

## California Controller Must Still “Look To Find A Reason To Believe”

Article By:

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Last month, I wrote about reports that the SEC is seeking years of employment agreements, nondisclosure agreements and other documents in an effort to ferret out possible restraints on whistleblowers. See [Is Anything Fishy With The SEC's Whistleblower Inquiries?](#) As noted in the post, the SEC can ask, it can even subpoena, but it takes a court to enforce the subpoena. A recent case from California gives me some hope that courts will exercise a degree oversight of administrative fishing expeditions and will not allow their process to be abused by overzealous regulators.

*Yee v. Am. Nat'l Ins. Co.*, 2015 Cal. App. LEXIS 257 (Cal. Ct. App. 2015) involved an appeal of a preliminary injunction issued by a trial court permitting the California Controller to examine the records of a life insurance company. The Controller had joined a multistate investigation to determine life insurance industry compliance with state laws on unclaimed property. Under California's Unclaimed Property Law (UPL) provides that the Controller “may at reasonable times and upon reasonable notice examine the records of any [entity] if the Controller has reason to believe that the [entity] is a holder [of property] who has failed to report property that should have been reported pursuant to [the UPL].” Cal. Code Civ. Proc. § 1571(a). The insurer resisted the Controller's efforts on the basis that the Controller did not have “reason to believe” under the statute.

The Court of Appeal in a decision authored by Justice [M. Kathleen Butz](#) adopted the standard of “reason to believe” enunciated by the Maryland Court of Special Appeals in *Goldstein v. PHH Corp.*, 123 Md. App. 214 (Md. Ct. Spec. App. 1998): The Controller meets the standard if it can point to “specific articulable facts that would justify a belief by a reasonable person, knowledgeable in the field of unclaimed property, that a person or business entity [is] not reporting [unclaimed] property as required by the [unclaimed property law].” *Id.* at 232. On the record before it, the Court of Appeal could not decide whether the Controller had identified “specific articulable facts” as required by the “reason to believe” standard. If the Controller is to succeed, she must do so in a trial on the merits.

The *Yee* decision, of course, involves as specific California statute. Still, I look to find a reason to believe that the federal courts will find a way to prevent the abuse of their own process by administrative agencies.

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