
NJ Court Denies Injunction Sought by Amex and Merchants Over Prepaid Card Data Law

by Deborah S. Thoren-Peden and Amy L. Pierce

On January 13, 2011, Judge Freda L. Wolfson, U.S. District Judge, District of New Jersey, denied an emergency motion for preliminary injunction from the New Jersey Retail Merchants Association, New Jersey Food Council and American Express Prepaid Card Management Corporation. The motion sought construction of the NJ Court's Order dated Nov. 13, 2010, and a preliminary injunction to stop the State of New Jersey from enforcing the recent data collection amendments to its Unclaimed Property Law, as well as portions of the New Jersey Treasury announcements dated Nov. 23 and Nov. 24, 2010.

On Dec. 8, 2010, the plaintiffs filed their emergency motion in response to the New Jersey Court's Nov. 13, 2010 Order and the NJ Treasurer's Nov. 23, 2010 Announcement FY 1011-05 and Nov. 24, 2010 Announcement FY 2011-06. In her Nov. 12, 2010 Order, Judge Wolfson enjoined "application of the place-of-purchase presumption found in subsection 5c of Chapter 25." The basis for this ruling, the judge wrote, was that "the place-of-purchase presumption is preempted by the federal common law set forth in a series of Supreme Court cases that create a priority scheme for the escheat of abandoned intangible property—the Texas line of cases." At the conclusion of this preemption analysis, the opinion stated: "[t]he State shall be preliminarily enjoined from applying the place-of-purchase presumption in the Act to SVCs [stored value cards]."

The Treasurer's Nov. 23, 2010 Announcement directed all stored value card issuers to collect and maintain zip code information, and its Nov. 24, 2010 Announcement extended the effective date for this data collection provision to Jan. 3, 2011. (In addition, the State appealed the place-of-purchase presumption aspect of Judge Wolfson's Nov. 13 Order.) On Dec. 21, 2010, the NJ Treasurer agreed to further extend the effective date for this data collection provision to Jan. 15, 2011, to afford the court time to consider and rule on the plaintiffs' motion.

In her Jan. 13, 2011 opinion on the plaintiffs' emergency motion, Judge Wolfson: (1) clarified that her Nov. 13, 2010 order "enjoined only the place-of-purchase presumption," disagreeing with the plaintiffs that "the State waived any argument that subsection 5c's data collection provision could operate independent of the

place-of-purchase presumption;" (2) disagreed with plaintiffs that "the data collection provision is so interrelated with the place-of-purchase presumption that the two cannot be severed;" and (3) disagreed with plaintiffs that the court should construe the Nov.13 order as enjoining the data collection provision because that provision does not further the Supreme Court's *Texas v. New Jersey* priority scheme.

Judge Wolfson concluded that "there is no legal basis for this Court to enjoin the enforcement of the data collection provision. To the contrary, collection of the purchaser's last known address has been sanctioned by the United States Supreme Court and is integral to the *Texas* priority scheme."

[Click here](#) to read the Judge Freda L. Wolfson's January 13, 2011 Order.

[Click here](#) to read the Judge Freda L. Wolfson's January 13, 2011 Opinion.

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