SUPREME COURT OF THE UNITED STATES

DELAWARE, *Plaintiff,*

v. Nos. 22O145 & 22O146 (Consolidated)

ARKANSAS, *et al.*, *Defendants*

August 4, 2023

JOINT STATUS REPORT

Pursuant to the Special Master's June 29, 2023 scheduling order, the parties submit this Joint Status Report.

Delaware's Position

Delaware regrets that the parties have been unable to reach a resolution of this litigation. In the absence of an agreed resolution, it is Delaware's position that discovery is necessary before the escrow funds can be distributed. It is important to proceed carefully. Once these funds are distributed, it would be enormously complicated—and potentially impossible—to correct any errors that later come to light, especially given the complex nature of state budget cycles.

The Supreme Court has made clear that MoneyGram Official Checks should be escheated in accordance with the Federal Disposition Act. As Delaware's response to Pennsylvania's motion for immediate withdrawal from the escrow explains in greater detail, however, there is currently insufficient data with respect to the State of purchase for all of the Official Checks in escrow, and in particular for Delaware at this stage to identify specific instruments reportable to Delaware, rather than another State, per the Special Master's request.

Defendants took the position at the May 4, 2023 hearing that the "financial institution address" field in MoneyGram's spreadsheets is the State of purchase. Following the hearing, however, Delaware asked MoneyGram for information regarding whether the "financial institution address" field reflects the State of purchase for each Official Check. MoneyGram submitted two declarations to the parties, which are included as attachments to Delaware's response to Pennsylvania's motion for immediate withdrawal from the escrow. Those declarations explain that the "financial institution address" field in MoneyGram's records *is not intended to record* the State of purchase for each Official Check. Instead, MoneyGram's declarants state that the "financial institution address" field is an address chosen by MoneyGram's clients, and it does not necessarily reflect the State of purchase.

As a result, there is insufficient data in the record at this time to determine the State of purchase for each instrument in escrow. Delaware cannot determine, for instance, whether any of those instruments were purchased online by a Delaware resident. Nor can Delaware determine whether the "financial institution address" recorded by MoneyGram reflects a corporate headquarters address rather than a location—including a location in Delaware—where the Official Check was sold. In short, Delaware *cannot* identify which specific instruments may have been purchased in Delaware on the current record.

To address this problem, Delaware submits that discovery is necessary with respect to the State of purchase of the escrowed instruments. It is Delaware's position that it is far more efficient for this discovery to occur on the same timeline as the discovery on Defendants' damages claims. Delaware will likewise need to conduct discovery regarding the State of purchase for instruments escheated prior to the establishment of the escrow, and it makes sense to perform this discovery at the same time. This will allow a single set of discovery to be conducted with respect to third parties, including MoneyGram and individual banks, reducing the burden on those third parties. Delaware also submits that expert discovery—and adequate time to review that discovery—is necessary on the escrow funds given the complexity of determining the State of purchase for each instrument in the escrow. Delaware submits that this expert discovery should take place on the same schedule as the expert discovery on Defendants' damages claims, permitting the parties' experts to opine on the disposition of the escrowed funds at the same time that they address Defendants' damages claims.

Following expert discovery, Delaware submits that the parties should address the disposition of the escrow funds on the same schedule as the summary judgment briefing on Defendants' damages claims. Briefing both the escrow and the parties' summary judgment motions on damages at the same time will allow the Special Master to resolve the recordkeeping problems in the same way, rather than risking inconsistent decisions. Otherwise, if the escrow is distributed prior to discovery—and discovery later shows that the distributions were inaccurate—the distribution would need to be unwound. Delaware's proposed approach will also allow the Supreme Court to determine the proper disposition of the escrow funds on a complete record.

Consistent with this Court's June 29, 2023 scheduling order, *see* Dkt. 161, Delaware submits that the parties should thus proceed as follows:

1. **Initial written discovery to be served:** August 4, 2023.

