) Whether the Defendants and their privately commissioned "Auditors" make any effort to procure the names of the owners, provide notice to them, and do so with the full knowledge that the owners can never claim their unlawfully seized property because

the Defendants and “Auditors” maintain no records and therefore cannot tell the public who owns what from the stash of seized property.

28. Accordingly, in this proposed class action Plaintiffs seek declaratory and injunctive relief against Defendants, to remedy the constitutional defects created by their actions under color of the UPL.

BACKGROUND

A. STATUTORY BACKGROUND

29. Delaware’s Unclaimed Property Law departs from the historic function of abandoned property laws dictated by the United States Supreme Court. “Traditionally, abandoned property or ‘escheat’ statutory schemes applied to real property and tangible personal property belonging to persons who died intestate or disappeared, i.e., are unknown to the State, where there was no descendent, relative, or other valid claimant to the estate. In these situations, the property truly was abandoned and ownerless (*bona vacantia*.)” *See, e.g., Taylor I*, 402 F.3d at 924, *supra*.

30. The Defendants application of the UPL is very different from traditional statutes. Instead of being limited to property owned by persons who have died intestate or disappeared, the statutory scheme applies to *any* property meeting a new technical, statutory definition of “abandonment.” Black’s Law Dictionary (11th Ed.) defines the term “abandonment” as:

“[T]he surrender, desertion, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it. The giving up of a thing absolutely, without reference to any particular person or purpose, as vacating property with the intention of not returning, so that it may be appropriated by the next comer or finder. It includes both the intention to abandon and the external act by which the intention is carried into effect.”

31. Rather than protecting the rights of the “true owners,” the Defendants’ application of the escheatment statute reflects a new form of escheatment that views the Unclaimed Property

Law solely as a revenue generator for the State of Delaware. Money is dedicated from the unclaimed property fund to seize more property, but virtually no funds are dedicated to providing prior notice or to restoring the seized property to the owners, which is the primary purpose of the statutory scheme.

32. It was not until 1990s that states, with Delaware taking the lead, began to expand unclaimed property laws to include certain types of intangible property including, in particular, unclaimed bank deposits. State governments soon realized that unclaimed intangible property, after it was remitted to the states, was often never claimed by the owner and, thus, could represent a significant source of revenue for the state.³ Defendants recognized that this source of “revenue” would increase if the citizens were never told (i.e., never received “notice”) that their property was to be seized in the first place.

B. MISUSE OF CONTINGENT FEE AUDITORS TO SEIZE PRIVATE PROPERTY.

33. Starting in the late 1990’s and early 2000’s, certain states, with Delaware at the forefront, began to dramatically increase their enforcement efforts. This surge in audit activity was in large part due to the proliferation of the use of private contract audit firms that are compensated by the states on a contingent-fee basis – which is typically, ten to fifteen percent of the amount of any unclaimed property identified in the audit. Such a fee structure provides a profit incentive to such firms to take aggressive positions in these audits.

³ See ABC Good Morning America, Not-So-Safe-Deposit Boxes: States Seize Citizens’ Property to Balance Their Budgets (May 12, 2008) found at: <http://www.youtube.com/watch?v=ZdHLIq0qHhU>;

National Public Radio “NPR” “All Things Considered – State Unclaimed Property Laws Under Scrutiny,” National Broadcast: <http://www.npr.org/templates/story/story.php?storyId=12379040>

34. Further, these contingent-fee audit firms are often staffed by former accountants and consultants with far greater expertise in unclaimed property matters than their client states, which has led many states to defer almost entirely to the ridiculous positions taken by these firms in audits. Simply put, there is no statutory or constitutional authority to retain unclaimed property “audit firms” and then to compensate those firms with percentages of the private property they seize from known owners who receive no prior constitutional notice. For instance, foreign citizens like Plaintiff Schramm received no notice whatsoever in Italy that his shares of stock were to be seized and used to compensate “Auditors” in the State of Delaware. Plaintiff Schramm’s personal property, including his shares of stock, are beyond the jurisdictional reach of the State of Delaware. Most important, each of the Plaintiffs and Class Members have no way to protect themselves from operation of these laws in the future.

35. The Auditors often seize the private property without any ownership information whatsoever, which defeats the due process clause of the United States Constitution by making it impossible for the State of Delaware to provide any *Mullane*-style notice to the owners. *See Jones*, 547 U.S. 220, *supra*; and *Mullane*, 339 U.S. 306, *supra*.

