

**BRIEF FILED  
WITH MOTION**

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**  
**No. 14-0100**

JOHN D. PERDUE, Plaintiff Below,

Petitioner,

v.

NATIONWIDE LIFE INSURANCE COMPANY, et al.,  
Defendants Below,

Respondents.

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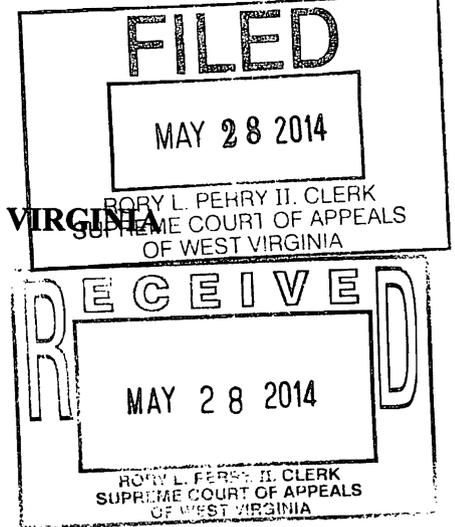
**PROPOSED AMICUS BRIEF OF NATIONAL ASSOCIATION  
OF UNCLAIMED PROPERTY ADMINISTRATORS  
IN SUPPORT OF JOHN D. PERDUE**

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## I. INTRODUCTION OF AMICUS CURIAE<sup>1</sup>

Several issues presented in the matter *sub judice* concern the conditions under which unclaimed life insurance proceeds may be presumed abandoned and, therefore, subject to report and remittance to the state under West Virginia's Uniform Unclaimed Property Act. The Amicus submitting this brief, the National Association of Unclaimed Property Administrators ("NAUPA"), has an interest in the administration of state unclaimed property laws, including those pertaining to unclaimed insurance benefits, which is directly implicated by this appeal.

NAUPA is a non-profit organization affiliated with the National Association of State Treasurers and the Council of State Governments. Members represent all states, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands and other international governmental entities. NAUPA seeks to promote and strengthen unclaimed property administration and interstate cooperation in order to enhance States' return of unclaimed property to rightful owners and provide a forum for the open exchange of information and ideas. The issues presented in this case are important to NAUPA and its members since they potentially impact the administration of unclaimed property laws both in West Virginia and in other states.

For the reasons set forth below, NAUPA respectfully submits that this Court should reverse the trial court's ruling, and find that life insurance benefits may be presumed unclaimed when the insured has died, notwithstanding the beneficiary's failure to make a demand or present documentation otherwise required to obtain payment.

---

<sup>1</sup> Counsel for the Petitioner did not author or make monetary contributions specifically intended to fund the preparation or submission of this Brief.

## II. OPERATIVE FACTS ON THE UNDERLYING MATTER

A recitation of the operative facts and procedural history of this case is not necessary for the purposes of this amicus brief. NAUPA incorporates by reference the operative facts as recited in the Brief of the Petitioner.

## III. DISCUSSION AND ARGUMENT

### A. Statutory framework of the West Virginia Uniform Unclaimed Property Act, W.Va. Code §§36-8-1 *et seq.*

West Virginia's Uniform Unclaimed Property Act (the "UPA"), W.Va. Code §§36-8-1 *et seq.*, sets forth the circumstances under which various types of unclaimed property are "presumed abandoned" and, therefore, subject to report and delivery to the state. Section 36-8-1(13)(vi) defines "property" as including "property that is referred to or evidenced by ... [a]n amount *due and payable* under the terms of an ... insurance policy, including policies providing life insurance." W.Va. Code §36-8-1-(13)(vi) (emphasis added).

Section 36-8-2(a) of the UPA states that "[p]roperty is presumed abandoned if it is unclaimed by the apparent owner" during the time specified for a particular property type. In the case of an "[a]mount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, [the property is presumed abandoned] three years after the *obligation to pay* arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based." W.Va. Code §36-8-2(a)(8) (emphasis added).

Finally, section 36-8-2(e) of the UPA states that "[p]roperty is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment." W.Va. Code §36-8-2(e).

