

In 2016, the Florida legislature amended its unclaimed property laws to require life insurance companies to conduct annual Death Master File (DMF) searches on active and terminated policies dating back to 1992. (Fla. Stat, § 717.107) United Insurance Company of America (United Insurance) immediately filed suit against Florida CFO Jeff Atwater and the Florida Department of Financial Services to overturn the law on constitutional grounds, most notably its retroactive application.

On May 16, 2017, United Insurance voluntarily dismissed one of its two counts and now seeks declaratory and injunctive relief from the retroactive application of the amendment on due process grounds alone. The due process claim alleges that the statute adversely affects vested rights, imposes new obligations regarding DMF searches and beneficiary outreach, and imposes additional penalties for failure to perform the new obligations.

Many life insurance companies are watching this case with great interest, for not only court guidance on the constitutionality of retroactive obligations and penalties, but also regarding the asymmetric application of those provisions. The newly amended law exempts a certain class of insurers from the retroactive burdens: if by June 30, 2016, an insurer (i) had entered into a regulatory settlement agreement with the Florida Office of Insurance Regulation (OIR) or (ii) had received a targeted market-conduct examination report regarding claims-handling and DMF use, the insurer is not obligated to conduct annual searches of lapsed or terminated policies back to 1992. That insurer may conduct annual searches of its in-force policies and contracts only.

Of course, most life companies conduct regular DMF searches of their policyholder data, all the while maintaining direct control over the security of those highly sensitive consumer data. The Florida law fails to recognize both the reality of the insurer searches and the risk of requiring an insurer to turn over this sensitive data to the Florida treasurer's third-party auditor for the purpose of conducting the search. The law contains no provision for certifying to the treasurer that these searches have been conducted or protecting the security of the data. So, at the time the law went into effect in April 2016, insurers had to quickly decide to either enter into a settlement with the OIR to have a third-party auditor conduct the DMF search without any data security requirements or prepare to conduct annual DMF searches of in-force, lapsed and terminated policies over an ever-increasing lookback period. In short: risk consumer data and forfeit contract rights or submit to retroactive penalties.

The outcome of the United Insurance litigation will address the retroactive application of an unclaimed property law, but the context of the litigation could determine more. If Florida prevails, it will underscore yet another shift of the claims process from departments of insurance to the state treasurers. If state insurance departments remain silent to treasurers' efforts to expedite the claims process for budgetary gain, insurers are left as the only voice of reason.

The case is *United Insurance Co. of America v. Jeff Atwater*, Case No. 2016-CA-1009 (In the Circuit Court of the Second Judicial District, Leon County, Florida).

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