

Center for Insurance Research

2298 Massachusetts Ave. • Cambridge, MA 02140

April 8, 2014

Rep. Robert Damron, Co-Chair
Rep. George Keiser, Co-Chair
NCOIL Unclaimed Property Task Force
385 Jordan Road
Troy, NY 12180

RE: CIR Recommendations and Comments on Unclaimed Property Model

Dear Representatives Damron and Keiser:

I am writing to offer my comments on the Unclaimed Property model from my perspective as a consumer advocate (and advisory member of the Task Force). The Center for Insurance Research (CIR) is a nonprofit, public policy and advocacy organization founded in 1991 that represents consumers on insurance matters nationally.¹

CIR has been involved with the subject of Unclaimed Property matters for several years and we have made presentations at the NAIC and NCOIL on the subject. We have also followed closely the results of the recent examinations and settlement agreements conducted by insurance regulators.

CIR first wishes to commend the members of NCOIL who have stepped forward in recent years to investigate and address the issues surrounding Unclaimed Property. The NCOIL Model Act (and enacted versions thereof) has helped ensure the return of millions in insurance benefits to families across the country. Ensuring that Unclaimed Property is paid out as promised is vitally important because it of the assistance it provides to families -- particularly when those families are dealing with funeral and other expenses -- in addition devastating emotional losses.

I. CIR Recommendations

A. Unclaimed Property Disclosures – CIR recommends the Unclaimed Property model be amended to match the NCOIL Beneficiaries' Bill of Rights (governing Retained Asset Accounts) in requiring that insurers report each year the amount of funds they turn over to state abandoned property funds.

Disclosure of the amount of funds transferred to abandoned property each year is essential for policymakers and consumer intermediaries like CIR to investigate and understand the scope of unclaimed insurance proceeds. Without this information, policymakers will be unable to compare the changes in abandoned property transfers

¹ I am the Director of the Center for Insurance Research and serve as one of the members of the National Association of Insurance Commissioners ("NAIC") consumer funded liaison program. I also serve on the consumer advisory panel of the Interstate Insurance Product Regulation Commission.

from year to year or identify the insurers and types of contracts that account for the most substantial amount of unclaimed property.

A number of years ago, CIR staff members sent a survey to the unclaimed property managers of each state seeking the total amount of unclaimed funds contributed by insurance companies for the prior year. The results were dismal, to say the least. Only three states responded to the survey, and even those only answered a handful of questions. It was apparent from the answers we received that unclaimed property administrators were not tracking the amount of funds transferred by the insurance industry. CIR believes a good first step in evaluating and identifying fixes to the abandoned property system would be to begin collecting the relevant information in the annual financial reports of insurers.

B. Consider Modifications to State Escheatment Laws - The vast majority of insurance consumers do not know how abandoned property laws may potentially interact with their insurance policies. Concepts like the "limiting age" are arcane concepts. A family member who searches an unclaimed property database is not likely to realize that it might be decades before a policy belonging to a deceased loved one might wind up in the abandoned property funds.² The Task Force should discuss whether escheatment laws should be modernized in light of the unique nature of insurance products.

C. Improving Searches by Insurers - CIR first became familiar with Unclaimed Insurance Proceeds issues while we were working on demutualization matters in the early 2000's. Many large mutual insurers were converting into stock companies and distributing billions of dollars of surplus to their policyholders in the process. We, along with many state officials, were amazed to learn that many life insurers had lost track of hundreds of thousands of policyholders who were owed money.

The root of the problem lay in record-keeping. Many large insurers had written hundreds of thousands of industrial or small face policies in prior decades (with premiums collected on a weekly basis door to door by agents), and after being in force for many decades these policies became "paid up." This meant no more premiums were owed, and the only future interaction the insurer would have with a policyholder would be the payment of a claim upon death. This did not provide a lot of incentive for insurers to track the whereabouts and well-being of these policyholders and these older policies began falling through the cracks.

² Many states use a limiting age to determine when a life insurance policy will escheat to the abandoned property fund. While the use of the Death Master File ("DMF") may certainly reduce the number of policies that reach the limiting age before being identified, the DMF will never account for 100% of policies. The limiting age is typically 100, so absent a DMF hit, a life insurance policy would only escheat to the state a set number of years (3 or 7 being common) after the insured would have reached their 100th birthday. So if an individual passes away at 85, it may be 18-25 years before that policy would escheat to the abandoned property fund. By that point, family members will no doubt long since have ceased looking for unclaimed property accounts.

Further investigation by state officials showed that many of these policyholders were not in fact "lost." Instead, the demutualizing insurer had conducted only a cursory search to locate its missing policyholders - sometimes searching only a single database (rather than an aggregated database). Secretaries of state in various jurisdictions have located numerous "lost" policyholders simply by performing a thorough search of state databases (voter registration rolls, tax rolls and Department of Motor Vehicle records).³

Before turning a death benefit or any other contract proceeds over to a state abandoned property fund, insurers should be required to conduct a thorough search for the policyholder.

