



## UNCLAIMED PROPERTY ALERT

### Significant Unclaimed Property Case Decided In Favor Of Thrivent Financial For Lutherans

On July 9, 2018 the California Superior Court heard arguments and granted Thrivent Financial for Lutherans (“Thrivent”) motion for summary judgment in the case of Thrivent Financial for Lutherans vs. Betty Yee (in her official capacity as California State Controller) and the Office of the California State Controller (“State” or “Controller”).

The court agreed with the Plaintiff’s arguments that the Controller’s Office had adopted two regulations without following the procedural requirements of the California Administrative Procedure Act (APA).

#### **Background**

The State Controller’s Office is responsible for the enforcement of the California Unclaimed Property Law. During a recent trend where the life insurance industry was targeted by a number of states for compliance with the unclaimed property laws, the Controller’s office (and/or their auditors) frequently asserted that in order for a life insurance company to be in compliance with the unclaimed property laws, the insurance companies were required to proactively search the Social Security Death Master File (“DMF”) to determine if a policy owner was deceased (“External Database Regulation”). If the owner was deceased, the state also asserted that the “Dormancy Trigger” began at the owner’s date of death versus the notification of death required by California state statute.

Thrivent challenged the Controller’s Office arguing that the company had followed the law and that the regulations implemented by the Controller’s Office were not valid and enforceable.

## **Decision rendered in favor of the Plaintiff**

The Court ruled in favor of Thrivent agreeing that **the two “underground regulations” adopted by the state are “INVALID.”**

The court also noted that as a life insurer obligated to comply with the Unclaimed Property Law, Thrivent is entitled to know what it needs to do and what it can forbear from doing without running afoul of the requirements imposed by the state.

## **What does this mean for the state?**

The state is prohibited from enforcing or threatening to enforce these regulations based on their interpretation unless they follow the formal procedures as required by law. They must remove all references to those regulations in the materials they disseminate to life insurance companies unless accompanied by a conspicuous disclaimer that the purported requirements of these two regulations are merely the state’s views and do not have any legal effect.

Furthermore, the state may not impose financial consequences of any kind on a life insurance company for failing to comply with either of these two regulations, currently or retroactively.

## **What does this means to you?**

This decision can be considered a significant win for the Insurance/Holder community. The judgement reinforces that the state cannot develop its own interpretations and regulations, that are not supported in statute, without promulgating the regulation through the proper administrative rule process.

Until and unless the state promulgates regulations through the California Administrative Procedure Act or through state statute, holders are not compelled to comply with these regulations and the state is prohibited from imposing financial consequences for not complying.

[The full text of the summary judgement can be found here.](#)

This article is intended for educational purposes and should not be considered legal advice. For additional questions concerning this alert, contact Dana Terry at [dterry@georgeson.com](mailto:dterry@georgeson.com) or 201-539-1998.

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