

VICE CHANCELLOR LEO STRINE RULES FROM BENCH AGAINST STAPLES

PERMITS DELAWARE TO FILE ITS SUPPLEMENTAL COUNTERCLAIM

Following a 20-minute oral argument the afternoon of Tuesday June 7, 2011, Vice Chancellor Leo Strine of the Delaware Court of Chancery issued a bench ruling granting the State of Delaware's motion for leave to file a supplemental counterclaim in the ongoing litigation over the State's unclaimed property audit of Staples.

Staples filed this suit in April 2010, contesting the State's demand for payment from Staples for unclaimed property in the categories of Accounts Payable and Payroll. The State answered Staples' complaint in July 2010 and simultaneously filed its own counterclaim seeking the Court to order Staples to pay Staples' alleged unpaid liability and interest under Delaware's unclaimed property statute. In April 2011, the State sought leave of the Court to file a supplemental counterclaim that would compel Staples to produce additional documentation in relation to the ongoing State audit of Staples' liability in the categories of Gift Certificates/Merchandise Credits, Accounts Receivable, and Rebates. Staples contested the State's ability to file this supplemental counterclaim, arguing a supplemental filing would delay the progress of the ongoing litigation.

The Court disagreed and granted the State's motion, explaining that Staples had not persuaded the Court that the State was inexcusably delayed in seeking to file its supplemental counterclaim or that Staples would be prejudiced or the litigation delayed by the State filing its supplemental counterclaim. The Court emphasized the efficiencies that would be realized by conducting discovery relating to the supplemental counterclaim at the same time as discovery relating to the original complaint and counterclaim, rather than by pursuing two separate paths of discovery and litigation.

Staples acknowledged that the State has the right to bring a new lawsuit against Staples seeking the same relief as the State's proposed supplemental counterclaim, and the Court explained that any such new lawsuit would simply be consolidated into the active litigation, just as if the State had filed a supplemental counterclaim directly.

The Court indicated frustration with Staples' strategy, to date, on motions brought before the Court. The Court then strongly urged Staples' counsel to resolve future issues with the State and to avoid causing similar preliminary motions to come before the Court.

Not being persuaded that Staples would suffer any prejudice or that the State had engaged in inexcusable delay, and in the interest of efficiency, the Court granted the State's motion for leave to file its supplemental counterclaim and requested that the parties coordinate their efforts to ensure the efficient and timely completion of discovery.

Please contact Morris Nichols attorneys in the Unclaimed Property Counseling Group if you would like to discuss the implications of this development in the *Staples* litigation. We also will continue to provide updates as this litigation moves forward.

MICHAEL HOUGHTON
(302) 351-9215
MHUGHTON@MNAT.COM

WALTER C. TUTHILL
(302) 351-9024
WTUTHILL@MNAT.COM

KATHERINE H. BETTERLY
(302) 351-9281
KBETTERLY@MNAT.COM

R. JASON RUSSELL
(302) 351-9464
JRUSSELL@MNAT.COM

BRENDA R. MAYRACK
(302) 351-9252
BMAYRACK@MNAT.COM

BRYAN TOWNSEND
(302) 351-9210
BTOWNSEND@MNAT.COM