

TAX APPEAL BOARD OF THE STATE OF DELAWARE

JLI INVEST, S.A., and LIN INVEST, S.A.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 1652
)	
DAVID M. GREGOR, in his official capacity)	
as the State Escheator of the State of Delaware,)	
)	
Respondent.)	

BEFORE: Todd C. Schiltz, Esq., Chairman, Joan M. Winters, CPA, and Sindy Rodriquez and Robert Slavin, Members

Stephen B. Brauerman, Esq. and Sara E. Bussiere, Esq., Bayard, P.A. and Ethan D. Millar, Esq., Elizabeth A. Sperling, Esq. and Samantha M. Bautista, Esq., Alston & Bird, LLP, for Petitioners

Jennifer R. Noel, Esq., Deputy Attorney General, Caroline Lee Cross, Esq., Deputy Attorney General, and Steven S. Rosenthal, Esq., and J.D. Taliaferro, Esq., Loeb & Loeb, LLP, for Respondent

DECISION AND ORDER

JLI Invest S.A (“JLI”) and LIN Invest S.A. (“LIN,” and together with JLI, “Petitioners”) appeal from a March 31, 2015 notice of determination issued by the respondent, the current State Escheator of the State of Delaware (“Respondent”).

In the notice of determination, Respondent determined that Petitioners are the owners of 560,000 shares of common stock (the “Stock”) in Idenix Pharmaceuticals, Inc. (“Idenix”) that were escheated to the State of Delaware in

2009. Respondent also determined that Petitioners are entitled to receive \$1,695,851.75 from the State of Delaware for the Stock. The \$1,695,851.75 equals what the State of Delaware received for the Stock when it sold the Stock in 2009, and is materially less than what Petitioners could have received for the Stock in a third-party transaction in 2014.

For the reasons set forth below, the Board determines that: (i) it lacks jurisdiction over the Petitioners' claims to the extent they are based on facial or as applied constitutional challenges, 42 *U.S.C.* § 1983, the foreign affairs power of the federal government, common law theories, federal or state securities laws or a treaty between the United States and Belgium; (ii) it has jurisdiction over Petitioners' claims to the extent they challenge Respondent's interpretation and application of Delaware law related to escheats, 12 *Del. C.* §§ 1101 *et seq.* (the "Delaware Escheats Law"), with respect to the claims Petitioners submitted to the Respondent regarding the Stock; and (iii) the Respondent adhered to the Delaware Escheats Law when determining that Petitioners are entitled to receive \$1,695,851.75 from the State of Delaware for the Stock.

STATUTORY FRAMEWORK

Delaware, like all 50 states, has enacted laws that govern the treatment of abandoned property. The Delaware laws related to escheat are codified at 12 *Del. C.* §§ 1101 *et seq.* and, among other things, contain provisions related to: (i) the

reporting of abandoned property to the State Escheator, (ii) the delivery of abandoned property to the State Escheator, (iii) the obligation of the State Escheator to sell abandoned property delivered to him, (iv) the right of an owner to file a claim with the State Escheator seeking the return of abandoned property, and (v) what a claimant can recover from the State of Delaware on account of its claim.

A. Reporting of Abandoned Property

Section 1199 of the Delaware Escheats Law requires every holder of any property deemed to be abandoned property to report such property to the State Escheator. Specifically, Section 1199 requires every “holder of funds or other property, tangible or intangible, deemed abandoned” to “file with the State Escheator, on or before March 1 of each year . . . a report with respect to such property” held as of December 31 of the preceding year. 12 *Del. C.* § 1199.

Among other things, the report must identify the “name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property deemed abandoned” and the “date when the property became payable, demandable or returnable and the date of the last transaction with the owner with respect to the property.” 12 *Del. C.* §§ 1199(a)(1) and (3). The holder, not the State Escheator, determines what property in its possession has been abandoned and must be reported pursuant to Section 1199.

In pertinent part, a holder is “any person having possession, custody or control of the property of another person For purposes of this subchapter, the issuer of any intangible ownership interest in a corporation, whether or not represented by a stock certificate, which is registered on stock transfer or other like books of the issuer or its agent, shall be deemed a holder of such property.” 12 *Del. C.* § 1198(7). A holder is different than an “owner.” An owner is the person who or the entity which has legal or equitable title to the property. *Id.* and 12 *Del. C.* § 1198(8).

Abandoned property is defined as “property against which a full period of dormancy has run.” 12 *Del. C.* 1198(1).

Property includes “personal property . . . of every kind or description, tangible or intangible, in the possession or under the control of a holder . . . and includes . . . intangible ownership interests in corporations, whether or not represented by a stock certificate, bonds and other securities” 12 *Del. C.* § 1198(11).

The pre-June 30, 2008, version of Section 1198(9)a of the Delaware Escheats Law (“Old Section 1198(9)a”) defined the term “period of dormancy” as follows:

“Period of dormancy” means the full and continuous period of 5 years, except a period of 15 years for traveler's checks, during which an owner has ceased, failed or neglected to exercise dominion or control over property or to assert a right of ownership

or possession or to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property, provided that with respect to an intangible ownership interest in a corporation, whether or not represented by a stock certificate, the period of dormancy means a period of 5 years during which:

1. The owner has not claimed a dividend, distribution or other sum with respect to such interest;
2. The owner has not communicated in writing with the holder concerning such property or otherwise communicated with the holder concerning such property which communication is evidenced by a writing or other record prepared by the holder or its employee in the ordinary course of business; and
3. At the end of which the holder does not know the current location of the owner of such property.

Thus, in order for securities to be abandoned property under Old Section 1198(9)a, there must have been a continuous period of five years during which the owner failed or neglected to exercise dominion or control over the securities or to assert a right of ownership or possession or to do any other act in relation to or concerning the securities, including communicating with the holder or claiming a distribution (the “Five-Year Inactivity Rule”) and, at the end of this five-year period, the holder does not know the location of the owner (the “Lost Shareholder Requirement”).

Effective June 30, 2008, Section 1198(9)a of the Delaware Escheats Law was amended (“New Section 1198(9)a”) to eliminate the Lost Shareholder Requirement and to state, in pertinent part:

“Period of dormancy” means the full and continuous period of 5 years, except a period of 15 years for traveler’s checks, during which an owner has ceased, failed or neglected to exercise

dominion or control over property or to assert a right of ownership or possession or to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property. Notwithstanding the foregoing, “period of dormancy” means the full and continuous period of 3 years with respect to intangible ownership or indebtedness in a corporation or other entity whether or not represented by a stock certificate

Thus, for securities, the 2008 amendment to Section 1198(9)a reduced to three years the period during which an “owner [must have] ceased, failed or neglected to exercise dominion or control over property or to assert a right of ownership or possession or to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property” (the “Three-Year Inactivity Rule”).

