



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

FILE NO. 03-003

INSURANCE:
Insurance Benefit Proceeds
as Unclaimed Property

The Honorable Judy Baar Topinka
Treasurer, State of Illinois
One West Old State Capitol Plaza, Suite 400
Springfield, Illinois 62701

Dear Treasurer Topinka:

I have your letter wherein you inquire whether, pursuant to the provisions of the Uniform Disposition of Unclaimed Property Act (765 ILCS 1025/0.05 et seq. (West 2000)), property and casualty insurance companies are required to report and to remit to the State Treasurer insurance drafts and checks that have been issued by them but which remain uncashed for at least five years. For the reasons hereinafter stated, it is my opinion that: (1) insurance drafts and checks issued as offers of settlement of claims that are not negotiated within five years are presumed to be abandoned, a presumption which may be rebutted if the offer was not accepted by the payee; (2) insurance drafts

The Honorable Judy Baar Topinka - 2.

and checks issued to pay claims owing according to mandated or agreed schedules generally constitute liquidated obligations that must be reported and delivered to the State Treasurer pursuant to the provisions of the Uniform Disposition of Unclaimed Property Act if not negotiated after five years of issuance; and (3) insurance drafts and checks issued to third party vendors for goods and services provided to an insured or on behalf of an insured generally constitute liquidated obligations which must also be reported and delivered to the State Treasurer, if the draft or check was issued to the payee in the ordinary course of the insurance company's business and remains unnegotiated for at least five years.

You have noted that a number of property and casualty insurance companies located throughout the United States have taken the position that the unclaimed property laws of the several States are not applicable to the uncashed insurance drafts and checks they have issued. Specifically, those insurance companies have argued that uncashed insurance drafts "are merely 'offers of settlement' which become void" following the passage of the prescribed period of time. The insurance companies contend that a claim draft transmitted to an insured, or to a person or business which has transacted business with the insured, is an "offer of settlement" which is not a liquidated

The Honorable Judy Baar Topinka - 3.

obligation until and unless the claim draft is properly endorsed by the payee and accepted by the insurance company. Therefore, it is the position of these insurance companies that such uncashed drafts or checks are not unclaimed property which is subject to the provisions of the Uniform Disposition of Unclaimed Property Act (hereinafter the "Act").

The uncashed drafts and checks that are the focus of your inquiry generally fall into one of three categories: (1) drafts and checks issued as offers of settlement of claims; (2) drafts and checks issued to pay claims owing according to mandated or agreed schedules (e.g., workers' compensation claims and health insurance benefit claims); and (3) drafts and checks issued to third party vendors for goods or services provided to the insured or on the insured's behalf (e.g., towing services, ambulance services and body shop work furnished pursuant to an automobile insurance policy). You have inquired whether insurance companies are required to report and to deliver to the State Treasurer the sums representing these insurance drafts and checks that have not been negotiated within five years of issuance.

Sections 2a and 9 of the Act (765 ILCS 1025/2a, 9 (West 2000)) respectively provide, in pertinent part:

"(a) Business associations shall report, pursuant to Section 11 of this Act, all property and any earnings thereon to which

the owner would be entitled that have re-
mained unclaimed for 5 years and are there-
fore presumed abandoned. Before reporting
and delivering property as required under
this Act, a business association may deduct
from the amount of otherwise reportable in-
tangible personal property the economic loss
suffered by it in connection with that intan-
gible personal property arising from transac-
tions involving the sale of tangible personal
property at retail. This property shall
consist of, but is not limited to:

* * *

(6) unpaid claims, unpaid accounts
payable or unpaid commissions; * * *

* * *

(Emphasis added.)

"All personal property, not otherwise
covered by this Act, including any income or
increment thereon that the owner would be
entitled to and deducting any lawful charges,
that has remained unclaimed by the owner for
more that 5 years is presumed abandoned.
Before reporting and delivering property as
required under this Act, a business associa-
tion may deduct from the amount of otherwise
reportable intangible personal property the
economic loss suffered by it in connection
with that intangible personal property aris-
ing from transactions involving the sale of
tangible personal property at retail. Except
as provided in Section 10.5, this provision
shall not apply to personal property held
prior to October 1, 1968 by business associa-
tions. * * *" (Emphasis added.)

