IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JIMMY PATRONIS, in his official capacity as Chief Financial Officer of the State of Florida, and the FLORIDA DEPARTMENT OF FINANCIAL SERVICES,

APPELLANTS,

Case No.: 1D18-2114

v. **L.T. No.: 2016-CA-001009**

UNITED INSURANCE COMPANY OF AMERICA; THE RELIABLE LIFE INSURANCE COMPANY; MUTUAL SAVINGS LIFE INSURANCE COMPANY; and RESERVE NATIONAL LIFE INSURANCE COMPANY,

APPELLEES

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AMICUS BRIEF OF THE NATIONAL ASSOCIATION OF UNCLAIMED PROPERTY ADMINISTRATORS IN SUPPORT OF JIMMY PATRONIS AND THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES

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I. IDENTITY OF THE AMICUS CURIAE AND ITS INTEREST IN THE CASE

The issues presented in the matter *sub judice* concern the conditions under which unclaimed life insurance proceeds may be presumed unclaimed and, therefore, subject to report and remittance to the state under the Florida Disposition of Unclaimed Property Act, chapter 717, Florida Statutes (2017)(the "Unclaimed Property Act"), as amended by Chapter 2016-219, Laws of Florida (the "Amendments"). The Amicus submitting this brief, the National Association of Unclaimed Property Administrators ("NAUPA"), has a significant interest in the nationwide administration of state unclaimed property laws, including those pertaining to unclaimed insurance benefits, which are implicated by this appeal.

NAUPA is a non-profit organization affiliated with the National Association of State Treasurers. Members represent all states, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands and other international governmental entities. NAUPA seeks to promote and strengthen unclaimed property administration and interstate cooperation in order to enhance States' return of unclaimed property to rightful owners and provide a forum for the open exchange of information and ideas. The issues presented in this case are important to NAUPA and its members since they impact the administration of unclaimed property laws both in Florida and in other states.

The "administration" of unclaimed property extends well beyond the states simply collecting and assuming custody of lost assets. All states have active owner location programs (including no-cost, searchable Internet databases) designed to reunite individuals with the property owed to them. The states are sincere in their shared desire to locate owners and in recent years, have paid upwards of $3 billion in claims annually. In many cases, the payment of unclaimed property to an owner can be highly impactful in that individual's life.[1] In all cases, the State is ensuring that rightful owners receive property to which they are entitled.

Over the past several years, unclaimed property programs across the country have sought to remedy a widespread problem that was revealed following the initiation of multi-state unclaimed property audits of the largest life insurance companies for unpaid death benefits. It soon became apparent to administrators, as well as state insurance regulators, that insurance companies were in possession of a significant number of policies belonging to insureds who died while their policies were in force, but the benefits had not been paid out or remitted to the applicable state as unclaimed property. In most cases, the beneficiaries of these policies, or

[1] NAUPA's website includes a link to a video documenting the states' successes in locating and paying owners of unclaimed property, and includes commentary from claimants who have recovered lost assets. See https://www.youtube.com/watch?v=_tY-YBI8Jmg&feature=youtu.be.

their heirs, were unaware that these policies existed and accordingly, the death benefits due and owing had not been paid. The discovery of this problem led to concerted actions by unclaimed property administrators, along with state insurance regulators, to investigate, and come up with solutions to ensure that unclaimed death benefits were timely paid to the rightful owners.[2]

As a result of these investigations and multi-state unclaimed property audits, NAUPA's members and insurance regulators across the country have entered into settlement agreements with over two dozen of the largest life insurance companies in the country in order to resolve the issue of unpaid death benefits.[3] These