B. Holders Must Deliver Abandoned Property to the State Escheator

Section 1201 of the Delaware Escheats Law requires holders of abandoned property to pay or deliver such property to the State Escheator and, in the case of certificated securities, to deliver the original stock certificate or a replacement certificate evidencing the certificated security to the State Escheator. 12 *Del. C.* § 1201(a) (“On or before the date required for the filing of the report pursuant to § 1199 of this title, every holder of abandoned property shall pay or deliver to the State Escheator all abandoned property specified in the report The holder of any intangible ownership interest in a corporation deemed abandoned under this subchapter shall, when making the delivery contemplated by this section: (1) If

such interest is a certificated security as defined in § 8-102(a) of Title 6 deliver either the original stock certificate evidencing the abandoned property, if such is in its possession or a duly issued replacement certificate evidencing such property in a form suitable for transfer”).

Under Section 1144 of the Delaware Escheats Law, when a holder pays or delivers property that the holder deems to be abandoned to the State Escheator, the holder “shall immediately and thereafter be relieved and held harmless from any and all liability for the property so paid and no action shall be maintained against [the holder] or [the property;]” provided, however, that “[n]othing in [Section 1144] shall be construed to relieve [the holder] . . . from liability for . . . [d]amages for negligence . . . [that occurred] prior to the time such funds or property are paid to the State Escheator.” 12 *Del. C.* §§ 1144(b) and (c).

If a holder delivers property that technically is not “abandoned property” to the State Escheator, the State Escheator is nonetheless required to treat such property as abandoned property:

Whenever, because of some mistake of fact, error in calculation or erroneous interpretation of a statute, any person pays or delivers to the State Escheator any moneys or other property not required by this subchapter to be so paid or delivered, such moneys or other property shall, for the purposes of this subchapter, be deemed to be abandoned property, unless and until refunded or redelivered by the State Escheator to the person who paid or delivered the same.

12 *Del. C.* § 1144(e).

Property that is paid or delivered to the State Escheator as abandoned property must be deposited into the State of Delaware’s general fund, 12 *Del. C.* § 1131(a), and is held by the State of Delaware “for the benefit of those entitled to receive the same” 12 *Del. C.* § 1144(a). Each October, the State Escheator “shall publish in a daily newspaper of this State a statement of abandoned or unclaimed property or funds paid to the Escheator during the 12 months ending July 1 next preceding such publication.” 12 *Del. C.* § 1142(a).

C. The State Escheator Must Sell Abandoned Property

The Delaware Escheats Law also mandates that “[a]ll abandoned property, other than money, delivered to the State Escheator under this subchapter shall be sold or disposed of in accordance with § 1143 of this title.” 12 *Del. C.* § 1204(a).

Section 1143(a) of the Delaware Escheats Law provides, in relevant part, that:

All abandoned property . . . delivered to the State Escheator pursuant to this subchapter may be sold or disposed of in such manner and at such times as the State Escheator, in the Escheator’s discretion, shall determine to be in the best interests of the State. In the case of stocks, bonds or other securities, disposition may be made by sale through a registered broker on a recognized security exchange or over the counter market or, if there is no ready market for such security, by negotiation or public auction.”

12 *Del. C.* § 1143(a). The proceeds of any sale, less any costs associated therewith, “shall be held in the place of such property” 12 *Del. C.* § 1143(b).

These proceeds, like all other money or proceeds of property received by the State

Escheator, must be deposited in the State of Delaware’s general fund. 12 *Del. C.* § 1131(a).

D. Claims to Abandoned Property

A person who or entity which has legal or equitable title to abandoned property worth \$3 or more that has been paid or delivered to the State Escheator can file a claim for the property with the State Escheator. 12 *Del. C.* § 1146(a). The General Assembly has given the State Escheator “full and complete authority to determine all such claims” 12 *Del. C.* § 1146(b).

If a claimant submits a valid claim for abandoned property that has been sold as required by Sections 1143 and 1204 of the Delaware Escheats Law, then such claimant “shall be entitled only to the money so received [as a result of the sale], less lawful service charges.” 12 *Del. C.* § 1143(b). The State of Delaware is responsible for paying any claim recognized by the State Escheator. 12 *Del. C.* § 1144(a).

STATEMENT OF FACTS¹

A. Background

Dr. Gilles Gosselin and Dr. Jean Louis Imbach, both French citizens, headed a research team that, in 1997, synthesized a new drug that was found active against the Hepatitis B virus. Gosselin Decl. ¶ 2. Noviro Pharmaceuticals Limited (“Noviro”) was established in 1998 to develop this drug. *Id.* In exchange for contributing their new drug to Noviro, Drs. Gosselin and Imbach each received 600,000 shares of Noviro stock in 1998. *Id.*

In 2002, Drs. Gosselin and Imbach formed Petitioners, both of which are duly organized and existing under the laws of Belgium, to hold certain of their shares of Noviro stock. SOF ¶¶ 1-2, Exs. A-B. LIN is owned 99.99% by Dr. Gosselin and 0.01% by Dr. Imbach and JLI is owned 99.99% by Dr. Imbach and 0.01% by Dr. Gosselin. SOF ¶ 3. On or about May 27, 2002, Drs. Gosselin and Imbach transferred 400,000 shares of Noviro stock to LIN and 300,000 shares of Noviro stock to JLI. Gosselin Decl. ¶ 3. At this time, Drs. Gosselin and Imbach

¹ The facts set forth herein are taken from the Stipulation of Facts (“SOF”) filed by the parties, the exhibits to the Stipulation of Facts, the declarations filed by the parties with their briefing, the exhibits attached to those declarations, pleadings filed in *JLI Invest S.A. et al. v. Computershare Trust Company, N.A., et al.*, Case 1:15-cv-11474-ADB (D. Mass.) and the cited filings with the United States Securities and Exchange Commission. Respondent has objected to one of the exhibits Petitioners submitted with a declaration. To the extent materials attached to declarations were not objected to, we treat those materials as part of the record before the Board.

