

ORIGINAL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FILED
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U.S. COURT OF
FEDERAL CLAIMS

JEFF ATWATER, CHIEF FINANCIAL
OFFICER FOR THE STATE OF
FLORIDA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 16-1482 C

COMPLAINT

Plaintiff Jeff Atwater, in his official capacity as Chief Financial Officer for the State of Florida (“CFO”), for a Complaint by and through his attorney of record, J. Brett Milbourn, hereby states:

INTRODUCTION

1. This action seeks just compensation from the United States of America pursuant to the Code of Federal Regulations 31 C.F.R. § 315 *et seq.* and 31 C.F.R. § 353 *et seq.* (“Treasury Regulations”) for money damages owed to the State of Florida by the United States Department of the Treasury (“Treasury”). Florida has attempted to redeem for value three sets of United States savings bonds to which it holds title as the sole and valid bond owner. Treasury has refused to fully comply with Florida’s requests, in clear violation of the governing law.
2. Treasury began selling U.S. savings bonds in the 1930s. Savings bonds bear long maturities, and vast numbers remain unredeemed long after they mature. For decades, Treasury has made little to no effort to affirmatively notify owners when their bonds

mature, even though it possesses information that would enable it to do so. Nor has Treasury undertaken any true or effective effort to locate missing owners. As a result, unclaimed savings bonds with an estimated combined matured value of more than \$19 billion, many of which reached final maturity and ceased earning interest decades ago, have accumulated at Treasury. Based on population studies, forensic accounting, and information from Treasury, approximately \$1 billion of that amount corresponds to purchasers of unclaimed, matured savings bonds that were originally registered to individuals with last known addresses in the State of Florida.

3. Pursuant to a Judgment of Escheatment entered in accordance with the procedures set forth in the Florida Disposition of Unclaimed Property Act, chapter 717, Florida Statutes (hereinafter, the “Act”), the State of Florida took — as of the date the CFO filed a complaint under Florida law seeking a determination that the bonds at issue in this case had escheated to the State — sole and valid title to three categories of matured, unclaimed U.S. savings bonds currently held by Treasury: (1) U.S. savings bonds with a matured value of \$598,605.40 which are in the CFO’s possession (“Bonds in Possession”); (2) U.S. savings bonds with a matured value of \$283,359.99 which were delivered to the CFO and then sent to the United States Treasury (“Bonds Repossessed by Treasury”);¹ and (3) U.S. savings bonds registered to persons with last known addresses in the State of Florida which have been lost, stolen, destroyed, or otherwise abandoned, and are not in the CFO’s possession (“Remaining Absent Bonds”).

¹ These bonds were delivered to the CFO as unclaimed bonds prior to 2007 and then sent to the U.S. Treasury at its suggestion. By repossessing these bonds, the U.S. Treasury retained the entirety of the cash proceeds and is now also in possession of the physical bonds. Under these circumstances, there is virtually no chance that the original owners of these bonds will ever recover the proceeds unless Florida takes further action, as title owner, to find and advise them of their right to make a claim under Florida law.

4. The Act grants Florida the legal authority to seek all right, title, and interest in such unclaimed, matured U.S. savings bonds through judicial escheatment and to maintain ownership over the proceeds thereof. Furthermore, the Act empowers the CFO to take steps to return the proceeds of redeemed savings bonds to the bonds' original owners who may be found. This Court has held that, under applicable Treasury regulations, a State that escheats title to matured, unredeemed savings bonds is a valid bond owner that may redeem the bonds for value. *See Estes v. United States*, 123 Fed. Cl. 74 (2015).
5. Pursuant to these established legal processes, Plaintiff informed Treasury that Florida was the proper titleholder of the Bonds in Possession and the Bonds Repossessed by Treasury, and requested that the proceeds of those bonds be redeemed in favor of Florida. Plaintiff further requested that Treasury provide Florida with the registration information for the Remaining Absent Bonds so that Plaintiff can identify the set of Remaining Absent Bonds to which the State of Florida now holds title. Treasury has refused to comply with Plaintiff's repeated requests with respect to the Remaining Absent Bonds. This is unlawful.
6. No legal authority in force at the time Florida succeeded to title to the bonds at issue in this case allowed Treasury or any other federal instrumentality to maintain custody of unclaimed, matured U.S savings bonds and the proceeds thereof to the exclusion of a valid titleholder. Treasury's treatment of Florida's claim thus amounts to an unlawful withholding of hundreds of millions of dollars to which Florida is properly entitled under state and federal law. Plaintiff Atwater, in his official capacity as the Chief Financial Officer for the State of Florida, thus brings this action to remedy this harm and compel Treasury to finally pay this massive debt owed Florida and its residents.

THE PARTIES

7. Plaintiff Jeff Atwater is the Chief Financial Officer for the State of Florida, with a business address at 200 East Gaines Street, Tallahassee, Florida 32399-0301. Plaintiff Atwater, as head of the Florida Department of Financial Services, is the state official responsible for Florida unclaimed property and undertaking judicial escheatment procedures for U.S. Savings Bonds under the Act. Plaintiff Atwater sues in his capacity as the CFO for and on behalf of the State of Florida.
8. The Defendant is the United States of America (“United States”). At all relevant times herein, the Defendant was acting by and through the Treasury, an administrative agency of the United States; Jacob J. Lew, Secretary of the Treasury; the Bureau of the Fiscal Service (“Bureau”), a Division of the Treasury; David Lebryk, Fiscal Assistant Secretary; Sheryl Morrow, Commissioner of the Bureau; and Steven D. Miller, Deputy Assistant Commissioner, Office of Management Services of the Bureau.
9. The Bureau has direct responsibility for the administration of the U.S. savings bond program, with a business address at PO Box 5312, Parkersburg, WV 26106 or 200 Third Street, Parkersburg, WV 26106.