**B. Unclaimed life insurance proceeds may be subject to reporting under West Virginia's UPA based on the death of the insured alone, even though the beneficiary has not made a valid claim and submitted proof of death, or the insured has not yet attained the limiting age**

The trial court erred in finding that “there is no ‘property’ subject to or reportable under the UPA until the beneficiary has made a valid claim and submitted proof of death or the insured obtains the limiting age.” *State of West Virginia ex rel. Perdue v. Nationwide Life Ins. Co.*, Civil Action No. 12-C-287 (Cir. Court Putnam Cty. Dec. 27, 2013), slip op. at 10. To the contrary, under controlling authority, although an individual beneficiary may be required to supply such documentation before receiving payment, it is well-settled that satisfaction of these conditions is not required in order for unclaimed life insurance proceeds to be subject to report and remittance as unclaimed property under state unclaimed property laws.

In *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U.S. 541 (1948), the United States Supreme Court affirmed the constitutionality of unclaimed property statutes making life insurance proceeds subject to reporting and delivery based on the death of the insured alone, notwithstanding the fact that the beneficiary has not provided proof of death or met other contingencies in the policy. The appellant insurance companies therein had argued that the statute was unconstitutional because “the policy terms provide that the insurer shall be under no obligation until proof of death or other contingency is submitted and the policy surrendered.” *Id.* at 545-46. The U.S. Supreme Court was not persuaded, finding:

Unless the state is allowed to take possession of sums in the hands of the companies classified by [the unclaimed property law] as abandoned, the insurance companies would retain moneys contracted to be paid on condition and which normally they would have been required to pay. ... *The fact that claimants against the companies would under the policies be required to comply with certain policy conditions does not affect our conclusion.* The state may more properly be custodian and beneficiary of abandoned property than any person. ... *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.* The state is acting as a conservator, not as a party to a contract.

333 U.S. at 546-47 (emphasis added).

West Virginia's UPA codifies the U.S. Supreme Court's holding in *Connecticut Mutual*. Specifically, West Virginia Code section 36-8-2(e) states that "[p]roperty is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment." As explained in the Comment to Section 2 of the Uniform Unclaimed Property Act (1995) (the "1995 Act"), which West Virginia adopted in 1997 through its enactment of the UPA, subsection (e) "is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his or her entitlement to property, fails to present to the holder evidence of ownership or to make a demand for payment." See 1995 Act, §2, Comment (citing *Connecticut Mut.*, 333 U.S. 541). Accordingly, unclaimed life insurance proceeds may be subject to report and remittance to the state based upon the death of the insured alone, and it is not necessary that the beneficiary have previously made a claim and submitted "proof of death" in order for the unclaimed life insurance proceeds to be deemed "abandoned" under the UPA.

**C. The trial court erred in concluding that both W.Va. Code §36-8-2(e) and *Connecticut Mutual* are irrelevant to the determination of when unclaimed life insurance proceeds are presumed abandoned and required to be reported and delivered to the state**

In reaching the conclusion that "there is no 'property' subject to or reportable under the UPA until the beneficiary has made a valid claim and submitted proof of death or the insured obtains the limiting age," slip op. at 10, the trial court erroneously discounted both the opinion of the U.S. Supreme Court in *Connecticut Mutual* as well as the West Virginia Legislature's inclusion of subsection 36-8-2(e) in its passage of the UPA.

As an initial matter, Section 36-8-2(e) unambiguously states that "[p]roperty is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or

present an instrument or document otherwise required to obtain payment.” On its face, this subsection applies to all types of unclaimed property covered by the UPA. Moreover, the application of this provision to unclaimed death benefits clearly is established by the Comment to subsection 2 of the 1995 Act, which Section 36-8-2(e) adopted verbatim, which explicitly provides that “no possible harm can result in requiring that holders turn over the property, *even though the owner has not presented proof of death or surrendered the insurance policy.*” See 1995 Act, §2, Comment (emphasis added). Yet rather than “apply the statute as written,” see *State ex rel. Frazier v. Meadows*, 193 W. Va. 20, 24, 454 S.E.2d 65, 69 (1994), the trial court blatantly ignored the language of both Section 36-8-2(e) and the historical commentary and basis for including this subsection in the UPA, turning instead to provisions of West Virginia’s Insurance Code addressing the time period by which an insurance company is required to settle a claim made by an individual beneficiary. See slip op. at 10 (citing W.Va. Code §33-13-14).