Some documents and discovery responses cited in the parties’ briefing were not included as exhibits to the Stipulation of Facts or to the declarations. As copies of these materials were not provided to the Board, they were not considered by the Board in issuing this decision and order.

also formed two other Belgian entities, Carisio Invest S.A. (“Carisio”) and Flocena Invest S.A. (“Flocena”). These entities also owned Noviro/Idenix stock. Gosselin Decl. ¶ 3.

On May 28, 2002, Noviro changed its name to Idenix. Prospectus at p. F-7 filed with the Securities and Exchange Commission on July 22, 2004. On May 30, 2002, Idenix was converted to a Delaware corporation. *Id.* On or before May 28, 2003, LIN sold 80,000 Idenix shares and JLI sold 60,000 Idenix shares. Gosselin Decl. ¶¶ 8-9. Petitioners were issued replacement share certificates reflecting LIN’s ownership of 320,000 shares of Idenix stock and JLI’s ownership of 240,000 shares of Idenix stock (defined above as the “Stock”). *Id.*

In 2003, Petitioners entered into consulting agreements with Idenix. Gosselin Decl. ¶¶ 10-11; SOF Ex. C. LIN’s consulting agreement was renewed in 2007. Gosselin Decl. ¶ 12; SOF Ex. C. These consulting agreements reflected Petitioners’ ownership of the Stock. SOF Ex. C.

At all relevant times, Idenix and Idenix’s transfer agent, Computershare Trust Company, N.A. (“Computershare”),² had a written record of Petitioners’ mailing address in Brussels, Belgium. SOF ¶ 7.³

² Equiserve acted as Idenix’s transfer agent until 2005 at which time Equiserve was acquired by Computershare.

³ Companies that have publicly traded securities typically use transfer agents to keep track of and communicate with the individuals and entities that own their stock and bonds. *See* <http://www.sec.gov/answers/transferagent.htm>.

It is undisputed that Drs. Gosselin and Imbach participated in Idenix's development and served on its Scientific Advisory Board for Hepatitis and HIV drug research. Gosselin Decl. ¶ 5; SOF ¶ 5. From 1998 to 2006, Dr. Imbach worked with Idenix on an ongoing basis and had regular contact with it. *See* Imbach Decl. ¶¶ 1-12. From 1998 to 2015, Dr. Gosselin worked with Idenix on an ongoing basis and had regular contact with it. *See* Gosselin Decl. ¶¶ 1-13.

B. The Idenix IPO

On July 20, 2004, Idenix filed a registration statement with the SEC in anticipation of an initial public offering ("IPO"). *See* Amendment No. 4 to Idenix Form S-1 filed with the Securities and Exchange Commission on July 20, 2004. In connection with the IPO, existing Idenix stockholders were directed to return their original pre-IPO shares certificates to the transfer agent in exchange for post-IPO share certificates. Taliaferro Decl. Ex. B at JLILINTAB 0001-2, 0206, 0570.

Respondent contends that, in October 2004, Idenix's counsel advised Reynders & Co. ("Reynders"), an entity located in Belgium that provided administrative and accounting services to JLI, LIN, Flocena and Carisio, that Reynders might be receiving a request to return pre-IPO share certificates for post-IPO share certificates and if it did to forward such a request to Dr. Imbach. Taliaferro Decl. Ex. B at JLILINTAB 0570. The record reflects that Reynders received a blank "IPO Letter of Transmittal" form related to the 320,000 shares of

Idenix stock held by LIN. Taliaferro Decl. Ex. B at JLILINTAB 0206. This is the form that had to be executed to exchange pre-IPO share certificates for post-IPO share certificates. There is no evidence this form was ever signed or returned to the transfer agent. Likewise, there is no evidence before the Board indicating that JLI ever signed or returned an IPO Letter of Transmittal to the transfer agent. The record does reflect that Flocena signed and returned an IPO Letter of Transmittal. Taliaferro Decl. Ex. B at JLILINTAB 0001.⁴

C. The Stock is Delivered to Delaware and is Sold

On December 4, 2008, Computershare sent ACS Unclaimed Property Clearinghouse (“ACS”) a letter stating that Idenix had authorized Computershare to use ACS to “report and deliver to . . . states any abandoned securities and related cash” that arose out of the Idenix IPO. Taliaferro Decl. Ex. A at DE 0168-70 and 0169 (“Issues to be Processed: IDENIX PHARMACEUTICALS INC IPO”). The letter stated that Computershare or Idenix “will perform the required due diligence prior to delivering any unclaimed property to ACS” *Id.*

In a separate document which appears to have been sent to ACS with the December 4, 2008 letter, Computershare certified that on September 5, 2008, it had made “a due diligence mailing . . . to owners” who had not exchanged their pre-

⁴ The IPO Letter of Transmittal executed by Flocena bears a date of March 24, 2005, and was signed by Mireille Couderc. Taliaferro Decl. Ex. B at JLILINTAB 0001. Respondent contends that Ms. Couderc is a director of Flocena and the wife of Dr. Gosselin.

IPO Idenix share certificates for post-IPO Idenix share certificates and that “Owners who responded to the mailing have been removed from the records of abandoned property, or otherwise have been identified as having established contact.” Taliaferro Decl. Ex. A at DE 0175. Petitioners contend they never received any mailing from Computershare and they have submitted the declaration of Miguel Reynders, a managing director of Reynders, as support for that position.⁵

On December 8, 2008, Computershare sent ACS a report which identified the Stock, 320,000 shares of Idenix stock owned by LIN and 240,000 shares of Idenix stock owned by JLI, and 1,000 additional Idenix shares as abandoned property arising from the Idenix IPO. SOF ¶ 12, Ex. E. On January 5, 2009, ACS delivered the Stock to the then State Escheator of the State of Delaware. SOF ¶ 13, Ex. G.⁶ On their face, the report Computershare sent ACS and the documentation

⁵ Mr. Reynders’ declaration states that (i) Reynders provided administrative and accounting services to JLI and LIN from 2002 to the present, (ii) JLI and LIN used Reynders’ address in Belgium as their address, (iii) Reynders employees collected and scanned incoming mail directed to JLI and LIN, and (iv) once scanned, the mail was emailed to more senior Reynders employees who then forwarded it to a representative of JLI or LIN. Petitioners contend that Exhibit 1 to Mr. Reynders’ declaration is a “log reflect[ing] all incoming mail for JLI and LIN” from 2003 to 2016. Respondent objects to Exhibit 1 arguing that it is (i) just a list of emails between Reynders’ employees which purportedly pertaining to JLI and LIN, (ii) not a log kept in the ordinary course of business or contemporaneously maintained, and (iii) not a list of postal mail that was scanned and forwarded by email to a representative of JLI or LIN.

