JOSHUA J. VOSS
JVOSS@KLEINBARD.COM
Direct Dial 267.443.4114

May 18, 2023

VIA EMAIL

Hon. Pierre N. Leval
Special Master
PNLspecialmaster@ca2.uscourts.gov
Pierre_Anquetil@ca2.uscourts.gov

RE: *Delaware v. Arkansas*, Nos. 22O145 & 22O146 (consolidated)

Dear Judge Leval:

On behalf of the Commonwealth, Pennsylvania Treasurer, we write regarding the proposed scheduling order submitted by Delaware today. As noted in Delaware's cover email, Pennsylvania objects to the schedule. Pennsylvania's chief objection to the proposed schedule is the delay it builds into the final phase of this matter. This case has been pending for seven years. The time to fight liability long ago passed; the time to "do the math" is now. And the math is, from Pennsylvania's perspective, uncomplicated, for several reasons.

One, MoneyGram has already supplied necessary information relating to the escrowed funds, which total $94.1 million. That information shows some $6,331,070.91 belongs to the citizens of Pennsylvania. Within a day of receiving that information, Pennsylvania was able to file a motion supplying "the math" to all parties (*see* docket # 146). In contrast, Delaware asks for 60 days to do the same analysis.

Two, MoneyGram has already supplied necessary information relating to the post-litigation, pre-escrow funds for report years 2016 & 2017. Those funds—despite Delaware's description of them as a "limited amount" (*see* docket # 144 at 4)—total $37.6 million, of which $2,153,501.24 reflects instruments purchased in Pennsylvania. Subject only to additional information from MoneyGram about any refunds of the above sums from Delaware (information that is imminently forthcoming), the foregoing totals are not genuinely in dispute.

Three, MoneyGram has already supplied necessary information relating to funds reported in years 2006 through 2015. That information reveals some $284.6 million Delaware received (in error, according to the Supreme Court's recent opinion), of which $16,026,988.64 reflects instruments purchased in Pennsylvania. And, again, subject only to forthcoming information from MoneyGram about any refunds of the above sums, the foregoing totals are not genuinely in dispute.

In light of the above, the periods of review and discovery in the proposed scheduling order are, respectfully, more than is reasonably needed. As such, Pennsylvania objects to the entry of the proposed order. Instead, Pennsylvania requests the following:

(1) the Court enter an order affording Delaware 14 additional days from today to review the escrowed funds (which, on top of the 17 it has already had, provides Delaware a total of 31 days);

(2) the Court order Delaware, at the end of the 14 days, to file a motion with the Court presenting any objections it has with regard to funds having a connection to Delaware;

(3) the Court enter a schedule consistent with the proposal on page 23 of the Joint Status Report, which would draw this matter to a close in early 2024; and

(4) the Court set a briefing schedule on Pennsylvania's pending motion (docket # 146) regarding the escrowed funds.

Next, Pennsylvania is prepared to stipulate as necessary to resolve reasonable disputes regarding the escrowed funds or otherwise, and it welcomes the opportunity to engage in meaningful discussions about resolution with any party willing to do so. Pennsylvania is not, however, desirous of protracted delays that lead only to outcomes that are readily ascertainable now. Indeed, Pennsylvania notes that in 2015 it explained to Delaware why Delaware's interpretation of the Federal Disposition Act was wrong: seven years later the Supreme Court unanimously agreed with Pennsylvania. Against this, we are not interested in many more years of "dispute" about the amount of recovery just to get where we can get today based on the already available information.

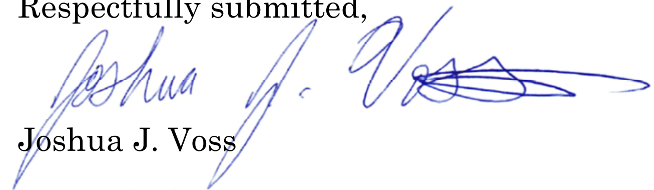
Finally, history suggests Pennsylvania's proposed abbreviated approach is reasonable. In 1988 when Delaware sued New York for "wrongfully escheated" funds—totaling nearly $900 million—the Supreme Court ruled on March 30, 1993 that Delaware was entitled to relief and that New York owed Delaware, but also ruled additional proceedings before the Special Master on the amount owed were necessary. *See Delaware v. New York*, 507 U.S. 490, 509 (1993). Less than one year later, on January 21, 1994, Delaware moved to dismiss its complaint after having reached a settlement with New York. *See* Report and Recommended Disposition of Motions with Respect to Complaints, *Delaware v. New York*, No. 111 Original, at 2 (U.S. Mar. 15, 1994).[1] That settlement

---

[1] *Available at* https://www.supremecourt.gov/specmastrpt/SpecMastRpt.aspx; *see also Delaware v. New York*, 511 U.S. 1028 (1994) (receiving and filing Special Master's March 15, 1994 report).

totaled some $200 million, according to reporting. *See* The Associated Press, *New York Pays Delaware in Securities Settlement*, New York Times (Jan. 22, 1994).[2] In other words, when Delaware was owed money for wrongful escheat, the damages phase took just nine months and just a few additional months for the Special Master's final report (issued approximately one year after the Court's liability ruling in 1993). There is no reason this history—established by Delaware—cannot guide here.

Respectfully submitted,



Joshua J. Voss

cc: Counsel of record (via email)

[2] *Available at* https://www.nytimes.com/1994/01/22/nyregion/new-york-pays-delaware-in-securities-settlement.html.