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September 26, 2023

The Honorable Pierre N. Leval  
United States Court of Appeals for the Second Circuit  
40 Foley Square  
New York, NY 10007

RE: State of Delaware v. State of Arkansas, et al.  
Supreme Court of the United States, Case Nos. 22O145 and 22O146

Dear Judge Leval:

I write on behalf of the Defendant States (including Pennsylvania) in the above-titled consolidated action to request an informal pre-motion discovery conference pursuant to S.D.N.Y. Local Rule 37.2. The Defendant States also request that the Special Master conduct that conference remotely.

Delaware has issued 68 extraordinarily broad requests for production of documents to each of the 30 Defendant States (i.e., 2040 total requests). Delaware's requests are exponentially broader than the requests Delaware issued during the liability phase of this action, which were themselves narrowed following a discovery conference that the Special Master held in January 2018. Dkt. 59. The Defendant States contend that none of Delaware's damages phase requests satisfy the requirements of Rule 26, which states that "[p]arties may obtain discovery [i] regarding any nonprivileged matter that is relevant to any party's claim or defense and [ii] proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1) (roman numerals added).

With respect to the first requirement of Rule 26, many of the requests are directed toward legal theories that Delaware has not pled in this action, or to liability issues that have already been resolved by the Supreme Court. The Defendant States intend to seek a protective order directing that legal theories that have not been pled and those previously adjudicated liability issues are not proper subjects for discovery requests.

With respect to the second requirement, Delaware did not deny the extraordinary breadth of its discovery requests during the parties' meet-and-confer efforts, nor did Delaware offer to narrow or withdraw any of its requests. Instead, Delaware contends that because a significant amount may be at stake, Delaware is entitled to extraordinarily broad latitude in crafting discovery requests. But Rule 26 requires that requesting parties consider "whether the burden or expense of the proposed discovery outweighs its likely benefit" regardless of the amount in controversy. The fact that Delaware may ultimately be responsible for returning custody of

amounts payable on a significant number of unclaimed Official Checks which Delaware took possession of in violation of federal law does not mean Delaware is entitled to conduct a fishing expedition into the files of every agency of every Defendant State looking for irrelevant records dating back nearly a quarter century. The Defendant States thus intend to seek a protective order directing Delaware to narrow its requests to be proportional to the needs of the damages phase of this case.

**I. DAMAGES PHASE DISCOVERY SHOULD BE LIMITED TO POST-LIABILITY ISSUES RELATING TO THE CLAIMS AND DEFENSES PLED BY THE PARTIES**

Parties may only seek discovery “that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). This matter was bifurcated into liability and damages phases by the Order dated July 24, 2017 (Dkt. 43, ¶ 6),<sup>1</sup> and all liability issues that were raised or that could have been raised during the liability phase were resolved by the Supreme Court’s decision on the merits. *Delaware v. Pennsylvania*, 143 S. Ct. 696 (2023). The Defendant States therefore contend that the following subjects are the only legitimate subjects for discovery during the damages phase of this case: (1) how the funds in the Southern District escrow account should be distributed; (2) the value of unclaimed MoneyGram Official Checks that MoneyGram wrongfully escheated to Delaware before the establishment of the escrow account; and (3) the amounts Delaware should be ordered to pay to each of the Defendant States, which may also include interest or penalties owed under any applicable state laws.<sup>2</sup> Of these three topics, Delaware has only issued damages discovery requests directed to the third.

The Defendant States contend that the following are not valid subjects for discovery: (1) legal theories that must be pled affirmatively but that Delaware did not include in any claim, affirmative defense, or counterclaim in any of its operative pleadings in this case; and (2) liability-related issues. The Defendant States intend to seek a protective order relieving them of any obligation to respond to Delaware’s damages discovery requests directed to these issues.

**A. The Claims and Defenses That Have Been Pled By the Parties Form the Boundaries of Permissible Discovery**

Many of Delaware’s discovery requests are directed to legal theories that Delaware has not pled in any complaint, answer, or counterclaim. Rule 26(b)(1) limits the scope of discovery to matters that are, among other things, “relevant to any party’s claim or defense.” Because Delaware’s requests go to unpled claims and defenses that are not currently before this Court, the Defendant States are entitled to a protective order.

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<sup>1</sup> Unless stated otherwise, docket citations are to Case No. 22O145.

<sup>2</sup> The parties will also need to address Delaware’s contention that there is no legal basis for the Defendant States to recover Official Checks that MoneyGram escheated to Delaware before the escrow account was established, and whether Delaware has waived that argument. But those are purely legal questions that do not require discovery.

Delaware described the unpled legal theories in meet-and-confer correspondence as follows:

For the avoidance of doubt, and without waiving or forfeiting any arguments, Delaware intends to raise at least the following arguments for precluding or limiting damages, penalties, interest, or other claims by Defendants: (1) Defendants lack a cause of action; (2) Defendants lack authority to escheat under state law, and thus under the FDA, where state statutes of limitations have run or where other state law barriers prevent escheat (such as acquiescence, laches, etc.); (3) a statute or statutes of limitations apply to the FDA and bar or limit Defendants' claims; (4) Defendants are barred by constitutional principles including federalism, comity, and sovereign immunity from pursuing Delaware for damages; (5) state statutes of limitations and other state law principles (such as acquiescence, laches, etc.) bar or limit Defendants' claims; (6) Defendants acquiesced to Delaware's escheat, and so cannot recover damages; (7) Defendants' claims are barred by laches; (8) Defendants' request for damages is barred by general equitable principles; (9) Defendants are unable to recover damages because their hands are unclean; and (10) the Supreme Court's decision in this matter, or any remedy based on that decision, should not apply retrospectively. Delaware notes that these arguments are either purely legal or depend on a core nucleus of operative facts, chiefly Defendants' actual, constructive, or inquiry knowledge and Defendants' escheatment practices. Delaware does not concede whether specific arguments are affirmative defenses. Finally, as Defendants know, Delaware intends to prove that MoneyGram's principal place of business is in Minnesota, or at a minimum was in Minnesota for the time period at issue here.

Ex. 5.<sup>3</sup>

These are classic avoidance defenses that must be pled as affirmative defenses. Federal Rule of Civil Procedure 8 states: "In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense." Fed. R. Civ. P. 8(c)(1). Rule 8 then provides examples of such avoidance defenses that must be pled affirmatively, including estoppel, laches, release, statute of limitations, and waiver. Fed. R. Civ. P. 8(c)(1). The list in Rule 8(c)(1) is not exclusive, and acquiescence and unclean hands are avoidance defenses that must be pled as affirmative defenses. *Haas Door Co. v. Haas Garage Door Co.*, No. 3:13 CV 2507, 2016 WL 1047242, at \*15 and \*18 (N.D. Ohio Mar. 16, 2016) (discussing *Kellogg Co. v. Exxon Corp.*, 209 F.3d 562, 575 (6th Cir. 2000) [acquiescence] and *Broadcast Music, Inc. v. Claire's Boutiques, Inc.*, 949 F.2d 1482, 1486 (7th Cir. 1991) [unclean hands]); *United States v. All Assets Held at Bank Julius Baer & Co., Ltd.*, 202 F. Supp. 3d 1, 7-8 (D.D.C. 2016) (unclean hands).

Delaware understood that avoidance defenses must be pled as affirmative defenses in 1989, when it asserted the affirmative defense of estoppel in its answer to the complaint in

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<sup>3</sup> Delaware did not clearly delineate which of its discovery requests relate to which subjects during the meet-and-confer correspondence, but the Defendant States' best understanding is that Delaware justifies Requests Nos. 1-9, 13-16, 34-38, and 59 based on these unpled legal theories.

intervention by Texas in *Delaware v. New York*, Original Jurisdiction Case No. 111. Ex. 7 at 6. But in this matter, Delaware has not pled any avoidance theories in claims or defenses in this action in *any* of Delaware's operative pleadings, which are:

- (1) Delaware's bill of complaint against Pennsylvania and Wisconsin dated May 17, 2016, Dkt. 1;
- (2) Delaware's answer to Wisconsin's counterclaim dated November 1, 2016, Dkt. 13;
- (3) Delaware's answer to Pennsylvania's counterclaim filed November 18, 2016, Dkt. 18;
- (4) Delaware's answer to the complaint of Arkansas, et al., dated November 1, 2016, Case No. 22O146, Dkt. 10; and
- (5) Delaware's counterclaim against Arkansas, et al., dated August 5, 2016, Case No. 22O146, Dkt. 3, as amended to include additional Defendant States as permitted by the Special Master's Order dated July 24, 2017, Case No. 22O146, Dkt. 35 ¶ 5(a).

Indeed, none of these pleadings assert any affirmative defenses or contain any references to acquiescence, estoppel, release, statutes of limitations, unclean hands, or waiver as required by Rule 8. The deadline for amending these pleadings under the Special Master's Case Management Order No. 4 was September 12, 2018. Dkt. 66.<sup>4</sup>

The issue here is not one of notice—it is about Delaware's failure to follow the Federal Rules of Civil Procedure.<sup>5</sup> Since Delaware has never pled any of its proposed affirmative

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<sup>4</sup> To the extent Delaware might respond to this letter by seeking leave to amend its pleadings, that would not be an appropriate use of an informal discovery conference. Before amending its pleadings, Delaware must file a motion seeking a modification of the Court's scheduling order as required by Rule 16(b)(4) and/or a motion to amend under Rule 15. Delaware may not use an informal discovery conference held in anticipation of a party filing a motion for a protective order under Rule 26(c) to seek this relief. If Delaware ultimately files a procedurally sound motion for leave to amend, the Defendant States will oppose that motion, but any discussion of the merits of that motion is premature at this stage and not currently before the Special Master.

<sup>5</sup> In meet-and-confer correspondence, Delaware argued that the Federal Rules of Civil Procedure may not apply in this action. Ex. 3 [8/21 letter] at p. 3 ("Even if the Federal Rules of Civil Procedure apply to this question, which Delaware does not concede..."). This position is squarely foreclosed by the case management orders entered in this case, in which Delaware *expressly agreed* to be bound by the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of New York in this action. Dkt. 66 at 3; *see also* Supreme Court Rule 9(2) (the Federal Rules of Civil Procedure may generally "be taken as a guide to procedure in original actions"). And Delaware has cited to and relied upon the Federal Rules of Civil Procedure countless times in this case, including relying upon Rule 15(a) during a previous attempt to amend its pleadings in this very case, DE's Reply in Supp. of Motions for Leave to Amend, Dkt. 3, at 3, and in the introduction to the damages discovery

defenses, the Defendant States have never had an opportunity to move to strike any of those defenses pursuant to Rule 12(f), move for summary judgment pursuant to Rule 56, or seek their own discovery regarding those defenses pursuant to Rule 26.<sup>6</sup> More fundamentally, Rules 8 and Rule 26 are clear and binding: a party must assert avoidance legal theories in a claim or defense in a complaint, answer, or counterclaim before it can ask another party to respond to discovery requests concerning those theories. *All Assets Held at Bank Julius Baer & Co., Ltd.*, 202 F. Supp. 3d at 8. With narrow exceptions that are not applicable here, affirmative defenses that are not raised in any pleading are excluded from the case. *Wood v. Milyard*, 566 U.S. 463, 470 (2012). The Federal Rules of Civil Procedure specify how parties should raise claims and defenses. Delaware's stated intention to assert unpled legal theories does not give Delaware a legal basis to seek discovery regarding those unasserted theories.