To resolve the matter before the Board, it is not necessary for the Board to determine whether or not Computershare mailed a letter to Petitioners or engaged in any other due diligence with respect to the Stock before delivering it to the State Escheator. Accordingly, the Board makes no determination as to this issue.

⁶ The record before the Board is not clear as to exactly what ACS delivered to the State Escheator. As the Stock is certificated, Section 1201(a) of the Delaware Escheats Law requires the delivery of the original certificate or a replacement certificate to the State Escheator. At all

ACS sent the State Escheator do not identify the Petitioners or their address in Belgium. SOF Exs. E and G. It is not clear if all of the documentation related to the delivery of the Stock to the State Escheator is part of the record before the Board.⁷

Prior to March 24, 2009, the then State Escheator placed a sell order on the Stock. SOF ¶ 14. Between March 24 and April 6, 2009, the Stock was sold in several transactions for total consideration of \$1,695,851.75. *Id.*⁸

times, Petitioners have had physical possession of the replacement share certificates they received in 2003, Gosselin Decl. ¶ 10; however, after 2003, new replacement share certificates related to the Stock were issued in connection with the 2004 Idenix IPO, *see* Taliaferro Decl. Ex. B at JLILINTAB 0001-2, 0206, 0570, and as there is nothing in the record indicating that Petitioners submitted the forms necessary to exchange their 2003 share certificates for the post-IPO replacement share certificates, it is possible that Idenix and/or Computershare had physical possession of the post-IPO replacement share certificates and that these certificates were delivered to the State Escheator. Although Petitioners have noted that they had possession of the 2003 certificates, they have not argued that the State Escheator did not receive the post-IPO replacement share certificates or other replacement certificates from ACS.

⁷ Although the Stock was delivered to the State Escheator after New Section 1198(9)a was adopted, Petitioners contend that Old Section 1198(9)a and its Five-Year Inactivity Rule and Lost Shareholder Requirement, and not New Section 1198(9)a and its Three-Year Inactivity Rule, govern whether “a full period of dormancy has run” as to the Stock. Petitioners further contend that, regardless of whether New Section 1198(9)a or Old Section 1198(9)a governs this issue, the “period of dormancy” required by these provisions has not been satisfied and, therefore, the Stock was never abandoned.

Petitioners further contend that, because they are foreign entities incorporated outside the United States, the Stock could never be escheated to Delaware.

Respondent disagrees with all of these points.

⁸ The record does not reflect whether or not, prior to the sale of the Stock, Idenix or Computershare filed a report of abandoned property with the State Escheator identifying the Stock as abandoned property and providing the other information required by Section 1199 of the Delaware Escheats Law.

The record does not contain any evidence indicating that the then State Escheator or his representatives attempted to contact the Petitioners or engaged in any other due diligence related to the Stock or its owners before selling the Stock. In addition, no evidence has been presented suggesting the Stock was listed as abandoned property in the October 2009 newspaper publication of abandoned property as required by Section 1142(a) of the Delaware Escheats Law.

D. Petitioners Discover the Stock was Escheated to Delaware

Prior to March 30, 2011, Petitioners inquired about the Stock. *See* Complaint filed in *JLI Invest S.A. et al. v. Computershare Trust Company, N.A., et al.*, Case 1:15-cv-11474-ADB (D. Mass.) (“MA Complaint”) at ¶ 31. Petitioners contend that, on March 31, 2011, Computershare informed Petitioners that the Stock had been escheated to Massachusetts. *Id.* and at ¶ 43. Petitioners also contend that, on July 9, 2012, Computershare advised Petitioners that their shares had been delivered to Delaware, not Massachusetts. *Id.* at ¶ 44.

E. Petitioners File Claims for the Stock

On September 17, 2012, a Reynders representative emailed the State of Delaware about the 240,000 shares of Idenix common stock owned by JLI. SOF Ex. I. In his email, the Reynders representative asked what steps had to be taken to return these shares to JLI and further indicated that similar steps would probably have to be taken as to LIN. *Id.*

In response to this email, Petitioners were instructed to fill out claim forms and initiate the claims process contemplated by Section 1146(a) of the Delaware Escheats Law. SOF ¶ 16. From September 2012 to March 2013, Petitioners supplied documents and information to Delaware in an effort to substantiate their claims. SOF ¶¶ 15-21, Exs. I-M. Petitioners contend that, during this period, they “requested assistance from Computershare and Idenix to confirm that their shares had in fact been escheated to Delaware and, if so, to recover their shares from Delaware. However, Computershare and Idenix did not respond to [Petitioners’] requests, were unable or unwilling to help [Petitioners], or were delinquent in providing minimal assistance to [Petitioners]. As a result of Computershare’s and Idenix’s lack of responsiveness and assistance, Plaintiffs were not able to confirm until May 2014 that their shares had in fact been escheated to Delaware” MA Complaint ¶¶ 48-49.

Once all the documentation had been received, representatives of the Delaware Office of Unclaimed Property then began researching and investigating the Petitioners’ claims. SOF ¶¶ 22-25. On May 22, 2014, a representative of the Delaware Office of Unclaimed Property confirmed that the Stock had been delivered to Delaware and indicated that the Stock likely was sold. SOF ¶ 25, Ex. O.

F. The Merck Tender Offer

On June 19, 2014, Merck & Co., Inc. (“Merck”) announced it was commencing a tender offer to acquire all outstanding shares of Idenix common stock for \$24.50 per share. On August 4, 2014, Merck completed its tender offer.

If Petitioners had sold the Stock to Merck in the tender offer, they would have been entitled to receive \$13,720,000 for their 560,000 shares of Idenix common stock.

G. Petitioners’ Claims are Approved for \$1,695,851.75

On September 8, 2014, a representative of the Delaware Office of Unclaimed Property provided a new claim form to Petitioners. This claim form, which was partially completed, indicated that claims had been submitted for both LIN and JLI and stated that the total due to Petitioners was \$1,695,851.75. SOF ¶ 28, Ex. Q.

