

Banking Law News

## JPMorgan Must Defend Claim It Saved Millions on Abandoned Assets

By Michael J. Bologna  
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- Judge greenflags whistle-blower case alleging violations of unclaimed property law
- JPMorgan faces penalties for delaying transfers of unclaimed property to New York

JPMorgan Chase & Co. could be on the hook for millions in unpaid interest and penalties for delaying transfers of unclaimed property to the state of New York following a first-of-a-kind state court ruling.

State Supreme Court Judge James E. d'Auguste denied JPMorgan Chase's petition for summary judgment in a whistle-blower case alleging the financial giant, for more than a decade, made false statements to the state and fraudulently delayed escheating abandoned properties to the Office of the New York State Comptroller. JPMorgan Chase's delay strategy, the whistleblower asserts, permitted the bank to sit on millions of dollars' worth of cash, real estate, securities, jewelry and other assets without paying the statutorily required annual interest rate of 10 percent.

Throughout the litigation JPMorgan Chase has characterized any duty to pay interest to the state as a contingent obligation, subject to interpretation by the comptroller and not actionable under New York's False Claims Act.

But judge d'Auguste found no wiggle room in the state's Abandoned Property Law (APL), writing the statute is "abundantly clear" that any person who fails to pay or deliver property to the state "shall" pay interest for the period of the delay. The judge also rejected JPMorgan Chase's assertion that interest payments are discretionary or that some type of "intermediary step" by the comptroller is necessary to trigger interest payments for late payments of abandoned properties.

"Accordingly, no further assessment needs to be made," d'Auguste wrote Aug. 30.

Representatives of JPMorgan Chase did not respond to Bloomberg Law's request for comment on the ruling.

In court, however, the bank asserted the New York comptroller's Office of Unclaimed Funds issued a letter in 2013 waiving any interest duties following an audit for the years 2008 through 2012. JPMorgan Chase told the court the letter is "strong evidence" that any potential violation is not material.

### Catch Me If You Can

Randall M. Fox, a partner with Kirby McInerney LLP in New York and counsel for the whistleblower, said d'Auguste properly rejected the bank's campaign to characterize the APL as a "catch-me-if-you-can statute."

"Chase tried to avoid this case by arguing that it was allowed to make false statements to the New York State government without consequence and that the State must have wanted to give Chase the benefit of what were essentially multi-million dollar interest-free loans that Chase quietly took for itself, even while hard working New Yorkers want government money to benefit the public," said Fox, who previously served as chief of the New York Attorney General's Taxpayer Protection Bureau. "The Court resoundingly rejected JPMorgan Chase's arguments. Now the case can go forward, and Chase will have to explain its false conduct."

The qui tam action was originally filed in 2015 by Raw Data Analytics LLC. Serving as relator, or whistleblower, Raw Data essentially stepped into the shoes of the attorney general to sue JPMorgan Chase on behalf of the state. The initial complaint pointed to a pattern of conduct going back to 2005 by which JPMorgan Chase illegally waited years to escheat abandoned property to the state, made false statements about its obligations, and then failed to make statutorily required interest payments to the state.

Fox said the ruling paves the way for discovery in the matter, fully revealing JPMorgan Chase's illegal pattern of conduct over the last 14 years.

He said the matter could be worth tens of millions of dollars in unpaid interest and penalties, pointing to earlier statements by the bank indicating it had late escheated \$60 million in unclaimed property to New York. The \$6 million annual interest obligation on that amount, multiplied over multiple years, plus various penalties could turn into a liability totaling tens of millions of dollars, he said.

The case is New York ex. rel. Raw Data Analytics LLC v. JPMorgan Chase & Co., N.Y. Sup. Ct., No. 100271/2015, 8/30/19

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