**B. All Liability Issues Have Been Resolved and They Are Not Proper Subjects for Damages Discovery Requests**

Several of Delaware's damages discovery requests call for documents relating to the Defendant States' interpretations of the Federal Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. §§ 2501-2503 (FDA), or to other issues that are relevant only to liability questions. Ex. 1, Request Nos. 31-33, 60-62, 68. For example, Delaware seeks:

**Request No. 33:** All DOCUMENTS and COMMUNICATIONS concerning the status under the Federal Disposition Act of any official check, teller's check, agent check, traveler's check, cashier's check, registered check, certified check, treasurer's check, draft, money order, agent money order, gift certificate, or any other instrument or property of any kind regardless of the seller, issuer, or debtor of such instrument or property from 2000 to the present.

Ex. 1, Request No. 33. The liability phase of this case is over, the Supreme Court held the FDA applies to Official Checks, and Delaware's claims about how other instruments are escheated have no bearing on damages. *Delaware v. Pennsylvania*, 143 S. Ct. 696 (2023).

Indeed, Delaware had the opportunity to, and did, seek discovery on the subject matter of Request 33 during the liability phase of this case. After the parties previously raised a discovery dispute and attended an informal conference with the Special Master, the parties agreed that the Defendant States would produce documents responsive to four broad categories of requests. Dkt. 59. These categories included documents dating back ten years that substantially

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requests that are the subject of this letter, Ex. 1 at p. 1. Delaware cannot in good faith contend that the Federal Rules of Civil Procedure do not apply.

<sup>6</sup> Pennsylvania issued a few prophylactic discovery requests relating to Delaware's delay-based theories, but during the meet and confer process, counsel for Pennsylvania advised Delaware that it need not respond to those requests while this dispute is resolved.

overlapped with the content of Delaware’s current Request No. 33.<sup>7</sup> The Defendant States subsequently produced responsive documents to Delaware’s apparent satisfaction, as Delaware never issued additional requests, sought to compel further responses, or otherwise complained about the adequacy of the Defendant States production of documents under the agreement. During recent meet-and-confer discussions, Delaware argued its current requests are appropriate because it now believes the Defendant States should have produced more documents, but Delaware’s belated protest about the adequacy of the Defendant States’ production comes years too late. Having received an adverse final ruling from the Supreme Court on its liability under the FDA, Delaware cannot now backtrack on its prior discovery agreements and reopen discovery on issues related to its liability under the FDA.

These requests also represent a second attempt to dramatically expand the scope of this case. Back in January 2017, Delaware previously sought to amend its counterclaim to seek declarations that “certain other unclaimed instruments” other than MoneyGram Official Checks—including, presumably, the instruments identified in Request No. 33—were not subject to the FDA’s escheatment rules. Dkt. 23, Prayer ¶ 5. Indeed, it asked the Special Master “to allow Delaware to recover funds from these instruments that” it claimed “were wrongfully escheated to the other States.” Dkt. 29 at 3. The Special Master squarely rejected Delaware’s request, noting that “[s]uch a pleading might expand enormously the scope of the case and significantly delay its resolution to an unknown extent.” Order dated July 24, 2017, Dkt. 43, ¶ 5(b).

Undeterred, Delaware has nevertheless issued seven discovery requests in the damages phase of this case that expressly mention other instruments like cashier’s checks. Ex. 1, Request Nos. 15, 31, 33, 34, 34, 38, and 54. In contrast, Delaware only issued one request for production that is limited to the MoneyGram Official Checks that are the subject of this litigation. *Id.*, Request No. 16. Other instruments like cashier’s checks are not, and have never been, relevant to the resolution of this case. The Defendant States intend to seek a protective order barring discovery on issues relating to the interpretation of the FDA, discovery that is duplicative of what the Defendant States already produced in the liability phase of this case, and documents and communications relating to instruments other than MoneyGram Official Checks.

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<sup>7</sup> These categories included: “Communications between the state agencies responsible for collecting unclaimed property and the ten holders who have reported the largest amounts of unclaimed property under the codes identified above over the last ten years regarding state policies on whether particular types of instruments are ‘money orders,’ ‘other similar written instruments,’ or ‘third party bank checks’ for the purposes of the Federal Disposition Act,” and documents “regarding how state agencies responsible for collecting unclaimed property should apply the terms ‘money orders,’ ‘other similar written instruments,’ or ‘third party bank checks’ in the context of the Federal Disposition Act.” Dkt. 59.

## II. DELAWARE'S DISCOVERY REQUESTS ARE OVERLY BROAD, UNDULY BURDENSOME, AND GROSSLY DISPROPORTIONATE

Rule 26(b)(1) mandates that discovery requests be “proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Delaware’s discovery requests reflect an attempt to craft the broadest imaginable requests. Delaware’s requests therefore fail the proportionality requirement of Rule 26.

For example, Delaware seeks:

- Every communication between MoneyGram and any Defendant State agency about any unclaimed property subject (not just Official Checks) since January 1, 2000, Ex. 1, Request No. 1;
- Every document (including internal emails) that discusses any unclaimed property practice or procedure regarding any kind of property since January 1, 2000, *id.*, Request No. 10;
- The entire file for every unclaimed property audit of any entity since January 1, 2000, *id.*, Request No. 12; and
- All documents (including emails) relating to any Defendant State audit of any entity that sells any kind of financial instrument used to transmit money, *id.*, Request No. 15 (specifically referencing American Express, JP Morgan Chase, U.S. Bank, Wells Fargo, and others).

Many of Delaware’s other document requests are similarly broad. *E.g., id.*, Request Nos. 6, 7, 8, 29, 31-37, 39-41, 62, 68.

Delaware’s requests are not limited to issues relating to escheatment. Although this case primarily involves unclaimed property and each state has participated by and through their various offices that administer their unclaimed property programs, many requests call for the Defendant States to search the records of other agencies that do not have authority over escheatment practices. For example, Delaware asks the Defendant States to produce every communication, regardless of subject, between MoneyGram and any state banking regulator or money transmission regulator:

**Request No. 1:** All COMMUNICATIONS between DEFENDANT STATES and MONEYGRAM, INCLUDING, without limitation, COMMUNICATIONS between the STATE UNCLAIMED PROPERTY AGENCIES, the state agencies responsible for banking, any STATE FINANCIAL INSTITUTION, any state regulator of money transmission, and MONEYGRAM, regarding escheatment

and the reporting and collection of any unclaimed property from January 1, 2000 through the present.

Ex. 1, Request No. 1. Delaware emphasized during meet-and-confer discussions that because it defined “Defendant States” to include “all officers, employees, agents, agencies, servants, and representatives of” the Defendant States, Delaware expects each of the Defendant States to expand its searches for documents beyond the agencies that administer unclaimed property programs to other state agencies and instrumentalities that have had no involvement in this case and lack authority to speak for their states with respect to unclaimed property reporting procedures. Delaware’s demand that the Defendant States conduct unbounded searches throughout the entirety of 30 state governments is patently unreasonable.

Delaware’s damages requests are far broader than the requests for production Delaware issued during the liability phase. There are more than three times as many requests than were contained in Delaware’s liability discovery requests, and the damages requests define a broader relevant time period. Although they were narrower than the damages requests, even Delaware’s liability phase requests were significantly narrowed in scope following an informal conference with the Special Master. *See* Dkt. No. 59. While the parties previously were able to reach an agreement regarding discovery disputes during the liability phase, to date Delaware has not offered to withdraw or modify any request.

Delaware’s “broader is better” approach to drafting discovery requests is exemplified by request for production No. 6, which calls for every communication between any Defendant State’s escheatment office and any bank that has sold an Official Check since January 1, 2000.

**Request No. 6:** All COMMUNICATIONS between STATE UNCLAIMED PROPERTY AGENCIES and any MONEYGRAM CLIENT BANK from January 1, 2000 through the present. [*MONEYGRAM CLIENT BANK is defined as “any financial institution identified by MONEYGRAM as a customer in any of the spreadsheets MONEYGRAM has produced to the parties to this Action.”*]

Ex. 1, Request No. 6. The most fundamental problem with Request No. 6 is that it does not limit the subject of documents sought to Official Checks. It does not even limit the subject to MoneyGram. It seeks every email, letter, and other written communication exchanged between thirty escheatment offices and the hundreds of banks that have sold Official Checks over the last twenty-three years, regardless of whether those communications deal with MoneyGram or MoneyGram’s Official Check products. Of course, the vast majority of such communications are likely to relate to unclaimed safety deposit boxes, saving accounts, and other types of property that bear no relation to this case. And, as noted in the previous section, the Defendant States have already produced any documents in their possession that discuss the escheatment of MoneyGram Official Checks for the time period covered by the parties’ prior agreement. The likelihood that new searches would turn up many new such documents, even if Delaware were permitted to expand the scope of the searches back further in time, is low given limits on document retention policies that nearly every government agency will have.

The astonishingly broad scope of Request No. 6 is no accident—Delaware did not mistakenly omit a subject-matter limitation from the request. During meet-and-confer



discussions, Delaware justified the scope of the request by citing a single document produced by MoneyGram during the liability phase. In that document, a California banking regulator identified a potential issue regarding how MoneyGram was handling unclaimed property, and directed MoneyGram to consult with California's escheatment office (a separate agency) to resolve the issue. That single document does not justify the astonishingly broad scope of Request No. 6, or of the many other requests that are similarly broad. To the extent any discovery from the Defendant States regarding MoneyGram and its products is relevant at all at this stage of the proceedings, such requests should be limited by subject matter to documents relating to MoneyGram Official Checks.

Delaware has also issued extraordinarily broad requests regarding the Defendant States' general escheatment policies and practices. For example, Request No. 10 calls for all documents (including internal emails) that discuss any audit practice or procedure of any kind since January 1, 2000:

**Request No. 10:** All DOCUMENTS and COMMUNICATIONS concerning YOUR policies, practices, outlines, and procedures for training auditors, and conducting any audits, reviews, or similar evaluations that encompass the reporting and collection of abandoned or unclaimed property in YOUR state from January 1, 2000 through the present.

