

Third Circuit Issues Decision in New Jersey Gift Card Escheat Suit

January 30, 2012 by [Craig Cardon](#), [Brian Anderson](#), [Rachel Hudson](#)

On January 5, 2011, the Third Circuit issued its decision in *New Jersey Retail Merchants Association v. Sidamon-Eristoff*, Case No. 10-4551 (3d Cir. Jan. 5, 2012). The appellate court affirmed the decision of the District Court partially granting and partially denying a motion for a preliminary injunction of enforcement of New Jersey's unclaimed property law as applied to gift cards or stored value cards ("SVCs").

Background

The New Jersey Retail Merchants Association ("NJRMA"), New Jersey Food Council, and American Express Prepaid Card Management Corporation (referred to as "SVC issuers") are challenging New Jersey's statute regarding the return of unclaimed property, 2010 N.J. Laws, Chapter 25, also known as an escheat law, as it relates to SVCs. In general, escheat laws require that once property has been deemed abandoned, the holder must attempt to contact the owner at his or her last known address and if unsuccessful, turn the property over to the state for safe keeping. The New Jersey law amended the state's escheat laws to apply to SVCs for the first time and created new rules specifically relating to SVCs.

Third Circuit Decision

The Third Circuit's decision concerns the SVC issuers' motion for a preliminary injunction of certain provisions of the law. The District Court granted the motion as to the retroactive application of the law and the place-of-purchase presumption and denied the motion as to the two year abandonment period and the name and address collection requirement. The Third Circuit affirmed the decision.

The Third Circuit agreed with the lower court that it was reasonably likely that the SVC issuers would prevail on the issue of whether retroactive application would violate the Contracts Clause of the United States Constitution. The court held that retroactively applying the law would impair the contractual relationship between the SVC issuers and their customers by imposing a new

burden on the SVC issuers not accounted for when the relationship was formed. The place-of-purchase presumption provision provides that where no information is known about the residence of the purchaser of the SVC, it is presumed that a SVC sold in New Jersey escheats to the State of New Jersey. Both courts held that the SVC issuers established a reasonable likelihood of prevailing on their claim that this rule is preempted by the federal common law rule that governs the priority of escheatment of property.

The Third Circuit affirmed the District Court's denial of the preliminary injunction of the two-year abandonment period as the court held that it was not reasonably likely that the SVC issuers would prevail on their claim that the New Jersey law is preempted by the federal Credit CARD Act, 15 U.S.C. § 16931-1(c).

The Third Circuit also affirmed the District Court's denial of the preliminary injunction of the requirement that SVC issuers collect the name and address of the purchaser or owner of each SVC issued or sold and at least maintain a record of the zip code of the owner or purchaser. The court held that this portion of the law was severable from the place-of-purchase presumption provision. The court further held that the SVC issuers were not likely to succeed on their claim that the requirement was preempted by federal law and that there are rational, legitimate reasons for the requirement.

Finally, the Third Circuit affirmed the District Court's holding that the SVC issuers did not establish a reasonable likelihood of success on their substantive due process challenge to the law.

The case will now return to the District Court to proceed on the merits should the parties continue to pursue the litigation, however, the parties still have the opportunity to petition for rehearing by the Third Circuit or appeal the decision to the Supreme Court. The NJRMA has stated that it is unlikely to petition for rehearing or appeal.

State Treasury's Response

The New Jersey Treasurer's office has stated that they are taking time to "digest" the decision and will then schedule a meeting within the next few weeks to discuss the NJRMA's concerns. The Treasurer's office has assured the NJRMA that they will not issue any type of implementation guidance prior to this meeting. The Treasurer's office has said that they will not begin enforcement of the law until they issue guidance.

Legislative Efforts

In addition, the NJRMA and other retail groups will continue to pursue legislative strategies if their discussions with the state are unproductive.