The trial court also determined that the facts of *Connecticut Mutual* were not analogous to, and therefore not controlling of, the proceedings below. In this regard, the trial court distinguished *Connecticut Mutual* as presenting “a discrete issue of statutory interpretation and does not involve any Contract Clause challenge to the constitutionality of the West Virginia statute.” Slip op. at 12. In fact, the holding in *Connecticut Mutual* is directly controlling here, as it forms the basis of Section 2(e) of the 1995 Act, which West Virginia adopted in passing the UPA. Accordingly, the *Connecticut Mutual* decision is clearly relevant here and should be fully considered in the determination of whether unclaimed life insurance proceeds can be presumed abandoned and, therefore, subject to report and remittance under the UPA.

**D. The trial court erred in relying on W.Va. Code §33-13-14 to conclude that “receipt of due proof of death” is necessary in order to establish that an “obligation to pay arose” under West Virginia’s UPA**

Section 36-8-2 of West Virginia’s UPA provides that the “[a]mount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated” is “presumed abandoned” “three years after the *obligation to pay arose* or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based.” W.Va. Code §36-8-2(a)(8) (emphasis added).

The trial court read this provision of the UPA – that an “obligation to pay” must arise before the amount owed by an insurer can be presumed abandoned – in conjunction with the provision of West Virginia’s Insurance Code requiring that “when a policy shall *become a claim by the death of the insured*[,] settlement shall be made *upon receipt of due proof of death.*” W.Va. Code. §33-13-14 (emphasis added); slip op. at 7. Section 33-13-14, makes clear that a claim is incurred upon the death of the insured under a life insurance policy and goes on to establish the time by which that claim must be settled with the individual beneficiary.

Nevertheless, based upon its reading of these two statutes together, the trial court erroneously concluded that “receipt of due proof of death,” as set forth in West Virginia’s insurance laws, is necessary before any “property” in the form of death benefits can come into existence under the state’s unclaimed property laws. In so doing, the trial court erroneously conflates (i) when a life insurance policy becomes a *claim* (and thus gives rise to an “obligation to pay” under the policy) with (ii) when *settlement* of the claim must be made with the *beneficiary* (“upon receipt of due proof of death”).

Moreover, for the reasons set forth above, it was erroneous for the trial court to rely on an insurance statute establishing conditions that must be satisfied before a life insurance company must pay a single beneficiary, for the determination of when unclaimed life insurance proceeds

are presumed abandoned and report and delivery to the state under the state's unclaimed property statute. *Connecticut Mutual* and its progeny make clear that certain conditions applicable to an individual owner do not apply to the state and do not prevent property from being presumed unclaimed. *See also Rose's Stores, Inc. v. Boyles*, 106 N.C. App. 263, 268 (1992) (holding that, absent risk of double recovery by the owner, property is subject to report and delivery under North Carolina law even though the owner has not made a demand on the holder as he or she otherwise would be required to make); *Callahan v. Marshall Field & Co.*, 83 Ill. App.3d 811, 818 (Ill. App. Ct. 1980) (holding that unused gift certificates and credits were required to be reported and delivered even though contractual conditions setting forth the time by which they must be presented had not been met).

West Virginia's UPA makes clear, as set forth above, that unclaimed life insurance proceeds may be presumed abandoned and, therefore, subject to report and delivery to the state notwithstanding the beneficiary's failure to make a demand for payment or provide proof of death or any other documentation as required by the policy. *See also In re Petition for Declaratory Statement of Thrivent Financial for Lutherans*, Case No. 137963-13-DS (Fla. Dep't Fin. Serv. Oct. 4, 2013), slip op. at 9 ("a life insurance policy 'becomes a claim upon the death of the insured'" and "the proceeds are 'presumed unclaimed' ... notwithstanding the owner's failure to make a demand or present documents required to receive payment").

#### **IV. CONCLUSION**

For these reasons, the Amicus urges that this Court overrule the trial court's finding that there is no 'property' subject to or reportable under the UPA until the beneficiary has made a valid claim and submitted proof of death or the insured attains the limiting age.

## I. INTRODUCTION OF AMICUS CURIAE<sup>1</sup>

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Finally, section 36-8-2(e) of the UPA states that "[p]roperty is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment." W.Va. Code §36-8-2(e).