As used in the Unclaimed Property Act, the term "busi-
ness association" refers to "* * * any corporation, joint stock
company, business trust, partnership, or any other association,

The Honorable Judy Baar Topinka - 5.

limited liability company, or other business entity consisting of one or more persons, whether or not for profit". (765 ILCS 1025/1(b) (West 2000).) The term "owner" refers to "a * * * payee * * * or any person having a legal or equitable interest in property subject to this Act * * *". (765 ILCS 1025/1(f) (West 2000).)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (In re Marriage of Kates (2001), 198 Ill. 2d 156, 163.) Legislative intent is best evidenced by the language used in the statute. (Yang v. City of Chicago (2001), 195 Ill. 2d 96, 103.) Where statutory language is clear and unambiguous, it must be given effect as written. In re Consolidated Objections to Tax Levies of School District No. 205 (2000), 193 Ill. 2d 490, 496.

Under the plain and unambiguous language of section 2a of the Act, business associations are required to report and to deliver to the State Treasurer unpaid claims that remain unclaimed for at least five years. Clearly, the definition of the phrase "business association" is sufficiently broad to encompass insurance companies. Similarly, the language of section 9 of the Act generally requires the holder of personal property that is not covered by other provisions of the Act that remains unclaimed for more than five years to report and to deliver such property

The Honorable Judy Baar Topinka - 6.

to the State Treasurer. The issue, therefore, is whether the uncashed drafts and checks which are described in your inquiry constitute either unpaid claims under section 2a of the Act or personal property under section 9 of the Act.

Addressing these sections in inverse order, section 9 of the Act traces its origins to section 9 of "AN ACT relating to the disposition of unclaimed property, to make uniform the law with reference thereto, to provide penalties for violation thereof and to make an appropriation with relation thereto". (Ill. Rev. Stat. 1963, ch. 141, par. 109), which, originally enacted, provided:

"All intangible personal property, not otherwise covered by this Act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this State in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 15 years after it became payable or distributable is presumed abandoned." (Emphasis added.)

Although other sections of the original enactment were subsequently amended to conform to the provisions of the 1966 Uniform Disposition of Unclaimed Property Act (see Uniform Disposition of Unclaimed Property Act (1966), 8A U.L.A. 207 (1993)), the original language of section 9 of the Act was virtually identical to that of section 9 of the 1966 Uniform Disposition of Unclaimed Property Act. The purpose of section 9

The Honorable Judy Baar Topinka - 7.

of the 1966 Uniform Disposition of Unclaimed Property Act was explained in the notes of the Commissioners as follows:

" * * *

Section 9 is the omnibus section covering all other intangible personal property not otherwise covered by the more specific provisions of the Act. It should be noted that to be subject to the section the property must be held or owing in the 'ordinary course of the holder's business in this state.' A wide variety of items will be embraced under this section, including, by way of illustration, money, stocks, bonds, certificates of membership in corporations, securities, bills of exchange, deposits, interest, dividends, income, amounts due and payable under the terms of insurance policies not covered by section 4 [sic] [3], pension trust agreements, profit-sharing plans, credit balances on paid wages, security deposits, refunds, funds deposited to redeem stocks, bonds, coupons and other securities, or to make a distribution thereof, together with any interest or increment thereon.
* * *" (Emphasis added.)

In Insurance Co. of North America v. Knight (1972), 8 Ill. App. 3d 871, appeal dismissed, 414 U.S. 804, 94 S. Ct. 165 (1973), the appellate court was asked to declare section 9 of the Act unconstitutional to the extent that it required the plaintiff insurance company to report certain outstanding, unrepresented and uncashed drafts and checks to the State's administrator of the unclaimed property laws. In concluding that section 9 of the Act as originally enacted was not unconstitutional, the court stated:

" * * *

The trial court was correct in concluding that issuance of drafts or checks to third parties under circumstances which would normally indicate delivery creates prima facie evidence of intangible property which, after the statutory period, may be presumed abandoned, but we conclude that such evidence is subject to rebuttal either by the maker as holder or the payee as owner.

* * * "

It is clear, therefore, that a record of the issuance of a draft or check is prima facie evidence of an obligation. The draft's or check's abandonment was established by showing the issuance of the draft or check and the passage of the requisite period of time without negotiation of the instrument. Such evidence was subject to rebuttal, however, by the maker as the holder or by the payee as the owner.

In 1997, the General Assembly amended section 9 of the Act to its present form. (See Public Act 90-167, effective July 23, 1997.) As currently in effect, section 9 of the Act is applicable to "[a]ll personal property", rather than to "[a]ll intangible personal property". By striking the word "intangible" from the original enactment, the General Assembly apparently intended to broaden the scope of section 9 of the Act, not to restrict it in any way. Thus, the conclusion of the court in Insurance Co. of North America v. Knight was not affected by the

The Honorable Judy Baar Topinka - 9.

amendment. It is my opinion, therefore, that the language of section 9 of the Act is sufficiently broad to include within its purview uncashed drafts and checks of the types which are the focus of your inquiry.

