

Liability Claims Impact Unclaimed Property

By Josie Lowman and Phyllis J. Shambaugh

The California Court of Appeals addressed unclaimed property issues. In the first case to address the issue, the California Court of Appeals in *Harris v. Verizon Communications*¹ held that the indemnification provision of the California Unclaimed Property Law (“UPL”)² relieves a Holder³ of all liability for any loss resulting from the Holder’s delivery of the stock to the California Controller (“Controller”).⁴ The Court of Appeals held, in an earlier case involving the same plaintiffs and same stock, that the state had absolute immunity from suit. As a result, California was not liable for the fact that the stock increased in value after the state was required to sell the stock.

This article gives a brief overview of unclaimed property law regarding corporate stock and addresses the issues debated in the court’s decisions in *Harris*.

Why and When Must a Business Report and Remit Unclaimed Property?

All 50 states plus the District of Columbia have escheat, abandoned or unclaimed property laws. Unclaimed property laws were enacted to protect the interests of True Owners,⁵ to relieve Holders of the bookkeeping problems associated with tracking the unclaimed property and to give states the benefit of the use of unclaimed property.

The states currently have the use of billions of dollars in unclaimed property in their coffers.

California has more than 7.2 billion dollars in unclaimed funds, of which approximately 20 percent is eventually claimed by the True Owners. Of the reported unclaimed property, 42 percent was remitted by banks, 32 percent by corporations, and 18 percent by insurance companies and broker dealers. Florida has over \$1 billion in unclaimed property, which will be deposited into its school fund if the funds remain unclaimed. Ohio has over \$700 million in its unclaimed property fund, and Pennsylvania has over \$1 billion. The states have a keen interest in receiving and holding all unclaimed property to which they are entitled.

Generally, the UPL statutes require Holders to turn over property to the state once the property is presumed abandoned. To date, states have concentrated on collecting abandoned property such as stock, dividends, savings and checking accounts, insurance policies, rent and utility deposits, credit memos, wages or commissions, securities, credit balances, uncashed checks, and the contents of safe deposit boxes.

State statutes differ on the types of property that must be reported and the time period in which the property is presumed abandoned, commonly known as the abandonment period. The recent trend has been to shorten the abandonment period, thus requiring the Holder to turn over the property after a shorter period of time, usually between one and three years.

Once the property is presumed abandoned, the Holder is required, after giving notice to the True Owner, to report and remit the property to the state. Most UPL statutes are custodial in nature, and require the state to maintain the property for the benefit of the True Owner. Generally, there is no time limitation in which the True Owner must claim her or his property.

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Reporting and Remitting Unclaimed Stock

One substantial unclaimed property issue regarding stock is determining if and when the stock is presumed abandoned or unclaimed. Stocks are generally presumed abandoned if, after the state's abandonment period, the owner fails to:

- claim a dividend, stock split or other distribution; or
- correspond with the holder regarding the stock.

Generally, when dividends are issued, a Holder can easily determine when the abandonment period begins to run. Holders are required to keep records of whether a True Owner has cashed dividend checks or claimed a stock split or other distribution.

A Holder may have difficulty, however, determining when the abandonment period begins to run for stocks that do not issue dividends. Correspondence from the True Owner regarding his or her stock may not be kept in a central location.

It may be unclear what type of correspondence qualifies. For example, if the owner has an active credit account with the Holder, has the owner corresponded with the Holder regarding the stock? In many states, the UPL is not clear on the type of correspondence required to demonstrate the True Owner's interest in the stock.

Unclaimed property laws were enacted to protect the interests of True Owners, to relieve Holders of the bookkeeping problems associated with tracking the unclaimed property, and to give states the benefit of the use of unclaimed property.

The Penalty for Unclaimed Stock

A potentially costly problem for Holders arises when the True Owner claims her or his stock after the stock has been reported and remitted to the state, and the state has sold the stock.

In the case of remitted stock, the UPL in many states requires the state, after expiration of a period of time and public notice, to sell the stock. If the True Owner claims the stock after the sale, the state pays the True Owner the proceeds from the stock sale. If the state still holds the stock, however, the state returns the stock certificate to the True Owner.

If the stock's value increases dramatically after the state's sale, the True Owner may have lost a significant amount of money. In such cases, True Owners have filed suit against the state and the Holder, asserting that the state and/or the Holder must pay the True Owner the appreciated value of the stock at the time the True Owner claims it, not the value of the stock at the time of the state's sale.

While the state's UPL generally make it clear that the state has absolute immunity from suit in these circumstances, it is less clear whether a Holder has absolute immunity against such claims.

California Court Holds UPL Grants State and Holder Absolute Immunity

Factual Background

Gene Harris⁶ was employed by GTE in California during the 1970s and 1980s. Part of his compensation

was GTE stock. Harris claimed that GTE did not provide him a stock certificate or the notices and information required by law. Harris also alleged that GTE failed to notify him of annual and special shareholder meetings, which prevented Harris from voting and taking action with respect to his stock.

In 1990, GTE transferred Harris' GTE shares to the California Controller. Pursuant to the California UPL, the Controller collected the dividends and interest from the stock and sold the stock two years later.⁷ During the late 1990s, Harris became aware of his stock ownership, GTE's transfer of the stock to the Controller and the Controller's subsequent sale of the stock. Harris filed a claim with the Controller under the UPL and the Controller paid Harris the proceeds from the sale of the GTE stock.