**B. Unclaimed life insurance proceeds may be subject to reporting under West Virginia's UPA based on the death of the insured alone, even though the beneficiary has not made a valid claim and submitted proof of death, or the insured has not yet attained the limiting age**

The trial court erred in finding that “there is no ‘property’ subject to or reportable under the UPA until the beneficiary has made a valid claim and submitted proof of death or the insured obtains the limiting age.” *State of West Virginia ex rel. Perdue v. Nationwide Life Ins. Co.*, Civil Action No. 12-C-287 (Cir. Court Putnam Cty. Dec. 27, 2013), slip op. at 10. To the contrary, under controlling authority, although an individual beneficiary may be required to supply such documentation before receiving payment, it is well-settled that satisfaction of these conditions is not required in order for unclaimed life insurance proceeds to be subject to report and remittance as unclaimed property under state unclaimed property laws.

In *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U.S. 541 (1948), the United States Supreme Court affirmed the constitutionality of unclaimed property statutes making life insurance proceeds subject to reporting and delivery based on the death of the insured alone, notwithstanding the fact that the beneficiary has not provided proof of death or met other contingencies in the policy. The appellant insurance companies therein had argued that the statute was unconstitutional because “the policy terms provide that the insurer shall be under no obligation until proof of death or other contingency is submitted and the policy surrendered.” *Id.* at 545-46. The U.S. Supreme Court was not persuaded, finding:

Unless the state is allowed to take possession of sums in the hands of the companies classified by [the unclaimed property law] as abandoned, the insurance companies would retain moneys contracted to be paid on condition and which normally they would have been required to pay. ... *The fact that claimants against the companies would under the policies be required to comply with certain policy conditions does not affect our conclusion.* The state may more properly be custodian and beneficiary of abandoned property than any person. ... *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.* The state is acting as a conservator, not as a party to a contract.

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**C. The trial court erred in concluding that both W.Va. Code §36-8-2(e) and *Connecticut Mutual* are irrelevant to the determination of when unclaimed life insurance proceeds are presumed abandoned and required to be reported and delivered to the state**

In reaching the conclusion that "there is no 'property' subject to or reportable under the UPA until the beneficiary has made a valid claim and submitted proof of death or the insured obtains the limiting age," slip op. at 10, the trial court erroneously discounted both the opinion of the U.S. Supreme Court in *Connecticut Mutual* as well as the West Virginia Legislature's inclusion of subsection 36-8-2(e) in its passage of the UPA.

As an initial matter, Section 36-8-2(e) unambiguously states that "[p]roperty is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or

present an instrument or document otherwise required to obtain payment.” On its face, this subsection applies to all types of unclaimed property covered by the UPA. Moreover, the application of this provision to unclaimed death benefits clearly is established by the Comment to subsection 2 of the 1995 Act, which Section 36-8-2(e) adopted verbatim, which explicitly provides that “no possible harm can result in requiring that holders turn over the property, *even though the owner has not presented proof of death or surrendered the insurance policy.*” See 1995 Act, §2, Comment (emphasis added). Yet rather than “apply the statute as written,” *see State ex rel. Frazier v. Meadows*, 193 W. Va. 20, 24, 454 S.E.2d 65, 69 (1994), the trial court blatantly ignored the language of both Section 36-8-2(e) and the historical commentary and basis for including this subsection in the UPA, turning instead to provisions of West Virginia’s Insurance Code addressing the time period by which an insurance company is required to settle a claim made by an individual beneficiary. *See* slip op. at 10 (citing W.Va. Code §33-13-14).

The trial court also determined that the facts of *Connecticut Mutual* were not analogous to, and therefore not controlling of, the proceedings below. In this regard, the trial court distinguished *Connecticut Mutual* as presenting “a discrete issue of statutory interpretation and does not involve any Contract Clause challenge to the constitutionality of the West Virginia statute.” Slip op. at 12. In fact, the holding in *Connecticut Mutual* is directly controlling here, as it forms the basis of Section 2(e) of the 1995 Act, which West Virginia adopted in passing the UPA. Accordingly, the *Connecticut Mutual* decision is clearly relevant here and should be fully considered in the determination of whether unclaimed life insurance proceeds can be presumed abandoned and, therefore, subject to report and remittance under the UPA.

