



## HOT TOPIC

### Tells Us about the New Organization

By Christa DeOliveira

*What is the name of the new organization?*

**Nick Nichols (NN):** The new name is SMS Vanacore. Both SMS and Vanacore separately created very strong brands and images in the marketplace. As such, it was critical to maintain both names. Look for our exciting new logo and branding materials in the near future!

*What are the service offerings that the combined company provides?*

**Derek Vanacore (DV):** Our mission is to fulfill the unclaimed property needs of our business clients. As such, we offer a full suite of unclaimed services including owner location and outreach due diligence programs, address verification mailings, state escheat reporting, and compliance consulting services.

*Where are your offices located?*

**NN:** Our headquarters are in New York City and the newest addition is in Folsom, California. We also have our compliance and research facility in Salt Lake City, Utah. This gives us excellent coverage across the country and near key financial services markets like New York City and San Francisco.

*What do you do to ensure data security and compliance?*

**NN:** Data security and compliance are two things we take very seriously at our company. There is no room for error in these areas. For data security, we've committed substantial resources to securing client data. This includes leveraging encryption tools for confidential data stored on our systems, selection and monitored user access levels, and regular vulnerability tests. For compliance, we staff a Chief Compliance Officer that continually monitors activities across departments, conducting reviews and spot checks on various processes to ensure policies are followed. We also conduct a regular SAS 70 audit. Grant Thornton recently completed the audit work for our TYPE II for 2007. We believe it's critical to have this level of certification to demonstrate to our clients that our policies and procedures are not just words on paper, but how we operate.

*How do you add value to corporate issuers and transfer agents?*

**DV:** SMS Vanacore is helping issuers and agents comply with regulations, increase their levels of asset and account retention, and most importantly, allowing them to focus on their core business. We realize that unclaimed property is not the highest priority business process for our clients, but a necessity. As such, we focus on providing an excellent, end-to-end service giving our clients piece of mind so they can focus on their core business processes. We provide our clients a world-class experience, augmented by our flexibility, and ability to listen and anticipate changing needs.

*How do you add shareholder/customer value?*

**NN:** By simplifying the process of reactivating accounts and/or recovering assets. Our processes were designed to address

many of the service issues that plagued the location industry for many years. As such, the processes and people are focused on the owner. It's all about personalized service, listening, and understanding shareholder and customer needs and ensuring follow-up happens in a timely manner. Our team's focus is to treat owners as they would want to be treated.

*Do you expect any efficiencies to be gained by combining the organizations?*

**NN:** Absolutely! We've already seen immediate efficiencies in combining our sales, marketing, and client services efforts. Our resources quickly bonded and are working well together due to our shared culture of excellent customer service. We expect to continue seeing efficiencies and savings with reduced costs associated with conference exhibits, advertising, and other internal costs.

**DV:** The strong cultural fit allowed us to integrate our businesses quickly and is facilitating further growth in the unclaimed property segment. Additionally, the excellent reputations of both SMS and Vanacore separately, were significant in the wonderful acceptance the market has shown to our companies coming together.

*What sets you apart from other organizations?*

**NN:** I think if you look back on the answer about shareholder and customer value, you will see what sets us apart. Some of our clients have told us they believe we care as much about their shareholders and customers as they do. It's that level of focus and dedication we strive to apply to every client and every asset owner. We treat our clients and "their clients" as we would want to be treated ourselves.

**DV:** Bottom line: Our commitment to customer service. Many companies offer search services, what makes the difference is how that shareholder or customer is treated, and at SMS Vanacore our clients are our number one priority. Whether the shareholder's or customer's asset is large or small it doesn't matter, we strive to treat everyone with the same great customer service.

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GUEST ARTICLE

A Candid Conversation with Attorney William Palmer

By Christa DeOliveira

I flew out to Santa Cruz, California from my home in Salt Lake City, Utah to meet with William W. Palmer, who recently won a series of federal actions against the California Controller involving its handling of the \$5.1 Billion Unclaimed Property Program that is administered by the California Controller. The California Treasurer and the Controller have estimated that these cases, which challenge the Controller's failure to provide Notice, Constitutional Due Process, and the taking of Interest Payments that have accrued on the 8.7 million accounts, some since 1959, as having a minimum value of \$3.1 Billion (based on the Due Process violations) and a minimum of \$1 Billion (based on the interest payments). These cases are listed in California's Budget as having a "material impact" on the General Fund or State Budget for the State of California.