2. **All fact discovery, including document discovery, depositions, and any third party practice, to be completed:** 180 days from the initial service of written discovery.

3. **Initial reports from retained experts, including reports regarding distribution of the escrow account, due:** 90 days from the completion of fact discovery.

4. **Rebuttal reports from retained experts, including reports regarding distribution of the escrow account, due:** 60 days from the filing of initial expert reports.

5. **Expert depositions, including depositions regarding distribution of the escrow account, to be completed:** 45 days from the filing of rebuttal expert reports.

6. **Dispositive motions on all aspects of the case, including the distribution of the escrow account, due:** 45 days from the close of expert depositions.

7. **Tentative trial date:** Q4 2024.

Delaware's Response to Defendant States

Delaware received Defendants' submissions to this joint status report, and an associated data file with dozens of individual spreadsheets with thousands of rows of data, on the evening of Thursday, August 3. Despite the August 4 deadline for this submission being on the calendar for weeks, Defendants provided no advanced warning that they would submit this data file and rely on it, and Delaware has been unable to evaluate all of Defendants' calculations in less than 24 hours.

Defendants' approach impeded Delaware's efforts to analyze Defendants' assertions and respond in an orderly manner. Delaware does not waive or forfeit any arguments, and at a minimum requests that the Special Master permit Delaware a meaningful opportunity to respond to Defendants' many factual and legal assertions before ruling on any disputed matters.

Pennsylvania accuses Delaware of bad faith. Pennsylvania is wrong. In this litigation, Pennsylvania and the other Defendants are seeking millions of dollars from Delaware's public *fisc*. Those States never expected to receive such a windfall from a co-equal sovereign State, and Delaware acted in good faith—for many years—based on an interpretation of the FDA with which the Special Master essentially agreed in his Second Interim Report. Delaware is a sovereign State that has a responsibility to ensure that Delaware's citizens receive their appropriate portion of the escrow account, which in part will offset the extraordinary damages Defendants seek (if the FDA even permits damages in this context, which Delaware will argue it does not). Delaware's position is that the Special Master should follow the Supreme Court's decision in *Delaware v. Pennsylvania* and the text of the FDA when distributing the escrow funds. Defendants, in contrast, are seeking a shortcut that is contrary to the Supreme Court's decision and contrary to statute. They are asking the Special Master to decide disputed issues of fact without a factual record. Delaware instead seeks an opportunity to determine what the facts are before it takes a position on how almost $100 million should be distributed.

The question presented here—the extent to which MoneyGram's books and records can be relied upon to show the State of purchase for Official Checks, and what other evidence may shed light on that issue—is a key question with respect to both the escrow and Defendants' retroactive damages claims. That question should be decided on a full record. The many disputed factual and legal issues raised by the parties' status report submissions confirm why the proper course is to develop a full record through discovery and to brief the distribution of the escrow account at summary judgment.

Indeed, Defendants' own submissions show the wisdom of proceeding carefully and resolving these legal and factual issues in a single proceeding: Defendants now ague that a stipulation allowing MoneyGram to report funds to the States under the FDA constituted a factual concession about MoneyGram's books and records. As explained more fully below, that stipulation was not a concession on Delaware's part of any kind. But to avoid any similar argument that the Special Master's recommendation to the Supreme Court regarding the escrow account governs issues surrounding retroactive damages, the proper course is to resolve these factual and legal issues in one blow.

Given the limited time available to Delaware, Delaware raises the following five additional objections to Defendants' status conference submission:

First, MoneyGram's declarant does not confirm that MoneyGram's records reflect the State of purchase for every instrument in the escrow. MoneyGram's declarant instead states that it is up to MoneyGram's client banks to pick the address reflected in MoneyGram's records. According to the declarant, client banks have no "obligation" "to identify to MoneyGram all of the locations from which Official Checks would be sold and/or issued and have data for those locations tracked separately." Johnson Decl. ¶ 8. The declarant expressly confirms that a bank could "report and record the issuance of all Official Checks out of a single location" (*i.e.*, a corporate headquarters) if it chose to do so," and that this decision "is made by the Client, not by MoneyGram." *Id.* ¶ 12.