Ex. 1, request No. 10. Again, Delaware has made no effort to tie this request to the subject matter of this case. The request encompasses policies and procedures relating to every kind of abandoned property that an escheatment office may handle, the vast majority of which bear no connection to this case. If a more junior member of an escheatment office asked a more senior member of the office for advice on how to audit a retailer's reporting of unclaimed gift cards, that email exchange is responsive. If a state updated its regulations for how to audit life insurance corporations with respect to policies that are deemed matured based on mortality tables and the amount of time that has passed since the last contact with the insured, the entire rulemaking file for that regulatory change would be responsive. The Defendant States already produced non-privileged "memos, instructions, or policies" relating to the escheatment of the classes of instruments covered by the FDA under the terms of the parties' prior discovery agreement. Dkt. 59. Delaware has already received all the discovery it previously agreed it was entitled to concerning the Defendant States' unclaimed property procedures.

Yet Delaware issued 40 new document requests about the Defendant States' unclaimed property policies and practices. Ex. 1, request Nos. 10-12, 17-30, 39-58, and 63-67. Many are expansive requests for data or historical records regarding the Defendant States' practices and procedures. For example, Delaware demands:

**Request No. 30:** DOCUMENTS sufficient to show the calculation of the total amount of property not reported by any non-compliant or late-reporting holder because of a decision to forgo or not pursue an enforcement action for each year from 2000 until the present.

**Request No. 40:** All DOCUMENTS and COMMUNICATIONS from 1965 until the present concerning any of the DEFENDANT STATES' policies regarding

paying or receiving reciprocal claims, including whether the state accepts reciprocal claims, how the reciprocal claim is processed, and how long the reciprocal claim takes to process. For purposes of this paragraph, “reciprocal claims” includes property transferred under reciprocity agreements.

Ex. 1, request Nos. 30 and 40. Delaware’s intent seems to be to try to establish inconsistencies between the Defendant States’ positions in this case and their prior determinations, or between each other. But here again Delaware has made no effort to narrow its demands to a reasonable universe of materials. The requests encompass every form of property that can be escheated, demand information going back decades, and call for “all documents” or “all communications” regarding broad topics. The cumulative burden of these requests is massive and the potential benefits to Delaware from obtaining the mountain of documents it requested are minimal, particularly given what has already been searched for and produced by the Defendant States in this case.

For all of the foregoing reasons, the Defendant States intend to seek a protective order relieving them of the obligation to respond to discovery requests that: (1) relate to issues Delaware has not even attempted to properly plead in this case; (2) are not tailored to MoneyGram Official Checks, which are the only instruments at issue in this case under the Special Master’s previous rulings; (3) are directed to state agencies that do not administer a given state’s unclaimed property program; or (4) fail the cost-benefit analysis that governs the reasonableness inquiry under Rule 26. Further, the Defendant States intend to seek an order directing Delaware to comply with Rule 26 in preparing any further requests.

Sincerely,



MICHAEL SAPOZNIKOW  
Deputy Attorney General

For     ROB BONTA  
          Attorney General

# **EXHIBIT 1**

**SUPREME COURT OF THE UNITED STATES**

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DELAWARE, *Plaintiff*,

v.

Nos. 220145 & 220146 (Consolidated)

ARKANSAS, *et al.*, *Defendants*

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**PLAINTIFF STATE OF DELAWARE’S FIRST SET OF REQUESTS  
FOR PRODUCTION TO DEFENDANT STATES**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, and any other applicable rules (collectively, the “Applicable Rules”), Plaintiff State of Delaware, by and through its counsel, Hogan Lovells US LLP, serves this First Set of Requests for Production of Documents (“Requests,” and each a “Request”) on Defendant States in the above-captioned action (the “Action”).

Defendant States are requested to produce the following items for inspection and copying to Plaintiff’s undersigned counsel within thirty (30) days of the service hereof.

**DEFINITIONS**

1. The following definitions set forth in Southern District of New York Local Rule 26.3(c) and (d) are deemed incorporated by reference:

a) COMMUNICATION

- b) DOCUMENT
- c) IDENTIFY (with respect to persons)
- d) IDENTIFY (with respect to documents)
- e) PARTIES
- f) PERSON
- g) CONCERNING
- h) ALL/ANY/EACH
- i) AND/OR
- j) NUMBER

2. “CLAIM” means the assertion, through the submission or filing of a written or electronic form or any other mechanism, of a right of ownership over unclaimed or abandoned property that has escheated to a state.

3. “DEFENDANT STATES” or “YOU” means the States of Arkansas, Texas, Alabama, Arizona, California, Colorado, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming and all officers, employees, agents, agencies, servants, and representatives of DEFENDANT STATES.

4. “ESCHEAT” means any circumstance in which a State receives unclaimed or abandoned property, including circumstances in which the State assumes ownership over that property, takes custody of that property, or holds the property on behalf of an owner.

5. “INCLUDING” means “including but not limited to” and “including without limitation.”

6. “PLAINTIFF STATE” means the State of Delaware and all officers, employees, agents, agencies, servants, and representatives of PLAINTIFF STATE.

7. “PRIMARY RULE” means the first priority rule for determining where certain unclaimed or abandoned intangible property should escheat, as set forth in *Texas v. New Jersey*, 379 U.S. 674 (1965), which is that the state of the last known address of the creditor, as shown by the debtor’s books and records, has the first opportunity to escheat.

8. “MONEYGRAM” means MoneyGram Payment Systems, Inc., and its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, or corporate predecessors, including Travelers Express Company, Inc., Greyhound Dial Corporation, The Dial Corp., and Viad Corp.

9. “MONEYGRAM CLIENT BANK” means any financial institution identified by MONEYGRAM as a customer in any of the spreadsheets MONEYGRAM has produced to the parties to this Action.

10. “MONEYGRAM INSTRUMENT” means any official check, teller’s check, agent check, traveler’s check, cashier’s check, registered check, certified check, treasurer’s check, draft, money order, or agent money order issued or sold by MONEYGRAM.

11. “SECONDARY RULE” means the second priority rule for determining where certain unclaimed or abandoned intangible property should escheat, as set forth in *Texas*, 379 U.S. 674, which is that the state in which the debtor is incorporated has the second opportunity to escheat.

12. “STATE FINANCIAL INSTITUTION” means any bank, credit union, savings bank, or loan agency ran or run by any of the DEFENDANT STATES.

13. “STATE UNCLAIMED PROPERTY AGENCIES” means the office, agency, or agencies in each DEFENDANT STATE that is responsible for collecting unclaimed property under each DEFENDANT STATE’s unclaimed property laws.

14. Words and phrases not defined herein shall have their ordinary and plain meaning within the context of the Federal Rules of Civil Procedure and in accordance with the generally accepted meaning accorded to such words and phrases in everyday use in the English language.

## INSTRUCTIONS

1. PLAINTIFF STATE specifies the form(s) in which electronically stored information (“ESI”) is to be produced, as follows:
  - a. E-mail, instant messaging, calendars, contacts, and word processing files must be derived from the original electronic media and converted to single-page .tiff images with accompanying system metadata (e.g. author, recipient(s), “cc” recipients, “bcc” recipients, date and time of creation and receipt, date and time of modification, etc.) and substantive metadata (e.g., the substance of changes, etc.), with all attachments for production. All chronological metadata shall be standardized to Eastern Standard Time. PLAINTIFF STATE reserves the right to request native format production for ESI. Upon request, DEFENDANT STATES shall produce specific DOCUMENTS (identified by Bates number or range) in original native electronic format. Chats, instant messages, etc. are to be produced as threaded chats or texts consisting of a 24 hour period of a specific chat/text, or to be produced with a metadata field (chat thread id, etc.) that could help in identifying chats/texts related to a specific thread.
  - b. Dynamic files (e.g., databases, spreadsheets, project files, etc.) shall be produced in original native format along with a placeholder image.



These should be produced with all accompanying metadata, along with all software necessary to interpret the produced information if such software is not readily commercially available. Power Point and similar presentations should be produced in both native and tiff format.

- c. All responsive DOCUMENTS derived from QuickBooks shall also be produced electronically in both delimited and tiff formats. All responsive DOCUMENTS derived from Applied Business Software shall also be produced electronically in comma delimited (CSV) format, along with a data dictionary to explain the field headers of CSV, which reflects the field information contained in the actual business software.
  - d. For all ESI not specified above, production shall be made in native format with all accompanying metadata, along with all software necessary to interpret the produced information if such software is not readily commercially available, unless PLAINTIFF STATE specifically agrees to a different form for production.
2. The words in each Request shall be construed so that each word, term, or phrase used in these requests is intended to have the broadest meaning permitted under the Applicable Rules.

3. Unless otherwise indicated, the DOCUMENTS requested herein include all DOCUMENTS in YOUR possession, custody, or control. Without limiting the meaning of the terms “possession, custody, or control” as used in the preceding sentence, a DOCUMENT is in YOUR possession, custody, or control if YOU have actual possession or custody of the DOCUMENT, or the right to obtain the DOCUMENT or a copy thereof upon demand from one or more of YOUR employees, representatives, agents, independent contractors, consultants, attorneys, accountants, auditors, or any other person or public or private entity that has actual physical possession of the DOCUMENT.

4. Each Request seeks production of each DOCUMENT in its entirety, without abbreviation or redaction, and all drafts and non-identical copies of each DOCUMENT, including all attachments, appendices, exhibits, lists, schedules, or other matters at any time affixed thereto. If a DOCUMENT responsive to a Request cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible.

5. For each DOCUMENT requested, produce the entire DOCUMENT, including all cover letters and emails, attachments, appendices, and exhibits. If any of the requested DOCUMENTS cannot be produced in full, produce them to the extent possible, and specify the reason for your inability to produce the remainder,

stating whatever information, knowledge or belief you have concerning the unproduced portions.

6. For each DOCUMENT requested, produce each and every non-identical duplicate of each DOCUMENT within the scope of any Request, whether different from the original because of stamps, indications of recipient(s), handwritten notes, marks, comments, or attachments to different DOCUMENTS, or for any other reason.

7. If YOU object to any of these Requests, state in writing with specificity the grounds of YOUR objection. Any such objection must comply with Fed. R. Civ. P. 34. If YOU object to a particular portion of any DOCUMENT request, YOU shall respond to any other portions of such DOCUMENT request as to which there is no objection and state with specificity the grounds of the objection.

8. If YOU are withholding responsive DOCUMENTS pursuant to any general objection, YOU should expressly so indicate in YOUR response. If YOU claim any ambiguity or uncertainty in interpreting either the request or a definition or instruction applicable thereto, such claim shall not be used by YOU as a ground for refusing to respond, YOU must set forth as part of YOUR response the language deemed to be ambiguous or uncertain and the interpretation that YOU will use in responding to the request.