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[2] For example, hearings involving unclaimed property administrators and insurance regulators were held in Florida, California and Illinois. *See In re Metropolitan Life Ins. Co.* (Fla. Office of Ins. Reg., May 19, 2011), transcript available at https://www.floir.com/siteDocuments/TRANSCRIPT_MetLife.pdf (last visited July 30, 2018); *In re Nationwide Ins. Co.* (Fla. Office of Ins. Reg., May 19, 2011), transcript available at www.floir.com/siteDocuments/TRANSCRIPT_Nationwide.pdf (last visited July 30, 2018); *In re Metropolitan Life Ins. Co.'s Practices and Procedures Relating to the Use of Death Master File Data and Related Information* (Cal. Ins. Commissioner, May 23, 2011), transcript available at www.insurance.ca.gov/upload/MetLifeHearingTranscript.pdf (last visited July 30, 2018); Illinois Treasurer, Unclaimed Life Insurance Policies Task Force, *Final Report* (Jan. 12, 2017), available at http://www.illinoistreasurer.gov/TWOCMS/media/doc/TULIP_FINAL_011217.pdf (last visited July 30, 2018).

[3] *See, e.g.*, California State Controller, Protecting Life Insurance Beneficiaries, https://www.sco.ca.gov/protecting_life_insurance_beneficiaries.html (last visited July 30, 2018) (listing 28 agreements California and other states have entered into with life insurers); Florida Office of Insurance Regulation, Life Claim Settlement Practices, https://www.floir.com/Sections/LandH/life_claims_settlement_practices_hearing0

agreements, in which as many as 52 jurisdictions have participated, put into place procedures to identify unpaid policies that were in force at the time the insured died, and either locate and pay the beneficiaries, or turn the proceeds over as unclaimed property, where the state continues efforts to locate the owner.

In addition to regulatory investigations and settlements, NAUPA has advocated for and supported the efforts of legislators across the country to remedy the issue of unpaid death benefits and to prevent this problem from arising again in the future by enacting some form of law requiring life insurers to search for unpaid death benefits by comparing their policies against the United States Social Security Administration's Death Master File (the "DMF") or a similar database, in order to determine if an insured is deceased. In addition to Florida, more than a dozen states have enacted laws that require insurers to regularly conduct such searches of all their in-force policies. Further, three of these states (Illinois, New York, and West Virginia) also require insurers to search lapsed and terminated policies going back a certain number of years. Most of these laws were based on the Model Unclaimed Life Insurance Benefits Act, first adopted by the National Conference of Insurance

5192011.aspx (last visited July 30, 2018) ("Nationally, the life claim settlement agreements have resulted in returning over $8.7 billion to beneficiaries directly by the companies and over $3.25 billion being delivered to the states, who continue efforts aimed at locating and paying the beneficiaries.").

Legislators ("NCOIL") in 2011, and last amended in 2014, which applies to all in-force policies.

NAUPA has previously participated as Amicus in *State ex rel. Perdue v. Nationwide Life Ins. Co.*, 777 S.E.2d 11 (W. Va. App. 2015), which involved similar issues as those here.[4] In that action, the Supreme Court of Appeals of West Virginia reversed the trial court's opinion dismissing the complaint the state's treasurer had filed against sixty-three national insurance companies for unlawfully retaining life insurance proceeds in contravention of the state's unclaimed property act. In reaching its decision, the *Perdue* court noted that "[i]t is apparent from the nationwide legislative reaction to the proliferation of settlements emanating from the insurers' conduct, . . . that our sister states have perceived an ambiguity in their own statutory schemes that they wish to clarify." *Id.* at 19. "[O]ne may conclude from the gross conspicuousness of the disputes and their resolution that the insurers have been on notice for some time that similar, meritorious claims are likely present here. . . ." *Id.* at 20, n.9 (citing Devin Hartley, Note, *A Billion Dollar Problem: The*

[4] The issues presented in the West Virginia life insurance case and this matter do not present questions on which NAUPA's member states are divided. It is the shared view of NAUPA's members that the dormancy period for insurance benefits payable on death begins to run on the date of death of the insured, and that any other contractual requirements that are to be satisfied by a beneficiary before the insurer is required to settle a claim do not alter the fact that it is the death of the insured that gives rise to "the obligation to pay." See http://www.uniformlaws.org/shared/docs/Unclaimed%20Property/Comments%20-%20NAUPA.zip

Insurance Industry's Widespread Failure to Escheat Unclaimed Death Benefits to the States, 19 Conn. Ins. L.J. 363, 391 (2013)).

