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18 September 2015

Via katie.robinson@uniformlaws.org

Rex Blackburn, Co-Chair
Michael Houghton, Co-Chair
Charles A. Trost, Reporter & Draftsman
Drafting Committee To Revise the *Uniform Unclaimed Property Act*
c/o Katie Robinson, Uniform Law Commission Drafting Committee

RE: Life Insurance Revisions to the *Uniform Unclaimed Property Act*

Dear Messrs. Blackburn, Houghton, Trost & Members of the Committee:

The Committee first exposed draft life insurance revisions to the model act on June 8. The ACLI objected to the draft revisions on July 6. See Attachment 1. Eleven insurance commissioners on July 9 advised the Committee not to authorize unclaimed property administrators to require life insurance companies to use the Social Security Death Master File (DMF), among other things. See Attachment 2. Committee leadership released a new framework for the treatment of life insurance policies on July 12. See Attachment 3.

The ACLI is encouraged by the framework and is relying upon its guidance for consideration of further revision of the life insurance provisions of the draft model act. However, the framework guidance that the revised model act must acknowledge the Death Master File and explain how it relates to unclaimed property obligations remains difficult for the ACLI. We have made clear ACLI objections to this proposition from the beginning.

The Drafting Committee perhaps misapprehends the complexities and implications of acknowledging the Death Master File in the unclaimed property laws. The treasurers and their auditors are not demanding simple use of the federal database. They are demanding insurance companies to import the Death Master File into corporate books and records in a manner or for a use never contemplated by the companies or policy owners. They demand that insurance companies employ the treasurers' auditor's secret "fuzzy logic" to accomplish "fuzzy matching" of policy owner records with DMF information. They demand the companies assume the costs and burdens to prove a fuzzy match wrong. Such demands transcend simple use of the DMF and exponentially increase controversies, costs and compliance difficulties. Much of what is demanded by the treasurers is arbitrary. As the principal auditor for the treasurers has explained in court proceedings:

1. [The auditor's] matching processes and procedures are not known to anyone outside of [the auditor] ... The Global Regulatory Agreement (GRA) does not explain *how* [the auditor] identifies a match. The "Rules for Identifying Death Matches" as described in the GRA are rules governing when ... customer data will be deemed to match the DMF; the GRA *does not* include details about [the auditor's] processes and procedures for identifying DMF matches. ... In other words, the companies that enter into GRAs with [the auditor] —not to mention [the auditor's] competitors—have no knowledge of [the

auditor's] processes and procedures for identifying a DMF match. Nor does [the auditor] communicate the details of its matching processes and procedures to its state clients, including in response to procurement requests. In addition, in obtaining its patent for the method of uniquely identifying an individual, [the auditor] did not disclose the details of its proprietary matching processes and algorithms.

2. Even within [the auditor], its matching processes and procedures are a black box. Only three ... officers and employees—its President, its Chief Technology Officer ("CTO"), and the CTO's assistant—have access to [the auditor's] entire matching process. ...

3. [The auditor] goes to great lengths to protect the secrecy of its matching processes and procedures. ... [The auditor] has implemented various controls to ensure that its applications and processes are kept secure, including the following: access to company networks is limited to equipment issued by [the auditor]; employees undergo annual security training; state of the art full disk encryption on its servers housing core processing applications; multi-factor authentication for access to processing servers; housing application servers within a top tier secure colocation facility which utilizes state of the art security standards; housing applications on a secure server which is separated from the remainder of its systems to further prevent unauthorized entry...

4. The matching of policy data to the DMF is just one part of [the auditor's] proprietary and confidential technology. ... [The auditor's] process involves obtaining data, warehousing the data, performing the matching process, and applying analytics to the data. ... These examinations are [the auditor's] primary source of revenue, and the disclosure of [the auditor's] processes and procedures to its competitors would jeopardize its position in the marketplace.