36. Put another way, there is no way for the state officials and the government Defendants to provide constitutional notice because they do not ask for and do not receive the ownership information. And, likewise, there is no way for the owners to ever reclaim their property from the State. There is no way for the impacted owners to locate their property, even if they had known it was taken in the first place.

37. The private Auditor seizure activity makes it impossible for the “known” owners to recover their private property because there are no records maintained by Defendants of what they have seized. *See, e.g., Siemens USA Holdings Inc. v. Geisenberger, et al.*, No. 19-02284 (3d.

Cir. 2019) (Unclaimed private property seized without notice and delivered to Delaware without any owner identification information, thereby making it impossible for any owner to recover his/her private property and the state's auditor paid with a percentage of the unnoticed seizures); *contra, see Jones*, 547 U.S. 220, *supra*; and *Mullane*, 339 U.S. 306, *supra*; *see also Taylor I*, 402 F.3d 924, *supra*; *Taylor II*, 488 F.3d at 1200-02, *supra*; *Taylor III*, 525 F.3d at 1291, *supra*; *Suever I* (same outcome as *Taylor I*).

38. These unclaimed property “audits” are replete with examples of the contract audit firms dictating policies to states, which lack the knowledge or expertise to know when these audit firms are overreaching. The use of contingent fee audits (which of course creates financial incentives for larger assessments and seizures) is also inconsistent with the primary purpose of unclaimed property laws, which is not to disturb the property rights of known citizens, but to return property that is indisputably owed to those citizens.

39. In short, Delaware's UPL, as misconstrued by these Defendants, along with unclaimed property laws in certain of the other states, has been trending in the wrong direction for over thirty (30) years. This trend occurred because such actions, though unconstitutional, have greatly expanded the generation of revenue for states, at the expense of both owners and holders of unclaimed property. These are the very citizens and businesses which the UPL was designed to protect.

C. PROPERTY IS SEIZED FROM “KNOWN” OWNERS WITHOUT NOTICE.

40. The UPL does not use the traditional understanding of “abandonment” – i.e., the knowing and voluntary relinquishment or renunciation of property rights. Instead, property is deemed to be “abandoned” under the UPL according to dormancy thresholds specified in the statute. As a general rule, property is deemed “abandoned” under the UPL if it is dormant for three

to five years with no activity by the owner. *See, e.g.*, 12 Del. C. § 1133 (2021). In Delaware, most properties are considered abandoned after five years of dormancy, three years in the case of securities-related property, or fifteen years for traveler’s checks. (State of Delaware Department of Finance Office of Unclaimed Property Holder Handbook (2022) (“OUP Handbook”) at pg. 5.)

41. The UPL uses a five-year rule (previously three years) to determine whether a bank account is dormant, even though a typical person does not “forget” about his bank account. Rather, such accounts are often left untouched for extended periods of time (*e.g.*, “rainy-day” accounts). The shortening of the dormancy period in 2011 was driven more by state revenue concerns than by any correlation with the actual time that owners are likely to have forgotten about their property.

42. In another escheat case, Judge Richard Posner of the Seventh Circuit Court of Appeals described a three-year dormancy period for determining abandonment as “a period so short as to present a serious question whether it is consistent with the requirement in the Fourteenth Amendment that property not be taken without due process of law, implying adequate notice and opportunity to contest.” *Cerajeski v. Zoeller*, 735 F.3d 577, 582 (7th Cir. 2013).

43. As part of the Defendants’ relentless campaign to fill the State’s coffers with “abandoned” property, the UPL contains strong penalties coercing holders of property, including banks and other entities, to report as much “abandoned” property as possible to the OUP. Such entities are required, under threat of severe penalties, to submit annual “holder reports” to the OUP listing all “abandoned” property they hold. Such reports must include details on the property as well as a remittance to the OUP of the escheated property.

44. “Abandoned” property is transferred to the OUP, under the supervision of the State Escheator, which acts as custodian of the property. Holders of property (such as banks and utilities) are required to transfer cash via checks or electronic funds transfers. (OUP Handbook,

at p. 5.) Property that is not claimed by its owners is escheated to the State and promptly spent by the Delaware State government as revenue.

