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SPRINGFIELD

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FINANCIAL INSTITUTIONS:  
Applicability of Uniform  
Disposition of Unclaimed  
Property Act to Underlying  
Shares of Stock

Shinae Chun, Director  
Department of Financial Institutions  
100 West Randolph, Suite 15-700  
Chicago, Illinois 60601

Dear Director Chun:

I have your letter wherein you inquire whether underlying shares of stock are "held or owing", under section 9 of the Uniform Disposition of Unclaimed Property Act (Ill. Rev. Stat. 1989, ch. 141, par. 109), and are therefore reportable as abandoned property. For the reasons hereinafter stated, it is my opinion that underlying shares of stock are reportable as unclaimed property under the Act.

According to your letter, underlying shares of stock are shares issued by a business association, banking organization or financial organization, the certificates for which are in the possession of the shareholders, but regarding which the shareholders have failed to cash dividend checks, to correspond with the issuing corporation or to respond to the issuing corporation's attempts to make contact. In other words, an underlying share of stock is an ownership interest in a business entity, the certificate or other evidence of which is presumably in the possession of the missing owner.

Section 9 of the Uniform Disposition of Unclaimed Property Act provides, in pertinent part:

"All intangible personal property, not otherwise covered by this Act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this State in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 7 years after it became payable or distributable is presumed abandoned. \* \* \*"

There appear to be no reported cases concerning whether section 9 is applicable to underlying shares of stock. The Commissioners' comment to section 9 of the 1954 Uniform Disposition of Unclaimed Property Act, from which section 9 of the Illinois Act is derived, states that it is an "omnibus section covering all other intangible personal property not otherwise covered" by the Act, and that it would embrace, among other items, stocks, bonds and certificates of membership in

corporations and securities. (Uniform Disposition of Unclaimed Property Act (1954) (U.L.A.) § 9 (comment).) Further, section 5 of the 1954 Uniform Act (Uniform Disposition of Unclaimed Property Act (1954) (U.L.A.) § 5) and section 2a of the Illinois Uniform Disposition of Unclaimed Property Act (Ill. Rev. Stat. 1989, ch. 141, par. 102a) specifically provide that stocks, and interest and dividends thereon, which remain unclaimed for 7 years are presumed to be abandoned. Since this earlier section would appear to cover any shares of stock for which certificates are in the possession of the issuing corporation, the reference in the comment to section 9 is evidence of an intention that underlying shares of stock be included therein.

Two Supreme Court decisions relating to abandoned property laws in New York and New Jersey support the conclusion that underlying shares of stock are "held or owing" within the meaning of such statutes. In Connecticut Mutual Life Insurance Co. v. Moore (1948), 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863, the Court held that New York could take possession of abandoned money in the hands of out-of-State life insurance companies when the money was "held or owing" as a result of policies issued to New York residents. Regarding the situs of the funds, the Court stated that "the statutory reference to 'any moneys held or owing' does not refer to any specific

assets of an insurance company, but simply to the obligation of the life insurance company to pay." (Connecticut Mutual Life Insurance Co. v. Moore (1948), 333 U.S. 541, at 548, 68 S. Ct. 682, at 686, 92 L. Ed. 863, at 870.) Similarly, in the case of underlying shares, it is the intangible interest in the issuing company which is reflected on the company's books that is "held or owing" to the owner. By analogy, a shareholder who loses a share certificate may obtain a new one, but his failure to do so does not extinguish his property right in the underlying shares. The State, acting as conservator of the missing owner's property, might make a demand similar to that which the shareholder could make. It is the obligation, not the certificate, which is "held or owing".

In Standard Oil Co. v. New Jersey (1951), 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078, the Court held that the New Jersey escheat statute was applicable to underlying shares of stock, reasoning that the shares were "held" by the corporation:

" \* \* \*

\* \* \* It is true that fiction plays a part in the jurisprudential concept of control over intangibles. There is no fiction, however, in the fact that choses in action, stock certificates and dividends held by the corporation, are property. Whether such property has its situs with the obligor or the obligee or for some purposes with both has given rise to diverse views in this Court.

We see no reason to doubt that, where the debtor and creditor are within the jurisdiction

of a court, that court has constitutional power to deal with the debt. Since choses in action have no spatial or tangible existence, control over them can 'only arise from control or power over the persons whose relationships are the source of the rights and obligations.' [Citation omitted.] Situs of an intangible is fictional but control over parties whose judicially coerced action can make effective rights created by the chose in action enables the court with such control to dispose of the rights of the parties to the intangible. \* \* \*

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341 U.S. at 439-40, 68 S. Ct. at 828-29, 95 L. Ed. at 1088-89.

Although certificates evidencing ownership of the shares in question were not in the possession of the corporation, the Court nevertheless had power to determine the rights of parties to the shares, since they are intangible choses in action, the situs of which is not necessarily determined by the location of the certificates. The Court held that the shares were "unclaimed" and subject to escheat because the whereabouts of the owners were unknown after they failed to cash dividend checks for 14 years.

A construction of section 9 of the Illinois Act which would include underlying shares of stock among the property which it covers is consistent with the Standard Oil Co. decision, and with the general objectives of the Uniform Act as well. One court has stated, in construing section 9, that:

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\* \* \* The overriding objective of the Uniform Act is to give the benefit of the use of

abandoned property to all citizens of a state connected with the property rather than to the fortuitous holder of the property. Section 9 was obviously meant to be given a broad reading to promote this objective because it expressly applies to all intangible personal property.

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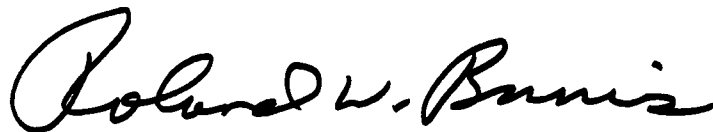
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Travelers Express Co. v. State of Minnesota (D. Minn. 1981), 506 F. Supp. 1379, 1388, aff'd 664 F.2d 691 (8th Cir. 1981), cert. denied 456 U.S. 920, 102 S.Ct. 1780 (1982).

In conclusion, based upon the cases cited above, it is my opinion that underlying shares of stock are unclaimed property held or owing by the issuing business entity within the meaning of section 9 of the Uniform Disposition of Unclaimed Property Act, and are therefore subject generally to the provisions of that Act.

Very truly yours,



A T T O R N E Y G E N E R A L