

1984 WL 249859 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 13, 1984

**\*1 SUBJECT: Property, Unclaimed—Unpresented Drafts and Checks Issued By Property and Casualty Insurance Companies.**

The failure by the payee for a period of seven years to present a draft or check issued by a property and casualty insurance company does not by itself create an abandonment of property. However, where the facts supporting the issuance of the draft or check establish that the company has a contractual obligation to the payee, a failure to present a draft or check for a seven year period results in an abandonment of the contractual obligation within the provisions of § 27-17-100, South Carolina Code of Laws, 1976, as amended.

**APPLICABLE LAW: The Uniform Disposition of Unclaimed Property Act, § 27-17-10, et seq., South Carolina Code of Laws, 1976, as amended.**

Honorable John G. Richards, V  
Deputy Chief Insurance Commissioner

QUESTION:

Are drafts or checks issued by property and casualty insurance companies subject to the Uniform Disposition of Unclaimed Property Act, § 27-17-10, et seq., South Carolina Code of Laws, 1976, as amended?

DISCUSSION:

The Uniform Disposition of Unclaimed Property Act, § 27-17-10, et seq., hereinafter the Act, provides a broad coverage by identifying various properties that shall be presumed abandoned. The application of the Act is always dependent upon the establishment of facts which bring a specified property within the provisions of a section of the Act. It is not possible to express in an opinion all possibilities which may be encountered in abandoned property due to claims by policyholders against a casualty or property insurance company, however, certain basic conditions can be discussed which are relevant to the issue.

A casualty or property insurance company undertakes by contract with its policyholder to insure against loss or damages due to the occurrence of some event such as a fire casualty to a building. The terms of such contractual obligation may vary from policy to policy. Upon the occurrence of the insured event and upon the presentment of a valid claim, the company incurs a contractual liability. Normally, after verification of policy coverage and an appraisal of damages, the company issues a draft or check with such draft or check presented as full settlement of the company's entire obligation related to the casualty. Such draft or check is usually stated to be null and void unless presented for payment within sixty days. When the party to whom the check or draft is issued does not respond to the insurance company within a period of seven years, an abandonment of property may result.

Section 27-17-100 provides that intangible personal property which is held or owing in the ordinary course of the holder's business is presumed abandoned if unclaimed by the owner for more than seven years. The contractual obligation of the company is intangible personal property within § 27-17-100. [Blue Cross of Northern California v. Cory, 120 Cal. App. 3rd 723, 174 Cal. Rptr. 901, 908-909 \(1981\)](#). The obligation is held by the insurance company as a holder since the company is 'in possession of property subject to this chapter' and is also 'indebted to another on an obligation subject to this chapter [the Act]'. Section

27-17-20(4). [Treasurer and Receiver General v. John Hancock Mutual Life Ins. Co.](#), 388 Mass. 410, 446 N. E. 2d 1376, 1385 (1983). Finally, the payee of the check or draft is the owner. [Blue Cross](#), supra at 908 and [John Hancock](#), supra at 1385. Under such circumstances, money equal to the contractual obligation represented by the amount of the unrepresented draft or check is required to be reported and paid to the South Carolina Tax Commission. Sections 27-17-130 and 27-17-150; [Blue Cross](#), supra at 910. It is, of course, essential that the facts of each case establish a contractual obligation incurred under a specific policy. The mere issuance of a draft or check does not mean the insurance company admits a contractual liability since a company may find ‘\* \* \* it advisable to offer payments in full or partial settlement of any claims prior to the establishment of liability under the terms of its policies’. [Allstate Ins. Co. v. Egerton](#), 403 So. 2d 172, 173 (1981). In short, there is an abandonment of property where there is proof that the person to whom the check or draft is payable has an unqualified right by way of a contractual obligation. [Kane v. Insurance Co. of North America](#), 38 Pa. Commonwealth 42, 392 A. 2d 325, 329 (1978). Also see [Aetna Casualty and Surety Ins. Co. v. State Ex. Rel. Egerton](#), 414 So. 2d 455 (1982). In the absence of such proof, there is no property to be abandoned.

CONCLUSION:

\*2 The failure by the payee for a period of seven years to present a draft or check issued by a property and casualty insurance company does not by itself create an abandonment of property. Where the facts supporting the issuance of the draft or check establish that the company has a contractual obligation to the payee, a failure to present a draft or check for a seven year period results in an abandonment of the contractual obligation within the provisions of §27-17-100, South Carolina Code of Laws, 1976, as amended.

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