On March 27, 2015, Petitioners submitted the completed claim form that had been provided to them on September 8, 2014. SOF ¶ 31. The form Petitioners submitted related to both of their claims and sought the return of 560,000 shares of “Stock or Cash Equivalent, which Owner Maintains is the Exchange Value in Merck Tender Offer on 6/24/14 (\$24.50 per share).” SOF Ex. T.

On March 31, 2015, Petitioners were notified that the Respondent had approved their claims in the amount of \$1,695,851.75. SOF ¶ 32, Ex. U. This is

the determination that Petitioners have appealed. Petitioners contend it took too long for their claims to be approved and that they were injured as a result.

H. Petitioners Sue Computershare and Idenix in Massachusetts

On March 30, 2015, Petitioners sued Computershare, Idenix and their affiliates in Massachusetts “to recover the value of shares of stock owned by [Petitioners] that Defendants wrongfully escheated to Delaware” *See* MA Complaint introductory paragraph. Among other things, Petitioners’ Massachusetts complaint alleges that:

- “Computershare, acting as the agent of Idenix, erroneously reported to the State of Delaware in November 2008 that 560,000 shares owned by [Petitioners] had been ‘abandoned’ and constituted ‘unclaimed property’ and then delivered [Petitioners’] 560,000 shares to Delaware on January 2, 2009.”
- “Neither Computershare nor Idenix attempted to contact [Petitioners] prior to escheating their shares.”
- “On information and belief, Computershare did not perform a due diligence search to locate or communicate with [Petitioners] before declaring their property to be abandoned.”
- “[Petitioners] requested assistance from Computershare and Idenix to confirm that their shares had in fact been escheated to Delaware and, if so, to recover their shares from Delaware. However, Computershare and Idenix did not respond to [Petitioners’] requests, were unable or unwilling to help [Petitioners], or were delinquent in providing minimal assistance to [Petitioners].”
- “As a result of Computershare’s and Idenix’s lack of responsiveness and assistance, [Petitioners] were not able to confirm until May 2014 that their shares had in fact been escheated to Delaware.”

- “But for the wrongful and tortious acts committed by Computershare and Idenix, LIN would have been entitled to receive \$7,840,000 (320,000 shares x \$24.50 per share price), and JLI would have been entitled to receive \$5,880,000 (240,000 shares x \$24.50 per share price) in exchange for their shares pursuant to the Merck tender offer.”
- “Computershare and Idenix erroneously applied the incorrect standard for escheat.⁹ Furthermore, even under that standard, [Petitioners’] shares would not have been escheatable because [Petitioners] did in fact have contact with Idenix with respect to their shares during the three-year period prior to the date their shares were escheated.”
- “Computershare and Idenix also breached their duties to [Petitioners] by failing to provide sufficient information to Delaware, including [Petitioners’] contact information, to enable Delaware to return [Petitioners’] shares to them.”¹⁰

MA Complaint ¶¶ 30, 33, 35, 48, 49, 56, 62, and 67.

In Massachusetts, Petitioners asserted claims for negligence, unfair trade practices, conversion, breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, violation of federal securities laws, violation of state securities laws and violation of 42 *U.S.C.* § 1983 by depriving and taking Petitioners’ property without due process of law. Petitioners further contend that the Stock could not be escheated under federal common law because the Stock was owned by a foreign person/entity and that the escheatment of the Stock violates the Commerce Clause of the United States Constitution.

⁹ This allegation appears to refer to Petitioners’ contention that Old Section 1198(9)a, and not New Section 1198(9)a, governs whether “a full period of dormancy has run” as to the Stock.

¹⁰ In the petition they filed with the Board, Petitioners contend that “[o]n information and belief, when Idenix and Computershare reported Petitioners’ shares to Delaware, they provided Petitioners’ names and addresses to Delaware.” Petition ¶ 5.

The Massachusetts defendants sought to stay the Massachusetts lawsuit in favor of the proceedings in Delaware referenced below. *See* Defendants' Memorandum of Law in Support of their Motion to Stay filed in *JLI Invest S.A. et al. v. Computershare Trust Company, N.A. et al.*, 1:15-cv-11474 (D. Mass.) on September 11, 2015. That request was denied. Memorandum and Order on Defendants' Motion to Stay; Notice for Scheduling Conference, *JLI Invest S.A. et al. v. Computershare Trust Company, N.A. et al.*, 1:15-cv-11474 (D. Mass. Sept. 13, 2016). Thereafter, the Massachusetts defendants moved to dismiss Petitioners' claims arguing that all of the claims are time barred and that some of the claims fail to state a claim. That motion remains pending in Massachusetts.

I. Petitioners Recover \$1,695,851.75

On or about June 8, 2015, Petitioners received a check from the State of Delaware in the amount of \$1,695,851.75. Thereafter, Petitioners and Respondent agreed that Petitioners could endorse and deposit the check without prejudice to their right to seek additional funds based on their claims and lawsuits. Petitioners then deposited the check, under protest and without prejudice. SOF ¶¶ 33-34.

J. Petitioners Sue the State of Delaware, the Respondent and Other Present and Former Officials in the Court of Chancery

On July 9, 2015, Petitioners filed suit against the State of Delaware, the Respondent and other present and former state officials in the Court of Chancery. Petitioners alleged that the Court of Chancery defendants' acts violated the

Delaware Escheats Law, federal common law, the Due Process Clauses of the United States and Delaware Constitutions, the Takings Clauses of the United States and Delaware Constitutions, the Commerce Clause of the United States Constitution, 42 *U.S.C.* § 1983, the foreign affairs power of the federal government, federal and state securities laws and the Friendship, Establishment and Navigation Treaty entered into between the United States and Belgium.

Petitioners further allege that the Court of Chancery defendants' acts constitute gross negligence and conversion. In their Court of Chancery action, Petitioners seek to recover \$12,024,148.25 ($\$13,720,000 - \$1,695,851.75 = \$12,024,148.25$). SOF ¶ 35.

K. This Appeal

On July 28, 2015, Petitioners filed a petition with this Board appealing the Respondent's March 31, 2015 determination that the Petitioners were the owners of the Stock and entitled to \$1,695,851.75 from the State of Delaware. SOF ¶ 37.¹¹ Petitioners' petition raises the same issues and claims that they have asserted in their Court of Chancery lawsuit. Petitioners' Opening Brief at 5.