Defendants emphasize a portion of the declaration in which MoneyGram's declarant stated "it is my understanding that" banks "usually" record "the physical location where the item was purchased." *Id.* ¶ 10. That speculation may be accurate. It may not. But the declarant did not provide any evidence to support her speculation. Based on Delaware's preliminary analysis, it appears that on many, many occasions, banks chose to record some *other* location—such as a corporate headquarters—in MoneyGram's records.

This is precisely why discovery is necessary. The Special Master should not rely on a selective portion of a declaration, without any evidentiary support, to disburse nearly $100 million dollars. The purpose of discovery is to plumb these kinds of disputed factual issues.

Second, Defendants suggest Delaware has no possible interest in the escrowed instruments. That is simply not true. Delaware cannot accurately determine whether it has an interest in any particular instrument without conducting further discovery. For instance, as Delaware noted, Official Checks appear to have been sold online—meaning they could have been purchased in any State, including Delaware. Discovery may also reveal other circumstances in which Official Checks were purchased in Delaware, as explained more fully in Delaware's response to Pennsylvania's motion for immediate withdrawal from the escrow.

Third, Defendants argue that the Special Master should not determine what MoneyGram actually recorded in its books and records. But that is precisely what the FDA requires. Section 2503(1) permits a State to escheat under the primary rule if the records "*show*" "the State in which" the instrument "was purchased." 12 U.S.C. § 2503(1). The verb "show" means "[t]o demonstrate," "[t]o make apparent or clear, either to the eye or to the understanding or to both,

by display, by evidence, by illustration, or by other means." *Ballentine's Law Dictionary* (3d ed. 1969); *see also, e.g.*, *Black's Law Dictionary* (11th ed. 2019) ("To make (facts, etc.) apparent or clear by evidence; to prove."); *Merriam-Webster Online Dictionary* ("[T]o give indication or record of[.]"), *available at* https://tinyurl.com/b3kz74uv. Thus, under the FDA, the debtors' books and records must constitute actual "evidence" of the State of purchase.

Contrary to Defendants' assertions, "close enough" simply doesn't cut it. The evidentiary showing must be specific to each individual instrument on a "transaction-by-transaction basis." *Cf. Delaware v. New York*, 507 U.S. 490, 509 (1993) ("If New York or any other claimant State fails to offer such proof on a transaction-by-transaction basis or to provide some other proper mechanism for ascertaining creditors' last known addresses, the creditor's State will not prevail under the primary rule, and the secondary rule will control.").

Nor does the FDA rely *exclusively* on a holder's books and records. The FDA suggests that, where the books and records do not demonstrate the State of purchase, other "written evidence" can establish the State of purchase. 12 U.S.C. § 2503(2). That is precisely why further inquiry is needed. At a minimum, the Special Master should not recommend a resolution to the Supreme Court of these legal questions—which could have potentially sweeping ramifications far beyond this case—without discovery and full briefing.

Fourth, Delaware in no way "stipulated to" the accuracy of MoneyGram's books and records "going forward." Delaware stipulated that MoneyGram would escheat according to "each State's unclaimed property laws *and the Federal Disposition Act*." Dkt. 152 at 1 (emphasis added). Delaware agreed to this particular language in the stipulation because it acknowledges MoneyGram must comply with the FDA going forward. But Delaware took no position as to whether MoneyGram's books and records show the State of purchase, whether MoneyGram should escheat under the FDA's primary rule, or whether MoneyGram should escheat some or all Official Checks under the FDA's secondary rule.