**D. The trial court erred in relying on W.Va. Code §33-13-14 to conclude that “receipt of due proof of death” is necessary in order to establish that an “obligation to pay arose” under West Virginia’s UPA**

Section 36-8-2 of West Virginia’s UPA provides that the “[a]mount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated” is “presumed abandoned” “three years after the *obligation to pay arose* or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based.” W.Va. Code §36-8-2(a)(8) (emphasis added).

The trial court read this provision of the UPA – that an “obligation to pay” must arise before the amount owed by an insurer can be presumed abandoned – in conjunction with the provision of West Virginia’s Insurance Code requiring that “when a policy shall *become a claim by the death of the insured*[,] settlement shall be made *upon receipt of due proof of death.*” W.Va. Code. §33-13-14 (emphasis added); slip op. at 7. Section 33-13-14, makes clear that a claim is incurred upon the death of the insured under a life insurance policy and goes on to establish the time by which that claim must be settled with the individual beneficiary.

Nevertheless, based upon its reading of these two statutes together, the trial court erroneously concluded that “receipt of due proof of death,” as set forth in West Virginia’s insurance laws, is necessary before any “property” in the form of death benefits can come into existence under the state’s unclaimed property laws. In so doing, the trial court erroneously conflates (i) when a life insurance policy becomes a *claim* (and thus gives rise to an “obligation to pay” under the policy) with (ii) when *settlement* of the claim must be made with the *beneficiary* (“upon receipt of due proof of death”).

Moreover, for the reasons set forth above, it was erroneous for the trial court to rely on an insurance statute establishing conditions that must be satisfied before a life insurance company must pay a single beneficiary, for the determination of when unclaimed life insurance proceeds

are presumed abandoned and report and delivery to the state under the state's unclaimed property statute. *Connecticut Mutual* and its progeny make clear that certain conditions applicable to an individual owner do not apply to the state and do not prevent property from being presumed unclaimed. *See also Rose's Stores, Inc. v. Boyles*, 106 N.C. App. 263, 268 (1992) (holding that, absent risk of double recovery by the owner, property is subject to report and delivery under North Carolina law even though the owner has not made a demand on the holder as he or she otherwise would be required to make); *Callahan v. Marshall Field & Co.*, 83 Ill. App.3d 811, 818 (Ill. App. Ct. 1980) (holding that unused gift certificates and credits were required to be reported and delivered even though contractual conditions setting forth the time by which they must be presented had not been met).

West Virginia's UPA makes clear, as set forth above, that unclaimed life insurance proceeds may be presumed abandoned and, therefore, subject to report and delivery to the state notwithstanding the beneficiary's failure to make a demand for payment or provide proof of death or any other documentation as required by the policy. *See also In re Petition for Declaratory Statement of Thrivent Financial for Lutherans*, Case No. 137963-13-DS (Fla. Dep't Fin. Serv. Oct. 4, 2013), slip op. at 9 ("a life insurance policy 'becomes a claim upon the death of the insured'" and "the proceeds are 'presumed unclaimed' ... notwithstanding the owner's failure to make a demand or present documents required to receive payment").

#### **IV. CONCLUSION**

For these reasons, the Amicus urges that this Court overrule the trial court's finding that there is no 'property' subject to or reportable under the UPA until the beneficiary has made a valid claim and submitted proof of death or the insured attains the limiting age.

**SUBMITTED BY:**



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**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
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**JOHN D. PERDUE, Plaintiff Below,**

**Petitioner,**

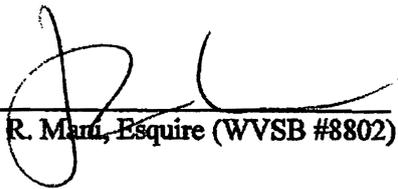
**v.**

**NATIONWIDE LIFE INSURANCE COMPANY, et al.,  
Defendants Below,**

**Respondents.**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that the foregoing **PROPOSED AMICUS BRIEF OF NATIONAL ASSOCIATION OF UNCLAIMED PROPERTY ADMINISTRATORS IN SUPPORT OF JOHN D. PERDUE** has been served upon attached counsel of record by depositing a true and exact copy thereof, via facsimile, hand delivery, email and/or United States mail, postage prepaid and properly addressed on this 27<sup>th</sup> day of May, 2014.

  
\_\_\_\_\_  
Jonathan R. Mann, Esquire (WVSB #8802)