5. [The auditor] spent more than five years developing, testing, and refining its matching process. ... The development of [the auditor's] proprietary and confidential technology was an iterative process that involved multiple stages of testing its process through trial and error, including manually confirming the accuracy of matching results generated from large data sets. ...

6. [The auditor's] competitors are not able to duplicate [the auditor's] matching process. [The auditor] was formed in 2007 and began its first unclaimed property audit in 2009. At the time, other companies were already established in the marketplace providing unclaimed property auditing services yet there had been no significant audits of unclaimed death benefits. Since 2011, [the auditor] has recovered more than \$1.4 billion in unclaimed property for its state clients, of which [the auditor] is typically compensated at a rate of approximately 10% of the property recovered. Additionally, [the auditor] has identified more than \$300 million dollars of unclaimed benefits that have been returned directly to individuals. No other third party auditor has had similar results identifying unclaimed life insurance policy proceeds.

The 22 insurance companies which entered into Global Settlement Agreements with the treasurers of 30 states expressly deny wrongdoing or any violations of any law but rather agreed to avoid long-term litigation and administrative proceedings and resolve differences of opinions about the interpretation of unclaimed property laws. We are advised by regulators that they represent about 70% of premium in the United States. Such companies sell both life insurance and annuities and often many varieties of both. They have large operations and numerous employees providing economies of scale, operational experience with and staff dedicated to DMF comparisons, and probably staff and operations dedicated to exceeding policy and contract requirements to know their customers and facilitate beneficiary claims assistance.

They are not representative of the other 828 insurance companies underwriting about 30% of premium in the United States.

The insurance companies expressing the most concern with the proposition of compelling DMF use by statute may not write both annuities and life insurance, or may not write the kinds of contracts and annuities believed to be of targeted interest to the auditors. They do not have operations and staff dedicated to DMF use. They have limited, if any, experience with the DMF. They certainly do not have staff devoted to DMF search activities, which were never contemplated in the insurance laws, policies and contracts now in force, i.e., policies and contracts approved by their insurance regulators. These are the companies that face the greatest burdens in the proposed DMF processes under discussion.

For these reasons, the ACLI renews its concerns about acknowledging Death Master File requirements in the revised model act. ACLI members do not shirk utilization of the federal database. The ACLI made clear in 2012 that its members will support new requirements for life insurer administration of unclaimed policy benefits and dormant retained asset accounts based upon reasonable and consistent standards which are triggered when the name and other sufficient identifying information of a person insured under a policy or owning a retained asset account appear in the Death Master File. To such end 17 states have enacted modern insurance laws addressing insurance company administration of unclaimed life insurance benefits since 2012. Relevant insurance legislation is pending in another three states.

The ACLI is determined to defend traditionally-respected principles related to unclaimed property law. Since 1954 these principles have been premised on the proposition that the substantive law of insurance precedes and informs the administration of unclaimed life insurance benefits pursuant to the unclaimed property laws. Acknowledging the Death Master File in unclaimed property laws will confront insurance companies in each of 50 states with two different laws with two different regulators each authorized to require DMF use. It will make impossible the achievement of the fundamental goal of the Commission itself, i.e., *to accomplish uniform laws*.

For these reasons, the ACLI demurs to the need to acknowledge the Death Master File in the draft revision of the *Uniform Unclaimed Property Act*. The ACLI continues to evaluate the framework for opportunities to agree to revisions acceptable to all interested parties.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Kelly", with a long horizontal flourish extending to the right.