In September 2001, Harris filed the class action lawsuit against the Controller⁸ and followed with a suit against Verizon (GTE's successor by merger)

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in October 2001. Harris alleged that GTE was liable for damages caused by its transfer of Harris' shares to the Controller. In addition, Harris claimed that GTE breached its fiduciary duty, was negligent, converted his property without notice, committed constructive fraud and violated the Securities Act of 1933 because GTE allegedly knew or could have found Harris' address and notified him of the impending stock transfer. Finally, Harris asserted that he and other similarly situated plaintiffs suffered monetary damage because the stock price increased greatly due to the Verizon merger, which occurred after the Controller sold the stock.

Among other defenses, GTE countered that the immunity provision (hereinafter "Immunity Statute") in the UPL barred all of Harris' claims. The trial court held that the UPL granted GTE absolute immunity from any damages or losses resulting from its transfer of the stock to the Controller, even if GTE's transfer was wrongful. Harris appealed to the Court of Appeals.

Relevant Immunity Statute

The California Immunity Statute provides that upon delivery of a duplicate stock certificate to the Controller, the holder of the certificate:

[S]hall be relieved from all liability of every kind to any person including, but not limited to, any person acquiring the original certificate or the duplicate of the certificate issued to the Controller for any losses or damages resulting to that person by the issuance and delivery to the Controller of the duplicate certificate.⁹

The Court of Appeals held that this provision provides the Holder absolute immunity, stating:

The fact that GTE allegedly failed to comply with the UPL's notice requirements cannot diminish the absolute immunity conferred by section 1532, subdivision (b).¹⁰

In addressing Harris' argument that the immunity was conditional and did not apply if the property was escheated wrongfully, the Court stated that such an interpretation would "render the immunity meaningless because immunity comes into play when, and only when, the defendant is charged with wrongdoing."¹¹ Thus, the fact that GTE may or may not have complied with the notice provisions of the Immunity Statute, in

the Court's view, did not negate the absolute immunity provided to Holders.

The Court of Appeals noted that its holding is consistent with the UPL's purpose—to give California, rather than the Holders—the benefit of the use of the property. Further, the Court reasoned that absent a grant of absolute immunity, Holders would be reluctant to report and remit property, thus, denying the state the benefit of the property's use and contravening the UPL's purpose.

Dissent Would Have Allowed Pre-Remittance Damages

Concluding that the immunity provision protected GTE only from losses resulting from the delivery of the stock to the Controller, the dissent would have permitted Harris to pursue damages from GTE for any losses resulting from its conduct that prevented Harris from exercising his right to sell the stock prior to the delivery to the Controller.¹² The dissent supported "conditional immunity" despite the majority's warning that without absolute immunity Holders would be reluctant to report unclaimed property. The dissent reasoned that "conditional immunity" was consistent with another purpose of the California UPL—reuniting a True Owner with her or his property.¹³

What About Stock Reportable Outside California?

The 1981 Uniform Unclaimed Property Act (UUPA) is a model act promulgated by the National Conference of Commissioners on Uniform State Laws. The UUPA was intended to minimize differences in unclaimed property laws from one state to another and many states have enacted it.¹⁴ California's UPL immunity provision is similar to the 1981 UUPA immunity provision, which provides:

Upon delivery of a duplicate certificate to the administrator, the holder ... is relieved of all liability of every kind ... to every person ... for any losses or damages resulting to any person by the issuance and delivery to the administrator of the duplicate certificate.

This provision mirrors key language found in the California UPL, *i.e.*, "the holder is relieved of all liability" and "for any losses or damages." Thus, under the court's reasoning in *Harris*, states

that have adopted the 1981 UUPA should grant absolute immunity.

The 1995 version of the UUPA simplified and arguably clarified the language of the 1981 Act and states the following¹⁵:

A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

Arguably, the 1995 UUPA similarly supports the conclusion that a Holder is granted absolute immunity because the 1995 UUPA states that a Holder “is relieved of *all* liability arising thereafter.” (Emphasis added.) Although True Owners may argue about the

placement of the word “thereafter,” Holders will note that damages from a state’s sale of stock must arise after delivery to the state.

Conclusion

Unclaimed property compliance can be tricky because of the variations in law from state to state. Even vigilant Holders run into murky issues. Unclaimed property laws should not be interpreted as a sword against businesses that remit unclaimed property, but instead in a manner to encourage Holders to remit property, to benefit the state by permitting use of the property, and to provide a mechanism to reunite the property with the True Owner.

ENDNOTES

¹ *Harris v. Verizon Communications*, 46 Cal. Rptr. 3d 185, 141 Cal. App. 4th 573 (2006).

² Cal. Civ. Proc. Code §§1500–82 (indemnification regarding stock at §1532(b)).

³ “Holder” is used in this article to refer to any person, including a corporation or other entity, which is in possession of property that is owed to another.

⁴ *Harris v. Westly*, 10 Cal. Rptr. 3d 343, 116 Cal. App. 4th 214 (2004).

⁵ True Owner is the person or entity with a legal or equitable interest in the property that is in the possession of the Holder.

⁶ Harris is the lead plaintiff of a group of minority GTE/Verizon shareholders. All plaintiffs were employees of GTE and received stock as part of their employment compensation.

⁷ Cal. Civ. Proc. Code §1563.

⁸ This suit is addressed in *Harris v. Westly*, 10 Cal. Rptr. 3d 343, 116 Cal. App. 4th 214 (2004).

⁹ Cal. Civ. Proc. Code §1532.

¹⁰ 46 Cal. Rptr. 3d, *supra* note 1, at 188–89.

¹¹ *Id.*

¹² *Id.*, at 194.

¹³ *Id.*

¹⁴ Twenty-nine states have adopted a version of or some provisions of the 1981 UUPA.

¹⁵ Eleven states have adopted a version of or some provisions of the 1995 UUPA. The remaining states have either unique statutes or versions and/or combinations of earlier uniform acts.

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