9. Pursuant to Local Civil Rule 26.1, if any DOCUMENT requested herein is withheld on the basis of any claim of privilege, YOU shall, in YOUR response or objection, identify the nature of the privilege (including work product) which is being claimed and indicate the privilege rule being invoked. Further, for each such DOCUMENT, YOU shall serve a privilege log containing the following information: (a) the identity of the person who prepared or authored the DOCUMENT, and if applicable, all persons to whom the DOCUMENT was addressed or transmitted; (b) the date on which the DOCUMENT was prepared and/or is dated; (c) the general subject matter of the DOCUMENT; (d) the nature of the DOCUMENT (e.g. letter, memorandum, email, etc.); (e) a brief statement of the legal ground upon which the DOCUMENT is claimed to be privileged and the facts supporting that legal ground; (f) the paragraph of this request to which the DOCUMENT relates; (g) the Bates range of the DOCUMENT, if any; (h) all other recipients and persons who have reviewed the DOCUMENT.

10. If a portion of an otherwise responsive DOCUMENT contains information subject to a claim of privilege, only that portion of the DOCUMENT subject to the claim of privilege shall be redacted from the DOCUMENT following the instructions in the preceding paragraph, and the rest shall be produced. A redaction log including the information identified in Paragraph 9 above should be provided for such DOCUMENTS.

11. Each Request shall be construed independently and not with reference to any other Request for the purpose of limitation or exclusion.

12. Each Request shall be deemed continuing so as to require prompt supplemental responses, in accordance with Federal Rule of Civil Procedure 26(e), if YOU obtain or discover additional Documents between the time of initial production and the time of deposition, settlement, or trial.

13. Unless otherwise specified, YOU are requested to produce Documents responsive to the Requests that concern, whether in whole or in part, throughout the period of January 1, 2000 to the present, inclusive, even if dated, prepared, generated, or received prior or subsequent to that period.

### **REQUESTS FOR PRODUCTION**

#### **Request No. 1:**

All COMMUNICATIONS between DEFENDANT STATES and MONEYGRAM, INCLUDING, without limitation, COMMUNICATIONS between the STATE UNCLAIMED PROPERTY AGENCIES, the state agencies responsible for banking, any STATE FINANCIAL INSTITUTION, any state regulator of money transmission, and MONEYGRAM, regarding escheatment and the reporting and collection of any unclaimed property from January 1, 2000 through the present.

**Request No. 2:**

All DOCUMENTS and COMMUNICATIONS internal to STATE UNCLAIMED PROPERTY AGENCIES concerning MONEYGRAM from January 1, 2000 through the present.

**Request No. 3:**

All DOCUMENTS and COMMUNICATIONS reflecting or concerning any holder reports, data, or other submission of information related to escheatment or unclaimed property from MONEYGRAM from January 1, 2000 through the present, including the holder reports, data, or other submissions of information related to escheatment or unclaimed property from MONEYGRAM.

**Request No. 4:**

All DOCUMENTS and COMMUNICATIONS concerning any CLAIM or inquiry by anyone regarding a CLAIM to or the disposition of any MONEYGRAM INSTRUMENT from January 1, 2000 through May 26, 2016.

**Request No. 5:**

All COMMUNICATIONS between STATE UNCLAIMED PROPERTY AGENCIES and any PERSON who contacted the state seeking to recover any unclaimed MONEYGRAM INSTRUMENT or otherwise inquiring whether the STATE had received the proceeds of or could assist in determining the disposition

of any unclaimed MONEYGRAM INSTRUMENT from January 1, 2000 through May 26, 2016.

**Request No. 6:**

All COMMUNICATIONS between STATE UNCLAIMED PROPERTY AGENCIES and any MONEYGRAM CLIENT BANK from January 1, 2000 through the present.

**Request No. 7:**

All DOCUMENTS and COMMUNICATIONS concerning the reporting of unclaimed property by any MONEYGRAM CLIENT BANK from January 1, 2000 through the present.

**Request No. 8:**

All COMMUNICATIONS between DEFENDANT STATES, including the state agencies responsible for banking, and any MONEYGRAM CLIENT BANK concerning escheatment or unclaimed property from January 1, 2000 through the present.

**Request No. 9:**

All DOCUMENTS and COMMUNICATIONS reflecting or concerning any holder reports, data, or other submission of information related to escheatment or unclaimed property from any MONEYGRAM CLIENT BANK from January 1, 2000 through the present, including the holder reports, data, or other submissions

of information related to escheatment or unclaimed property from any MONEYGRAM CLIENT BANK.

**Request No. 10:**

All DOCUMENTS and COMMUNICATIONS concerning YOUR policies, practices, outlines, and procedures for training auditors, and conducting any audits, reviews, or similar evaluations that encompass the reporting and collection of abandoned or unclaimed property in YOUR state from January 1, 2000 through the present.

**Request No. 11:**

All DOCUMENTS and COMMUNICATIONS concerning YOUR engagement of any third-party to conduct any audits, reviews, or similar evaluations that involved the reporting and collection of abandoned or unclaimed property in YOUR state, including any contracts, engagement letters, agreements, outlines, procedural manuals, and reports of findings, with any such third-party from January 1, 2000 through the present.

**Request No. 12:**

All DOCUMENTS and COMMUNICATIONS reflecting any materials, including but not limited to audit outlines, procedural manuals, and reports of findings, from any audit, review, or similar evaluation that involved the reporting



and collection of abandoned or unclaimed property in YOUR state from January 1, 2000 through the present.

**Request No. 13:**

All DOCUMENTS and COMMUNICATIONS concerning any audits, reviews, or similar evaluations, including any reports of findings, conducted by any state money transmission regulator of MONEYGRAM from January 1, 2010 through December 31, 2013.

**Request No. 14:**

All DOCUMENTS and COMMUNICATIONS concerning any audits, reviews, or similar evaluations, including any reports of findings, conducted by YOUR state of MONEYGRAM from 2000 through May 26, 2016.

**Request No. 15:**

All DOCUMENTS and COMMUNICATIONS concerning any audits, reviews, or similar evaluations, including any reports of findings, conducted by any state agency which involved the reporting and collection of abandoned or unclaimed property by any company that issues, issued, sells, or sold remittance instruments from January 1, 2000 through the present. For purposes of this paragraph, a “remittance instrument” includes but is not limited to an official check, teller’s check, agent check, traveler’s check, cashier’s check, registered check, certified check, treasurer’s check, prepaid draft, money order, bank draft,

bank check, or agent money order. For purposes of this paragraph, companies that issue, issued, sells, or sold remittance instruments from January 1, 2000 through the present include, but are not limited to, First Data Corporation, Integrated Payment Services, American Express, PNC Bank, JP Morgan Chase & Co., U.S. Bank, Wells Fargo, and their respective corporate parents, subsidiaries or affiliates.

**Request No. 16:**

DOCUMENTS sufficient to show when each DEFENDANT STATE became aware of MONEYGRAM's practices regarding the escheatment of unclaimed Official Checks.

**Request No. 17:**

All DOCUMENTS and COMMUNICATIONS concerning the assessment or waiver of penalties against non-compliant or late-reporting holders under each DEFENDANT STATE's unclaimed property laws.

**Request No. 18:**

All DOCUMENTS and COMMUNICATIONS reflecting any policies or practices of assessing penalties or waiving penalties against non-compliant or late-reporting holders under each DEFENDANT STATE's unclaimed property laws.

**Request No. 19:**

DOCUMENTS sufficient to show the calculation of the total penalties formally assessed against any non-compliant or late-reporting holder for each year from 2000 until the present.

**Request No. 20:**

DOCUMENTS sufficient to show the calculation of the total penalties actually collected from any non-compliant or late-reporting holder for each year from 2000 until the present.

**Request No. 21:**

DOCUMENTS sufficient to show the calculation of the total penalties informally or formally waived against any non-compliant or late-reporting holder for each year from 2000 until the present.

**Request No. 22:**

All DOCUMENTS and COMMUNICATIONS concerning the assessment of late-reporting interest against non-compliant or late-reporting holders under each DEFENDANT STATE's unclaimed property laws.

**Request No. 23:**

All DOCUMENTS and COMMUNICATIONS reflecting any policies or practices of assessing late-reporting interest against non-compliant or late-reporting holders under each DEFENDANT STATE's unclaimed property laws.

**Request No. 24:**

DOCUMENTS sufficient to show the calculation of the total amount of late-reporting interest formally assessed against any non-compliant or late-reporting holder for each year from 2000 until the present.

**Request No. 25:**

DOCUMENTS sufficient to show the calculation of the total amount of late-reporting interest actually collected from any non-compliant or late-reporting holder for each year from 2000 until the present.

**Request No. 26:**

DOCUMENTS sufficient to show the calculation of the total amount of late-reporting interest formally or informally waived from any non-compliant or late-reporting holder for each year from 2000 until the present.

**Request No. 27:**

All DOCUMENTS and COMMUNICATIONS concerning the application of a statute of limitations, or any similar legal principle, with respect to a non-compliant or late-reporting holder under each DEFENDANT STATE's unclaimed property laws.

**Request No. 28:**

DOCUMENTS sufficient to show the calculation of the total amount of property not reported by any non-compliant or late-reporting holder because of the

application of a statute of limitations, or any similar legal principle, for each year from 2000 until the present.

**Request No. 29:**

All DOCUMENTS and COMMUNICATIONS concerning any decision to forgo or not pursue an enforcement action with respect to a non-compliant or late-reporting holder under each DEFENDANT STATE's unclaimed property laws.

**Request No. 30:**

DOCUMENTS sufficient to show the calculation of the total amount of property not reported by any non-compliant or late-reporting holder because of a decision to forgo or not pursue an enforcement action for each year from 2000 until the present.

**Request No. 31:**

All DOCUMENTS and COMMUNICATIONS concerning any interpretive opinions or settlements between DEFENDANT STATES and issuers of any official check, teller's check, agent check, traveler's check, cashier's check, registered check, certified check, treasurer's check, draft, money order, or agent money order related to non-compliance or late-reporting under each DEFENDANT STATE's unclaimed property laws.

**Request No. 32:**

All DOCUMENTS and COMMUNICATIONS concerning the Federal Disposition Act from January 1, 2000 through present, including any reporting instructions, reporting forms, policy documents or guidance to holders related to the Supreme Court's February 28, 2023 opinion in this Action, any demands made of holders, and any documents or explanations requested from holders.

**Request No. 33:**

All DOCUMENTS and COMMUNICATIONS concerning the status under the Federal Disposition Act of any official check, teller's check, agent check, traveler's check, cashier's check, registered check, certified check, treasurer's check, draft, money order, agent money order, gift certificate, or any other instrument or property of any kind regardless of the seller, issuer, or debtor of such instrument or property from 2000 to the present.

**Request No. 34:**

Any DOCUMENTS and COMMUNICATIONS concerning the status under unclaimed property law of, or the reporting of, cashier's checks or any other instrument issued by JP Morgan Chase & Co. and U.S. Bank or their officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

**Request No. 35:**

Any DOCUMENTS and COMMUNICATIONS concerning the following cases: *Dill v. JP Morgan Chase Bank, N.A.*, No. 1:19-cv-10947 (S.D.N.Y.); *Illinois ex rel. Elder v. JPMorgan Chase, N.A.*, No. 1:21-cv00085 (N.D. Ill.); *State ex rel. Elder v. J.P. Morgan Chase, N.A.*, No. CGC-19-5-79144 (Cal. Super. Ct., San Francisco Cnty.); *State ex rel. Elder v. U.S. Bank, N.A.*, No. CGC-19-581373 (Cal. Super. Ct., San Francisco Cnty.); *State ex rel. Elder v. U.S. Bank, N.A.*, No. 2019-L-013262 (Ill. Cir. Ct., L. Div., Cook Cnty.); *Minnesota ex rel. Elder v. U.S. Bank, N.A.*, No. 0:21-cv-01753 (D. Minn.); *New Jersey ex rel. Elder v. JPMorgan Chase Bank, N.A.*, No. 2:21-cv-19462 (D.N.J.); any appeal arising from or related to one of the above cases; or any litigation asserting similar claims that cashier's checks were incorrectly reported.

**Request No. 36:**

Any DOCUMENTS and COMMUNICATIONS in the possession of any DEFENDANT STATE regarding unclaimed property associated with JP Morgan Chase & Co., its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

**Request No. 37:**

Any DOCUMENTS and COMMUNICATIONS in the possession of any DEFENDANT STATE regarding unclaimed property associated with U.S. Bank,

its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

**Request No. 38:**

DOCUMENTS sufficient to show the calculation of the total amount of (i) cashier's checks, and (ii) teller's checks reported annually to each DEFENDANT STATE by each respective financial institution incorporated in that State and each federally-chartered institution with a home office in that State, from 2000 to the present.

**Request No. 39:**

All DOCUMENTS and COMMUNICATIONS from 1965 until the present concerning any of the DEFENDANT STATES filing or receiving a CLAIM from another state (often called a "reciprocal claim"), accepting payment or property through a CLAIM from another state, making a payment or transmitting property through a CLAIM to another state, otherwise requesting information or the transfer of property from another state, otherwise receiving requests for information or the transfer of property to another state, regarding any property that had already been previously escheated to a state. For purposes of this paragraph, "reciprocal claim" includes property transferred under reciprocity agreements.



**Request No. 40:**

All DOCUMENTS and COMMUNICATIONS from 1965 until the present concerning any of the DEFENDANT STATES' policies regarding paying or receiving reciprocal claims, including whether the state accepts reciprocal claims, how the reciprocal claim is processed, and how long the reciprocal claim takes to process. For purposes of this paragraph, "reciprocal claims" includes property transferred under reciprocity agreements.

**Request No. 41:**

All DOCUMENTS and COMMUNICATIONS from 1965 until the present reflecting any transfer of unclaimed property from any state to any of the DEFENDANT STATES or by DEFENDANT STATES to any state for any reason.

**Request No. 42:**

DOCUMENTS sufficient to show the calculation of the total amount of unclaimed property, for each calendar year from 1965 until the present, transferred from any state to any of the DEFENDANT STATES or by any of the DEFENDANT STATES to any state based on a determination that the unclaimed property had been escheated to one state under the SECONDARY RULE but another state had a higher priority under the PRIMARY RULE, and for which

property owner addresses were unknown at the time the property was reported under the SECONDARY RULE.

**Request No. 43:**

With respect to the property referenced in Request No. 42, for each calendar year from 1965 until the present, DOCUMENTS sufficient to show the length of time from the date property was initially reported to the first state to when it was transferred to a second state.

**Request No. 44:**

With respect to the property referenced in Request No. 42, for each calendar year from 1965 until the present, DOCUMENTS sufficient to show the amount of associated interest, if any, which the first state paid the second state.

**Request No. 45:**

With respect to the property referenced in Request No. 42, for each calendar year from 1965 until the present, DOCUMENTS sufficient to show the amount of property transferred because the second state's law had initially not empowered that state to escheat the property, but the state's law subsequently changed and permitted the state to escheat the property.

**Request No. 46:**

DOCUMENTS sufficient to show the calculation of the total amount of unclaimed property, for each calendar year from 1965 until the present, transferred

from any state to any of the DEFENDANT STATES or by any of the DEFENDANT STATES to any state based on a determination that the unclaimed property had been escheated to one state under the SECONDARY RULE but another state had a higher priority under the PRIMARY RULE, and for which property owner addresses were known at the time the property was reported under the SECONDARY RULE.

**Request No. 47:**

With respect to the property referenced in Request No. 46, for each calendar year from 1965 until the present, DOCUMENTS sufficient to show the length of time from the date property was initially reported to the first state to when it was transferred to a second state.

**Request No. 48:**

With respect to the property referenced in Request No. 46, for each calendar year from 1965 until the present, DOCUMENTS sufficient to show the amount of associated interest, if any, which the first state paid the second state.

**Request No. 49:**

With respect to the property referenced in Request No. 46, for each calendar year from 1965 until the present, DOCUMENTS sufficient to show the amount of property transferred because the second state's law had initially not empowered

that state to escheat the property, but the state's law subsequently changed and permitted the state to escheat the property.

**Request No. 50:**

DOCUMENTS sufficient to show the calculation of the total amount of unclaimed property, for each calendar year from 1974 until the present, transferred from any state to any of the DEFENDANT STATES or by any DEFENDANT STATES to any state based on a determination that the unclaimed property had been escheated to one state under either of the common law priority rules but another state had a higher priority under the Federal Disposition Act.

**Request No. 51:**

With respect to the property referenced in Request No. 50, for each calendar year from 1974 until the present, DOCUMENTS sufficient to show the length of time from the date property was initially reported to the first state to when it was transferred to a second state.

**Request No. 52:**

With respect to the property referenced in Request No. 50, for each calendar year from 1974 until the present, DOCUMENTS sufficient to show the amount of associated interest, if any, which the first state paid the second state.

**Request No. 53:**

With respect to the property referenced in Request No. 50, for each calendar year from 1965 until the present, DOCUMENTS sufficient to show the amount of property transferred because the second state's law had initially not empowered that state to escheat the property, but the state's law subsequently changed and permitted the state to escheat the property.

**Request No. 54:**

All DOCUMENTS and COMMUNICATIONS reflecting any holder reporting manuals, reporting instructions, reporting forms, or other documents provided by any DEFENDANT STATE to holders to provide guidance on the reporting of official checks, teller's checks, agent checks, traveler's checks, cashier's checks, registered checks, certified checks, treasurer's checks, drafts, bank draft, bank check, money orders, agent money orders, or other remittance instruments.

**Request No. 55:**

All DOCUMENTS and COMMUNICATIONS reflecting YOUR data retention policies and procedures from January 1, 2000 through the present.

**Request No. 56:**

DOCUMENTS sufficient to show the total amount of unclaimed property returned to holders, owners or claimants for each year from January 1, 2000

through the present, for which the unclaimed property was associated with a name, owner address, or social security number.

**Request No. 57:**

DOCUMENTS sufficient to show the total amount of unclaimed property returned to holders or creditors for each year from January 1, 2000 through the present, for which the unclaimed property was not associated with a name, owner address, or social security number.

**Request No. 58:**

DOCUMENTS sufficient to show the total amount of unclaimed property collected by each DEFENDANT for each year from January 1, 2000 through the present.

**Request No. 59:**

All DOCUMENTS and COMMUNICATIONS regarding Delaware's escheatment of unclaimed property from January 1, 2000 through the present.

**Request No. 60:**

All DOCUMENTS and COMMUNICATIONS regarding any DEFENDANT STATE's decision to participate in this lawsuit.

**Request No. 61:**

All DOCUMENTS and COMMUNICATIONS regarding any DEFENDANT STATE's ability, future efforts, or plans to reunite the unclaimed

MONEYGRAM INSTRUMENTS at issue in this case with owners, including any efforts to conduct outreach to owners.

**Request No. 62:**

All other non-privileged DOCUMENTS and COMMUNICATIONS regarding this lawsuit.

**Request No. 63:**

Documents sufficient to show the total amount of property collected by a DEFENDANT STATE, for which property there was no owner address or there is a foreign (non-U.S.) owner address, where the holder is not incorporated in DEFENDANT STATE, but which is reflected by the DEFENDANT STATE's recordkeeping system as still being retained by the DEFENDANT STATE.

**Request No. 64:**

Documents sufficient to show the total amount of total property collected by a DEFENDANT STATE, for which property there was no owner address or there is a foreign (non-U.S.) owner address, where the holder is incorporated in Delaware, but which is reflected by the DEFENDANT STATE's recordkeeping system as still being retained by the DEFENDANT STATE.

**Request No. 65:**

Documents sufficient to show the total amount of property collected by a DEFENDANT STATE, for which property there was an owner address in another

State, but which is reflected by the DEFENDANT STATE's recordkeeping system as still being retained by the DEFENDANT STATE.

**Request No. 66:**

Documents sufficient to show the total amount of total property collected by a DEFENDANT STATE, but for which property there was an owner address in Delaware, which is reflected by the DEFENDANT STATE's recordkeeping system as still being retained by the DEFENDANT STATE.

**Request No. 67:**

All DOCUMENTS and COMMUNICATIONS reflecting any DEFENDANT STATE's policies or practices, formal or informal, concerning the retention of property mentioned in Request Nos. 63-66.

**Request No. 68:**

All DOCUMENTS and COMMUNICATIONS regarding any lawsuits, including any future lawsuits or potential lawsuits, in which a holder reported property to one state and another state asserted, or might assert, a higher claim to the property under any legal theory.



Dated: August 4, 2023

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## **EXHIBIT 2**

**ROB BONTA**  
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**State of California**  
**DEPARTMENT OF JUSTICE**



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August 17, 2023

Neal Kumar Katyal  
Katherine B. Wellington  
Nathaniel A.G. Zelinsky  
HOGAN LOVELLS US LLP  
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Washington, D.C. 20004

RE: *Arkansas et al. v. Delaware*  
Supreme Court of the United States, Case Nos. 220145 and 220146

Dear Mr. Katyal, Ms. Wellington, and Mr. Zelinsky:

I write on behalf of the Defendant States (including Pennsylvania) in the above-titled consolidated action to initiate the meet-and-confer process regarding Delaware's first set of damages requests for production, which were served on August 4, 2023 ("the RFPs"). The RFPs are overbroad and largely directed to irrelevant information or to topics that are not at issue in the damages phase of this case. The Defendant States request that Delaware withdraw the RFPs. If Delaware will not withdraw those requests, then the Defendant States intend to seek a protective order defining the bounds of appropriate discovery in the damages phase and request that you to consent to a 30-day extension of the period for responding so that the parties can present this dispute to the Special Master for resolution.