Petitioners contend that this Board lacks jurisdiction over the claims they have asserted in the petition, Petitioners' Opening Brief at 5, and that they filed

¹¹ Section 1146(b) of the Delaware Escheats Law provides that within four months after the Respondent makes a determination as to a claim for abandoned property, a claimant "may apply for a hearing and determination of claim by the Tax Appeal Board."

their petition in an abundance of caution to fully exhaust any possible administrative remedies they may have with respect to the claims they submitted to the Respondent regarding the Stock. Respondent contends Petitioners were required to file a petition with the Board and that the Board has jurisdiction over all of the claims asserted herein. The parties agreed to stay the lawsuit before the Court of Chancery until this Board rules on the petition.

ANALYSIS

There is a dispute as to the extent of the Board’s jurisdiction. As jurisdiction is a threshold issue, we start by determining which claims the Board has the authority to resolve.

I. Jurisdiction

To facilitate the jurisdictional analysis, the claims Petitioners have raised before the Board can be divided into three categories:

(i) “Constitutional Claims,” which include the claims that Respondent violated the Due Process Clauses of the United States and Delaware Constitutions, the Takings Clauses of the United States and Delaware Constitutions, the Commerce Clause of the United States Constitution, 42 *U.S.C.* § 1983 and the foreign affairs power of the federal government,

(ii) “Common Law, Treaty and Securities Law Claims,” which include the claims that Respondent violated federal common law, federal and state securities

law, and the Friendship, Establishment and Navigation Treaty entered into between the United States and Belgium and that Respondent has engaged in gross negligence and conversion, and

(iii) “Statutory Claims,” which include any claim that Respondent erred when interpreting the Delaware Escheats Law or when applying the facts to such law while considering the claims for the return of the Stock that the Petitioners filed with Respondent.

A. The Board Lacks Jurisdiction Over the Constitutional Claims

This Board has previously held that, as an administrative body, it does not have jurisdiction to resolve facial or as applied constitutional challenges. *See* Petitioners’ Opening Brief at 17-18 (citing authority). These rulings are consistent with Delaware case law which holds that administrative bodies lack the authority and expertise to resolve claims founded upon a constitutional right. *Bryant-Harris v. Delaware Dept. of Insurance*, 2012 WL 2106946, at *5 n.52 (Del. Super. June 6, 2012) (“administrative agencies are not properly prepared to deal with constitutional questions”) (citing *Califano v. Sanders*, 430 U.S. 99, 109 (1977) (“Constitutional questions obviously are unsuited to resolution in administrative hearing procedures”)); *see also Greene v. Dept. of Servs. to Children, Youth and their Families*, 2009 WL 5176536 at *2-3 (Del. Super. Nov. 24, 2009) (upholding decision of Merit Employee Relations Board that it lacked jurisdiction

to decide employee's as applied constitutional claim); *Tatten Partners, L.P. v. New Castle Cty. Bd. of Assessment Review*, 642 A.2d 1251, 1262 (Del. Super. 1993), *aff'd sub nom.*, 647 A.2d 382 (Del. 1994) (taxpayer "could not have presented" an as applied due process "claim to the [County Board of Assessment Review]" because such a claim is not within board's jurisdiction).

Petitioners agree with this conclusion. Petitioners' Opening Brief at 15 ("The TAB's jurisdiction . . . does not extend to constitutional . . . claims").

Respondent has not presented any argument that persuades the Board to deviate from its prior rulings.¹²

¹² In his answering brief, Respondent did not dispute that the Board lacks jurisdiction over facial constitutional challenges. Accordingly, any argument by Respondent that the Board has jurisdiction over facial constitutional challenges has been waived. *Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) ("Issues not briefed are deemed waived.").

With regard to as applied constitutional challenges, Respondent contends that *Davis v. Delaware Health and Social Service/Division of Child Enforcement*, 2010 WL 1502659 (Del. Ch. Apr. 6, 2010), supports the Board's jurisdiction over such matters. The Board disagrees. In *Davis*, the plaintiff argued a state agency violated his due process rights by suspending his driver's license. In dismissing plaintiff's as applied constitutional challenge, the court ruled the plaintiff "must pursue those claims within the agency and Family Court, if appropriate." The court did not rule such claims can be pursued before an agency. It ruled that the plaintiff had to pursue such claims in the "appropriate" forum. The appropriate forum for as applied constitutional challenges is a court, not the Board. *See Greene*, 2009 WL 5176536, at *3 ("the Court will not remand this matter to the [administrative agency] to consider the [as applied] constitutional due process issue. Instead, the Court [hearing the appeal from the administrative agency] will address [plaintiff's] constitutional claim *de novo*."); *The Town of South Bethany v. Nagy*, 2006 WL 1451528, at *6-7 (Del. Ch. May 12, 2006) (no need to exhaust administrative remedies before filing a lawsuit raising an as applied constitutional challenge because the underlying administrative body was not qualified to adjudicate the as applied constitutional issue).

The Constitutional Claims raised by Petitioners assert facial and as applied constitutional challenges. Resolving such claims falls outside the Board's jurisdiction and these claims will not be addressed or resolved by the Board.

B. The Board Lacks Jurisdiction Over the Common Law, Treaty and Securities Law Claims

The Board is not a court, let alone a court of general jurisdiction. Rather, it is an administrative body and, for purposes of this case, its function is limited to hearing the appeal from the notice of determination issued by the Respondent with respect to the claims filed by the Petitioners. 12 *Del. C.* §1146(b) (claimants can appeal the State Escheator's claim determinations to the Board and the Board is to proceed in accordance with 30 *Del. C.* § 329); 30 *Del. C.* § 329 (the Board "shall hear all appeals from determinations . . . and the Board may affirm, modify or reverse any such determination.").

The purpose of such a hearing/appeal is to determine whether the Respondent made factual or legal errors when resolving Petitioners' claims under the Delaware Escheats Law. *Id.* The Board's jurisdiction only extends to these issues and Petitioners' Common Law, Treaty and Securities Law Claims, all of which are independent causes of action that properly can be (and have been) asserted in a separate legal proceeding, do not fall within this ambit. Nothing in the Delaware Escheats Law authorizes the Board to hear these independent causes of action. The lack of jurisdiction is particularly clear in this case because the

Common Law, Treaty and Securities Law Claims were not presented to or considered by the Respondent when addressing the Petitioners' claims to the Stock. *See* Petitioners' Opening Brief at 17 ("The State Escheator never made any determination with respect to" Petitioners' tort claims).