The reality is that Delaware has repeatedly and vocally raised its concerns regarding MoneyGram's books and records, and that concern has only grown following MoneyGram's declarations. Delaware raised this concern in April at the parties' meet and confer, at the hearing in May, and in correspondence with MoneyGram on which Defendants' counsel were copied.[1]

Fifth, Defendants assert that Texas (a Defendant State) is MoneyGram's principal place of business and that Texas should escheat MoneyGram instruments under the FDA's secondary rule. This is factually incorrect. MoneyGram's principal place of business is in Minnesota, which is not a party to this lawsuit. MoneyGram's associate general counsel has provided a

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[1] Pennsylvania separately asserts that "Delaware has for *years* relied upon MoneyGram's books and records, as is, to accept receipt of abandoned Official Checks." That is a wild mischaracterization. MoneyGram escheated funds to Delaware based on the common law secondary rule, not based upon any owner or state of purchase address information. The secondary rule is a default rule based on the state of incorporation *when the owner address is unknown*. No one argues that MoneyGram's records contain owner-address information.

sworn declaration stating that MoneyGram "has its principal place of business in the State of Minnesota." Dkt.80. He explained that MoneyGram's *parent* company is located in Texas.

Defendants themselves admitted that MoneyGram's principal place of business is in Minnesota. As the Special Master explained in his First Interim Report, "in response to Delaware's statement of undisputed facts, the Defendants admitted that Minnesota is Moneygram's principal place of business." Dkt. 122 at 81 n.47. And a page on MoneyGram's website designed to assist law enforcement confirms that "MoneyGram Payment Systems, Inc. is a Delaware corporation *with its principal place of business in Minneapolis, Minnesota*."[2]

To the extent there is still a dispute on this issue, the parties can conduct discovery and brief it. But it should not be decided on the basis of Defendants' mere representation in a status conference report. Resolving MoneyGram's principal place of business could affect not only the distribution of the escrow account, but also the calculation of damages (if any) to Defendant States.

Finally, Delaware notes it has been unable to evaluate or confirm Defendants' complex interest calculations with less than 24 hours' notice.

The Defendant States

Since the May 4, 2023 status conference, Defendant States and Pennsylvania have worked to bring this litigation to resolution. Defendant States and Pennsylvania separately engaged in settlement discussions with Delaware. Those discussions were ultimately unfruitful. But while those discussions were ongoing, and in an effort to expeditiously resolve this matter, Defendant States retained experts to calculate the amounts due to each State from the escrowed funds.

The results of those efforts are included in a summary table below, and Defendant States respectfully request that the Special Master order payment to Defendant States as described below. The Special Master should reject Delaware's unsupported assertion that MoneyGram's records are insufficient to allow for such a distribution. Indeed, the Special Master already rejected Delaware's blanket objection to using MoneyGram's records and instructed Delaware to file a report identifying only escrowed items that it has a basis for believing were purchased in Delaware though MoneyGram's records list them as being purchased in another state.

A. Defendant States' Escrow Calculations

Defendant States have engaged Crowe LLP, a financial accounting firm, to review the disclosures MoneyGram supplied to the parties in 2023 concerning the escrowed funds. Crowe reviewed and analyzed the data and prepared detailed schedules (in spreadsheet format) that break down the unclaimed instruments reported by MoneyGram on a state-by-state and item-by-item basis. Those schedules have been provided to MoneyGram and Delaware and will be made available to any other party that requests them. Crowe used that data to calculate the total principal funds owed to each state, as well as the interest attributable to each state's respective

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[2] https://corporate.moneygram.com/compliance/subpoena-and-law-enforcment-requests.

principal balance through May 2023. Crowe has also prepared a summary chart of the pertinent information related to the escrowed funds, which Defendant States are happy to provide to the Special Master upon request.

1. *Calculation Summary*

The simplified results of Crowe's work are displayed in the table below. Defendant States respectfully request that the Court order the Southern District of New York escrow administrator to pay funds out of the escrow account to each of Defendant States in the amounts specified in the "Adjusted Total with Interest" column below.