The 68 requests in the RFPs are extraordinarily broad and burdensome, particularly given that they are each directed to 30 states (i.e., 2,040 total requests). Several of the requests call for information well outside the scope of legitimate discovery in this case. For example, Delaware seeks every communication between MoneyGram and any Defendant State agency about any unclaimed property subject since January 1, 2000 (RFP 1); every communication between any Defendant State and any bank that has done business with MoneyGram since January 1, 2000 (RFP 6); all documents and communications relating to "the reporting and collection of abandoned or unclaimed property" by the Defendant States since January 1, 2000 (RFP 12); all documents relating to any Defendant State audit of any company or financial institution that sells financial instruments used to transmit money (RFP 15 [specifically referencing American Express, JP Morgan Chase, U.S. Bank, Wells Fargo, and others]); and documents about the escheatment by banks of cashier's and teller's checks to the Defendant States (RFP 34 [specifically referencing JP Morgan Chase and U.S. Bank], RFP 38). There are many other extremely broad and burdensome requests. The Defendant States further note that there are more

than three times as many requests in the RFPs than were contained in Delaware's initial requests for production issued in the merits phase of this case in October 2017, and those requests were more narrowly tailored than the current RFPs (e.g., they defined a narrower relevant time period). As a reminder, even those requests were further and significantly narrowed in scope following an informal conference with the Special Master. *See* Dkt. No. 59.

In the Defendant States' view, the only issues before the Court during the damages phase of this litigation are: (1) how the funds in the S.D.N.Y. escrow account should be distributed; (2) the value of unclaimed MoneyGram Official Checks purchased in States other than Delaware that MoneyGram paid to Delaware before the establishment of the escrow account; and (3) how much Delaware should be ordered to pay to each of the Defendant States. We understand that Delaware also believes this case involves a fourth question about whether there is a legal basis for the Defendant States to pursue funds relating to MoneyGram Official Checks that MoneyGram paid to Delaware before establishment of the escrow account. These issues do not call for much, if any, discovery from the Defendant States. Indeed, the information relevant to issue 2 is entirely in Delaware's and MoneyGram's possession, and the fourth issue is a purely legal question that does not call for any discovery at all.

For the reasons discussed below, the Defendant States contend that the following are not valid subjects for discovery: (1) liability issues, (2) escheatment of financial instruments other than MoneyGram Official Checks, and (3) legal theories that Delaware forfeited by not including them in any claim, affirmative defense, or counterclaim, or that Delaware has otherwise expressly waived.

Liability issues are no longer valid subjects of discovery requests. This matter was bifurcated into liability and damages phases by the Special Master's Order dated July 24, 2017. As noted above, Delaware requested and obtained extensive discovery materials from the Defendant States during the liability phase. All liability issues that were raised or that could have been raised during the liability phase were resolved by the Court's February 28, 2023 decision on the merits. *Delaware v. Pennsylvania*, 143 S. Ct. 696 (2023). Delaware's discovery requests that relate to liability issues are therefore untimely, duplicative of Delaware's prior requests and the Defendant States' prior productions, and not directed to any issue that remains to be heard.

Nor is the escheatment of financial instruments other than MoneyGram Official Checks a valid subject for discovery requests. This case does not relate to the escheatment of cashier's and teller's checks by banks. *Delaware v. Pennsylvania*, 143 S. Ct. at 710-11 and n.13. And the Special Master denied Delaware's request to add a broad range of other unnamed instruments to this case in the Order dated July 24, 2017. Therefore, no other financial instruments are at issue in this case.

Legal theories that have been forfeited because they were not included in any pleading in this case are not valid subjects of discovery requests. Supreme Court Rule 17.2 provides that "[t]he form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is

August 17, 2023

Page 3

followed” in original jurisdiction actions, and the parties stipulated that this case would be governed by those rules. Dkt. 64 at 2. Rule 8(c), in turn, mandates that “a party must affirmatively state any avoidance or affirmative defense” including delay-based theories on which the answering party bears the burden of proof such as statute of limitations, laches, estoppel, and waiver. With narrow exceptions that are not applicable here, such defenses are forfeited if they are not raised as affirmative defenses in an answer, and an affirmative defense that has been forfeited is excluded from the case. *Wood v. Milyard*, 566 U.S. 463, 470 (2012). Delaware did not raise any delay-based legal theories in its bill of complaint in Case No. 145 dated May 17, 2016; its counterclaim in Case No. 146 dated August 5, 2016; its answer to the bill of complaint filed by Arkansas and other states in Case No. 146 dated November 1, 2016; its answer to Wisconsin’s counterclaim in Case No. 145 dated November 1, 2016; or its answer to Pennsylvania’s counterclaim in Case No. 145 dated November 18, 2016. The final deadline for any party to move to amend its pleadings was September 12, 2018. The time to raise any delay-based legal theories or any other defenses that must be pled affirmatively pursuant to Rule 8(c) therefore passed long ago.

Moreover, both in pretrial negotiations and during the early case management hearings in this case, Delaware repeatedly and expressly promised that they would pay the Defendant States any unclaimed Official Checks that the Supreme Court determined had been wrongfully remitted to Delaware. *E.g.*, Tr. of June 5, 2017 Conference at 151-52, 154-57 (Dkt. No. 39); Sept. 1, 2015 letter from Delaware (produced in discovery as MG 2652–53). That determination has been made, and the time for Delaware to assert new legal defenses and theories that effectively go to the merits of this case has passed. Such defenses and theories are not valid subjects for discovery.

Delaware’s requests for production of documents focus almost exclusively on topics that the Defendant States contend are not valid subjects for discovery. The Defendant States therefore request that Delaware withdraw the RFPs. If Delaware will not withdraw the RFPs, then please confirm that you consent to a 30-day extension of time to respond to the RFPs, to give us time to raise these issues with the Special Master. We would further welcome the opportunity to meet and confer via teleconference to explore a resolution to this issue. Please let us know if you would like us to arrange such a call within the next few weeks.

Sincerely,



MICHAEL SAPOZNIKOW  
Deputy Attorney General

For ROB BONTA  
Attorney General

## **EXHIBIT 3**

August 21, 2023

**By Electronic Mail**

Michael Sapoznikow  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550

Re: *Delaware v. Arkansas*, Nos. 22O145 & 22O146 (U.S.)

Dear Mr. Sapoznikow,

We write in response to your August 17, 2023 letter, in which Defendant States object to providing any discovery in this matter based chiefly on various legal arguments Defendants intend to make at summary judgment. As you know, the case management schedule does not permit the parties to litigate threshold legal questions, including the legal arguments raised in Defendants' letter, until after discovery. At the May 4, 2023 hearing, Defendants vigorously argued that discovery must take place before the parties can litigate both Delaware's defenses and Defendants' contention that Delaware waived certain defenses. According to Defendants, the legal and factual issues in this case are intertwined, and discovery must take place before a ruling on those legal issues by the Special Master or the Supreme Court. After hearing argument on this issue, the Special Master agreed with Defendants and expressly entered Defendants' proposed case management schedule. Defendants have thus affirmatively waived any objection to the parties conducting discovery prior to litigating these legal issues at summary judgment. In accordance with the schedule that Defendants proposed, Delaware has begun the discovery process in good faith and asks that Defendants do the same.

Delaware's discovery requests are reasonable. Defendants demand that a co-equal sovereign pay as much as \$150 million in damages to dozens of States, in addition to extraordinary amounts of interest and state-law penalties that Defendants almost never impose on private holders, for claims going back nearly 20 years. Delaware is a sovereign state that has every right to defend against these extreme claims. Discovery will almost certainly yield pertinent information. For example, the limited discovery during the liability phase already revealed that multiple Defendants knew about MoneyGram's escheatment practices as early as 2006—and then sat on their hands, affirmatively acquiescing to Delaware's receipt of MoneyGram Official Checks. Delaware has every right to develop a fulsome record for the Supreme Court that shows which Defendants States knew what and when.

Delaware agrees with your proposal to meet and confer before raising any unresolved issues with the Special Master. We are in the process of evaluating Defendants' requests for production, and we would like to discuss the scope of individual requests through the meet-and-confer process so that the parties can seek agreement, if possible. To make the meet-and-confer process productive, we request that Defendants respond individually to each request and indicate what information Defendants do not object to producing, assuming the Special Master rejects Defendants' efforts to use the discovery process to litigate Delaware's summary judgment defenses. Delaware also has some concerns regarding Defendants' requests, which we intend to discuss at the meet-and-confer.

To the extent Defendants need more time to articulate specific objections, Delaware agrees to a 30-day extension of the period for Defendants to respond to Delaware's discovery requests, provided that all Defendants agree to a corresponding extension of Delaware's responses to written discovery, including requests for production, requests for admission, and interrogatories. Delaware conditions any agreement to a 30-day extension on Defendants requesting that the Special Master extend the close of discovery by 30 days to allow the parties to confer on the scope of discovery, and the Special Master granting that extension. Delaware also notes that it does not consider Defendants' August 17 letter to constitute a formal response and objection to Delaware's requests for production, nor does Delaware consider this letter a formal response. Delaware does not waive or forfeit any arguments, and reserves all rights in the interim.

### **I. Defendants Waived The Ability To Litigate Threshold Legal Issues Prior To Discovery.**

Defendants have affirmatively waived the argument, raised in Defendants' August 17 letter, that Delaware's legal defenses and Defendants' waiver arguments should be litigated prior to discovery. In the April 27, 2023 status report, Delaware explained that discovery on the damages issues in this case would be extensive, requiring "extensive document discovery, including email communications, and depositions of all States' representatives, including but not limited to discovery related to the application of statutes of limitations, laches, and other equitable defenses, as well as any data each state has access to with respect to the escheated instruments and escheatment practices more generally." Dkt. 144 at 17. Defendants nevertheless argued that "the second phase of this litigation should proceed, just as the first phase did, with discovery followed by cross-motions for summary judgment." *Id.* at 19. According to Defendants, "discovery and briefing on all issues should be conducted simultaneously," because "the legal and factual issues might not be easily separated." *Id.* at 15.