45. Banking, financial institutions, and insurance companies, among others (referred to as “Holders,” in the parlance of the UPL) holding purportedly “abandoned” property of less than \$50 in value are not required to provide any notice at all to rightful owners before transferring it to the OUP. 12 Del. C. § 1150(b).

46. Under Defendants’ direction, telephone calls or verbal contacts from an owner do not prevent property from becoming deemed abandoned. Nor does internal activity such as service charges, crediting of interest and dividends, automatic dividend reinvestment, and automatic withdrawals. This misconduct directly conflicts with 12 Del. C. § 1136(2), which states: “An oral communication by the owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the owner’s communication.”

D. DELAWARE IS NOW ADDICTED TO THE UNCONSTITUTIONAL PROPERTY SEIZURE PROGRAM TO FUNDS ITS BUDGET.

47. The State of Delaware is now overwhelmingly dependent on the Unclaimed Property seizure program. Delaware’s economy is uniquely dependent upon the unclaimed property system to generate money for the state, and the magnitude of unclaimed property in the State’s budget is dramatically different from every other state. Delaware is so reliant that the funds are budgeted as 6% of the State’s “revenue” (not a liability owed to others) for FY 2023. Similarly, \$448 Million was reported as net revenue from unclaimed property in FY 2021 and \$340 Million is projected for FY 2022.

48. The accumulation of these funds over many years, and the total liability Delaware owes to the actual property owners, is truly astonishing when compared to other states. Delaware's total FY 2023 budget is \$4.9 Billion. Delaware does not publish the amount of unclaimed property it holds. But, according to data published by the Wall Street Journal, at least \$7.7 Billion has been collected by the state since 2000 alone. Since undoubtedly billions were also reported prior to 2000, the state conservatively holds and owes at least 2 times more in unclaimed property than their entire state budget.⁴ By contrast, the \$17.5 Billion held by State of New York (which holds the most unclaimed property of any state according to NAUPA), is less than 8% of state's \$221 Billion budget. In short, Delaware does not have the funds available to repay the owners and to run a constitutional program.

49. Delaware's system is particularly abusive to non-residents of the State. In all other states, the unclaimed property held by the state belongs dominantly to the residents of that particular state. Yet, the property held by Delaware is dominantly (almost certainly 95+ %) NOT owed to residents of their state. This dramatic difference is clearly evidenced by the published unclaimed property listings in the Wilmington News Journal. (e.g., 2017) which reveal thousands of owners with foreign addresses from whom the State has seized property.

CLASS ACTION ALLEGATIONS

50. This is a proposed Class Action brought by Plaintiffs pursuant to Federal Rules of Civil Procedures, Rules 23(b)(1)(A) and 23(b)(2) on their own behalf and on behalf of all those similarly situated with respect to the operation and administration of the UPL. The proposed Class

⁴ Vipal Monga, "Scientists, Out \$12 Million, Sue Delaware Over Seizure of Their Stock" The Wall Street Journal: <https://www.wsj.com/articles/scientists-out-12-million-sue-delaware-over-seizure-of-their-stock-1503054001>.

consists of all individuals owning purportedly “abandoned” property transferred to Defendant under color of the UPL over the past ten years without notice to the owners.

51. Although the exact number, identity, and location of persons in the proposed Class is readily discernible based on the Defendants’ own records, upon information and belief, Plaintiffs aver that the number of members in the proposed Class will be in excess of 1,000 persons. Those persons in the Class are, therefore, so numerous that joinder of the entire proposed Class is impractical.

52. There are questions of law and fact common to all members of the proposed Class, including whether Defendants complied with the constitutional requirements for the deprivation and taking of property.

53. Plaintiffs’ claims are typical of those of the members of the proposed Class, who are subject to the same deprivations of their property and rights. There is a well-defined community of interest in the questions of law and fact involved in this case.

54. Plaintiffs can adequately represent the interests of the members of the proposed Class. They have no interests relevant to the lawsuit’s subject matter antagonistic to the Class Members. Plaintiffs’ attorneys have experience in complex litigation, including Class Actions, involving issues identical or similar to those raised in this action.

55. Because Defendants’ duties to comply with the Constitution apply equally to each person in the proposed Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendants.

56. Defendants’ actions and threatened actions are depriving and will deprive Plaintiffs and the members of the proposed Class of their constitutional rights on grounds generally

applicable to all, thereby making appropriate declaratory, injunctive, and equitable relief and § 1983 claims with regard to the proposed Class as a whole.