State	Adjusted Total by State	Interest In Escrow (through May 2023)	Adjusted Total by State with Interest
PA	$ 6,149,078.91	$ 238,829.06	$ 6,387,907.97
OH	$ 5,387,049.07	$ 200,112.17	$ 5,587,161.24
CA	$ 5,057,129.17	$ 187,309.88	$ 5,244,439.05
TX	$ 4,998,618.89	$ 183,753.39	$ 5,182,372.28
FL	$ 4,566,416.14	$ 178,342.33	$ 4,744,758.47
MD	$ 3,547,854.48	$ 139,962.09	$ 3,687,816.57
MI	$ 2,933,807.91	$ 97,311.51	$ 3,031,119.42
IN	$ 2,369,376.92	$ 79,665.70	$ 2,449,042.62
OK	$ 2,070,081.94	$ 75,462.96	$ 2,145,544.90
AL	$ 1,862,482.08	$ 66,892.57	$ 1,929,374.65
WV	$ 1,841,429.63	$ 78,186.94	$ 1,919,616.57
WA	$ 1,748,435.66	$ 66,934.35	$ 1,815,370.01
WI	$ 1,696,080.44	$ 61,624.75	$ 1,757,705.19
VA	$ 1,607,512.27	$ 56,713.97	$ 1,664,226.24
UT	$ 1,599,447.47	$ 58,938.73	$ 1,658,386.20
LA	$ 1,351,254.97	$ 49,649.50	$ 1,400,904.47
ND	$ 1,286,765.77	$ 47,282.43	$ 1,334,048.20
SC	$ 710,244.41	$ 26,477.68	$ 736,722.09
DE	$ 628,199.34	$ 25,369.21	$ 653,568.55

State	Adjusted Total by State	Interest In Escrow (through May 2023)	Adjusted Total by State with Interest
MT	$ 552,619.90	$ 19,860.78	$ 572,480.68
CO	$ 509,435.06	$ 18,123.28	$ 527,558.34
OR	$ 494,969.77	$ 26,266.44	$ 521,236.21
KS	$ 489,755.90	$ 19,194.96	$ 508,950.86
WY	$ 440,896.13	$ 21,903.17	$ 462,799.30
KY	$ 372,272.23	$ 15,248.77	$ 387,521.00
AZ	$ 349,718.22	$ 13,469.99	$ 363,188.21
IA	$ 264,652.10	$ 8,899.92	$ 273,552.02
AR	$ 203,588.11	$ 7,203.39	$ 210,791.50
ID	$ 192,363.19	$ 8,486.76	$ 200,849.95
NV	$ 47,617.25	$ 2,338.05	$ 49,955.30
NE	$ -	$ -	$ -

2. *Principal Calculations*

By way of explanation, the column "Adjusted Total by State" in the table above is the principal currently in escrow for each state. Crowe began by assigning to each state the abandoned instruments for which MoneyGram identified that state as the place of purchase. Crowe then subtracted each of the abandoned instruments that have been reimbursed to MoneyGram pursuant to the Special Master's orders.

The total also reflects adjustments made by MoneyGram in January 2022 and in declarations MoneyGram submitted to the parties in 2023, along with a handful of very minor adjustments made by Crowe (less than $5,000) to entries in which the listed state did not correspond to the street address and city identified as the place of purchase for an instrument.

3. *Interest Calculations*

Interest was calculated based on the June 2023 "Case History Report" prepared by the escrow administrator, which reports the amount of interest that the escrow account earned each month. Crowe divided the monthly interest payments into three time periods that correspond to the dates of the deposits made by MoneyGram: April 6, 2018 to March 10, 2021 ("First Time Period"); March 10, 2021 to August 30, 2022 ("Second Time Period"); and August 30, 2022 to

May 30, 2023 ("Third Time Period"). The Case History Report indicates that the escrow account earned $868,914.58 in interest in the First Time Period; $238,286.17 in the Second Time Period; and $2,579,959.37 in the Third Time Period.