William W. Palmer (45) has practiced law for 17 years. His practice includes transactional business work and litigation. He is published, and has appeared in cases up to and including the United States Supreme Court. Bill Palmer attended UCLA, where he earned a double major, rowed on the UCLA Crew Team, and later earned his law degree at the University of the Pacific, McGeorge School of Law. Bill is self-made, and worked his way through school.

Bill lives in Sacramento, where he met his wife of 18 years Joanne or "Jodi", and together they have 3 children William (14), Julia (11), and Jack (9).

Bill, can you tell us a little bit about your public service background?

I am proud of my service to my home State of California and the United States. I have helped write laws and treaties for California and our country that I feel have improved our society and which have historic significance. The French philosopher Andre Malraux once said that "Great societies are not judged by the answers they give, but by the questions they ask?" I believe that my public service has added to this debate.

Could you be more specific?

Well, I helped write the Holocaust insurance reparations laws that later became the treaties for the United States and Europe, signed by President Clinton and President Bush. I am very proud of the personal note of thanks that I received from the Prime Minister of Israel and the personal signature pen that was given to me by California Governor Pete Wilson. I coordinated litigation in the United States that allowed the restructuring of Lloyd's London. I also rewrote the insurance claims laws for the State of California and served as the General Counsel and Chief of Staff for the California Department of Insurance for roughly 5 years. In short, my life has been blessed with opportunities, but I am grateful to have faced adversity, which enriched my life. A very wise, old attorney once said that "I learned the most from my mistakes, because during my successes I was too busy telling myself what an amazing guy I am." The message that he gave me was one of humility, to learn from mistakes, to persevere, and to dare greatly.



You recently served our country in Iraq, could you tell us about it?

No, I do not discuss my work there. The request came from our federal government, and I was grateful for the opportunity to serve my Country. However, I remember sitting on my couch, watching the troubling news on Iraq while thinking to myself that I had the ability to give something back to my Country. I have two young sons and a daughter, and I believe that it is critical that I set an example for them. I tell them that we are citizens in a republic, and we must contribute to this Country, to give something back. President Kennedy once said that "It is the highest calling of each citizen to participate in his government." This is what I want my children to take away with them from my work in Iraq.

What first lead you to Unclaimed Property?

In roughly 1994, I began seeing discrepancies in the handling of stock by the California Controller. At that time, I was just beginning my work with the Department of Insurance, and I did not have the time to explore what was going on in another agency. I did, however, initiate one case against a company for the mishandling of its stock in a merger. That action was quickly dismissed based on statute of limitations grounds, but the case forced me to dig deeply into California's processes. When I left the Department of Insurance in 1999, I began the odyssey into the Unclaimed Property Program in California and the United States. I quickly discovered that things are not as they appear.

What lead you to your strong position on Owner advocacy?

The original purpose of the escheat laws in this country, as they were transplanted from Europe, was two-fold. Originally, under the feudal laws of Europe, property reverted back to the king or feudal lord upon the death of an heirless tenant or serf. In the United States, we recognized that property rights create basic equality among our citizens that allow individuals to climb up and down the social ladder. Property rights are the foundation of this Country and assure basic equality. Consequently, our laws revolve around protecting the Citizen's prop-

erty rights, and our country was founded on the notion that we were escaping the feudalism of Europe. As a result, the two-fold purpose of the Unclaimed Property Law is to protect the rights of property Owners, first and foremost, and then as a secondary purpose to give the state, rather than the business holding the property, the benefit of the use of the property while the Owner is located. The problem is that cash-starved states like California have gradually warped the application of the law in order to create a revenue stream for their budgets. California, which is in the worst financial shape, thus became the greatest violator.



*Is it fair to call your Owner advocacy journey a crusade?*

In some respects, yes, it might be fair to call this work a “crusade,” but it is the fight that gives my life relevance. It is the public debate, the great question that I mentioned earlier – the “Why?” In the case of the misuse of the Unclaimed Property Law in California, it has not dawned on the rest of the Country that the misuse of these laws is nothing less than stealing. And it is ironic that the financially desperate State of California turned to a feudalistic law to work its way around the Constitution. Basically, California turned the clock backwards, to the very type of conduct that the people of our country sought to escape.