D. Setting Policyholder Communication Standards – The Unclaimed Property Model Act should establish standards for policyholder communication and tracking. There is no reason, for example, why an insurer should not send out an annual post-card reminder to its policyholders each year - even for paid up policies. Regular communications will prevent policyholders, and their families, from losing track of an insurance policy that might be four or five decades old. As the demutualization distributions have shown, the failure to communicate with policyholders on a regular basis can result in millions, or even billions of dollars in going unclaimed.

II. CIR's Comments on Other Suggestions

A. Constitutional – Contract Clause/Prospective v. Retrospective

CIR does not believe the constitutional questions raised by Kemper Home Service Companies and Maynard Cooper & Gale create concerns sufficient to alter the Model Act so that it only applies prospectively. The April 1, 2013 opinion in *United Insurance Company of America v. Kentucky* case, for example, succinctly disposes of the "prospective only" arguments. While that case may be subject to appeal, we believe the trial court's opinion is quite persuasive and other comments from industry members show the caselaw is "mixed" at best - which does not justify a "prospective only" approach.

The "legal memorandum" submitted to the Task Force in February appears to contain an incomplete analysis, given its failure to analyze the cases that rejected a constitutional claim. Moreover, the written comments appear to be confusing different issues. Not all the states where caselaw was identified have enacted the Model Act. There are legal differences between a state where an insurance commissioner maybe trying to implement use of the DMF under his or her general regulatory authority (or the unfair trade practices act) and a jurisdiction that has passed a version of the Model Act.

³ *State wants insurers to track policies*, Joe Bartolotta, Boston Herald (March 14, 2000); *Secretary of the State Susan Bysiewicz finds thousands more lost policyholders eligible for cash or stock from insurance companies*, Office of the Secretary of the State Susan Bysiewicz (April 6, 2000); *Secretary of State Markowitz Finds Lost Policy Holders*, Office of the Vermont Secretary of State Deborah L. Markowitz (June 2, 2000).

B. Bipartisan Budget Reconciliation Act of 2013

CIR supports and applauds NCOIL for its letter supporting continued access for insurers to the DMF. The NAIC and state insurance regulators have weighed in on the issue as well and CIR expects that a satisfactory compromise will be no doubt be reached with the Department of Commerce.

C. NAIC Unfair Trade Practices Model Act

CIR does not object to the ACLI suggestion that a reference to 'general business practice' be added to Section 5. It is not the intent of the Unfair Trade Practices Model Act to penalize an insurer for a single incident, but rather an unfair pattern or practice.

D. Search Requirement

CIR does not believe that a reconciliation should be performed only once (and using only the update files thereafter) - in case corrections or other adjustments to the DMF occur that are not reflected in the update files.

Primerica Life has raised the question as to whether searches should be done on an annual, rather than quarterly basis. CIR believes that if the Task Force wishes to consider or permit less frequent searching, it should be tied to the performance of an insurer. The data collection suggested above will permit regulators to monitor the performance of insurers in identifying and paying claims. Tying the frequency to a performance metric would reward insurers that do a thorough job in claims handling.

Similarly, certain lines of business may justify less frequent DMF reconciliation searches - but CIR believes that tracking the amounts of abandoned property that escheats to the states each year is the best way to determine the appropriate frequency of searches. This also benefits companies that keep adequate records. CIR believes that insurers should not be excused from performing DMF searches simply because it would be burdensome due to their own poor record-keeping.

CIR does not object to provisions that would allow the commissioner or adopting legislature to phase in the DMF search requirements, provided that any "phase-in" period not exceed 1 year.

E. Proposed Exclusions/Exemptions

CIR is not sure that insurers should be exempted from the DMF search requirements on policies simply because there is an active premium payment. While the suggestion seems logical at first, it overlooks the fact that policies may be paid via an automatic debit process or by someone other than the insured. We would appreciate hearing more from

the industry on the impact of an exclusion like this would have on such auto-debited contracts.

F. Contingency Fee Auditors

CIR does not support a blanket prohibition on the use of contingency fee audits for unclaimed property examinations at this time. CIR has numerous concerns about such arrangements, but believes the subject needs further investigation before a ban is imposed (such as consideration of alternative compensation mechanisms).

G. Impact on Small Companies

CIR does not agree that all small companies should be exempted from the requirements of the Model Act. The ACLI suggestion that discretion be provided to the commissioner may have merit (provided a hardship standard is incorporated to the Model), but as noted above CIR also supports a performance based approach. A small company with a good performance record (*i.e.* not turning over an inordinate amount of Unclaimed Property to state funds), or one that sells a type of product that produces little in the way of Unclaimed Property, may merit less frequent searches - if approved by the commissioner under a reasonable standard.

I look forward to working with members of Task Force in the days ahead. Thank you for the consideration of my comments on this important matter.

Sincerely,

/s/

Brendan Bridgeland
Director