Attachments:

1. ACLI-ULC Letter objecting to current draft revisions (7/6/15)
2. Letter of Eleven Insurance Commissioners to ULC (7/9/15)
3. "Framework for Treatment of Life Insurance Policies" (7/12/15)



6 July 2015

To every Uniform Law Commissioner *via email*

RE: *Uniform Unclaimed Property Act Proposed Revisions Relating to Life Insurance*

Dear Uniform Law Commissioner:

On July 14 in Williamsburg, Drafting Committee Chairmen Michael Houghton and Rex Blackburn will read the proposed revision of the captioned act. Please be aware that the life insurance provisions at §3(h) ("Presumptions of Abandonment") include unnecessarily controversial concepts uniquely departing from ULC practice of statutory coordination to create statutory conflict. ACLI requests the provision be entirely deleted. You might be led to believe §3(h) must be respectable because its provisions:

- apparently are included by unanimous consent of the entire drafting committee;
- seem to rely upon and incorporate elements of a National Conference of Insurance Legislators' model act; and
- advance the unclaimed property administrators' theory of insurance company responsibilities which led to 18 multi-state settlements extolled in government press releases accelerating escheat of \$1.7 billion of property never classified as unclaimed.

But there are other considerations important to your understanding which we introduce to you now. These controversial provisions:

- Were first exposed to interested parties on June 15 with no opportunity to appeal to the drafting committee for moderation;
- Were unneeded by the administrators to achieve their celebrated multi-state settlements based on existing laws and all editions of the *UUPA*;
- If not deleted, make likely the determined opposition of the life insurance industry to the revision effort and make unlikely the legislative adoption of a revised *UUPA*;
- are one-sided concessions to unclaimed property administrators with no balancing respect for traditional insurance laws or traditional precepts of unclaimed property administration;
- bootstrap greater ownership rights for Government than exist for a property holder in violation of the Derivative Rights Doctrine;
- contravene the intention of National Conference of Insurance Legislators by embedding its model into the *UUPA* rather than enacted into insurance laws (already accomplished in 17 states);
- usurp substantive insurance law, creating a conflict of authority and wrongfully elevating unclaimed property administration over substantive insurance regulation of contract provisions, requirements and interpretations, especially with regard to proof of death;

- guarantee conflicting regulatory requirements pertaining to insurance company use of the federal Death Master File because there is no way to compel the uniform cooperation of 100+ unclaimed property administrators and insurance commissioners in 50+ states;
- impose dormancy triggers which create an absurd potential for violation of the *UUPA* without the knowledge of the property holder; and
- exempt arbitrarily different types of insurance from new obligations to be administered by unclaimed property administrators in a manner trumping insurance commissioner authority and contrary insurance laws.

We would be happy to discuss these matters, even briefly, with you in Williamsburg. Otherwise please know that the American Council of Life Insurers will continue its respectful, good faith participation in drafting committee activities even while extending our efforts to inform you of the details of the important considerations introduced to you here. Best wishes for your uniform law endeavors, sincerely,

Michael Lovendusky
American Council of Life Insurers
call 202.624.2390 in Williamsburg

David Westmark
Thrivent Financial
Chairman of the ACLI Unclaimed
Property Working Group
call 920.915.8900 in Williamsburg

Copy: katierobinson@uniformlaws.org

July 7, 2015

Rex Blackburn, Co-Chair
Michael Houghton, Co-Chair
Drafting Committee to Revise the *Uniform Unclaimed Property Act*
c/o Katie Robinson, Staff Liaison
Uniform Law Commission
111 N. Wabash Avenue, Suite 1010
Chicago, IL 60602

Dear Commissioners Blackburn and Houghton and Drafting Committee Members:

On behalf of the state insurance commissioners signed below, thank you for the opportunity to comment on the anticipated revisions to the Uniform Unclaimed Property Act and to provide an update on the activities of the Unclaimed Life Insurance Benefits Working Group of the NAIC Life Insurance and Annuities Committee related to addressing the issue of unclaimed death benefits

Late last year, the Working Group was charged with conducting a study to determine if recommendations should be made to address the consistent handling of unclaimed death benefits. In beginning this study, in March, the Working Group held an information-gathering session at the NAIC Spring National Meeting. During this session, the Working Group heard from various stakeholders to better understand the issues from each of their unique perspectives in order to determine what recommendations, if any, to develop and make to address these issues. The Working Group continued its discussions in August at the NAIC Summer National Meeting.