With respect to section 2a of the Act, it is provided that business associations are required to report, inter alia, all "unpaid claims, unpaid accounts payable or unpaid commissions", which remain unclaimed for five years. The phrase "unpaid claims" is not defined in the Act. It is well established, however, that undefined statutory terms must be given their ordinary and popularly understood meaning. (Carroll v. Paddock (2002), 199 Ill. 2d 16, 25.) The term "unpaid" commonly means "* * * not presented as payment * * * not cleared by payment * * *." (Webster's Third New International Dictionary 2505 (1993).) Similarly, the term "claim" refers to "* * * a demand for compensation, benefits, or payment (as one made in conformity with provisions of the Social Security Act or of a workmen's compensation law, one made under an insurance policy upon the happening of the contingency against which it is issued * * *) * * *." (Webster's Third New International Dictionary 414 (1993).) Consequently, the phrase "unpaid claims" would ordinarily include insurance benefits and payouts which have not been satisfied by payment.

The Honorable Judy Baar Topinka - 10.

Based upon the provisions of the Act, it is my opinion that a draft or check issued by a property or casualty insurance company as an "offer of settlement" of a claim for property damage or personal injury is subject to a presumption of abandonment, which may be rebutted if it can be shown that the offer was not accepted by the payee. Unclaimed property laws apply only to liquidated obligations. The rights of the State for custodial purposes are derivative of the rights of the owner, so that the State has no greater right than that of the payee owner. (Insurance Co. of North America v. Knight (1972), 8 Ill. App. 3d 871, 876.) Thus, where an insurance company has made an offer to an insured or other payee to settle a claim upon specified terms and the circumstances indicate that delivery of the draft or check was made, then there is prima facie evidence of a liquidated obligation. Specifically, it is my opinion that drafts and checks issued as offers of settlement fall within the commonly understood meaning of the phrase "unpaid claim". Therefore, such drafts and checks should be reported and remitted to the State Treasurer under section 2a of the Act. The payor may then attempt to rebut the presumption that a liquidated obligation exists.

With respect to drafts or checks issued by an insurer to pay claims owing according to fixed or agreed schedules, for

The Honorable Judy Baar Topinka - 11.

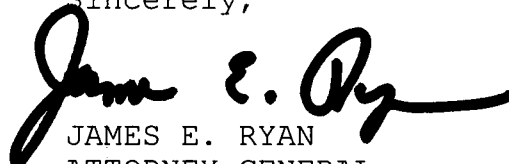
example, health insurance claims, disability insurance claims or workers' compensation claims, there appear to be no Illinois cases addressing this specific issue. A review of reported cases from other jurisdictions, however, indicates that a draft or check issued by a life insurance company, a health insurance company or a disability insurance company in payment of a scheduled benefit is a fixed obligation. (Revenue Cabinet v. Blue Cross & Blue Shield of Kentucky, Inc. (Ky. 1986), 702 S.W.2d 433, 435; Employers Insurance of Wausau v. Smith (1990), 154 Wis. 2d 199, 204, 453 N.W.2d 856, 857; Blue Cross of Northern California v. Cory (1981), 120 Cal. App. 3d 723, 736, 174 Cal. Rptr. 901, 909.) As such, these drafts and checks are not, in my opinion, offers of settlement. Rather, it is my opinion that uncashed drafts and checks issued in payment of a fixed or scheduled benefit constitute certain, liquidated obligations of the insurer which are properly characterized as unpaid claims for purposes of section 2a of the Act. Consequently, the uncashed drafts and checks must be reported and delivered to the State Treasurer upon the expiration of the prescribed period of time.

Lastly, you have inquired whether uncashed drafts and checks issued to third party vendors for goods or services provided to an insured are subject to the provisions of the Act. It has generally been held that money in the amount of any

The Honorable Judy Baar Topinka - 12.

uncashed vendor check for a liquidated obligation is subject to a State's unclaimed property laws when the payee's right to receive the money arises in the ordinary course of the insurance company's business. (State v. Chubb Corp. (N.J. Super. Ct. Ch. Div. 1989), 239 N.J. Super. 257, 570 A.2d 1313.) Thus, a draft or check issued to pay for goods or services provided by a third party vendor is not subject to a presumption of abandonment if it was rejected by the payee, as, for example, when the draft was written for an incorrect amount or to an incorrectly identified payee, and a corrected draft was later issued and accepted relating to the same obligation. Conversely, when a draft or check is issued to a third party vendor for goods or services provided to the insured under circumstances which would normally indicate delivery, a liquidated obligation is created. Consequently, it is my opinion that such uncashed drafts and checks are properly characterized as unpaid claims under section 2a of the Act.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL