

Example of appellate opinion. Involves prenuptial agreement (contract law) and fake engagement ring

A dissent near the end of this opinion is in rhyme, a rarity in opinions.

Porreco v. Porreco, 571 Pa. 61, 811 A.2d 566 (Pa. 11/27/2002)

[1] Pennsylvania Supreme Court

[2] No. 9 WAP 2001

[3] 571 Pa. 61, 811 A.2d 566, 2002.PA.0004185 <<http://www.versuslaw.com>>

[4] November 27, 2002

T LOUIS J. PORRECO, APPELLANT

v.

SUSAN J. PORRECO, APPELLEE

[6] Appeal from the Order of the Superior Court entered June 6, 2000 at No. 1502WDA1999 affirming the Order of the Court of Common Pleas of Erie County entered March 5, 1999 at No. 13920-1994.

[7] The opinion of the court was delivered by: Madame Justice Newman

[8] ARGUED: September 11, 2001

[9] RESUBMITTED: June 6, 2002

[10] OPINION ANNOUNCING THE JUDGMENT OF THE COURT

[11] In this case we must decide whether a misstatement by one party to a prenuptial agreement of the assets of the other party constitutes fraud such that the prenuptial agreement is voidable. We find that there is no justifiable reliance by the party claiming fraud with respect to this representation and, accordingly, we reverse the Superior Court on that issue. We also remand this case to the Superior Court to review the determination by the trial court that a confidential relationship existed between the parties.

[12] FACTUAL AND PROCEDURAL BACKGROUND

[13] Appellant Louis Porreco ("Louis") was forty-five years old, and previously married, when he met Appellee Susan Porreco ("Susan"), who was seventeen years old, in high school, living with her parents, and working part-time at a ski shop. The parties dated for over two years, during which time Louis provided Susan with an apartment, an automobile, insurance, a weekly allowance, access to one of his credit cards as a secondary card holder, and a gas charge account at his car dealership's fueling station.

[14] When the parties engaged to be married, Louis presented Susan with an engagement ring. The parties dispute whether Susan knew at the time Louis gave her the ring that it was not a genuine diamond but, instead, a cubic zirconium. The trial court credited Susan's testimony that she believed the engagement ring contained a real diamond and did not discover that it was fake until the parties separated many years later. However, prior to giving her the engagement ring, Louis had given Susan other rings that contained genuine stones. *fn1

[15] In July of 1984, Louis presented Susan with the first draft of a prenuptial agreement. Louis did not discuss the agreement with Susan, other than to say that it was a standard agreement with the provisions left blank, and that Susan should seek legal counsel. This first draft of the agreement made no provision for Susan, other than that she was to retain her separate property in

the event of a divorce. Louis later presented Susan with a second version of the agreement, which provided that, in the event of divorce, Susan was to receive \$3,500.00 for each year of marriage in lieu of alimony, alimony pendente lite, and spousal support. Also pursuant to this agreement, Louis would provide Susan with an automobile and health insurance for one year. In all other respects, the agreement provided that the parties would retain their separate property, including all increase in value thereof.

[16] Prior to the execution of the final version of the agreement, Louis prepared, in his own handwriting, a personal financial statement that listed Susan's assets. Included in this list was an entry for the engagement ring, with the value listed at \$21,000.00. Although the financial statement described the ring as an engagement ring, it did not state that the ring contained a diamond, or any other kind of stone. The final version of the agreement contained a typed personal financial statement of Susan's assets, which also stated a value of \$21,000.00 for the engagement ring. Based on this financial statement, the net worth of Susan's assets appeared to be \$46,592.00. *fn2 Louis' personal financial statement -- the accuracy of which is not in dispute -- listed his net worth at \$3,317,666.00. Susan testified that she understood that, as a consequence of signing the prenuptial agreement, she would only receive, in the event of a divorce, the lump sum payment of \$3,500.00 per year of marriage, an automobile, insurance, and whatever individual assets she possessed. An attorney reviewed the agreement on Susan's behalf, although he conducted no negotiations for her.

[17] When the parties separated more than ten years later, Susan took the ring to a jeweler in South Carolina, who informed her that it was not a diamond. Subsequently in the divorce proceedings, Susan filed a Petition for Special Relief to set aside the prenuptial agreement. Susan alleged three grounds for invalidation of the prenuptial agreement: (1) that Louis fraudulently induced her to enter the prenuptial agreement by misrepresenting the value of the ring; (2) that Louis breached a confidential relationship with her; and, (3) that Louis violated his duty, pursuant to our decision in *Simeone v. Simeone*, 525 Pa. 392, 581 A.2d 162 (1990), of a full and fair disclosure.

[18] The trial court invalidated the prenuptial agreement. The court concluded that a confidential relationship existed between Louis and Susan, due to the difference in the parties' age, sophistication, wealth and status, and Susan's dependence on Louis for her material and social well-being. Louis breached this confidential relationship, according to the trial court, by having a prenuptial agreement drafted that was lopsided in his favor. Additionally, the court found that Louis misrepresented the nature and value of the ring in order to induce Susan to sign the prenuptial agreement, which she signed in reliance on Louis' representation as to the ring's value, and that this misrepresentation was material to her decision to sign the agreement. The court found credible Susan's testimony that if she knew that Louis had given her a fake ring and lied about it, she would not have signed the prenuptial agreement and "would not have married the man." Finally, the court declined to address Susan's claim that Louis violated his duty to provide her with a full and fair disclosure, pursuant to *Simeone*.

[19] The Superior Court affirmed *fn3 in a 2-1 unpublished decision. The majority determined that Susan had proven, by clear and convincing evidence, that Louis fraudulently induced her to enter the prenuptial agreement by misrepresenting the value of the ring. Because the majority

agreed with the trial court that the prenuptial agreement was voidable due to Louis' fraud, they did not address the merits of the determination by the trial court that Louis breached a confidential relationship with Susan. Judge Kelly dissented. In Judge Kelly's view, the remedy of invalidating the entire prenuptial agreement was too harsh. Instead, Judge Kelly would have required Louis to pay Susan \$21,000.00 to compensate her for the value of the ring as stated in the prenuptial agreement, but would otherwise have enforced the agreement.

[20] DISCUSSION

[21] We begin our analysis with a recitation of the standard of our review of an appeal from the decision of a court sitting in equity. We are bound by the facts found by the court, when supported by competent evidence in the record. *Kepple v. Fairman Drilling Co.*, 532 Pa. 304, 312, 615 A.2d 1298, 1302 (1992). "However, no such deference is mandated for conclusions of law, and we are at liberty to review such conclusions." *Id.* (citing *Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church*, 507 Pa. 255, 266, 489 A.2d 1317, 1323 (1985)).

[22] The starting point for assessing the merit of any challenge to the validity of a prenuptial agreement is our decision in *Simeone*. In that opinion, we reevaluated our criteria for enforcing prenuptial agreements and rejected the paternalistic assumption in our caselaw that courts must scrutinize these agreements and refuse to enforce those that failed to make a reasonable provision for the other spouse. As we stated in *Simeone*, "[s]uch decisions rested upon a belief that spouses are of unequal status and that women are not knowledgeable enough to understand the nature of contracts that they enter." *Simeone*, 525 Pa. at 399, 581 A.2d at 165. Instead, we placed prenuptial agreements on the same general footing as other contracts, to be enforced pursuant to the well-settled principles of contract law: "[p]renuptial agreements are contracts, and, as such, should be evaluated under the same criteria as are applicable to other types of contracts." *Id.* at 400, 581 A.2d at 165.

[23] In reorienting our standards for enforcing prenuptial agreements to the traditional principles of contract law, however, we did not lose sight of the fact that parties to these agreements do not necessarily deal with each other at arm's length. Accordingly, we reaffirmed "the longstanding principle that a full and fair disclosure of the financial positions of the parties is required." *Id.* at 402, 581 A.2d at 167. "Absent this disclosure, a material misrepresentation in the inducement for entering a prenuptial agreement may be asserted." *Id.* (citing *Hillegass Estate*, 431 Pa. 144, 152-53, 244 A.2d 672, 676-77 (1968)). Thus, despite the prevailing theme in *Simeone* that the provisions of prenuptial agreements should be subject to no greater scrutiny than ordinary business contracts, we nevertheless continued the principle from our previous decisions that these agreements will only be enforced where the parties make a "full and fair" disclosure. In addition to preserving this vestige of our common-law caution towards the enforcement of prenuptial agreements, we affirmed that these agreements may be invalidated when fraudulently procured. "If an agreement provides that full disclosure has been made, a presumption of full disclosure arises. If a spouse attempts to rebut this presumption through an assertion of fraud or misrepresentation then this presumption can be rebutted if it is proven by clear and convincing evidence." *Simeone*, 522 Pa. at 403, 581 A.2d at 167 (citing *Hillegass*, 431 Pa. at 152-53, 244 A.2d at 676-77). Thus, in *Simeone*, we recognized two alternate bases for invalidating a

prenuptial agreement: (1) any ground for voiding a contract under the common law (such as fraud); and (2) where a party fails to make "full and fair" disclosure of his or her own assets prior to entering the agreement.

[24] Presently, we are not asked to decide the extent of the "full and fair" disclosure rule of Simeone; neither the trial court nor the Superior Court relied on this rule to invalidate the prenuptial agreement. Rather, we must consider whether the trial court properly concluded that Louis fraudulently induced Susan to sign the prenuptial agreement by misrepresenting the value of the engagement ring on the list of her individual assets, which he prepared as part of the prenuptial agreement.

[25] The elements of fraudulent misrepresentation are well settled. In order to void a contract due to a fraudulent misrepresentation, the party alleging fraud must prove, by clear and convincing evidence: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) resulting injury proximately caused by the reliance. *Bortz v. Noon*, 556 Pa. 489, 499, 729 A.2d 555, 560 (1999); *Gibbs v. Ernst*, 538 Pa. 193, 207, 647 A.2d 882, 889 (1994). All of these elements must be present to warrant the extreme sanction of voiding the contract.

[26] To be justifiable, reliance upon the representation of another must be reasonable. See *In re Allegheny International, Inc.*, 954 F.2d 167, 178 (3d Cir. 1992) (applying Pennsylvania law). See also Restatement (Second) of Contracts §§ 164, Comment "d" ("A misrepresentation, even if relied upon, has no legal effect unless the recipient's reliance on it is justified."). While the nature of the relationship between the parties ^{*fn4} may affect the reasonableness of one's reliance, we hesitate to find reliance justified where the party claiming reliance had an adequate opportunity to verify the allegedly fraudulent statements. As aptly stated by the United States District Court for the Eastern District of Pennsylvania in explaining Pennsylvania law:

[27] Whether reliance on an alleged misrepresentation is justified depends on whether the recipient knew or should have known that the information supplied was false. *Scaife Co. v. Rockwell-Standard Corp.*, 446 Pa. 280, 285 A.2d 451 (1971) (citing *Emery v. Third National Bank*, 308 Pa. 504, 162 A. 281 (1932)). Where the means of obtaining the information in question were not equal, the representations of the person believed to possess superior information may be relied upon. *Siskin v. Cohen*, 363 Pa. 580, 70 A.2d 293, 295 (1950). *Fort Washington Resources, Inc. v. Tannen*, 858 F. Supp. 455, 460 (E.D. Pa. 1994).

[28] Additionally, in *Moore v. Steinman Hardware Co.*, 319 Pa. 430, 179 A. 565 (1935), a case in which the plaintiff alleged fraud in connection with the sale of corporate stock, we stated, "[i]t has many times been pointed out that a buyer or seller is not entitled to rely on such statements where he has an equal opportunity to ascertain the facts affecting the value of the thing to be sold." *Id.* at 433, 179 A. at 566. Since *Simeone*, we have moved towards treating parties to a prenuptial agreement the same as parties to other contracts, with the attendant duties of investigation and due care for their bargain. We will, accordingly, judge the reasonableness of a party's reliance by the same standards.

[29] In the present case, although we are bound by the factual conclusions of the trial court, ^{*fn5}

we cannot agree that Susan's alleged reliance on Louis' misrepresentation of the value of the ring on the schedule of her assets was justifiable. Susan had possession of the ring and was not impeded from doing what she ultimately did when the parties separated: obtain an appraisal of the ring. *fn6

[30] She had sufficient opportunity to inform herself fully of the nature and extent of her own assets, rather than rely on Louis' statements concerning the valuation of her holdings. We find her failure to do this simple investigation to be unreasonable. Although we do not excuse Louis' actions, we will not sanction the avoidance of an entire prenuptial agreement -- the consequences of which Susan admittedly understood -- on the basis of fraud in these circumstances.

[31] Because the Superior Court never reviewed the determination by the trial court that a confidential relationship existed between Louis and Susan, however, we will reverse and remand for consideration of that issue.

[32] Mr. Chief Justice Zappala files a concurring opinion.

[33] Mr. Justice Cappy files a concurring opinion.

[34] Mr. Justice Castille files a concurring opinion.

[35] Mr. Justice Saylor files a dissenting opinion in which Mr. Justice Nigro joins.

[36] Mr. Justice Eakin files a dissenting opinion.

[37] CONCURRING OPINION

[38] MR. JUSTICE CASTILLE

[39] I join the lead opinion, but write separately to emphasize that there is another issue, which the courts below may have to address, before this matter can be finally resolved. Our reversal today is limited to the single issue brought before this Court: whether the prenuptial agreement was invalid as a result of fraud. But this is not the only open issue in the case.

[40] In the initial action, appellee Susan Porreco alleged three distinct grounds for invalidation of the prenuptial agreement: (1) that appellant Louis Porreco fraudulently induced her to enter the prenuptial agreement by misrepresenting the value of the ring; (2) that appellant breached a confidential relationship with her; and (3) that appellant violated his duty of full and fair disclosure, as articulated in *Simeone v. Simeone*, 581 A.2d 162 (Pa. 1990). Although appellee argued these three separate grounds, only the first ground is resolved by this appeal. It is therefore possible that, on remand, appellee may prevail on one of the two remaining grounds.

[41] In this regard, I note that neither of the courts below has yet to rule on the question of whether appellant violated his duty of full and fair disclosure by misstating the value of the ring given to appellee. This Court in *Simeone* held that full and fair disclosure of the parties' financial positions is required in a prenuptial agreement. 581 A.2d at 167. "Parties to [prenuptial] agreements do not quite deal at arm's length, but rather at the time the contract is entered into

stand in a relation of mutual confidence and trust that calls for disclosure of their financial resources." *Id.* As noted in the lead opinion, a prenuptial agreement may be invalidated "where a party fails to make 'full and fair' disclosure of his or her own assets prior to entering the agreement." *Slip op.* at 7 (citing *Simeone*).

[42] The trial court invalidated the agreement in this case on two of appellee's three grounds. First, the trial court found that appellant made a material misrepresentation regarding the value of the engagement ring, and thereby fraudulently induced appellee to enter into the agreement. Second, the trial court found that there was a confidential relationship between the parties, which appellant breached. The trial court did not, however, specifically pass upon the *Simeone* question.

[43] On direct appeal, the Superior Court agreed that appellant fraudulently induced appellee into entering the prenuptial agreement by misrepresenting the value of the ring. Agreeing with the trial court's determination that fraud had occurred, the Superior Court did not address the alternative question of whether or not appellant breached the confidential relationship, nor did it reach the full and fair disclosure question raised pursuant to *Simeone*, which the trial court itself did not reach.

[44] The only issue before this Court on discretionary review is whether the courts below properly concluded that appellant fraudulently induced appellee into the prenuptial agreement by misrepresenting the value of the engagement ring on the list of her individual assets, which he prepared as part of the prenuptial agreement. The Court's holding is limited to finding that appellee's reliance on the misrepresentation was unjustifiable under common-law fraud principles, noting that "we are not asked to decide the extent of the 'full and fair' disclosure rule of *Simeone*; neither the trial court nor the Superior Court relied on this rule to invalidate the prenuptial agreement." *Slip op.* at 7. Thus, although we have held that the prenuptial agreement is not invalid as a result of fraud -- which is a high standard in the law, requiring the party alleging fraud to demonstrate all six elements with clear and convincing evidence -- we have offered no view on the other questions. The matter is being remanded to the Superior Court to determine whether or not the prenuptial agreement can be invalidated as a result of the trial court's finding of a breach of a confidential relationship. Depending on the outcome of that inquiry, the Superior Court may or may not have to reach the *Simeone* question. I would note that, if the Superior Court had to proceed to that inquiry, a remand to the trial court would be appropriate since that court never made a ruling on the question of full and fair disclosure.

[45] Thus, although I agree with the lead opinion that the prenuptial agreement is valid with respect to the issue before this Court, i.e. fraud, I caution that the case is far from over since, upon remand, the prenuptial agreement may be found invalid on one of the two remaining grounds.

[46] CONCURRING OPINION

[47] MR. CHIEF JUSTICE ZAPPALA

[48] I join Justice Newman's opinion. I write separately to address my grave concern that the

filing of an opinion that expresses itself in rhyme reflects poorly on the Supreme Court of Pennsylvania. While one may disagree intellectually with another's judicial philosophy, and the exchange of differing views is at the very core of a jurist's function, it is the substance of our views that should be the focus of discussion. The gravity of differing judicial views is diminished when the focus is taken away from their substance because of the form in which they are presented. I believe the integrity of this institution depends in great part upon the understanding that we engage in careful, deliberate and serious analysis of the legal issues that we undertake to examine. The integrity of the Supreme Court of Pennsylvania should never be placed in jeopardy by actions that would alter the perception of those whose lives and interests are affected by the decisions of the Court.

[49] It is of little import whether the issue before the Court involves the decision to impose the death penalty on an individual, the economic interests of individuals or businesses, or the effect of divorce actions in Pennsylvania. Each issue addressed by this Court commands our thorough, weighty consideration. No matter addressed by this Court is frivolous.

[50] The dignity of the Supreme Court of Pennsylvania, and the deserved respect that has been hard-earned, should not be diminished. I feel strongly that the expression of opinions issued by the highest court in the Commonwealth of Pennsylvania should reflect the gravity of our constitutional responsibility to our citizens. Our oath of office demands nothing less.

[51] CONCURRING OPINION

[52] MR. JUSTICE CAPPY

[53] I concur only in the result reached by the majority opinion. I write in this case not because the legal issues presented by the parties require further elucidation, to the contrary my learned colleagues have presented ample discourse on those topics. I write because I too am genuinely concerned with the point raised by the learned Chief Justice in his concurring opinion.

[54] It is axiomatic and I firmly believe that every jurist has the right to express him or herself in a manner that the jurist deems appropriate. My concern, however, and the point on which I concur completely with the Chief Justice, lies with the perception that litigants and the public at large might form when an opinion of this Court is reduced to rhyme. I, too, feel strongly that no case with which this court deals is any more or less important than any other; I will endeavor to prevent a contrary impression whenever possible.

[55] Accordingly, although respectful of the wishes of my esteemed colleague in the dissent, I am constrained to join the concurrence offered by the Chief Justice.

[56] DISSENTING OPINION

[57] MR. JUSTICE SAYLOR

[58] As I would not impose a duty to investigate upon Appellee, I respectfully dissent. Preliminarily, in the context of fraud or misrepresentation, the elements necessary to avoid a

contract correspond with those required to establish tort liability. See generally RESTATEMENT (SECOND) OF CONTRACTS (Topic 1. Misrepresentation, Introductory Note) (1979) (explaining that the rules applicable in the contractual context conform to those provided for in tort, although because "tort law imposes liability in damages for misrepresentation, while contract law does not, the requirements imposed by contract law are in some instances less stringent"). In either context, a recipient's reliance need only be justifiable. See RESTATEMENT (SECOND) OF CONTRACTS §§164(1); RESTATEMENT (SECOND) OF TORTS §§525; see also *Gibbs v. Ernst*, 538 Pa. 193, 207, 647 A.2d 882, 889 (1994).

[59] Justifiable reliance represents an intermediate level of dependence, falling between reasonable reliance and mere or bare reliance. See generally *Field v. Mans*, 516 U.S. 59, 72-75, 116 S. Ct. 437, 444, 446 (1995) (collecting cases discussing the required level of reliance for common law fraud). Although whether one's reliance is justified depends upon the facts and circumstances surrounding the representation, see *id.* at 71, 116 S. Ct. at 444, as a general rule, there is no duty to investigate. See RESTATEMENT (SECOND) OF CONTRACTS §§172 (stating that "a recipient's fault in not knowing or discovering the facts before making the contract does not make his reliance unjustified unless it amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing"). *fn7

[60] Here, taking into consideration that the parties did not deal at arm's length, their age and experience disparity, the absence of any evidence indicating that Appellee failed to act in good faith, the fact that the financial disclosure listing the value of the engagement ring occurred immediately before Appellee was to sign the prenuptial agreement, and the fact that Appellant had given Appellee numerous items of genuine jewelry prior to the engagement ring, and, more important, in light of the trial court's fact and credibility assessments, I would hold that the trial court did not err in concluding that Appellee's reliance upon the intentional misrepresentation by Appellant was justified. Mr. Justice Nigro joins this dissenting opinion.

[61] DISSENTING OPINION

[62] MR. JUSTICE EAKIN

[63] A groom must expect matrimonial pandemonium when his spouse finds he's given her a cubic zirconium instead of a diamond in her engagement band, the one he said was worth twenty-one grand.

[64] Our deceiver would claim that when his bride relied on his claim of value, she was not justified for she should have appraised it; and surely she could have, but the question is whether a bride-to-be would have.

[65] The realities of the parties control the equation, *fn8 and here they're not comparable in sophistication; the reasonableness of her reliance we just cannot gauge with a yardstick of equal experience and age.

[66] This must be remembered when applying the test by which the "reasonable fiancée" is assessed. She was 19, he was nearly 30 years older; was it unreasonable for her to believe what

he told her?

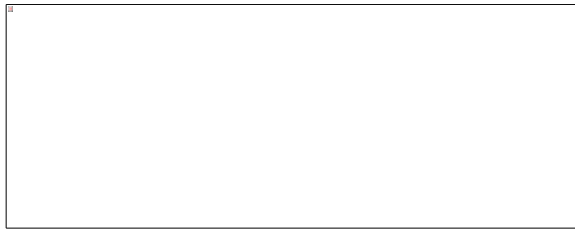
[67] Given their history and Pygmalion relation, I find her reliance was with justification. Given his accomplishment and given her youth, was it unjustifiable for her to think he told the truth?

[68] Or for every prenuptial, is it now a must that you treat your betrothed with presumptive mistrust? Do we mean reliance on your beloved's representation is not justifiable, absent third party verification?

[69] Love, not suspicion, is the underlying foundation of parties entering the marital relation; mistrust is not required, and should not be made a priority. Accordingly, I must depart from the reasoning of the majority.

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Unclaimed property

[You can check the state of Texas list at : <http://www.cpa.state.tx.us/up/>]

States Scooping Up Assets From Millions of Americans 'Unclaimed Property' Fattens Public Coffers

By SCOTT THURM and PUI-WING TAM

WALL STREET JOURNAL

February 4, 2008; Page A1

State governments, aided by corporate middlemen, are collecting billions of dollars a year from Americans by enforcing obscure laws to seize money from forgotten bank accounts and other so-called unclaimed property.

All states have unclaimed-property laws. The idea behind them is to return dormant assets -- bank deposits, stock, uncashed payroll checks, valuables in safe-deposit boxes -- to their owners. The laws require banks and brokerages to hand over the assets to states. Most states then make some effort to locate owners and return the property.

But states from Massachusetts to California have turned their programs into big money-makers, and routinely dip into unclaimed assets to cover state expenses. States have broadened laws to cover unredeemed gift cards and uncashed corporate checks to employees and suppliers. They've required businesses to turn over assets more quickly, and curtailed efforts to locate owners. And they've strengthened enforcement by hiring private auditors to examine corporate books in search of "lost" property. The auditors' reward: 10% to 15% of proceeds.

California is currently holding more than \$5 billion in unclaimed property, nominally owned by

more than eight million individuals and companies. Among the names appearing on the state's list of owners of seized assets: Google Inc. co-founder Sergey Brin, actress Angelina Jolie and baseball Hall of Famer Willie Mays.

"Somewhere along the line, a good idea got lost," says John Coalson, an Atlanta attorney who represents companies undergoing state unclaimed-property assessments. "What was intended to return property to its rightful owner has instead become a way for states to increase revenue without increasing taxes."

The 50 states collectively held roughly \$35 billion in unclaimed property as of June 2006, according to the most recent data from the National Association of Unclaimed Property Administrators and from the state of Delaware. States collected about \$5.1 billion in unclaimed property in 2006, up from \$3.6 billion in 2003, the data indicate. On average, states identify owners and return about one-third of this property.

States regard property as "unclaimed" if the owner hasn't had contact with the custodian of an asset for a specified period of time. In the case of bank deposits, depending on the state, that means three to five years without deposits, withdrawals or any other customer contact. For stock, it's three to seven years without cashing dividend checks, voting proxies or otherwise contacting the issuer or brokerage.

Delaware, the legal home to many big companies, is an aggressive collector of such assets. State officials examine corporate accounts, looking for uncashed checks and credit balances. Unclaimed property has become Delaware's third-largest source of revenue, generating \$365 million in the fiscal year ended June 30, 2007. That amounts to about 11% of state revenue, more than corporate-income tax or the state lottery.

Delaware is one of the states that don't make much effort to seek owners of unclaimed property. It's up to the owners to figure out if states have their assets and to file claims. If owners don't come forward, many states keep the cash and sell physical property, such as jewelry from safe-deposit boxes, on eBay.

Delaware's director of revenue, Patrick Carter, says the state returns less than 5% of the unclaimed property it collects, in part because it's difficult to link corporate credit balances with individual owners.

California officials stopped notifying owners whose property had been seized or listing their names in newspapers. Last June, a judge temporarily halted the program, ruling that the state wasn't following its rules for seizing and returning the property.

The ruling came in the case of Chris Lusby Taylor, a former Intel Corp. employee whose 52,224 shares of company stock had been handed to the state after he failed to cash dividend checks or vote proxies for three years. The state sold the shares. When Mr. Taylor discovered the transfer and filed a claim, the state offered him \$200,000. A federal appeals court said Mr. Taylor was entitled to the current value of the shares, then roughly \$3.8 million.

After the ruling, California lawmakers instituted changes intended to limit seizures and return more property to owners; the program is back in operation.

California and other states have reaped hundreds of millions collectively from the demutualization of insurance companies -- the conversion of policyholder-owned companies to

publicly traded ones. Policyholders typically are entitled to stock in the publicly traded company; unclaimed shares must be turned over to states.

Not every state views unclaimed property as a revenue generator. West Virginia says it gave back more assets than it collected in 2005. Missouri, Iowa and Kansas set up booths at county fairs to advertise their programs and identify owners. Oregon and Colorado hold unclaimed property in funds with the principal untouched, using only the interest.

FINDING YOUR PROPERTY

? If you think a state is holding unclaimed property belonging to you, an easy place to start is MissingMoney.com, a Web site run by Affiliated Computer Services. The site offers a national search and links to sites of most state unclaimed-property offices.

? If you have the owner's last known address, it can be quicker to search the property site of that state.

? Once you've identified your property, procedures vary. In general, you'll have to prove you are the owner. It may take several months to get the money. 'Just the Custodian'

"If you don't own it, it's not revenue," says Cynthia Wickham, Oregon's unclaimed-property administrator. "We're just the custodian."

Companies have challenged programs in some states. Biotech firm Biogen Idec Inc. and children's-shoe maker Stride Rite Corp. sued Massachusetts for classifying as unclaimed property money that one business owes another. The companies argued that state law excluded such assets. "It's clearly a money grab that's no longer about consumer protection," says Jim Dentzer, Biogen's former controller. A spokeswoman for the Massachusetts treasury declined to comment.

Last year, a Massachusetts state court ruled in favor of both companies in separate decisions. The rulings saved Biogen from having to pay the state \$860,000, and Stride Rite from paying about \$1.2 million. The state has appealed the Biogen decision.

Los Angeles lawyer David Epstein played a central role in the transformation of unclaimed-property laws. He calls the system "the best consumer-protection law ever devised" because it helps owners reclaim property that would otherwise be forgotten. Without the laws, Mr. Epstein says, the money returned to owners, which totaled \$1.75 billion in 2006, would unfairly fatten corporate profits.

In the 1970s, Mr. Epstein helped California with an unclaimed-property case against Bank of America, which was eventually settled in 1988 when the bank agreed to pay \$53 million. By then, Mr. Epstein had started a business, Unclaimed Property Clearinghouse, to help states enforce unclaimed-property laws, which at that time were widely ignored.

His company combed through corporate books on behalf of states and kept a share of seized assets. It first targeted securities, looking for shareholders who hadn't cashed dividend checks in seven years, then the legal standard for states to declare shares abandoned.

Mr. Epstein courted state officials to sign up by talking about the potential revenue such programs could produce, recalls Iowa Treasurer Mike Fitzgerald. Mr. Epstein also served as an adviser to a commission that drafted "model" laws -- later adopted by most states -- that broadened the definition of unclaimed property and shortened the waiting periods before states

could seize the property. California, for example, shortened its waiting period from seven years to five years in 1989, then to three years in 1990.

Mr. Epstein soon faced competition. National Abandoned Property Processing Corp., or Nappco, specialized in another type of unclaimed property: uncashed corporate checks to employees and suppliers.

Many states bolstered their programs in the 1990s. Lawmakers in California, which faced budget problems, reduced state efforts to find property owners.

By 1998, California was collecting \$300 million worth of unclaimed property a year, and returning less than half to owners, a 2003 state audit determined. Most of the rest went to fund state operations. Officials "started to raid this program and send it in the wrong direction," says state Controller John Chiang, who sponsored reform legislation passed last year.

Over time, the property of millions of Californians was transferred to the state without owners' knowledge. Surfing the Web in 2000, Richard and Jo-Ann Seitzinger, retirees in Northridge, Calif., stumbled across their names on the unclaimed-property list. They later learned that 200 shares of General Electric Co., where Mr. Seitzinger worked in the 1960s, had been transferred to the state in 1994. The Seitzingers lost track of the stock because of a record-keeping mistake by their broker, and Nappco classified the shares as dormant. The state sold the shares shortly after receiving them, for \$17,000.

The Seitzingers filed a claim and received the \$17,000. Mrs. Seitzinger thinks they deserved to be paid the \$60,000 she estimates the shares were worth in 2000. "They never ever tried to find us," she says. "Our name is so unusual they could have found us easily."

A spokesman for the state controller responds: "It's not that we can't find people. It's that the controller was prohibited by law from notifying them."

Finding Willie Mays

Because of that Catch-22, even famous people aren't contacted. Mr. Mays, the legendary home-run-slugging outfielder for the San Francisco Giants, nominally owns about \$3,000 held by the state, including a \$2,546.25 credit with American Express and a \$70 gift certificate from San Francisco retailer Gump's.

Mr. Mays, 76 years old, says he hadn't been contacted and wasn't even aware the state had his property. "I'm kind of easy to find," he says, noting he's lived at the same address in Atherton, Calif., since 1971.

California is holding \$1,173.49 in salary and wages paid by Stanford University to Google's Mr. Brin, presumably because he didn't cash paychecks, and \$9.53 in dividends from the New York Times Co. A Google spokesman declined to comment.

Ms. Jolie, the actress, shows up on the California list due to unclaimed salaries and wages from several companies, including Walt Disney Co. In total, she has \$9,210.31 currently being held by the state. Ms. Jolie's manager didn't respond to requests for comment.

If Ms. Jolie and Messrs. Mays and Brin don't apply to recover their property, California can keep it.

The growth of the audit industry and changes to state programs troubled some state officials. Mr. Epstein says complaints have been limited. In 1993, he sold his company, which was later

bought by Affiliated Computer Services Inc., a technology outsourcing firm. Mr. Epstein serves as an adviser to ACS.

Audit firms say they follow rules set by state officials. A California review ordered by Mr. Chiang, the state controller, found "no evidence" that the firms "illegally or inappropriately collected or delivered" property.

'Lost Customers'

At ACS, a spokesman says the company advocates "increased efforts on the part of companies to locate their lost customers, shareholders and vendors, as well as initiatives that provide states with the resources to increase the number of people reunited with their property."

In 2001, after taking over as head of Delaware's program, Mark Udinski looked into whether companies were submitting the required annual reports on unclaimed property. He found only about 2,300 reports for the 280,000 companies incorporated in Delaware.

Mr. Udinski launched an enforcement program. He added state auditors and hired outside audit firms. Delaware now contracts with four firms -- ACS, Kelmar Associates, Audit Services U.S. and Specialty Audit Services. Collections from unclaimed property rose to \$365 million in fiscal 2007, from \$163 million in 2001.

Delaware auditors typically ask for documentation going back to the early 1980s; if documents aren't available, the auditors use a sampling of recent records to estimate how much a company owes the state.

Waste Management Inc. received an audit notice from Delaware in 2004. Don Carpenter, the company's vice president of tax, and his aides reviewed three years of records for items such as uncashed payroll checks, then extrapolated the results over 20 years. Following what Mr. Carpenter describes as "a bit of negotiation," Waste Management paid \$19 million in 2006 to settle its unclaimed-property obligations.

Critics say Delaware's estimation practices violate the spirit of the law, because the state has no way of returning to individuals the money it collects based on the estimates. Mr. Carter, Delaware's director of revenue, defends the state's methodology and the work done by outside auditors.

"We think companies are paying way too little," he says. "We try and meet in the middle."

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