Faced with the same issues as have been encountered throughout the country, the Florida Legislature enacted the Amendments in order to clarify insurance companies' obligations to identify, report and remit unclaimed death benefits in a manner that is consistent with the Legislature's understanding of the original intent of section 717.107, Florida Statutes (2017), as well as the agreements reached in the various unclaimed property settlements from the last several years. NAUPA has grave concerns that if the Amendments to Florida's unclaimed property laws are not upheld here, Florida, and potentially many other states, will face the same problem once again as unclaimed death benefits build up on insurance companies' books. NAUPA therefore intercedes in this action as Amicus in order to assist the Court in recognizing the importance of beneficiaries receiving the death benefits they are due in a timely manner as intended, rather than allowing insurance companies hold on to these proceeds for decades after the insureds have died, and significantly decreasing the likelihood that beneficiaries will be located and paid.

II. SUMMARY ARGUMENT

The trial court erred in finding that the Amendments could not be applied retroactively for several reasons. First, the trial court overlooked that fact that the Amendments were enacted in response to this Court's decision in *Thrivent Fin. for*

Lutherans v. Dep't of Fin. Servs., 145 So. 3d 178 (2014), and should be considered merely to clarify the original legislative intent of section 717.107, Florida Statutes. The Legislature's understanding of the original intent of section 717.107, Florida Statutes, is consistent with well-settled unclaimed property precedent established by the United States Supreme Court in *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U.S. 541 (1948), which was codified by Section 717.102(2), Florida Statutes (2017).

Second, even if deemed substantive, the Amendments may be applied retroactively as Appellees have conceded that they do not have any vested rights in unclaimed property and are unable to identify any substantive new obligations imposed by the Amendments. Therefore, as described in detail below, NAUPA respectfully submits that this Court should reverse the trial court's ruling, and hold that the Amendments to section 717.107, Florida Statutes, may be applied retroactively without violating any of the Appellees' Due Process rights.

III. ARGUMENT

A. The Amendments May Be Applied Retroactively Because They Are Clarifications of Florida's Previous Unclaimed Property Laws

In finding that the Amendments could not be applied retroactively, the trial court specifically stated that it was bound by this Court's decision in *Thrivent Fin. for Lutherans v. Dep't of Fin. Servs.*, 145 So. 3d 178, 182 (Fla. 1st DCA 2014). That decision reversed the declaratory statement issued by the Department of Financial Services finding that (1) the dormancy period for unclaimed death benefits under

section 717.107, Florida Statutes, commences upon the death of the insured; and (2) insurance companies have an obligation to exercise “due diligence" through the utilization of reasonable and prudent methods to locate unclaimed property apparent owners by reviewing databases such as the DMF to ascertain whether any of its insureds have died. The trial court, however, overlooked the fact that the Amendments were a direct response to the *Thrivent* decision. This fact should have been considered by the trial court in determining whether the Amendments may be applied retroactively.

Specifically, the Amendments, which were enacted unanimously by the Florida Legislature in 2016, explicitly provide that life insurance proceeds are presumed unclaimed five years after the date of death of the insured, regardless of when the insurance company receives due proof of death for the purpose of paying the beneficiary. Ch. 2016-219, § 1, Laws of Fla. (codified at § 717.107(1), Fla. Stat.). The Amendments also explicitly require life insurance companies to compare their insurance policies to the DMF. *Id.* (codified at § 717.107(8)(a), Fla. Stat.). Finally, if an insurance company discovers a death through a comparison of its records against the DMF, the Amendments require it to attempt to locate and contact the beneficiaries. *Id.* (codified at § 717.107(9), Fla. Stat.). As the Supreme Court has held, “when ‘an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, *a court may consider that amendment as*

a legislative interpretation of the original law and not as a substantive change thereof." *Metro. Dade Cty. v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 503 (Fla. 1999) (emphasis added). Here, the Amendments, which were passed "soon after controversies as to the interpretation" of section 717.107, Florida Statutes, arose, are a legislative clarification that these requirements were obligations even under prior law.