The opinion in *Matthews v. Leavitt*, 452 F.3d 145 (2d Cir. 2006), is instructive. There, an administrative law judge ("ALJ") adjudicated a dispute over entitlement to Medicare benefits. In that administrative proceeding, the plaintiff argued that the defendant had breached the implied covenant of good faith and fair dealing in the underlying operative contract and as a result damaged plaintiff. The ALJ ruled that plaintiff's state law breach of contract claim was not within his jurisdiction. After that ruling was upheld by a review board, the plaintiff filed an action in federal court alleging that "the ALJ erred in 'declining to exercise jurisdiction over common law breach of contract issues.'" 452 F.3d at 150. The trial court rejected that contention and the plaintiff appealed.

On appeal, the ALJ's determination was affirmed. In concluding that "an ALJ has no statutory authority to entertain a state law breach of contract claim for damages," the appellate court stated:

The authority of an ALJ is "circumscribed by the appointing agency's enabling statutes and its regulations." The [plaintiff] points to no statement in the applicable statutory or regulatory scheme that empowers an ALJ to hear a state law breach of contract claim for damages. . . . Although the statutory language . . . empowers an ALJ to determine . . . whether [plaintiff] . . . is

entitled to particular supplemental benefits . . . it does not provide for the adjudication by the ALJ of a state law breach of contract action for damages that is independent of the ALJ's determination of entitlement to benefits under the terms of the applicable agreement. The statutory framework plainly does not contemplate the litigation of ordinary state law causes of action for damages before ALJs.

452 F.3d at 152-53 (citations omitted); *see also Eastern Shore Environmental, Inc. v. Kent County Dept. of Planning*, 2002 WL 244690, at *3 and *6 (Del. Ch. Feb. 1, 2002) (administrative board lacked jurisdiction to resolve claim of equitable estoppel “because the statute that empowers the [board] to hear appeals from zoning decisions does not encompass claims of this kind” and because the board lacked expertise over the issue in dispute); *Picogna v. Board of Educ. of Twp. of Cherry Hill, Camden County*, 592 A.2d 570, 571 (N.J. Super. Ct. App. Div. 1991) (holding that a court, and not an administrative judge or agency, had jurisdiction over claims for breach of contract, violation of state and federal constitutions and violation of state statute); *Department of Human Rights v. Spiten*, 424 N.W.2d 815, 820 (Minn. Ct. App. 1988) (defendant's tort-based counterclaims were not within the subject matter jurisdiction of an administrative law judge); *Point Mgmt., Inc. v. Dep't of Bus. Reg., Div. of Florida Land Sales and Condominiums*, 449 So.2d 306, 307 (Fla. Dist. Ct. of App. 1984) (“courts rather than administrative bodies construe contracts”); *Christen v. Tyson Foods, Inc.*, 1989 WL 206512 (Ark. Work. Comp. Com. Nov. 6, 1989) (neither administrative law judge nor commission

which reviews judge's decision has jurisdiction over tort claims); Petitioners' Opening Brief at 15 and 16 ("The TAB's jurisdiction . . . does not extend to . . . tort claims" and "The appeals process [before the Board] is not intended to resolve cases like this one where the State Escheator has *granted* the owners' claim, but the owner has separate (albeit related) tort and constitutional claims against the State and its officials . . .") (emphasis in original).¹³

Here, the statutory framework of the Delaware Escheats Law does not contemplate the litigation of common law, treaty based or securities law claims before the Respondent or the Board. Consequently, the Common Law, Treaty and Securities Law Claims fall outside the Board's jurisdiction and these claims will not be addressed or resolved by the Board.

C. The Board Has Jurisdiction Over the Statutory Claims

For the reasons set forth above, the Board has jurisdiction over the Statutory Claims, *i.e.*, any claim that Respondent erred when interpreting the Delaware Escheats Law or when applying the facts to such law while considering the claims for the return of the Stock that the Petitioners filed with Respondent.

¹³ See also *Levinson v. Delaware Compensation Rating Bureau, Inc.*, 616 A.2d 1182, 1190 (Del. 1992) (exhaustion of administrative remedies not necessary if the underlying issue involves a question of law rather than areas of administrative expertise).

II. Application of the Delaware Escheats Law

The Respondent took two actions in the March 31, 2015 determination from which Petitioners appeal. First, Respondent determined that Petitioners are the legal/equitable owners of the Stock. Second, Respondent determined that Petitioners are only entitled to recover \$1,695,851.75 from the State of Delaware, the amount received by the State when the Stock was sold in 2009. Petitioners contend that the latter decision is not consistent with the Delaware Escheats Law.

A. Respondent's Determination That Petitioners Own the Stock Is Not At Issue

With respect to the determination that Petitioners own the Stock, Respondent granted the very relief Petitioners sought on this issue and neither party contests this determination. As Respondent's determination as to Petitioners' status as owners is not at issue, this is not an issue this Board can address on appeal. *See In re Peierls Charitable Lead Unitrust*, 777 A.3d 232, 235 (Del. 2013) ("It constitutes reversible error for a trial court to have 'addressed issues as to which there was no actual controversy.'" (citations omitted); *Agar v. Judy*, 2015 WL 6949292, at *1 (Del. Ch. Nov. 15, 2015) (Order) (dismissing claims for "fail[ure] to state a claim because of the absence of an actual controversy" between the parties); *Franklin Balance Sheet Inv. Fund v. Crowley*, 2006 WL 3095952, at *8 (Del. Ch. Oct. 19, 2006) ("The primary function of a court is to adjudicate actual controversies. In the absence of a controversy, a case will be dismissed . . .").

B. Petitioners Can Recover \$1,695,851.75 Under the Delaware Escheats Law

Respondent's determination that Petitioners can recover \$1,695,851.75 from the State of Delaware adheres to the Delaware Escheats Law. As detailed above, in pertinent part, that law provides that when a holder delivers property that the holder deems to be abandoned property to the State Escheator, the State Escheator is required to sell such property and to retain the proceeds for the benefit of the legal or equitable owner. The law further provides that the legal or equitable owner can make a claim for that property and, if valid, the State of Delaware is required to pay such claim; provided, however, that "any claimant for abandoned property shall be entitled only to the money so received [as a result of the sale], less lawful service charges." 12 *Del. C.* § 1143(b).

The language of Section 1143(b) is unambiguous and caps what Petitioners can recover from the State of Delaware for the Stock under the Delaware Escheats Law. By determining Petitioners can recover \$1,695,851.75 from the State of Delaware on account of their claims, Respondent adhered to the Delaware Escheats Law.