Crowe calculated the pro rata interest earned by each abandoned instrument across its total time in escrow. Every instrument deposited by MoneyGram was assigned a weight for each time period that corresponds to the value associated with that instrument at the beginning of that time period. The interest earned during each time period was then assigned to the instruments pro rata based on their weight for that time period.

For a particular time period, if an instrument had not yet been deposited, its weight would be $0. If the instrument was deposited at the beginning of the time period, the weight would be the value of the instrument. If the instrument was deposited in a prior time period, then the weight would be the value of the instrument plus the interest that it had accrued as of the beginning of the time period. And if an instrument was reimbursed to MoneyGram after earning some interest, then the weight for the time period would be the interest remaining in escrow associated with that instrument at the beginning of the time period.

Crowe then assigned the interest earned during each time period to each instrument pro rata based on its weight. The "Interest (through May 2023)" column provides, for each state, the sum of interest earned on each instrument that was assigned to that state by Crowe and that was not the subject of a MoneyGram reimbursement request.

4. *Calculation Totals*

The "Adjusted Total with Interest" is the sum of the adjusted total column and the interest column. Defendant States respectfully submit that the "Adjusted Total with Interest" accurately reflects the abandoned instruments that the books and records of MoneyGram indicate were purchased in each of Defendant States, minus reimbursed items, and plus interest.

Defendant States recognize that some questions remain unanswered, including what to do with funds associated with states that are not parties to this action; what to do about interest that was earned on items prior to being reimbursed to MoneyGram, and the interest subsequently earned on that interest; and what to do about interest earned after June 1, 2023. But those questions do not affect the amounts due to Defendant States as reflected in the table above. These funds rightfully belong to Defendant States and have been sitting in escrow for years; there is no valid reason to further delay their distribution. Defendant States therefore respectfully request that the Special Master order payment to Defendant States in the amounts described above.

B. Defendant States' Response to Delaware's Proposal

At the May 4 status conference, the Special Master repeatedly instructed Delaware that it should file a status report identifying those escrowed MoneyGram Official checks that it believed were purchased in Delaware that MoneyGram's records list as being purchased in another state and to relinquish its claims to the balance of funds—whether or not it was clear from MoneyGram's records which *non*-Delaware State the remaining Official Checks should

escheat to. Transcript of May 4, 2023, Conference at 43:10-21, 44:9-24, 45:7-14, 82:16-24. Delaware, in response, said it "certainly can do that," *id.* at 82:25, and that that "[c]ertainly . . . makes sense," *id.* at 45:16. And, as noted above, in order to simplify matters and speed resolution, Defendant States have done their own analysis and submit the totals discussed above.

Yet in its status report, Delaware has done nothing of the kind. Instead, it seemingly asserts that MoneyGram's records are inadequate to determine the State of purchase for all the escrowed instruments; that any of them may potentially have been purchased in Delaware; and that it needs discovery from MoneyGram and third-party banks to ascertain the true State of purchase. That proposal is simply another attempt to delay release of the escrow funds, and it is unsupported for multiple reasons.

First, as the Special Master observed at the status conference, the Federal Disposition Act "expresses particular concern for the books and records of the holder of the funds, and" does not "envision[] extensive inquiry into what's behind the information received by the holder of the funds . . . and the possibility that it may have received inaccurate information as to the state of purchase." Transcript at 47:8-14. Indeed, the Disposition Act clearly conditions escheat on what the holder's records say about the State of purchase—not upon whatever discovery Delaware claims it needs.

The Disposition Act sets forth only two alternatives (setting aside situations where state law does not provide for escheatment). One, if the holder's "books and records . . . show the State" where an instrument was purchased, that State is entitled to escheat. 12 U.S.C. 2503(1). And two, if they "do not show the State" of purchase, the State in which the holder has its principal place of business—not the holder's State of incorporation—is entitled to escheat. 12 U.S.C. 2503(2). Here, by Delaware's own allegation, that State is Texas. *See* Compl. 4 ¶ 9; Answer of Arkansas et al. 4 ¶ 8 (admitting that allegation).