The Legislature's clarifications of section 717.107, Florida Statutes, are consistent with well-settled authority recognizing that, although an individual beneficiary may be required to file a claim and provide proof of death before receiving payment, satisfaction of these conditions is not required in order for unclaimed death benefits to be subject to report and remittance as unclaimed property under state unclaimed property laws. In *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U.S. 541 (1948), the U.S. Supreme Court affirmed the constitutionality of unclaimed property statutes making life insurance proceeds subject to reporting and remittance based on the death of the insured alone, notwithstanding the fact that the beneficiary has not provided proof of death or met other contingencies in the policy. The appellant insurance companies therein had argued that the statute was unconstitutional because "the policy terms provide that the insurer shall be under no obligation until proof of death or other contingency is

submitted and the policy surrendered." *Id*. at 545-46. The U.S. Supreme Court was not persuaded, finding:

> Unless the state is allowed to take possession of sums in the hands of the companies classified by [the unclaimed property law] as abandoned, the insurance companies would retain moneys contracted to be paid on condition and which normally they would have been required to pay. … *The fact that claimants against the companies would under the policies be required to comply with certain policy conditions does not affect our conclusion*. The state may more properly be custodian and beneficiary of abandoned property than any person. … *When the state undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the state to comply with conditions that may be quite proper as between the contracting parties*. The state is acting as a conservator, not as a party to a contract.

333 U.S. at 546-47 (emphasis added).

Florida's Unclaimed Property Act codifies the Supreme Court's holding in *Connecticut Mutual*. Specifically, section 717.102(2), Florida Statutes, provides that property is payable under chapter 717 "notwithstanding the owner's failure to make demand or present any instrument or document required to receive payment." As explained in the Commissioner's Comment to Section 2 of the Uniform Unclaimed Property Act (1981) (the "1981 Act"), which Florida adopted through its enactment of section 717.102(2), Florida Statutes, this provision "is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his or her entitlement to property, fails to present to the holder evidence of ownership or to make a demand for payment." *See* 1981 Act, §2, Comment (citing *Conn. Mut.*, 333 U.S. 541). Accordingly, unclaimed life insurance

proceeds may be subject to report and remittance to the state based upon the death of the insured alone, and it is not necessary that the beneficiary have previously made a claim and submitted "proof of death" in order for the unclaimed life insurance proceeds to be deemed "unclaimed" under the Act.

On its face, section 717.102(2), Florida Statutes, applies to all types of unclaimed property covered by the Unclaimed Property Act. Moreover, the application of this provision to unclaimed death benefits clearly is established by the Comment to subsection 2 of the 1981 Act, mirrored verbatim by section 717.102(2), Florida Statutes, which explicitly provides that "no possible harm can result in requiring that holders turn over the property, *even though the owner has not presented proof of death or surrendered the insurance policy*." *See* 1981 Act, §2, Comment (emphasis added). The Amendments are entirely consistent with both this Comment and *Connecticut Mutual* and should be construed as the Legislature's attempt to clarify the existing obligations of insurance companies to ensure that they report unclaimed death benefits in their possession.[5]

[5] In *Thrivent*, this Court found that section 717.102(2), Florida Statutes, was not relevant because it was "a general rule [that] does not control over section 717.107." *Thrivent*, 145 So. 3d at 181. NAUPA respectfully submits, however, that the Court did not take into consideration the connections between section 717.102(2), Florida Statutes, the Comments to the 1981 Act upon which it is based, and *Connecticut Mutual*, which make clear that this section was intended to apply to unclaimed life insurance proceeds.