I also don’t believe that the rest of the Country realizes how desperate the financial situation in California has become. There is almost a bankruptcy mentality in this State. During the 7 years that these lawsuits have been pending in federal court, California’s debt has soared from \$20 Billion to \$63 Billion this year, with a structural deficit of \$13 Billion this year. So, the question is whether the other states like your state of Utah, Alaska, Nevada, Oregon, and so forth, will be willing to bail out the State of California when the time comes. More troubling to me is that no one in California state government can tell you what the numbers truly are, they use a Ouija Board approach to the State Budget that would make Enron blush. This is the cause-and-effect that lead to the misuse of the Unclaimed Property Laws in California, which became solely devoted to generating a revenue stream rather than protecting the Citizens’ Constitutional property rights as originally conceived.

*You clearly are very passionate on this issue, do you see any other factors that lead to this problem?*

First, it is not a “problem,” it is a “disaster.” And, the answer to your questions is “Yes.” In short, there were a handful of men who profited handsomely from what has happened to the State of California, and in other states. Without naming names, in

the last 12 months alone, the Controller’s personnel handed out \$1 Billion in “contingency fee” contracts to one “Audit Agent”, the contracts paid 11%, which means that the “Audit Agent” will receive roughly \$110 million paid from private moneys owed to private citizens, without those Citizens even being told that their property is being taken. This process was the brainchild of only a couple of men, each of whom has become enormously wealthy based on the seizure and sale of private property without proper Notice to the Owners.

Next, the California Controller, while preaching that he is “fixing the problem” and that he is the “New Sheriff in Town,” declined the demand that he initiate an independent audit of the “Audit Agents,” and instead is allowing the same men who doled out the contracts, like Richard J. Chivaro, to conduct their own self-audits of their own activities. So, maybe there is a “New Sheriff in Town,” but there is no accountability, and the “New Sheriff,” as John Chiang told us, but he has surrounded himself with and saddled up with the “same old posse.” In sum, there is a lack of accountability within the new regime.

There are no secrets in anything that I have told you today. One needs only to read the published reports by the California State Auditor, the Attorney General for the State of California, and the California State Treasurer, even the reports issued by the Controller himself, and the private consultants that he hired. Virtually every agency in the State of California warned the prior Controller Steve Westly that what he was doing was illegal. Steve Westly ignored the warnings from all of these major agencies, and blew through every stop sign. Under public pressure brought by virtually every media outlet in the State of California, Steve Westly’s successor John Chiang announced the Unclaimed Property Program was “perverted.”

Just as an aside, was I the only one who noticed that Steve Westly was a founder of EBay and a majority shareholder in EBay, when he awarded the contract to auction off all of the Unclaimed Property, jewelry from safe deposit boxes and other valuables on EBay? I’ve noticed that other states like Kentucky, Wisconsin, and Illinois have now glommed onto the idea. EBay is where the bargain shoppers go to find “deals” on merchandise. I’ve seen examples where family heirlooms were taken without notice and auctioned off for a fraction of their value. Well, now that Steve Westly has announced that he is running for California Governor, perhaps more people will ask how much money Steve Westly made off of this process, and “Why?”

*What have been the significant milestones in your mission to change the California Controller’s policies and practices?*

The watershed moments for me in this fight were the 3 published, unanimous rulings of the federal Ninth Circuit Court of Appeal. It was a collection of shining moments when the 3 separate panels of 3 federal life-appointed judges confronted the reality of what is going on in the State of California. They cut through the deliberate confusion that the Controller’s attorneys were sowing and saw and spoke with clarity. Until they spoke, I felt like I was living *The Tale of the Ancient Mariner*, who is condemned to wander the earth speaking the truth, but whose curse it to have no one listen to him.

Suddenly, with the 3 pronouncements of the Ninth Circuit, I felt the cases gain traction. From there, I saw the importance

of the First Amendment, as members of the press began to dig into the story, and it became front page news across the State of California, it made day-time radio, and the nightly news. These were the milestones that one needs, and the rulings of the Ninth Circuit and the press energized the handful of hard-working attorneys like Dan Culhane, Brian Boydston, whistle-blowers, investigators, and others who had been assisting me. My team drew fresh strength. I realized that we would win this fight.