Consequently, there are only two routes for the escrowed Official Checks to travel. Where MoneyGram's records state the place of purchase, that statement is conclusive, even if Delaware doubts its accuracy. Where they do not state the place of purchase, the State of escheat is Texas. Either way, unless MoneyGram's records state Delaware is the place of purchase, Delaware is never entitled to escheat, and either way, discovery from third-party banks that are not the holder as to the true place of purchase is legally irrelevant. So Delaware's proposal that the parties engage in instrument-by-instrument discovery would unnecessarily delay this matter.

Second, even if Delaware's claim that MoneyGram's records are inaccurate were legally relevant, MoneyGram has not—contrary to Delaware's assertions—disclaimed that it keeps records of the State of purchase. To the contrary, it has testified that it does and that that information is generally accurate. Delaware generally cites, but tellingly doesn't quote, two declarations from MoneyGram. The first, Colleen Elvin's, refers to the declaration of Susan Johnson for an explanation of MoneyGram's "Financial Institution Address" data. *See, e.g.*, Decl. of Colleen Elvin at 3 ¶ 4(i). Susan Johnson's declaration, in turn, says that "most" MoneyGram client banks "report the issuance of Official Checks out of multiple locations." Decl. of Susan Johnson at 3 ¶ 13. Those locations, in turn, are "usually" "the physical location

where the item was purchased." *Id.* at 3 ¶ 10. And in any event, such addresses are "the most granular level of address information associated with a particular Official Check that is available to MoneyGram." *Id.* In some instances, clients may report issuance from only "a single location," *id.* at 3 ¶ 12, but the reason for that is typically that "that location uses Official Checks for its *own* disbursements," *id.* at 3 ¶ 13 (emphasis added), making it the place of purchase.

Thus, there is no further data available to MoneyGram—the entity whose books and records control under the statute—beyond what is already in the record. And even if the Disposition Act permitted Delaware to look past the place of purchase shown in the holder's books and records, MoneyGram's declarations *confirm* that its books and records' address information "usually" accurately reflects the place of purchase. Johnson Decl. at 3 ¶ 10. That degree of certainty more than suffices in this civil proceeding.

Third, even if Delaware might argue that MoneyGram's records on Official Checks whose issuers only report issuance out of a single location do not even purport to "show" the place of purchase, 12 U.S.C. 2503(1), Delaware would still have no interest in those Official Checks. If the holder's books and records "do not show the State" of purchase, an instrument escheats to the holder's principal place of business—here, Texas. 12 U.S.C. 2503(2). So in no event would Delaware be entitled to discovery on the escrowed instruments' place of purchase; it has no interest in whether a single-location reporting bank in fact sold its instruments out of that location or many. Moreover, even if it could escheat in the event that Delaware was the true place of purchase of some of those instruments, the examples it has offered of single-location reporting banks bely its concerns. The banks it mentioned at the status conference were Sterling Bank & Trust and Cadence Bank, and one defunct bank, Susquehanna Bank. Transcript, 34:10-18. *Not one* has or had a branch in Delaware.[3]

Fourth, though Delaware now claims that MoneyGram's records do not reflect the place of purchase, it has stipulated to those records' use to escheat funds going forward. In the parties' June 1 stipulation, Dkt. 152, it stipulated that beginning 60 days after the stipulation's date, or July 31, MoneyGram would begin to remit unclaimed Official Checks under the Disposition Act. Yet the only place-of-purchase information MoneyGram has with which to do so is the "financial institution address" data that Delaware now claims is not place-of-purchase information at all. *See* Johnson Decl. 3 ¶ 10 (such information "is the most granular level of address information . . . that is available to MoneyGram"). If Delaware's doubts about the reliability and relevance of that data were serious, it would not have entered into that stipulation, and having done so it cannot challenge that data's reliability and relevance.