C. Petitioners' Statutory Arguments are Based on a False Premise

Petitioners also contend that the State Escheator "violated the Delaware Escheats Law by wrongfully escheating and liquidating Petitioners' Stock and doing so in the absence of good faith and in a manner contrary to the purpose of

such law.” Petitioners’ Opening Brief at 20. In particular, Petitioners contend that the State Escheator violated the Delaware Escheats Law because:

- the Stock was never abandoned property as that term is defined under the Delaware Escheats Law;
- the State Escheator did not utilize Old Section 1198(9)a to determine whether the “full period of dormancy” had run with respect to the Stock;
- the State Escheator applied New Section 1198(9)a retroactively to determine if the “full period of dormancy” had run with respect to the Stock; and
- even if New Section 1198(9)a could be applied retroactively, the State Escheator incorrectly determined that the “full period of dormancy” had run under New Section 1198(9)a.

Petitioners’ Opening Brief at 20-28. Petitioners further complain that the State Escheator had the opportunity and could have contacted them, but that he made no attempt to confirm that the Stock was abandoned or to contact Petitioners before selling the Stock. Petitioners’ Opening Brief at 1, 11-13. Petitioners’ final complaint is that the State Escheator never listed the Stock as abandoned property on Delaware’s annual newspaper publication of such property or on the State Escheator’s website. *Id.*

Petitioners’ contentions are premised on a misunderstanding of the Delaware Escheats Law. Specifically, Petitioners assume that the Delaware Escheats Law requires the State Escheator to determine that property he receives from holders is, in fact, abandoned property and to attempt to locate the legal or equitable owners of such property. That is not how the Delaware Escheats Law is structured.

As detailed above, the Delaware Escheats Law places the burden on holders to determine whether property is abandoned property, to report any abandoned property to the State Escheator and to deliver the abandoned property to the State Escheator. 12 *Del. C.* § 1199 (holders must report abandoned property in the possession of the holder to the State Escheator); 12 *Del. C.* § 1201(a) (holders must turn over all abandoned property to the State Escheator).

Once delivered, the Delaware Escheats Law does not require the State Escheator to determine if the property is actually abandoned property or to attempt to locate the owner. Rather, once delivered to the State Escheator, the property “*shall . . . be deemed to be abandoned property*, unless and until refunded or redelivered by the State Escheator” 12 *Del. C.* § 1144(e) (emphasis added). Indeed, property “shall . . . be deemed to be abandoned property” even if “because of some mistake of fact, error in calculation or erroneous interpretation of a statute,” a holder “pays or delivers to the State Escheator . . . moneys or other property [that is] not required by this subchapter to be so paid or delivered” *Id.* Thus, under the Delaware Escheats Law, the burden is on holders to identify and deliver abandoned property to the State Escheator, the State Escheator has no obligation to determine if the property was properly delivered or whether the owner can be located and the State Escheator is required to treat any property so

delivered, including improperly delivered property, as abandoned property until such time as the property is returned.¹⁴

Because the holder of the Stock, and not the State Escheator, was required to determine if the Stock was abandoned property, and because the State Escheator was required to treat the Stock as abandoned property (even if the holder erred in identifying the Stock as abandoned property), and because the State Escheator was required to sell the Stock, the then State Escheator did not misapply or violate the Delaware Escheats Law when he sold the Stock in 2009. Likewise, the Respondent did not misapply or violate the Delaware Escheats Law when he determined that Petitioners can only recover \$1,695,851.75 from the State of Delaware under the Delaware Escheats Law.

Put simply, the Delaware Escheats Law imposes no obligation on the State Escheator or the State of Delaware to independently determine whether the Stock was “abandoned property” or whether Old or New Section 1198(9)a governs whether “a full period of dormancy has run” as to the Stock or to try to identify the

¹⁴ Placing the burden of determining what is and what is not abandoned property on holders is appropriate as the holders possess the facts that pertain to whether the property is, in fact, abandoned property, have the most information regarding how to identify and contact the owner and typically have physical possession of the property at issue. The State Escheator, in comparison, has no first-hand knowledge of any of these facts and only has the information set forth in the holder’s Section 1199 report. If the holder acts with reasonable care when determining if property is abandoned property, then the holder “shall immediately and thereafter be relieved and held harmless from any and all liability for the property . . .” 12 *Del. C.* § 1144(b). If, however, a holder acts negligently when delivering property to the State Escheator, the holder can be held liable for its negligence. 12 *Del. C.* § 1144(c).

owner of the Stock before selling it. To the contrary, regardless of whether the holder correctly determined that the Stock was abandoned property or applied and interpreted the correct version of Section 1198(9)a, the Delaware Escheats Law required the State Escheator to treat the Stock as abandoned property and to sell the Stock. As a result of that sale and the clear language of 12 *Del. C.* § 1143(b), Petitioners' claims under the Delaware Escheats Law are capped at \$1,695,851.75.¹⁵

To be clear, the Board's rulings concern only the text of the Delaware Escheats Law and Respondent's compliance therewith under the facts presented. The Board makes no rulings or judgments as to whether the sale of the Stock, the return of \$1,695,851.75 to the Petitioners or any other act by the Respondent or prior State Escheators violates any other legal or equitable doctrines.

CONCLUSION

The Board lacks jurisdiction over the non-Delaware Escheats Law claims asserted by Petitioners and the Board makes no rulings as to those claims. For the reasons set forth above and based on the evidence presented to the Board by both parties, Respondent was permitted to sell the Stock and deposit the proceeds into

¹⁵ There is no evidence in the record indicating that the State Escheator listed the Stock as abandoned property in the October 2009 newspaper publication of abandoned property as required by Section 1142(a) of the Delaware Escheats Law. Assuming no publication was made, the failure to adhere to the publication requirement does not change the result here. The clear language of 12 *Del. C.* § 1143(b) precludes Petitioners from recovering more than \$1,695,851.75 from the State of Delaware under the Delaware Escheats Law.

the general fund and the Respondent properly returned the proceeds to the
Petitioners in the amount of \$1,695,851.75, which is the most Respondent can pay
Petitioners with respect to their claims under the Delaware Escheats Law.

Paul E. Selt

Jan M. Winters

[Signature]

Robert W. Slav

SO ORDERED this 18th day of January, 2017.

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