JURISDICTION

10. Jurisdiction is proper in this Court, as the matter herein lies within the express jurisdictional mandate of the Tucker Act, 28 U.S.C. § 1491. Specifically, the claims herein are against the United States of America and are founded upon contracts wherein Plaintiff seeks monetary damages. *See id.*; *see also* 31 C.F.R. § 315 *et seq.*; 31 C.F.R. § 353 *et seq.*

BACKGROUND

U.S. Savings Bonds

11. Treasury began selling U.S. savings bonds between the First World War and Second World War. The maturity terms for the vast majority of the bonds at issue in this case are lengthy, typically 30-40 years, and many of the bonds were first issued as far back as 1935, 1941, 1951, and 1952. As a result, many of the Remaining Absent Bonds have been mature (but unredeemed) for decades and are well over 60, and in some cases 80, years old. With respect to the Bonds in Possession and Bonds Repossessed by Treasury, statistics for other states that went through the redemption process show that the average age of the escheated bonds was 53 years. Tens of thousands of these unredeemed savings bonds are registered to individuals with last known addresses in Florida.
12. Savings bonds are issued in various “Series,” each series represented by a letter (or letters) of the alphabet. The U.S. savings bonds owned by Plaintiff and at issue in this case are Series A, B, C, D, E, F, G, H, J, K, EE and HH bonds.
13. The majority of the matured, unredeemed U.S. savings bonds are Series “E” bonds, which were first sold in 1941. Nearly 4.6 billion Series E bonds were sold between 1941 and 1980. Between 1941 and November 30, 1965, Series E bonds were sold with 40-year terms. Between December 1, 1965 and 1980, they carried 30-year terms. The last Series E bond was sold in 1980, and the first such bonds matured and ceased earning interest in 1981. All Series E bonds have reached final maturity and ceased earning interest, the last of them doing so in 2010. Yet according to information published on Treasury’s website, matured and unredeemed Series E bonds currently have a combined matured value of more than \$9.8 billion.

14. Series A, B, C, and D bonds were sold from March 1, 1935, through April 30, 1941. These bonds were sold with 10-year terms and all reached maturity by April 1951.
15. Series F and G bonds were sold from May 1, 1941, through April 30, 1952. Series F and G bonds were sold with 12-year terms. All Series F and G bonds reached maturity by April 1, 1964.
16. Series H bonds were sold from June 1, 1952, through December 31, 1979. For Series H bonds with issue dates from June 1952 through January 1957, the interest paying term was 29 years, 8 months; and for Series H bonds with issue dates from February 1957 through December 1979 the interest paying term was 30 years. All Series H bonds reached maturity by December 2009.
17. Series J and K bonds were sold from May 1, 1952, through April 30, 1957. Series J and K bonds were sold with a term of 12 years. All Series J and K bonds reached maturity by April 1969.
18. Series EE bonds were first sold in January 1980 and continue to be sold through the present. Series EE bonds were originally sold with different terms, but all Series EE bonds earn interest for up to 30 years. The first Series EE bonds reached final maturity and ceased earning interest by January 2010.
19. Series HH bonds were sold from January 1, 1980, through August 31, 2004. Series HH bonds were sold with 20-year terms. The first Series HH bonds matured and ceased earning interest in January 2000.
20. For each U.S. savings bond sold by Treasury, the Bureau of the Public Debt (now consolidated along with the Financial Management Service into a new bureau, the Bureau of the Fiscal Service, or “Bureau”) issues and maintains registration records reflecting the

last known addresses of registered owners. Treasury's regulations also require the Bureau, on each sale of a U.S. savings bond, to register the bond with a record identifying the owner of the bond and the address of that person or entity at the time of sale. *See* 31 C.F.R. §§ 315.5; 353.5.

21. When U.S. savings bonds mature, Treasury has not and does not notify owners, not even by utilizing the addresses in its records. Nor does Treasury publish any other form of notice to owners or undertake any true or effective effort to locate missing owners. It is common for bonds to reach maturity without Treasury having contacted the owner even once in 30 or 40 years, especially for bonds that pay no periodic interest.
22. To redeem a long-matured U.S. savings bond, an owner, or other person or entity entitled to request payment of the U.S. savings bond, must affirmatively contact Treasury or one of its registered agents with a formal request. But Treasury's failure to notify owners when bonds mature, combined with the lengthy maturation periods of U.S. savings bonds and relatively small face amounts, has resulted in many individuals misplacing, forgetting about, or otherwise abandoning their bonds. Owners of bonds may live their entire lives never knowing of their rights to one or more U.S. savings bonds and the proceeds thereof. In fact, thousands of these bond owners have died with little to no assets except their savings bonds which were never paid back to them.
23. As a result, over \$19 billion in matured, unredeemed U.S. savings bonds remain outstanding nationwide. The Florida Department of Financial Services estimates that approximately \$1 billion, or 5.26%, of that amount corresponds with registered owners with last known addresses in the State of Florida.

Florida's Title-Based Escheat Statute

24. Every State in the U.S. and the District of Columbia operates an “unclaimed property” program designed to reunite lost and abandoned property with owners. Annually, these programs combine to return more than one billion dollars’ worth of property that, but for these programs, would almost certainly remain lost. These programs apply both to tangible property (*e.g.*, collectibles or art) and intangible property (*e.g.*, U.S. savings bonds or stock certificates).
25. State unclaimed property laws rely on the ancient sovereign power of escheat. Historically, States’ unclaimed property acts have provided for custody-based escheat. Once property is considered abandoned or unclaimed under state law, *custody* of the property, but not title, passes to the State for safekeeping and administration. Once the State has custody, it can leverage its unclaimed property program to attempt to unite lost property with its owner.
26. However, several states (18 and counting), including Florida, have adopted specific *title*-based escheat laws with respect to U.S. savings bonds. In July 2015, Florida, in reliance on Treasury’s longstanding promises to redeem such bonds through title-based escheat, amended the Act to authorize the State to escheat title to — that is, valid legal ownership of — matured, unclaimed savings bonds following required state proceedings and then to leverage the State’s unclaimed property programs to make available the return of the bond proceeds to the bonds’ original owners who can be found. *See* §§ 717.1382, 717.1383, Fla. Stat.
27. The Act further authorizes the CFO to redeem the bonds that escheat to the State and take title to the matured proceeds. *See* § 717.1382(3)g, Fla. Stat. This Court has held that the

Treasury regulations in force at the time Florida succeeded to title to the bonds at issue in this case required the agency to recognize redemption claims by States that escheat title to savings bonds under state law. *Estes v. United States*, 123 Fed. Cl. 74 (2015).

28. Pursuant to the specific provisions of the Act, unclaimed U.S. savings bonds escheat to the State of Florida under the following process:

- a. “Notwithstanding any other provision of law, a United States savings bond in possession of the department or registered to a person with a last known address in the state, including a bond that is lost, stolen, or destroyed, is presumed abandoned and unclaimed 5 years after the bond reaches maturity and no longer earns interest and shall be reported and remitted to the department by the financial institution or other holder in accordance with [§§] 717.117(1) and (3) and 717.119, if the department is not in possession of the bond.” § 717.1382(1), Fla. Stat.
- b. “After a United States savings bond is abandoned and unclaimed in accordance with subsection [717.1382](1), the department may commence a civil action in a court of competent jurisdiction in Leon County for a determination that the bond shall escheat to the state. Upon determination of escheatment, all property rights to the bond or proceeds from the bond, including all rights, powers, and privileges of survivorship of an owner, coowner, or beneficiary, shall vest solely in the state.” § 717.1382(2)(a), Fla. Stat.
- c. “Service of process by publication may be made on a party in a civil action pursuant to [§ 717.1382]. A notice of action shall state the name of any known owner of the bonds, the nature of the action or proceeding in short and simple terms, the name of the court in which the action or proceeding is instituted, and an abbreviated title of the case.” § 717.1382(2)(b), Fla. Stat.
- d. “If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is entitled to the bonds claimed by such claimant, the court shall enter a judgment in favor of the claimant.” § 717.1382(2)(e)3., Fla. Stat.
- e. “If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is not entitled to the bonds claimed by such claimant, the court shall enter a judgment that such bonds, or proceeds from such bonds, has escheated to the state.” § 717.1382(2)(e)2., Fla. Stat.
- f. “If no person files a claim with the court for the bond and if the department has substantially complied with the provisions of this section [717.1382], the

court shall enter a default judgment that the bond, or proceeds from such bond, has escheated to the state.” § 717.1382(2)(e)1., Fla. Stat.

- g. “The department may redeem a United States savings bond escheated to the state pursuant to this section [717.1382] or, in the event that the department is not in possession of the bond, seek to obtain the proceeds from such bonds.” § 717.1382(3), Fla. Stat.
- h. If a person wishes to make a claim for a United States savings bond that has escheated to the state pursuant to section 717.1382, that person may file a claim with the Florida Department of Financial Services. Upon providing sufficient proof of the validity of a person’s claim, the department may pay that person’s claim. § 717.1383, Fla. Stat.

Public Bulletin No. 111, the “Escheat Decision,” and Treasury’s Regulations

- 29. In 1952, the Bureau of the Public Debt promulgated Public Bulletin No. 111 setting out Treasury’s position with respect to “State statutes purporting to vest abandoned property, including United States securities, in certain State officers.” Bulletin No. 111, which contains an extensive legal analysis to support Treasury’s interpretation of its regulations relating to this subject, includes the following statement:

[T]he Department will pay one who *succeeds to the title* of the bondholder. This is not regarded as a violation of the agreement, but, on the contrary, as payment to the bondholder in the person of his successor or representative. Thus, although the regulations do not mention such a case, the Department recognizes the title of the state when it makes claim based upon a judgment of escheat.

- 30. In 1983, the Treasury’s Director of Transactions and Rulings stated as follows in a letter to the Kentucky Secretary of Revenue regarding a request by that State for payment of abandoned U.S. savings bonds:

The Treasury has considered at length on several occasions the matter of whether a State could be recognized as entitled to the proceeds of United States securities where the claim thereto is based on abandonment. Basically, the Department’s position is that claims by States for payment of United States securities will be recognized only where the States have actually succeeded to the title and ownership of the securities pursuant to valid escheat proceedings. The Department does not recognize claims for

payment by a State acting merely as a custodian of unclaimed or abandoned securities and not as successor in title and ownership of the securities. ... In other words, the Treasury recognizes escheat statutes that provide that a State has succeeded to the legal ownership of securities because in such case payment of the securities results in full discharge of the Treasury's obligation and this discharge is valid in all jurisdictions. Payment of securities to a State claiming only as a custodian results in the substitution of the State for the Department of the Treasury as obligor on the securities. ...

31. In 2000, Treasury published the following statement (hereinafter the "Escheat Decision") on its website, on a webpage entitled "EE/E Savings Bonds FAQs":²

The Department of the Treasury will recognize claims by States for payment of United States securities where the States have succeeded to the title and ownership of the securities pursuant to valid escheat proceedings. The Department, however, does not recognize claims for payment by a State acting merely as custodian of unclaimed or abandoned securities and not as successor in title and ownership of the securities.

In other words, the Treasury recognizes escheat statutes that provide that a State has succeeded to the legal ownership of securities because in such case payment of the securities results in full discharge of the Treasury's obligation and this discharge is valid in all jurisdictions.

But, payment of securities to a State claiming only as a custodian results in the substitution of one obligor, the Department of the Treasury, for another, the State. Not only is there serious question whether there is authority for a State to effect such a substitution, but also there seems to be no basis for believing that payment to a State custodian would discharge Treasury of its obligation. Even if the discharge were claimed effective in the State to which the payment is made, it is believed that the Treasury's obligation and liability would still remain in force in all other jurisdictions.

² See *EE/E Savings Bonds FAQs*, TreasuryDirect.gov, available at https://web.archive.org/web/20150503150349/https://www.treasurydirect.gov/indiv/research/indepth/ebonds/res_e_bonds_eefa.htm#escheatment (archive of webpage as of May 2015) (emphasis added).

32. Thereafter, in 2006, Treasury’s Assistant Commissioner, Office of Investor Services, stated as follows in a letter to Florida’s legal counsel to the State’s Chief Financial Officer regarding a request by that State for payment of abandoned U.S. savings bonds:

The applicable regulations would permit the state of Florida to be paid for bonds, pursuant to an appropriate state statute and after due process, by obtaining an order of escheat from a court of competent jurisdiction vesting title in the state, and then applying for payment to the Department of the Treasury pursuant to the procedures established by the regulations that all bond owners must utilize. The Treasury Department has no authority to pay Florida (or anyone else) the proceeds of matured but unredeemed savings bonds owned by the residents of Florida outside the context of these procedures.

Notably, the 2006 letter to the State of Florida does not explicitly provide that possession is required if a State seeks to redeem a bond. Instead, the letter states that if Florida invokes a proper title escheatment process, it can be paid for the bonds under “[t]he applicable regulations.” Moreover, the letter undermines Treasury’s latest rationale for redeeming bonds in a State’s possession — the application of its discretionary authority — which it has used in granting South Dakota’s, Louisiana’s, Kentucky’s, South Carolina’s, Indiana’s, and Ohio’s recent requests for the redemption of such bonds.

33. Treasury’s Escheat Decision, excerpted above, expressly rejected any right of the states to redeem unclaimed U.S. savings bonds over which they only have *custody*. But the Decision made clear that Treasury will honor *title-based* unclaimed property laws (the type in force in Florida). Under the authority of the Escheat Decision, Treasury has consistently rejected written requests to Treasury to deliver matured, unredeemed bonds into state custody in accordance with *custody-based* unclaimed property laws. When it has done so, Treasury has repeatedly relied on the longstanding distinction it has drawn

between custody-based and title-based escheat. *E.g., Treasurer of N.J. v. U.S. Dep't of Treasury*, 684 F.3d 382, 390-91 (3d Cir. 2012).

34. The United States has previously stipulated that the Escheat Decision “is [Treasury]’s interpretation of federal savings bond regulations ... and reflects [Treasury]’s understanding of existing laws, and that the Department has no intention of deviating from the statement.” *Treasurer of New Jersey*, 684 F.3d at 391 (internal quotation marks omitted). As the Solicitor General of the United States has recently acknowledged in the Supreme Court of the United States, “the Escheat Decision represents the [Treasury] Department’s considered interpretation of federal law.” Brief for Resp’ts in Opp’n at 4, *Dir. of the Dep’t of Revenue of Mont. v. Dep’t of the Treasury*, 133 S. Ct. 2735 (2013) (No. 12-926), 2013 WL 1803570 at *4.
35. The Escheat Decision remained online at least through May 2015. Treasury took the Escheat Decision off of its website while the government’s motion to dismiss in *Estes v. United States* was pending.
36. Also while the government’s motion to dismiss in *Estes* was pending, Treasury issued a Notice of Proposed Rulemaking, in which Treasury proposed to amend its regulations governing U.S. savings bonds to address state escheat claims to unclaimed bonds. *See Regulations Governing United States Savings Bonds*, 80 Fed. Reg. 37,559 (proposed July 1, 2015).
37. On December 24, 2015, after Florida succeeded to title to the bonds at issue in this case, Treasury issued final rules purporting “to clarify its prior statements on escheat and to describe more formally the criteria Treasury will use to evaluate escheat claims.” 80 Fed. Reg. 80,258, 80,259 (Dec. 24, 2015) (“Final Rules”). The Final Rules provide that

Treasury will not redeem escheated bonds that a State does not possess, but may — in its discretion — redeem escheated bonds in the State’s possession when the State provides satisfactory evidence of abandonment.

38. The Final Rules do not apply to this case because Florida’s title vested under the prior regulations.
39. The Treasury regulations that were in force when Florida succeeded to title to the bonds at issue in this case provide for redemption of a savings bond by a State that escheats title to the bond. Under 31 C.F.R. §§ 315.20, 353.20, Treasury is required to recognize a claim of “interest in” U.S. savings bonds where such interest is established by “valid, judicial proceedings,” such as those provided for in the Act. Proceeds of U.S. savings bonds will be paid to a “person or persons entitled under the provisions of these regulations . . . without regard to any notice of adverse claims to a bond” under 31 C.F.R. §§ 315.35, 353.35. As this Court has explained — analyzing the Treasury regulations in force at the time Florida’s title vested — § 315.20 and § 353.20 required Treasury to recognize as a valid owner of a savings bond a State that escheats to title following valid “State court escheatment proceedings.” *Estes*, 123 Fed. Cl. at 86.
40. Thus, at the time Florida succeeded to title to the bonds at issue in this case, Treasury lacked any authority — regulatory, statutory, or otherwise — to withhold the proceeds of matured bonds in the face of Florida’s requests for redemption.
41. Treasury Regulations further provide that proceeds of a lost, stolen or destroyed bond may be paid to a rightful owner or to his or her representative. *See* 31 C.F.R. §§ 315.25, 353.25. The payment will be made if the serial number of the lost bond is made known,

provided that the claim is made by a person authorized to make such a claim. *See* 31 C.F.R. §§ 315.26, 353.26.

THE PRESENT ACTION

Florida Escheat Proceedings

42. On December 19, 2015, counsel for Plaintiff filed a Complaint in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida pursuant to Florida's title-based escheat procedure for U.S. savings bonds, § 717.1382, Florida Statutes (hereinafter the "Florida Escheat Proceedings"). Plaintiff requested a determination that all rights and legal title to, and ownership of, the Bonds in Possession, Bonds Repossessed by Treasury and Remaining Absent Bonds which were unclaimed property under the Act had escheated to the State of Florida. (**Exhibit A**).
43. In addition, on or about April 27, 2016, Plaintiff filed a Motion For Leave to Effect Service by Publication, along with an Affidavit in Support of Motion For Leave to Effect Service by Publication. (**Exhibit B**).
44. Subsequently, on or about May 4, 2016, Judge James Hankinson of the Circuit Court in and for Leon County, Florida, entered an Order Granting Plaintiff's Motion Seeking Leave to Effect Service by Publication. (**Exhibit C**).
45. On July 19, 2016, following a hearing in the Florida Escheat Proceedings before the same Circuit Court in and for Leon County, Florida, the court, after reviewing the evidence provided, made its findings and entered orders enumerated in a Judgment of Escheatment (**Exhibit D**), which recognized that, pursuant to the Florida escheat statute, title to the matured, unredeemed savings bonds defined in the Complaint (**Exhibit A**) properly escheated to the State of Florida as of December 19, 2015, the date Plaintiff filed that

Complaint. The escheated bonds included the Bonds in Possession and Bonds Repossessed by Treasury, as well as the Remaining Absent Bonds.

46. The Court found that counsel presented evidence from escheat proceedings in other states with similar statutes, which established that: (1) the average age of escheated bonds, which were abandoned and unclaimed, was approximately 53 years; (2) on average, approximately 27% of the original owners were deceased; and (3) of the total unclaimed bonds in possession of these state treasurers and directors, more than 71% had no owners who could be located, with the remainder of the owners who could be found stating that they did not know they had bonds, or that the bonds had been lost or stolen, or that they had relinquished ownership of the bonds. The Court further found, based on evidence from the U.S. Treasury's own website, that the above described class of Remaining Absent Florida Unclaimed U.S. Savings Bonds included bonds whose maturity dates passed 65-70 years ago in some cases, and in others, 50 to 60 years ago, yet still remain unclaimed.
47. In addition, the court found that Plaintiff fully complied with Florida's process for publication and published lawful notice comports with due process under the constitutions of the United States and the State of Florida. (*See Exhibit D*, at ¶¶ 22-28). The court further found that Plaintiff's publication efforts went well beyond the minimum required to comply with Florida law and due process. The court held that such action with respect to the Remaining Absent Bonds further evidenced the efforts undertaken by Plaintiff to determine that such Bonds were indeed lost, stolen, abandoned, destroyed or otherwise voluntarily relinquished.

Florida's Redemption Request

48. Before and following the escheatment of the Bonds in Possession, the Bonds Repossessed by Treasury and the Remaining Absent Bonds, Plaintiff corresponded with Treasury to request records and information regarding the bonds at issue. Post-escheatment, Plaintiff formally requested that the Bonds in Possession and Bonds Repossessed by Treasury be redeemed. Plaintiff also requested that the information necessary for Florida to redeem the Remaining Absent bonds — information solely held by Treasury and nowhere else, and which Treasury is obligated to maintain — be delivered to Florida as titleholder. Treasury refused to comply with these requests in breach of its regulations.
49. On October 30, 2015, Plaintiff served the Bureau with a formal Freedom of Information Act (“FOIA”) request on behalf of the Florida Department of Financial Services regarding the subject U.S. savings bonds. Counsel requested that the Bureau either provide records or access to records that would give the Florida Department of Financial Services information on unclaimed bonds issued to individuals with last known addresses in the State of Florida. Counsel requested, *inter alia*, serial numbers and registration information, so that Plaintiff may provide the information necessary to redeem these bonds under applicable Treasury Regulations. (See **Exhibit B, attachment H**).
50. Also on October 30, 2015, Plaintiff corresponded with the Treasury’s Fiscal Assistant Secretary and the Commissioner of the Bureau on behalf of the Florida Department of Financial Services, requesting records regarding unclaimed savings bonds issued to individuals with last known addresses in the State of Florida. (See **Exhibit B, attachment I**). This request was for records or access to records that would provide information

regarding these unclaimed bonds. Counsel's correspondence with the Assistant Secretary and Commissioner was not a formal FOIA request, but a direct attempt to resolve the issues at hand with Treasury cooperatively. Neither the Assistant Secretary nor the Commissioner responded to this request for information.

51. On or about December 9, 2015, Denise Nelson, Disclosure Officer for Treasury, issued a response to Plaintiff's FOIA request invoking 31 C.F.R. § 323.2(b), which describes limitations on record availability regarding securities and states that such records "will ordinarily be disclosed only to the *owners of such securities*, their executors, administrators or other legal representatives or to their survivors or to investigative and certain other agencies of the Federal and State governments, to trustees in bankruptcy, receivers of insolvents' estates or where a proper order has been entered requesting disclosure of information to Federal and State courts." (See **Exhibit B, attachment J**). The response also asserted that "[d]isclosure of this information would not serve the core purpose of the FOIA, which is to shed light on an agency's performance of its statutory duties." *Id.* The request was denied as to information relating to bonds that had been issued to individuals.
52. On August 30, 2016, after the Judgment of Escheatment became final and title to the Remaining Absent Bonds vested in the State of Florida, counsel for Plaintiff followed up with a second FOIA request (**Exhibit E**, attachments omitted), this time as the title holder of Florida's Remaining Absent Bonds.
53. Also on August 30, 2016, the CFO made a claim on behalf of the State of Florida for redemption of the Bonds in Possession and Bonds Repossessed by Treasury, and requested information concerning the Remaining Absent Bonds now owned by the state via valid judicial escheat proceedings. (**Exhibit F**, attachments omitted).

54. On or about September 29, 2016, Ms. Nelson issued a response denying Plaintiff's second FOIA request relating to the Remaining Absent Bonds. As with the denial of Florida's first, pre-escheatment FOIA request, Ms. Nelson again invoked 31 C.F.R. § 323.2(b) and also asserted that disclosure of such records would not serve the core purpose of the FOIA. **(Exhibit G).**
55. On or about October 24, 2016, Treasury issued a response denying Florida's request to redeem the Remaining Absent Bonds, but stating that it "anticipate[d] granting" Florida's request to redeem the Bonds in Possession and Bonds Repossessed by Treasury. **(Exhibit H).**
56. With respect to the Remaining Absent Bonds, Treasury considered Florida's request under both the Final Rule and its prior regulations. Treasury denied Florida's request to redeem the Remaining Absent Bonds under the Final Rule because it stated that the new rule "clarify[ied] that Treasury will not redeem bonds that a state does not possess" and "confirm[ed] that Treasury is not bound by a state court escheat judgment." (*Id.*) Treasury also denied Florida's request to redeem the Remaining Absent Bonds under its prior regulations, stating that Florida's state court escheat judgment was not a "valid, judicial proceeding" as contemplated by 31 C.F.R. § 315.20 and § 353.20, because (1) the Judgment of Escheatment rests on the Florida Act, which it deemed preempted by federal law, and (2) the Florida's Escheat Proceedings did not comport with due process. (*Id.*)
57. With respect to the Bonds in Possession, Treasury evaluated Florida's request only under the Final Rule. Treasury stated that it recognized Florida's escheat and ownership of the Bonds in Possession and would grant Florida's request pursuant to its discretionary waiver authority under 31 C.F.R. § 315.88(a) and 353.88(a), provided that Florida

surrenders the Bonds in Possession and submits a certified copy of the Judgment of Escheat, a certified Statement of Incumbency for the Florida Chief Financial Officer and a signed FS Form 5396, "Direct Deposit Sign-Up Form." (*Id.*)

58. With respect to the Bonds Repossessed by Treasury, Treasury evaluated Florida's request under the Final Rule. Treasury stated that it recognized Florida's escheat and ownership of the Bonds Repossessed by Treasury and would grant Florida's request pursuant to its discretionary waiver authority under 31 C.F.R. §§ 315.88(a), 353.88(a) and §§ 315.90, 353.90, provided that Florida submits an executed *FS Form 1522, "Special Form of Request for Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized,"* as well as certified copies of the Judgment of Escheat and Statement of Incumbency and a signed FS Form 5396, "Direct Deposit Sign-Up Form". (*Id.*)
59. By failing and refusing to recognize the validity of the Judgment of Escheatment and Plaintiff's right to redeem the Remaining Absent Bonds, Treasury has failed to comply with its obligations under its Regulations in force at the time Florida succeeded to title to the Remaining Absent Bonds and is, therefore, in breach thereof.
60. Treasury's unlawful refusal to redeem the hundreds of millions of dollars in savings bonds to which Florida holds valid title damaged Plaintiff and the State of Florida in a precise amount to be determined according to proof.

COUNT I

(Breach of Express Contract)

61. Plaintiff incorporates by reference the allegations in paragraphs 1-60 as though fully set forth herein.

62. The subject U.S savings bonds are express contracts between the bond owner and the United States. *Rotman v. United States*, 31 Fed. Cl. 724, 725 (1994). Treasury Regulations constitute the terms of each of these contracts. *Wolak v. United States*, 366 F. Supp. 110, 110 (D. Conn. 1973). Plaintiff is a party in privity with Defendant because Florida became the sole title owner of the Bonds in Possession, the Bonds Repossessed by Treasury and the Remaining Absent Bonds pursuant to valid judicial escheat proceedings.
63. As this Court has held, the Treasury regulations in force at the time Florida succeeded to title to the bonds at issue require Treasury to pay the proceeds of matured and unredeemed savings bonds to a State that validly escheats title to the bond and submits a proper redemption request. *See Estes*, 123 Fed. Cl. at 90.
64. On multiple occasions, Plaintiff properly requested information from Defendant regarding the Remaining Absent Bonds as a part of the presentment and redemption process. Each time, Defendant has refused to fully comply with Plaintiff's requests in breach of the Treasury regulations.
65. Defendant's refusal to provide necessary and required information regarding the Remaining Absent Bonds, as well as its implicit refusal to redeem the proceeds of bonds to which Florida holds sole and proper title via valid judicial proceedings, constitutes a breach of the U.S. savings bond contracts.
66. As a direct proximate result of the Defendant's breach of the U.S. savings bond contracts, and Defendant's failure to allow the redemption and payment process to proceed, Plaintiff has suffered substantial damages believed to be in excess of \$1 billion.

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendant on Count I of Plaintiff's Complaint; that Plaintiff be awarded damages in an amount equal to the matured value, plus applicable interest, of all Remaining Absent Bonds — believed to be in excess of \$1 billion — now owned by the State of Florida; that Plaintiff be awarded the expense of this action, including attorney's fees and case expenses in the prosecution of this case; and that Plaintiff be awarded any and all additional relief that this Court deems just and equitable.