C. Conclusion

For the foregoing reasons, Defendant States respectfully request that the Special Master

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[3] *See Locate*, Sterling Bank & Trust, https://www.sterlingbank.com/locate; *Find a Location*, Cadence Bank, https://cadencebank.com/find-a-location; *Susquehanna Market Area*, Susquehanna Bank, https://web.archive.org/web/20150905084107/https:/www.susquehanna.net/AboutUs/SusquehannaMarketArea.aspx.

order payment to Defendant States in the amounts reflected in the table included above.

Pennsylvania

Pennsylvania joins and adopts the position taken by the Defendant States and writes separately to set forth the escrowed amounts due Pennsylvania and to underscore its objections to Delaware's proposed case management schedule.

The discovery sought by Delaware, as set forth herein, is superfluous and sought in bad faith. Delaware's purported concerns about MoneyGram's books and records are unavailing and merely made for its current convenience—to cause continued delay, frustration of recovery, and increase the States' costs—and not due to its convictions. Further, as addressed by the Defendant States, Delaware failed to heed the Special Master's charge to Delaware—to identify *any* instruments that it believes are wrongly attributed to another State rather than Delaware. As the Special Master noted during the May 4 status conference, Delaware has no interest to object otherwise. Delaware, however, has not identified a single misclassified instrument. Accordingly, Delaware lacks standing to assert any objections to the apportionment of the escrowed MoneyGram Official Checks.

Based on MoneyGram's books and records, which Delaware itself has relied upon to accept receipt of abandoned Official Checks, Pennsylvania has calculated the escrow account totals, plus interests, due to Pennsylvania. The total principal deposits into the escrow account by MoneyGram were $94,147,933.15, of which $6,333,610.92 was attributable to abandoned Official Checks purchased in Pennsylvania. MoneyGram recently received a withdrawal of $5,343,239.42 from the principal on deposit (*see* Order, document 160), leaving $88,804,693.73. As set forth in Pennsylvania's pending Motion for Order Directing Withdrawal of Deposited Funds (document 146) as well as Pennsylvania's Response to MoneyGram's Motion for Partial Release of Deposited Funds (document 158), the portion of the remaining sum attributable Pennsylvania is <u>$6,149,078.91</u>. Indeed, the Crowe LLP analysis confirms this amount. Further, pursuant to the analysis performed by Crowe, which Pennsylvania adopts, Pennsylvania also is entitled to <u>$238,829.06</u> of the interest accrued through May 2023 in the CRIS account (which continues to accrue). The "Adjusted Total with Interest" due to Pennsylvania as of May 2023, therefore, is **$6,387,907.97**. Pennsylvania respectfully requests that the Special Master order payment to Pennsylvania as described above and in the chart provided herein.

These Pennsylvania-specific deposit totals are based on MoneyGram's books and records. MoneyGram is a "holder" for purposes of the FDA, federal common law, and Pennsylvania law. Thus, only MoneyGram's books and records are material to the issue before the Court (i.e., how much each state is lawfully entitled to of the escrowed funds). Those records are clear as they concern instruments purchased in Pennsylvania. Despite this, and to date, Delaware has not identified a single instrument that Pennsylvania is claiming custody over that Delaware reasonably believes should be attributable to Delaware. Instead, Delaware now simply challenges MoneyGram's books and records. This challenge, however, is suspect and indeed, futile. Delaware has for *years* relied upon MoneyGram's books and records, as is, to accept receipt of abandoned Official Checks. Those same books and records were sufficient for Delaware then, but for reasons only known to Delaware, and not articulated here, are now purportedly problematic. Moreover, and tellingly, on June 1, 2023, Delaware entered into a

Stipulation whereby *future* MoneyGram unclaimed property remittals to each state would be based solely upon MoneyGram's books and records, as is. It can only be surmised, therefore, that Delaware's continued objections to the appropriate distribution of the escrow account (and request for discovery) is without basis in fact and intended only to cause needless delay and increase costs to Defendants.

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Respectfully submitted,

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