At the May 4, 2023 hearing, Defendants maintained this position, vigorously opposing any effort to litigate threshold legal issues prior to discovery. Delaware pointed out that discovery in this case would be extensive, given that Defendants are seeking damages going back nearly 20 years on behalf of dozens of different States. See, e.g., Dkt.150 at 8:3-4 ("[W]e're talking about discovery going back, you know, almost 20 years involving 30 different states, that's a really significant amount of discovery."). Defendants nevertheless repeatedly argued that fact issues could not be separated from legal issues, and that the parties should engage in discovery before briefing Delaware's defenses at summary judgment:

- "I think we can do discovery at the same time that we brief any legal issues that Delaware wants to raise, and we can just do that in summary judgment just as we did before. I mean, everybody agreed back in 2017 that we'd bifurcate this between the liability phase and the damages phase and now they want to bifurcate the bifurcation." *Id.* at 20:9-15.
- "I think just like in the liability phase, your Honor, there's no way to break those up and divide them separately." *Id.* at 23:8-10.
- "And we think, you know, those may be closer calls about whether there's a cause of action as opposed to the residue itself. But all of that's part of the damages phase, and we can do discovery on that all at the same time. We simply don't see any reason to break up those proceedings." *Id.* at 24:7-12.



- “[W]e were envisioning that this would all happen together and at the end of the process, there would be cross-motions for summary judgment.” *Id.* at 54:12-14.
- “Separating out those legal and factual issues I think is going to be somewhat difficult.” *Id.* at 56:22-24.
- “Like, it’s difficult to break out the factual stuff from the legal stuff there. I’m just not seeing a clear divide to brief those issues.” *Id.* at 57:13-15.
- “I would emphasize again I think everything discovery-related should just move forward, we would file cross-motions for summary judgment . . . . We should just move forward with everything, and our position is to file cross-motions at the end.” *Id.* at 77:19-21; 77:25 to 78:1-2.
- “Your Honor, the schedule we had proposed is the schedule that we had put in the status report, I believe at Page 23, which would just resolve everything together. Rather than filing a motion on some issues, not others—not entirely sure what those are at this point—you know, we just proceed forward with discovery, we brief it all at the end, the same way we did the liability phase, we wrap this thing in a bow and sent it to the Supreme Court.” *Id.* at 78:17-25 to 79:1.

The Special Master expressly adopted Defendants’ proposed approach after careful consideration, ordering the parties to proceed to discovery without briefing the very same legal arguments that Defendants are now apparently asking the Special Master to decide *prior to discovery*. See *id.* at 79:7-8. Having prevailed on their proposed approach, Defendants cannot turn around now and seek a different process than the one they successfully advocated for before the Special Master. Defendants have thus affirmatively waived any argument that Delaware’s defenses should be litigated prior to discovery, rather than at summary judgment on a full factual record. Delaware vigorously objects to Defendants’ attempt to use the discovery process as a back-door attempt to litigate arguments that are set to be decided at summary judgment.

In accordance with and reliance on the case management schedule that Defendants proposed and the Special Master adopted, Delaware has devoted considerable efforts and resources to discovery. Delaware has engaged a discovery vendor; added additional counsel and blocked off time in their schedules to oversee document collection and document review; conducted extensive discussions with Delaware’s IT personnel about harvesting e-mails and documents; obtained archived paper materials and scanned them; and begun reviewing documents in accordance with Defendants’ broadly worded requests for production. Delaware is complying in good faith with Defendants’ stated position that discovery should take place before briefing legal arguments at summary judgment. Delaware expects that Defendants will do the same.

## **II. Delaware Is Entitled To Raise Defenses To Defendants’ Extraordinary Claims.**

Defendants’ primary objection to discovery—that Delaware may not assert legal defenses to mitigate damages—also fails on the merits. Even if the Federal Rules of Civil Procedure apply to this question, which Delaware does not concede, a “[f]ailure to raise an affirmative defense by responsive pleading does not always result in waiver.” *Smith v. Sushka*, 117 F.3d 965, 969 (6th Cir. 1997). Instead, “[t]he purpose of Rule 8(c) of the Federal Rules of Civil Procedure is to give the opposing party notice of the affirmative defense and a chance to respond.” *Id.* In this case, Defendants experienced no harmful “surprise or unfair prejudice.” *Id.* The Special Master bifurcated the liability

phase from the damages phase, and Delaware made clear long before the damages phase began that it intends to defend against Defendants' damages claims. Defendants have suffered no prejudice, cannot claim unfair surprise, and can conduct all necessary discovery on these issues prior to briefing them at summary judgment. See also, e.g., *Motion Med. Techs., L.L.C. v. Thermotek, Inc.*, 875 F.3d 765, 771-772 (5th Cir. 2017) ("If the affirmative defense is raised in the trial court in a manner that does not result in unfair surprise, then a technical failure to comply precisely with Rule 8(c) is not fatal. . . . We have repeatedly rejected waiver arguments when a defendant raised an affirmative defense for the first time at summary judgment—or even later.") (cleaned up); *Rinaldi v. City of New York*, 756 F. Supp. 111, 116 n.3 (S.D.N.Y. 1990) (Leval, J.) (permitting defendants to raise un-pleaded defense "because plaintiff has not shown any significant prejudice from defendants' raising it at this time"). Indeed, the lone case Defendants cite (at 3) confirms that principles of "comity" allow even a federal *appellate* court reviewing a final judgment to resurrect an affirmative defense "overlooked by the State in the District Court." *Wood v. Milyard*, 566 U.S. 463, 471 (2012). And the Supreme Court has long cautioned that the "Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Foman v. Davis*, 371 U.S. 178, 181-182 (1962) (citation omitted).

Defendants also affirmatively waived, and at a minimum forfeited, any alleged forfeiture on Delaware's part. Before the Supreme Court, Delaware noted that because of the "procedural posture, the parties [had] not litigated whether the Court should impose a statute of limitations or other equitable restriction on a remedy for incorrectly escheated products." Del. First Exceptions Br. 49 n.12. Delaware then argued that, if the Court ruled for Defendants, it should "limit Defendants to prospective relief only." *Id.* In response, Defendants argued *only* that the Court should not consider "a request to limit damages" because "the parties have not litigated any damages questions" yet. Defs. First Reply 55 (internal quotation marks omitted). At no point did Defendants assert that Delaware *forfeited* all arguments for limiting damages. Quite the opposite: Defendants' brief strongly implied that all such legal issues would receive a full hearing on remand, and Defendants made this explicit at oral argument before the Supreme Court. Justice Gorsuch asked about the lack of a cause of action in the FDA. In response, Defendants' counsel stated that the parties had "not litigated the damages issue" or "arguments" regarding limiting damages, expressly recognizing that Delaware's defenses would be litigated at a later stage of the proceedings. Tr. 58:13-14. Defendants specifically agreed that the cause of action question "could be resolved" by the Special Master—and again never suggested that Delaware forfeited legal arguments against paying damages. *Id.* at 59:17.

To be clear: Delaware does not intend to litigate the availability of legal defenses in this letter, nor does it forfeit any arguments not raised in this letter. Under the case management schedule Defendants proposed and the Special Master adopted, the parties will brief these issues at summary judgment.

### **III. Defendants' Other Objections Lack Merit And Can Be Discussed At A Meet-And-Confer.**

Defendants are seeking hundreds of millions of dollars from a sovereign sister state—including by seeking to impose state-law penalties on a sister sovereign when Defendants almost never impose penalties on private holders—going back nearly 20 years. In light of the extraordinary nature of Defendants' demands, Delaware's discovery requests are reasonable. To the extent Defendants have objections to specific requests for production, Delaware is open to discussing those issues through the normal meet-and-confer process. As Delaware has mentioned, it too has objections to Defendants' discovery requests that it would like to discuss before approaching the Special Master, if needed.

Delaware will respond more fully to Defendants' arguments at a meet-and-confer, and, if necessary, in briefing or argument to the Special Master. However, Delaware notes that the discovery it seeks is directly related to Delaware's defenses to Defendants' extraordinary claims. For instance, Defendants object to disclosing "communication between MoneyGram and any Defendant State agency about any unclaimed property subject since January 1, 2000." August 17 Letter 1 (citing RFP 1). But those communications go to the heart of Delaware's arguments: Defendants long knew, or should have known, about MoneyGram's practices—and did nothing for years. Indeed, Delaware already has strong reason to believe that multiple states affirmatively knew about, and acquiesced to, MoneyGram's practices. For example, the extremely limited discovery to date revealed that Ohio audited MoneyGram and sent MoneyGram a letter *in 2006* alleging that MoneyGram should escheat official checks under the FDA. See MG0002616-2619. Ohio then did nothing *for a decade*. Similarly, in a 2011 document, MoneyGram indicated that "multiple states indicated that [Official Checks] should not be escheated to Delaware" and should instead escheat "to the state of purchase." MG-004245. Delaware will argue that, as a matter of law, such acquiescence prevents Ohio and other similarly situated states from recovering damages from a sister sovereign.

Defendants likewise object to discovery regarding communications between Defendants and MoneyGram's client banks. August 17 Letter 1 (citing RFP 6). But again, the limited discovery to date suggests that these communications are relevant to Delaware's defenses. For example, correspondence between California and one of MoneyGram's client banks shows that, as early as 2012, California was aware of MoneyGram's practice of reporting Official Checks to Delaware. See States0002650-2652. Similar correspondence between Michigan and a client bank shows that Michigan knew of MoneyGram's practices as early as 2009. See States0002684. Delaware deserves to develop a record on this issue.

Defendants also mischaracterize RFP 12. Delaware did not request "all documents and communications relating to 'the reporting and collection of abandoned or unclaimed property' by the Defendant States since January 1, 2000." August 17 Letter 1. Defendants requested documents and communications reflecting "any materials . . . from *any audit, review, or similar evaluation* that involved the reporting and collection of abandoned or unclaimed property." RFP 12 (emphasis added). Material regarding audit practices are relevant to determining when Defendants knew, or should have known, about MoneyGram's reporting of Official Checks to Delaware. Specific audits of companies selling other remittance instruments (RFP 15) may likewise reveal Defendants' constructive or actual knowledge of MoneyGram's practices. If Defendants have taken contradictory positions regarding other unclaimed property, that too is relevant to Delaware's equitable defenses. It is particularly important to explore Defendants' behavior toward JP Morgan and U.S. Bank. For years, these entities reported cashier's checks to Ohio under the common law. Recent *qui tam* lawsuits, including lawsuits bought in the name of California, argue that these instruments are subject to the FDA. Delaware may argue that it is deeply inequitable to reward Ohio if, in receiving these cashier's checks, Ohio has adopted a view of the FDA contrary to the one it has advanced here against Delaware. Delaware may similarly argue that principles of comity prevent Defendants like California from pursuing this action against Delaware—but taking a contrary position regarding damages with respect to Ohio.