Florida is not alone in seeking to enforce this precedent. This is the approach shared by NAUPA's member states. Additionally, in 2015, the Supreme Court of Appeals of West Virginia (the "West Virginia Court") overturned a decision dismissing a complaint brought by the West Virginia Treasurer against 63 national life insurers for failing to use the date of death to determine the dormancy period and failing to employ procedures, such as searching the DMF, to determine if insureds had died, in violation of the West Virginia Uniform Unclaimed Property Act of 1997 (the "WV UPA"). *Perdue v. Nationwide Life Ins. Co., et al.*, 777 S.E.2d 11 (W.Va. 2015). In doing so, the West Virginia Court analyzed both Section 2 of the 1995 Uniform Unclaimed Property Act (which is virtually identical to Section 2 of the 1981 Act) and its underpinnings in *Connecticut Mutual*[6] and held that "in the case of life insurance policy proceeds, the three-year dormancy period leading to the presumption of abandonment commences with the death of the insured." *Id*. at 19.[7] Additionally, although the West Virginia Court did not find that West Virginia's unclaimed property laws specifically required insurers to search the DMF, it held that insurers were required to "account for and turn over that property to the

[6] The WV UPA was based on the 1995 version of the Uniform Unclaimed Property Act. However, as the West Virginia court noted, the "1995 version of section 2(e) and its attendant commentary regarding *Moore* were reproduced almost verbatim from the 1981 version" that underlies Florida's Act. *Id*. at 17.

[7] The dormancy period under the WV UPA is three years, while under the Florida Unclaimed Property Act it is five.

Treasurer." *Id*. The court went on to explain that "[e]ach insurer is free to determine how it will investigate and discover whether insureds are yet living. . . [and] an insurer may well choose to review the DMF as the best or most efficient way to perform its duties under the Act." *Id*. Florida has simply taken the logical next step of specifying the process insurers issuing policies in Florida are required to follow in order to identify their own potential unclaimed accounts.

In short, the Amendments are consistent with the Comment to subsection 2 of the 1981 Act and *Connecticut Mutual* and its progeny. These controlling authorities confirm that the Amendments are Legislative clarifications of the pre-existing requirements of section 717.107, Florida Statutes, setting forth when unclaimed life insurance proceeds should be presumed unclaimed and, therefore, subject to report and remittance under the Act.

B. Even If The Amendments Are Considered To Be Substantive, Retroactive Application Is Appropriate Because It Will Not Violate Any of Appellees' Due Process Rights

Assuming, *arguendo*, that the Amendments are considered to be substantive in nature, the trial court erred in finding that they could not be applied retroactively. As the trial court held, a substantive law may be applied retroactively where: (i) the legislature has clearly expressed an intent for the law to be applied retroactively; and (ii) doing so will not violate any constitutional principles. Slip Op. at 4 (citing

Menendez v. Progressive Exp. Ins. Co., 35 So. 3d 873, 877 (Fla. 2010)). As set forth below, both of these conditions have been met.

It is beyond dispute that the Legislature intended for the Amendments to be applied retroactively. Indeed, as the trial court noted: "The Legislature made its intent clear within the act itself; '[t]he amendments made by this act are remedial in nature and apply retroactively.'" *Id*. (citing Ch. 2016-219, § 2, Laws of Fla. (2016)). Accordingly, the only question is whether retroactive application of the Amendments would violate any constitutional protections afforded to insurance companies with respect to unclaimed property in their possession.

The United States Supreme Court has long held that entities do not have any right to unclaimed property in their possession and states may enact or amend unclaimed property laws without violating any constitutional principles. *See Provident Institution for Sav. v. Malone*, 221 U.S. 660, 665 (1911) (rejecting argument that unclaimed property statute requiring banks to turn over deposits in savings accounts that had been inactive for 30 years violated due process); *Security Sav. Bank v. California*, 253 U.S. 282, 286 (1923) (same); *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 242 (1944) (holding that bank "can interpose no due process or contract clause objection" to statute lawfully requiring unclaimed deposits be turned over to state); s*ee also Delaware v. New York*, 507 U.S. 490, 502 (1993) ("a law requiring the delivery of [unclaimed] deposits affects no property interest

belonging to the bank"). Based on these principles, courts have likewise held that retroactive application of a statute shortening the dormancy period for unclaimed property does not violate constitutional protections. *See, e.g.*, *American Express Travel Related Services, Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 368 (3d Cir. 2012) (rejecting argument that retroactive application of statute shortening the dormancy period violated due process). The foregoing makes clear that retroactive application of the Amendments does not violate any constitutional principles.

Nevertheless, citing *Maronda Homes, Inc. v. Lakeview Reserve Homeowners Ass'n*, 127 So. 3d 1258, 1272 (Fla. 2013), the trial court held a substantive law may not be applied retroactively if it "(1) adversely affects or destroys a vested right, (2) imposes or creates a new obligation or duty in connection with a previous transaction or consideration, or (3) imposes new penalties." Slip Op. at 3. Based on this articulation of the standard, although the trial court acknowledged that the Appellees conceded that the Amendments did not impair any of their vested rights, the court went on to find that retroactive application of the Amendments would violate due process because they purportedly imposed a "new obligation or duty." Slip Op. at 4. As *Maronda Homes, Inc.* makes clear, however, the determination of whether a substantive law may be applied retroactively concerns the law's impact on vested rights and duties. *Maronda Homes, Inc.*, 127 So. 3d at 1272 ("a substantive law prescribes legal duties and rights and, once those rights and duties are vested, due

process prevents the Legislature from retroactively abolishing or curtailing them"). Accordingly, the mere fact that a law might be considered to impose a new obligation of some sort, without regard to the law's relation to or impact on vested rights and duties, is insufficient to give rise to a due process violation.

In this regard, virtually any new legislative enactment can be described to impose new obligations. Moreover, a change in a statute that alters expectations based on the prior law can also be re-characterized as imposing new obligations. Florida law is clear, however, that retroactive application of a statute that merely "upsets expectations based in prior law" is not unconstitutional. *Sowell v. Panama Commons L.P.*, 192 So. 3d 27, 31 (Fla. 2016) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 269 (1994)). In *Sowell*, the Court upheld retroactive application of a statute that repealed a property tax exemption that the plaintiff builder expected would have exempted a 92-unit affordable housing project it had constructed from all property taxes for tax year 2013. The Court rejected the plaintiff's due process challenge to the statute based on its holding that the plaintiff "did not have an immediate and fixed right to the exemption, but rather an expectation." *Id*. The Court reached this conclusion notwithstanding the plaintiff's argument that retroactive repeal of the tax exemption "imposed a new tax obligation not in effect on January 1, 2013." *Id*. at 29. As *Sowell* makes clear, imposition of

new obligations divorced from consideration of whether such obligations involve vested rights or duties is insufficient to establish a due process violation.[8]

Here, Appellees are unable to point to anything other than an expectation that the Legislature would not change the law with respect to when they need to report and remit unclaimed death benefits and the steps they are required to take to ensure that they are complying with their obligations under section 717.107, Florida Statutes. Having conceded they have no vested rights in unclaimed property, and unable to point to any vested right or duty that is implicated, Appellees' argument that the Amendments impermissibly impose new obligations in violation of due process fails. *See, e.g.*, *American Exp. Travel Related Svcs., Inc.*, 669 F.3d at 368 (finding that plaintiff failed to establish likelihood of success on substantive due process claim where state offered legitimate interests for reducing dormancy period).

The cases that the trial court relied on do not lead to a contrary result. In this regard, in finding that the Amendments impermissibly imposed new obligations on insurance companies, the trial court relied entirely on cases in which the court found that there was no express intent of the legislatures to apply the laws at issue retroactively. Slip Op. at 5-6 (relying on *United Ins. Co. of Am. v. Kentucky,* No. 2013-CA-00612-MR (Ct. App. Ky. 2014); *Biogen IDEC MA, Inc. v. Treasurer &*

[8] Finding otherwise would be inconsistent with the due process clause itself, which protects against deprivation of "life, liberty or property without due process of law." Art. I, § 9, Fla. Const.

Receiver Gen., 908 N.E.2d 740 (Mass. 2009); and *Am. Exp. Travel Related Servs. Co. v. Kentucky*, 730 F.3d 628 (6th Cir. 2013)). As a result, none of these cases addressed the question of whether it would be constitutionally permissible to apply the challenged laws retroactively. For example, in *American Express*, 730 F.3d at 633, because the court found no intent for the amendment at issue to be applied retroactively, it held that "we need not address the constitutional issue related to . . . whether the Amendment is a violation of substantive due process. . . ." *See also United Ins. Co. of Am.*, ("we need not discuss the constitutional issues" related to statute's retroactive application); *Biogen IDEC MA, Inc.*, 908 N.E.2d at 190 (noting that new regulations may be applied retroactively based on express intent of legislature, but regulations at issue were adopted by the treasurer without involvement of the legislature). In short, these cases simply do not provide support for the trial court's conclusion that the Amendments impose any "new obligations" of the type that would violate due process.

Finally, a review of the prior version of section 717.107, Florida Statutes, demonstrates that the Amendments, in fact, do not impose new obligations that did not already exist in some form.[9] In this regard, the trial court overlooked the fact

[9] It should also be noted that, even under the standard relied on by the trial court, a new obligation imposed by retroactive application of a law will only be found to violate due process where the new obligation involves "a previous transaction or consideration." Slip Op. at 3. . By definition, in-force policies are policies that have not terminated and therefore, involve *ongoing* business relationships between

that under Florida's previous unclaimed property laws, an insurance company was required to report and remit unclaimed death benefits when it "knows that the insured or annuitant has died," even absent receipt of "proof of death" or before the insured reached the "limiting age." Section 717.107(3)(a), Fla. Stat..[10] Thus, insurance companies were already obligated to report unclaimed death benefits based on the death of the insured even though contractual terms of the policy had not been satisfied. Moreover, in situations where an insurance company becomes aware that an insured has died (*i.e.*, the date the company knows the insured is dead) within the same year that the death takes place (*i.e.*, the date of death of the insured), any unclaimed death benefits would be due to be reported and remitted the same year under section 717.107, Florida Statutes, both before and after the Amendments. Likewise, under the pre-existing law, insurance companies were already under an

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the company and its insureds rather than *previous* transactions. Additionally, under section 627.461, Florida Statutes (2018), "a policy becomes a claim by the death of the insured." In situations where this has taken place but the benefits have not been paid to the beneficiaries or remitted as unclaimed property, the transaction is not complete, even with respect to policies that are listed by the insurance company as being out of force. Accordingly, there is no reason why the Amendments may not be applied retroactively because any purported new obligations do not involve previous transactions.

[10] The "limiting age" is the age at which the insured is presumed to be deceased based upon actuarial mortality tables and can be as high 120 years of age. The trial court incorrectly held that "the previous five-year [dormancy] period ran from the date the insurer either received proof of death or the insured reached the mortality limiting age." Slip Op. at 1. This description does not take into consideration the "knowledge" provision of section 717.107, Florida Statutes.

obligation to take steps to make sure that they were reporting and remitting all unclaimed death benefits in their possession. *See, e.g.*, *Perdue*, 777 S.E.2d at 19 (holding that West Virginia's unclaimed property act "requires insurers generally, as holders of property presumed abandoned, to account for and turn over that property to the Treasurer"). Thus, the Amendments merely clarify obligations that existed under the previous version of section 717.107, Florida Statutes, rather than imposing entirely new obligations.[11]Moreover, DMF comparisons are now regularly performed by insurance companies, either as a result of the statutory requirements of various other states or as an industry best practice.

IV. CONCLUSION

For these reasons, the Amicus urges that this Court overrule the trial court's finding and hold that the Act and the Amendments may be applied retroactively as the Florida Legislature intended.

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[11] In *Perdue*, the court held that insurers were free to determine how to comply with their obligation to determine whether their insureds were deceased, without mandating use of the DMF (although it noted that an insurance company might find review of the DMF to be "the most efficient way to perform its duties under the Act"). *Id*. Here the Legislature has chosen to require use of the DMF as the way for insurance companies to comply with their obligations. To the extent that the Court finds this specific DMF search requirement to be a new obligation, NAUPA respectfully submits that it should be considered a permissible remedial measure to ensure that insurance companies are complying with their obligations even as they existed prior to the Amendments. Curative statutes may reach back to past events in order "to complete a transaction which the parties intended to accomplish but carried out imperfectly." *City of Miami v. St. Joe Paper Co.*, 364 So. 2d 439, 442 (Fla. 1978).

CERTIFICATE OF SERVICE

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