57. A Class Action is superior to other available methods for the fair and efficient adjudication of this controversy.

58. Plaintiffs allege that there is no legal requirement that they exhaust Defendants' "administrative claim process," to the extent any such legal process exists; particularly after their property was seized and sold without notice in violation of Plaintiff and Class Members' 14th and 5th Amendment rights. *See* 42 U.S.C. §1983; *Pakdel v. City of San Francisco*, 141 S. Ct 2226 (2021); *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019) (Disavowing *Williamson County Regional Planning Comm's v. Hamilton Bank of Johnson City*, 105 S. Ct. 3108 (1985)).

FIRST CLAIM FOR RELIEF

(U.S. Const. Fourteenth Amendment § 1 – Due Process Clause: 42 U.S. C. § 1983)

59. The allegations set forth above in paragraphs 1 through 58 are incorporated into this claim by reference as though set forth in full.

60. The Fourteenth Amendment, Section 1, of the United States Constitution provides, in part, "nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ." A claim for violation of this federal right may be brought under 42 U.S.C. § 1983.

61. Defendants, under the color of law as provided by the UPL, have violated (and continue to violate) Plaintiffs' right to due process through their enforcement and administration of the UPL, by depriving them of their property without due process.

62. Plaintiffs, as well as the owners of existing property, have a constitutionally protected property interest in the private property that they own and that is seized by the State of Delaware under the processes described herein. Defendants deprived Plaintiffs and many other

property owners of their constitutionally protected property interests by seizing their property without providing notice and due process and by arbitrarily taking property from private companies and financial institutions without requesting the rightful owner's name, even when it is readily available.

63. Unless the Defendants are restrained and enjoined from continuing to enforce and administer the UPL in a manner that violates Plaintiffs' constitutional rights, they will continue to do so far into the foreseeable future.

64. Plaintiffs have no plain, speedy, adequate remedy at law; therefore, injunctive relief from this Court is the only means available to them to protect the rights guaranteed to Plaintiffs and the members of the Class by the Fourteenth Amendment's due process clause.

SECOND CLAIM FOR RELIEF

(U.S. Const. Fifth Amendment – Takings Clause: 42 U.S.C. § 1983)

65. The allegations set forth above in paragraphs 1 through 64 are incorporated into this claim by reference as though set forth in full.

66. The Fifth Amendment to the United States Constitution provides, in part, that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” The Just Compensation requirement is a self-executing constitutional command. It is also enforceable via an action pursuant to 42 U.S.C. § 1983.

67. The Defendants, under the color of law as provided by the UPL, has violated (and continues to violate) each Plaintiff's right under the Fifth Amendment through her enforcement and administration of the UPL, by taking each Plaintiffs' property without just compensation.

68. The Defendants' above-described unlawful takings of private property substantially impaired Plaintiffs' access, use, and enjoyment of said property for no valid public use or public purpose.

69. Unless the Defendants are restrained and enjoined from continuing to enforce and administer the UPL in a manner that violates Plaintiffs' constitutional rights, they will continue to do so far into the foreseeable future.

70. Plaintiffs and Class Members have no plain, speedy, adequate remedy at law; therefore, injunctive relief from this Court is the only means available to them to protect the rights guaranteed to Plaintiffs and the members of the Class by the Fifth Amendment's takings clause.

71. Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. Declaratory relief declaring that Defendants' enforcement and administration of the UPL against Plaintiffs and the Members of the Class violate the Fifth and Fourteenth Amendments of the United States Constitution.

2. Injunctive relief enjoining Defendants from enforcing or administering the UPL in an unconstitutional manner against Plaintiffs and the Members of the Class.

3. Injunctive relief requiring Defendants to return the property belonging to each Plaintiff and Class Member with substantive due process rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution.

4. Injunctive relief in the form of Substantive Due Process as required by the Fifth and Fourteenth Amendments of the United States Constitution.

5. An award of attorney's fees and costs pursuant to 42 U.S.C. § 1988; and

6. Such other and further relief as this Court deems just and proper.

Dated: November 2, 2022

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [‘Feudal Lord’: Class Action Lawsuit Alleges Delaware Has Misapplied State’s Unclaimed Property Law](#)