During a conference call in September, the Working Group voted unanimously to recommend to the Life Insurance and Annuities Committee and the NAIC that a new NAIC model law be developed to address the issue of unclaimed death benefits. A subgroup of the Working Group is currently in the process of drafting the model law. The Working Group anticipates consideration of its recommendation at the NAIC Fall National Meeting in November. The Working Group reached this recommendation after hearing testimony and receiving comments from various stakeholders regarding the inconsistent approach being taken in the states related to the handling of unclaimed life insurance benefits and recent conflicting court cases on the issue. The purpose of the new NAIC model law is to provide a uniform and consistent approach to the handling of death benefits.

With regard to possible revisions you may be considering for the Uniform Unclaimed Property Act, we would like to advise against considering any amendments that would have the effect of potentially creating a dual regulatory scheme for life insurers and negating the on-going efforts by state insurance regulators and legislators to develop a uniform approach to the handling of unclaimed death benefits. Such amendments include those that would permit state unclaimed property administrators to compel life insurers to periodically check their records against the U.S. Social Security Death Master File (DMF). State insurance regulators have long been the primary regulators of life insurers. This comprehensive regulatory framework addresses all aspects of financial solvency and market conduct. The responsibility

to regulate the financial and market conduct of insurers must remain with state insurance regulators rather than with unclaimed property administrators who have no experience in these matters.

Again, thank you for the opportunity to comment.

Sincerely,

Julie Mix McPeak, Tennessee
Chair, NAIC Life Insurance and Annuities (A) Committee

Julie Mix McPeak



James Donelon, Louisiana

James A. Donelon



Ken Selzer, Kansas

Ken Selzer



Ralph Hudgens, Georgia

Ralph Hudgens



Mike Chaney, Mississippi

Mike Chaney



John Doak, Oklahoma

John D. Doak



Nick Gerhart, Iowa

Nick Gerhart



Ted Nickel, Wisconsin

Ted Nickel



Katharine L. Wade, Connecticut

Katharine L. Wade



Todd E. Kiser

TODD E. KISER, Commissioner



Allen Kerr, Arkansas

Allen Kerr



REVISED UNIFORM UNCLAIMED PROPERTY ACT
Framework for Treatment of Life Insurance Policies

1. The Act must provide clear guidance regarding obligations of issuers of life insurance policies.
2. Recent controversies regarding the consequence of postings on the Social Security Death Master File database (the "Database") lead to the conclusion that the Act must acknowledge the existence of the Database and explain how the Database relates to Unclaimed Property obligations.
3. The Act will not mandate that insurers search the Database.
4. The Act will not mandate that the State insurance regulators require insurers to search the Database.
5. The Act will not mandate that the State unclaimed property administrator require insurers to search the database.
6. The Act will provide that, if a State insurance regulator issues regulations regarding searches of the Database, then the insurance regulator must first solicit and consider input from the Unclaimed Property Administrator.
7. The Act will acknowledge that (1) an insurer may choose, voluntarily, to search the Database, and (2) an insurer may be required, as a result of State legislative or administrative action, to search the Database. The Act will explain how such searches impact obligations relating to Unclaimed Property.
8. The Act will provide that, if an insurer searches the Database and finds a match, then the policy is deemed to have matured and the 3 year abandonment period begins to run and continues to run, unless:
 - (1) the insurer is able to determine that the insured in fact has not died; or
 - (2) the insurer is able to determine that a policy exclusion prevents the death benefit from being owed, e.g., the cause of death was suicide and the policy expressly excludes that cause of death.
9. No later than 60 days before filing the Unclaimed Property report that would list a particular life insurance policy death benefit, the insurer must contact the apparent owner or, as the case may be, the beneficiary or beneficiaries, notifying them that they must file a claim in the manner required by the policy in order to receive the death benefit.
10. If the apparent owner or beneficiary communicates with the insurer but fails to comply with the insurer's claim procedure, then the death benefits are not presumed to be abandoned and the insurer is not required to pay the death benefits to the Unclaimed Property administrator.