COUNT II

(Breach of Implied-in-Fact Contract)

67. Plaintiff incorporates by reference the allegations in paragraphs 1-66 as though fully set forth herein.
68. Alternatively, the subject U.S savings bonds are implied-in-fact contracts between the parties hereto. Plaintiff is a party in privity with Defendant because the State of Florida became the sole title owner of the Bonds in Possession, the Bonds Repossessed by Treasury and the Remaining Absent Bonds pursuant to valid judicial escheat proceedings.
69. On multiple occasions, Plaintiff properly requested information from Defendant regarding the Remaining Absent Bonds as a part of the presentment and redemption process. Each time, Defendant refused to fully comply with Plaintiff's requests in breach of Treasury regulations.
70. Defendant's refusal to provide necessary and required information regarding the Remaining Absent Bonds, as well as its implicit refusal to redeem the proceeds of bonds to which Florida holds sole and proper title via valid judicial proceedings, constitutes a breach of the U.S. savings bond contracts.

71. As a direct proximate result of the Defendant's breach of the U.S. savings bond contracts, and Defendant's failure to allow the redemption and payment process to proceed, Plaintiff has suffered substantial damages believed to be in excess of \$1 billion.

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendant on Count II of Plaintiff's Complaint; that Plaintiff be awarded damages in an amount equal to the matured value, plus applicable interest, of all Remaining Absent Bonds — believed to be in excess of \$1 billion — now owned by the State of Florida; that Plaintiff be awarded the expense of this action, including attorney's fees and case expenses in the prosecution of this case; and that Plaintiff be awarded any and all additional relief that this Court deems just and equitable.

COUNT III

(Breach of Fiduciary Duties—Express Contracts)

72. Plaintiff incorporates by reference the allegations in paragraphs 1-71 as though fully set forth herein.

73. When Defendant entered into contracts in the form of U.S. savings bonds, it assumed the fiduciary responsibility of upholding those contracts. Plaintiff has recognized and relied upon these fiduciary responsibilities by taking title to the Remaining Absent Bonds via valid escheat proceedings in compliance with the Escheat Decision, case law, and applicable Treasury Regulations. As the result of these valid judicial proceedings, contractual privity exists between Florida and Defendant, obligating Defendant as fiduciary to redeem the U.S. savings bonds to which the State of Florida has succeeded in all legal title, ownership, and rights.

74. Defendant repeatedly assured U.S. savings bond owners of Defendant's intention and obligation to pay out the bond proceeds upon a redemption request. Such assurances

induced a trust and confidence in Defendant by Plaintiff. In equity and good conscience, the parties hereto were bound to act in good faith and with due respect to one another's interest as parties to these contracts.

75. The owners of U.S. savings bonds have for decades recognized and relied upon these fiduciary obligations by agreeing to place their money in Defendant's custody in exchange for Defendant's promise to redeem the bonds in accordance with applicable Treasury Regulations.
76. Florida's judicial escheatment of the Remaining Absent Bonds resulted in Florida becoming the true and rightful owner of each bond and, therefore, each bond represented a binding contract between the parties. Defendant's fiduciary responsibilities to uphold the contracts extend to Plaintiff and the State of Florida as the owner and title holder.
77. Defendant betrayed this confidence and breached its duties of loyalty and good faith owed to Plaintiff by, in bad faith, withholding necessary and required information concerning the Remaining Absent Bonds and denying presentment of these bonds.
78. Plaintiff has suffered damages by relying on the continued promise of Defendant's redemption obligation per the terms of the applicable Treasury Regulations and Plaintiff's contracts with Defendant.

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendant on Count III of Plaintiff's Complaint; that Plaintiff be awarded damages in an amount equal to the matured value, plus applicable interest, of all Remaining Absent Bonds — believed to be in excess of \$1 billion — now owned by the State of Florida; that Plaintiff be awarded the expense of this action, including attorney's fees and case expenses in the prosecution of this case; and that Plaintiff be awarded any and all additional relief that this Court deems just and equitable.

COUNT IV

(Equitable Estoppel)

79. Plaintiff incorporates by reference the allegations in paragraphs 1-78 as though fully set forth herein.
80. Alternatively, Defendant should be equitably estopped from opposing Plaintiff's claims for relief.
81. Specifically, Defendant repeatedly and consistently for more than 60 years took the position that Treasury will recognize redemption by States that escheat title to U.S. savings bonds. This position was memorialized in the Escheat Decision, prior policy bulletins, and in litigation (among elsewhere).
82. In the alternative, these statements constitute false representations of a material fact calculated to convey the impression that Plaintiff, having escheated title to U.S. savings bonds via valid judicial proceedings, would be entitled to redeem the proceeds of those bonds.
83. On the basis of such statements, Plaintiff formed a reasonable belief that such redemption was authorized.
84. In reliance on such belief, Plaintiff commenced state escheatment proceedings and submitted numerous information requests in an attempt to redeem the Remaining Absent Bonds. These actions constituted a change in Plaintiff's position causing it substantial damage to be calculated according to proof.
85. Defendant also concealed material facts from Plaintiff by engaging in self-serving refusals to honor FOIA and other requests that would reveal necessary and requested

information about the Remaining Absent Bonds, despite Defendant's repeated promises to recognize and redeem title-based ownership of bonds via judicial escheatment.

86. Plaintiff reasonably believed that Treasury would provide information through valid requests and proof of title ownership and redeem Florida's savings bonds based on the Defendant's prior statements and conduct. In reliance on this belief, Plaintiff acted to its detriment by commencing state escheatment proceedings and submitting numerous information requests in an attempt to redeem the Remaining Absent Bonds.
87. In sum (and in the alternative), Defendant's delayed assertions that Treasury regulations bar Treasury from redeeming Florida's Remaining Absent Bonds and justify withholding necessary information has resulted in substantial material prejudice to Plaintiff because Florida relied on Treasury's conduct and statements. Under principles of equitable estoppel, this conduct should now bar the Defendant from taking these positions in litigation.

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendant on Count IV of Plaintiff's Complaint; that Plaintiff be awarded damages in an amount equal to the matured value, plus applicable interest, of all Remaining Absent Bonds — believed to be in excess of \$1 billion — now owned by the State of Florida; that Plaintiff be awarded the expense of this action, including attorney's fees and case expenses in the prosecution of this case; and that Plaintiff be awarded any and all additional relief that this Court deems just and equitable.

