

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DELAWARE v. NEW YORK

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 111, Orig. Argued December 9, 1992—Decided March 30, 1993

Most of the funds at issue are unclaimed dividends, interest, and other securities distributions held by intermediary banks, brokers, and depositories in their own names for beneficial owners who cannot be identified or located. New York escheated \$360 million in such funds held by intermediaries doing business in that State, without regard to the beneficial owner's last known address or the intermediary's State of incorporation. After Delaware initiated this original action against New York, alleging that certain of the securities were wrongfully escheated, the Special Master filed a report recommending that this Court award the right to escheat to the State in which the principal executive offices of the securities issuer are located. Both Delaware and New York lodged exceptions to the report.

Held: The State in which the intermediary is incorporated has the right to escheat funds belonging to beneficial owners who cannot be identified or located. Pp. 4-17.

(a) Under the primary and secondary rules adopted in *Texas v. New Jersey*, 379 U. S. 674, 680-682, reaffirmed in *Pennsylvania v. New York*, 407 U. S. 206, and reaffirmed in this case, the Court resolves disputes among States over the right to escheat abandoned intangible personal property in three steps. First, the Court must determine the precise debtor-creditor relationship, as defined by the law that created the property at issue. Second, because the property interest in any debt belongs to the creditor rather than the debtor, the primary rule gives the first opportunity to escheat to the State of the creditor's last known address, as shown by the debtor's books and records. Third, if the primary rule fails because the debtor's records disclose no address or because the creditor's last known address is in a State whose laws do not provide for escheat, the secondary rule awards the right to escheat to the

State in which the debtor is incorporated. Pp. 4-7.

DELAWARE v. NEW YORK

Syllabus

(b) Because the bulk of the abandoned distributions at issue cannot be traced to any identifiable beneficial owner, much less one with a last known address, these funds fall out of the primary rule and into the secondary rule. P. 7.

(c) Intermediaries who hold unclaimed securities distributions in their own names are the relevant ``debtors." Issuers cannot be considered ``debtors" once they make distributions to intermediaries that are record owners, since payment to a record owner discharges all of an issuer's obligations to the beneficial owner under the Uniform Commercial Code, which is the law in all 50 States and the District of Columbia. Instead, an intermediary serving as the record owner is the ``debtor" insofar as it has a contractual duty to transmit distributions to the beneficial owner. Unlike an issuer, it remains liable should a "lost" beneficial owner reappear to collect distributions due under such a contract. The Master thus erred in concluding that the issuer is the relevant ``debtor," and Delaware's and New York's exceptions in this regard are sustained. Pp. 8-12.

(d) Precedent, efficiency, and equity dictate rejection of the second major premise underlying the Master's recommendation: his proposal to locate a corporate debtor in the jurisdiction of its principal domestic executive offices rather than in the State of its incorporation. This *sua sponte* proposal would change the Court's longstanding practice under *Texas* and *Pennsylvania*. Moreover, as the Court recognized in *Texas, supra*, at 680, the proposal would leave too much for decision on a case-by-case basis. The mere introduction of any factual controversy over the location of a debtor's principal executive offices needlessly complicates an inquiry made irreducibly simple by *Texas's* adoption of a test based on the State of incorporation. Finally, the proposal cannot survive independent of the Master's erroneous decision to treat the issuers as the relevant ``debtors." The arguably arbitrary decision to incorporate in one jurisdiction bears no less on a company's business activities than the equally arbitrary decision to locate its principal offices in another jurisdiction, and there is no inequity in rewarding a State whose laws prove more attractive to firms that wish to incorporate. Thus, Delaware's exception to the Master's proposal in this regard is sustained. Pp. 12-15.

(e) New York's exception to the Master's application of the primary rule is overruled. New York contends that many of the disputed funds need not be escheated under the secondary rule because a statistical analysis of the relevant transactions on the books of the debtor *brokers* reveals creditor brokers, virtually all of whom have New York addresses. This proposal rests on the dubious supposition that the relevant ``creditors"

DELAWARE v. NEW YORK

Syllabus

under the primary rule are other brokers, whereas this Court has already held that "creditors" are the parties to whom the intermediaries are contractually obligated to deliver unclaimed securities distributions. Moreover, the exception must fail because the Court rejected a practically identical proposal in *Pennsylvania, supra*, at 214–215. On remand, however, if New York or one of the other claimant States can prove on a transaction-by-transaction basis that the creditors who were owed particular distributions had last known addresses within its borders or can provide some other proper mechanism for ascertaining those addresses, that State will prevail under the primary rule, and the secondary rule will not control. Pp. 15–17.

(f) To depart from the Court's interstate escheat precedent by crafting different rules for the novel facts of each case would generate much uncertainty and threaten much expensive litigation. If the States are dissatisfied with the outcome of a particular case, they may air their grievances before Congress, which may reallocate abandoned property among them without regard to the Court's rules. P. 17.

Exceptions sustained in part and overruled in part, and case remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. WHITE, J., filed a dissenting opinion, in which BLACKMUN and STEVENS, JJ., joined.