*What do you think of the Owner notification practices of SB 86?*

The Owner notification is little more than “smoke and mirrors,” and was deliberately designed to have no significant impact on the “stream of revenue” generated by this Unclaimed Property program as evidenced by the small adjustments to the budgetary impact. It is also designed to continue to benefit the same group of men who have made a fortune off of these programs in California and other states. While the Legislature, which is directed by lawyers from within and influenced by Controller John Chiang – “The New Sheriff” - mouths the words that it is their “intent...that property owners be reunited with their property...” which they actually wrote into the law, the result is exactly the opposite. In fact, I have listened while the Controller made speeches all over the State of California that the process was “perverted” over time, while his attorneys repeatedly argued in federal court that the process should not change one iota.

It is an amazing sight to watch the politician scramble around the state trying to position himself to strike a pose out in front of the issue, while his attorneys toil to keep the process almost exactly as it was before. My experience is that the truth eventually catches up to a politician like this one.

*What is on the horizon for restoring “interest payments” to Owners?*

We have already won this issue of law in federal district court in San Jose. It is an issue of law that predates this Country. “Interest follows the principal, as the shadow follows the body.” In other words, “but for” the principal, there would be no interest, which is the property right of the individual. So, when California attempted to backdate all of the accrued interest out of the private accounts in its custody, it was basically stealing, or to put it within the Constitutional framework, the Controller and his staff were violating the Due Process rights of the Owners that he was supposed to protect. We will win on this issue, and we will restore the interest back to where it belongs.

*What about the Holders?*

I want to be clear that I am not just an advocate for the Owners, but for the business community as well. I am in favor of less government, not more. As President Ronald Reagan once said, “The most feared words in the United States: Hi, we’re from the government and we’re here to help.” California has created a costly, unpredictable, self-serving system that is injurious to the business community. It is more of the “red tape” and big government for which California is now famous. And it adds to the exodus of our businesses and tax base from the State of California. Other Western States like Texas, Arizona, and even Utah, have California’s politicians and government to thank for their increasing tax bases as California’s businesses relocate there. It is no surprise that California’s financial problems are a self-fulfilling prophecy.

*The Holder community is burdened by changes in California’s new procedure.*

The Holder community, which makes up the businesses of California and the United States should be troubled by the events in California. We are witness to basic violations of law. In the real world, as we learned on the playground, this was “taking something that is not yours.” The Holder community should engage, and ask the question “Why?” They should actively formulate and push forward with a program that makes sense, which protects the Owner, and the businesses in which the Owner invests and operates.

*Members of the Holder community are certainly proponents for due process and notice, do you see a way to accomplish this without putting further demands on the business community?*

Yes, the solutions are fairly simple and revolve around a system-wide approach to these laws. The clock needs to be turned back, and the states like California need to come to grips with the fact that if they want to run what is in effect an enormous “lost-and-found” that it might not be a lucrative profit center or revenue generator. That if the programs are run properly by the government, and not off the backs of private businesses and funded with the illegal seizures of private property from the Owners, then the program will be expensive and time consuming. In effect, it is turning back the clock to the core realization that Unclaimed Property is about protecting private property rights, not about the secondary purpose of the law – revenue for the state.

From there, the law should be about longer dormancy periods, allowing businesses to do their job, better due diligence before property is ceded to the government, eliminating profiteering “Audit Agents” and artificial pressure and threats from government on businesses to fork over money and property for a percentage to these “Audit Agent” companies. Better and simpler reporting laws that are clear and understandable, with consistent application throughout the 50 United States and 5 Protectorates. In other words, it is like playing all of the keys on the piano in harmony, rather than just hitting the notes that make California and its contractors money.

*How do you see what you have been able to accomplish in California impacting other states?*

The federal decisions are the springboard to change the laws in the United States to protect its Citizens. I intend to see the cases through to the bitter end, and to administer some tough love to the State of California, in order to protect the Owners, the businesses, and the other states. California’s dire financial plight represents a fundamental challenge to the United States. To the other states, my hope is that the situation in California will force the other states to straighten up and take notice before California, the State that I love, is forced to reach into the pockets of her Sister States.

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