COUNT V

(Declaratory Judgment)

88. Plaintiff incorporates by reference the allegations in paragraphs 1-87 as though fully set forth herein.

89. Defendant has unlawfully refused to redeem the Remaining Absent Bonds and to provide Plaintiff the information necessary to redeem the Remaining Absent Bonds. Defendant has done so based on an incorrect interpretation of applicable Treasury Regulations, and a desire to unilaterally hold significant sums of money for its own use.
90. Defendant's refusal to redeem savings bonds to which Florida holds valid and sole title deprives the State of its property, thus creating an actual controversy between the parties.
91. Plaintiff has repeatedly sought the confidence and assurance of Defendant that it would redeem the Remaining Absent Bonds and turn over required and necessary information regarding the Remaining Absent Bonds, and further, that it would not retain property owned by Plaintiff but agree to redeem the proceeds of the Remaining Absent Bonds. However, Defendant has refused to give such confidence and assurance, and in fact, it has denied Plaintiff's rights with respect to such property.
92. Having legally taken all right, title, and interest in such U.S. savings bond property including all proceeds thereof by valid judicial escheat proceedings and thereby becoming the sole and rightful owner of the same, Plaintiff should not be deprived of its property, and any claim or action Defendant may assert to retain such property should be denied and extinguished.
93. Conversely, Defendant has no right, title, or interest in the subject bond property that would allow it to retain the same, deny presentment, and refuse redemption of such property and payment of proceeds.

WHEREFORE, Plaintiff prays that this Court enter an order declaring: that Defendant has no right, title, or interest to the Remaining Absent Bonds; that Defendant has wrongfully asserted custody and/or ownership over Plaintiff's Remaining Absent Bonds, and failed to turn

over to Plaintiff required and necessary information regarding the Remaining Absent Bonds, namely serial numbers, addresses, and other information which would identify those bonds with last known addresses in the State of Florida; that Plaintiff, having been awarded all right, title and interest in the Remaining Absent Bonds and their proceeds by valid judicial escheat proceedings, should not be deprived of its property and Defendant must therefore provide Plaintiff the information necessary to identify those Remaining Absent Bonds registered with last known addresses in the State of Florida; that Defendant accept Plaintiff's presentment and redemption of the Remaining Absent Bonds; that Plaintiff be awarded damages in an amount equal to the matured value, plus applicable interest, of all Remaining Absent Bonds — believed to be in excess of \$1 billion — now owned by the State of Florida; that Plaintiff be awarded the expense of this action, including attorney's fees and case expenses in the prosecution of this case; and that Plaintiff be awarded any and all additional relief that this Court deems just and equitable.

COUNT VI

(Fifth Amendment Taking of Plaintiff's Property for Public Use)

94. Plaintiff incorporates by reference the allegations in paragraphs 1-93 as though fully set forth herein.
95. Defendant's continued failure and refusal to redeem the Remaining Absent Bonds to which Plaintiff holds sole and valid title constitutes an unconstitutional taking of Plaintiff's private property by the government for public use, and without just compensation in violation of the Takings Clause of the Fifth Amendment of the United States Constitution.

96. As a direct and proximate result of the taking of U.S. savings bond ownership rights, Plaintiff has been damaged by Defendant in the amount equal to the matured value of the Remaining Absent Bonds which, upon information and belief, is in excess of \$1 billion.

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendant on Count VI of Plaintiff's Complaint; that Plaintiff be awarded damages in an amount equal to the matured value, plus applicable interest, of all Remaining Absent Bonds — believed to be in excess of \$1 billion — now owned by the State of Florida; that Plaintiff be awarded the expense of this action, including attorney's fees and case expenses in the prosecution of this case; and that Plaintiff be awarded any and all additional relief that this Court deems just and equitable

COUNT VII

(Action for Accounting)

97. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1-96 as if fully set forth herein.

98. Plaintiff is in privity with Defendant with respect to those Remaining Absent Bonds which escheated to Florida via valid judicial proceedings.

99. Pursuant to the Code of Federal Regulations at 31 C.F.R. § 323.2(b), Defendant owes a fiduciary duty to render full and true information to Plaintiff because Plaintiff is the owner of the Remaining Absent Bonds.

100. Defendant must account for any benefit conferred on it due to its contracts with Plaintiff in the form of U.S. savings bonds.

101. Plaintiff has made a demand upon Defendant to make and render a full accounting of the required and necessary information regarding the Remaining Absent Bonds, namely

serial numbers, addresses, and other information which would identify those bonds registered with last known addresses in the State of Florida.

102. Despite the demand, Defendant has refused to make and render a full accounting of the Remaining Absent Bonds, namely serial numbers, addresses, and other information which would identify those bonds with last known addresses in the State of Florida.
103. The actions of Defendant have excluded Plaintiff from the possession and use of Plaintiff's property, and Defendant owes money to Plaintiff as a result of Plaintiff's attempts to redeem the Remaining Absent Bonds in compliance with applicable Treasury Regulations.
104. Furthermore, the circumstances dictate that Defendant render a full accounting of the Remaining Absent Bonds, namely serial numbers, addresses, and other information which would identify those bonds registered with last known addresses in the State of Florida.

WHEREFORE, Plaintiff prays that this Court enter an order that Defendant provide an accounting of the Remaining Absent Bonds, namely serial numbers, addresses, and other information which would identify those bonds registered with last known addresses in the State of Florida, and the value of the Remaining Absent Bonds and their proceeds; that Plaintiff be awarded the expense of this action, including attorney's fees and case expenses in the prosecution of this case; and that Plaintiff be awarded any and all additional relief that this Court deems just and equitable.

November 9, 2016

Respectfully submitted,

/s/ J. Brett Milbourn

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