#### **IV. Conclusion.**

We request that the parties meet and confer in good faith regarding the scope of discovery in this case. Defendants' apparent position that they need not conduct any discovery whatsoever is untenable. To that end, we request that Defendants specifically respond to each of Delaware's requests for production, indicating Defendants' specific objections and the information Defendants will agree to produce, in accordance with the normal discovery process. To the extent Defendants believe that they need not produce documents because Defendants have supposedly waived certain

August 21, 2023

defenses, Delaware requests that Defendants nevertheless indicate what documents they are willing to produce, so that the parties can have a productive discussion and determine the scope of any disagreement before contacting the Special Master.

As we noted at the outset, if Defendants need additional time to respond to Delaware's requests for production, Delaware will agree to a reciprocal extension, subject to the Special Master extending the deadline for the closure of discovery. Delaware reserves all rights and objections.

Sincerely,

/s/ Katherine B. Wellington

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Enclosures: MG0002616-2619  
MG-004244-4245  
States0002650-2652  
States0002683-2686



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August 24, 2006

Ms. Kim Cole  
Legal Counsel  
Ohio Department of Commerce  
Division of Unclaimed Funds  
77 South High St., 20<sup>th</sup> Floor  
Columbus, OH 43215-6108

Dear Ms. Cole:

Thank you for your letter of August 3, 2006 concerning unclaimed property. We have carefully reviewed your letter and consulted with our outside counsel who is a national leading authority on unclaimed property. He advised us specifically with respect to your letter and, in turn, MoneyGram International respectfully disagrees with your conclusions for the following reasons.

First, it is clear beyond any doubt that P. L. 93-495 does not "overrule" *Texas v. New Jersey*, 85 S.Ct. 626 (1965). P.L. 93-495 was a lengthy, omnibus banking bill, dealing with several aspects of the federal banking and credit laws, and for the most part its provisions were completely irrelevant to the subject of unclaimed property and the states' jurisdictional claims to such property. Neither the Senate nor the House committee reports on the bill contain any commentary regarding the Supreme Court's decision in *Texas v. New Jersey*. During forty years subsequent to that decision, and continuing through the present, it has been universally recognized that *Texas v. New Jersey* continues as the seminal case on jurisdiction over unclaimed property.

What you have cited as an "overruling" statute was merely the enactment of a narrow exception. Tacked onto the end of P.L. 93-495 was a brief section titled "Disposition of Abandoned Money Orders and Travelers Checks," codified later as 12 U.S.C. sections 2501-2503. It was in only those three sections that there appeared any language concerning unclaimed property. And that language is not as expansive as your letter seems to represent. Section 2501-2503 did indeed, as you note, reverse the result in *Pennsylvania v. New York*.<sup>1</sup> In stating

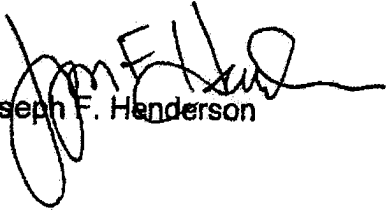
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<sup>1</sup> Pennsylvania and several other states had sued New York, which was escheating all uncashed Western Union money orders, wanting a share of those escheated funds. When they lost in the Supreme Court, the

the breadth of the exception, however, you refer to it as applying to all "money orders, travelers checks, and similar written instruments." That is not a complete quotation of what the section provides. What section 2503 actually states is that a sum payable on "a money order, traveler's check or other similar instrument (*other than a third party bank check*)" (*emphasis added*) may be escheated to the state where the instrument was purchased. Teller's checks and agent's checks are third party bank checks and therefore are not within the scope of the exception. Those instruments continue to be reportable, in the absence of an owner's address, only to the state of the holder's domicile. MoneyGram, being a party liable on the instruments under its agreement with the bank, is of course a "holder" of such instruments and is obligated to report them to the state of its domicile, Delaware.

If, after due consideration, you do not agree with this conclusion, I trust you will so advise us.

Best regards,

  
Joseph F. Henderson

---

plaintiff states went to their congressional representatives who carved out an exception for money orders and travelers checks.



# Ohio Department of Commerce

Division of Unclaimed Funds  
77 South High Street • 20<sup>th</sup> Floor  
Columbus, OH 43215-6108  
(614) 466-4433 FAX (614) 995-7535  
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Bob Taft  
Governor

Doug White  
Director



August 3, 2006

Recd TECI Legal Dept

AUG 07 2006

Joe Henderson  
State Regulatory and  
Government Affairs Counsel  
MoneyGram International  
1550 Utica Avenue, South  
St. Louis Park, Minnesota 55416

Dear Mr. Henderson:

Materials issued by MoneyGram International to a financial institution, regarding unclaimed funds, have been referred to me. The items, located during an audit, specifically reveal that MoneyGram has instructed financial institutions that as they have been reincorporated in Delaware, that unclaimed teller and agent checks will now be reported to Delaware.

It is acknowledged that the U.S. Supreme Court, in the case of Texas v. New Jersey 85 S.Ct. 626 (1965), held that intangible unclaimed funds are to be reported to the state of the creditor's last known address as seen on the books of the debtor, and if there is no record of the creditor's address, then to the state of the debtor's corporate domicile. Subsequently, in a case involving money orders, the court in Pennsylvania v. New York 92 S.Ct. 2075 (1972), held that unclaimed money orders are reportable to the state of the creditor's address, whether the creditor is a payee of an unpaid draft, the sender of a money order entitled to a refund, or an individual whose claim has been erroneously underpaid. If the records show no address for the creditor, then the funds are reportable to the state of the debtor's domicile.

However, the U.S. Congress, in P.L. 93-495, which became effective October 28, 1974, demonstrated its intent to overrule the Texas v. New Jersey and Pennsylvania v. New York cases, by establishing a 'place of sale' test. Congress made this test applicable to all sums payable on money orders, traveler's checks, and similar written instruments, and provided that the 'state of purchase' of these types of properties would be entitled to claim the unclaimed properties. The test was held to apply to properties deemed abandoned on or after February 1, 1965, the date of the Texas v. New Jersey decision. It is noted that the 8<sup>th</sup> Circuit Court of Appeals, in the case of Travelers Express Co., Inc. v. Minnesota, 664 F2d 691 (1981), in which the applicability of P.L. 93-495 was challenged, found that Minnesota's unclaimed property law's 'omnibus' or 'catch-all' provisions applied to the properties provided for in P.L. 93-495.

There appears to be no constitutional impediment to P.L. 93-495, as the Court in Texas v. New Jersey specifically stated that the issue was "not controlled by statutory or constitutional provisions or by past decisions." Further, the Court held that, "Since the States separately are without constitutional power to provide a rule to settle this interstate controversy and since there is no applicable federal statute, it becomes our responsibility in the exercise of our original jurisdiction to adopt a rule which will settle the question of which State will be allowed to escheat this intangible property." As the Court attempted to look to federal statute on the issue, thereby acknowledging that federal statute is appropriate to determine this matter, the subsequent P.L. 93-495 is controlling.

FINANCIAL INSTITUTIONS	INDUSTRIAL COMPLIANCE	LABOR & WORKER SAFETY	LIQUOR CONTROL
REAL ESTATE & PROFESSIONAL LICENSING	SECURITIES	STATE FIRE MARSHAL	UNCLAIMED FUNDS

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Lastly, it is noted that Ohio's Unclaimed Property Law, Chapter 169 of the Ohio Revised Code, specifically provides for the property in question in R.C. 169.02(F), which also states, "If there is no address of record for the owner or other person entitled to the funds, such address is presume to be the address where the instrument was certified or issued." Ohio also has an omnibus provision in R.C. 169.02(P). A holder may rely on the 'place of sale' for reporting purposes, and the holder is not required, nor it is relevant, to determine if the 'owner' transferred his interest to another in a different state than the place of sale.

Therefore, MoneyGram International is to report its unclaimed teller and agent checks to the state of the place of sale, and not to its state of incorporation. Of course, the place of sale may or may not be, Ohio. Further, the Division respectfully requests that MoneyGram inform the financial institutions and other entities to which it supplies unclaimed funds reporting information, that unclaimed teller and agent checks are to be reported to the state of place of sale, as provided for in Ohio and federal law, and please refrain from informing them that teller and agents checks are to be reported to the state of incorporation. It is noted that MoneyGram's 'table' does state that money orders are to be reported to the 'state in which the money order was originally issued.'

If you have any questions, you may contact me at 614-466-1385.

Sincerely,



Kim Cole  
Legal Counsel

Cc: James Dowley, Compliance Supervisor, Unclaimed Funds  
Michael Roark, Division of Financial Institutions



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**CONFIDENTIAL TREATMENT  
REQUESTED**

April 20, 2011

**Via Electronic Mail & Federal Express**

Mr. Mark Udinski  
Delaware State Escheator  
Bureau of Unclaimed Property, Division of Revenue  
820 North French Street, 8<sup>th</sup> Floor  
Wilmington, Delaware 19801

**RE: Request for Guidance Regarding Conflicting Escheat Claims**

Dear Mr. Udinski:

This firm represents a company (the "Holder") that reports and remits unclaimed property to the several states pursuant to those states' unclaimed property/escheat/abandoned property laws. Recently, a few states have informed Holder that certain property historically escheated to Delaware should instead be escheated to those other states. The purpose of this letter is to seek your guidance and confirmation as to whether the subject property is properly escheatable to Delaware.<sup>1</sup>

**A Description of the Holder and the Property at Issue**

The Holder is a Delaware incorporated company that is involved in payment processing, electronic commerce, and prepaid services. The Holder is not a national bank or state-chartered financial institution, though some of its products require it to be licensed under state money transmitter licensing statutes. Among other businesses, the Holder issues payment instruments that are sold by (but not drawn on) client financial institutions so as to allow those clients to outsource their traditional cashier's check/teller's check functions.

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<sup>1</sup> Since the identity of the Holder would not seem relevant to the inquiry, as well as the fact that the Holder is understandably reluctant to get involved in what may amount to a conflict among multiple states (all of which exercise some regulatory and administrative authority over the Holder), we are presenting this inquiry on a "no names" basis. Should you determine that disclosure of the Holder's identity is necessary, please contact me.

NEW JERSEY  
CONNECTICUT

NEW YORK  
MASSACHUSETTS

PENNSYLVANIA  
COLORADO

# MC ELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

Page 2

While the features of these check-like items vary depending upon the needs of the client, all such items have the same relevant characteristics:

- All of the items are issued by the Holder (which is not a financial institution);
- All such items are drawn on the Holder's bank account (which is, in most cases, not maintained at the client financial institution);
- The Holder does not have payee address information for these items; and
- The payee of the item is generally not the same as the purchaser.

## Holder's Current Unclaimed Property Practice

The Holder currently escheats these items to the State of Delaware using the NAUPA property type code CK15 "Other Outstanding Official Checks." Such items are escheated to Delaware because it is the Holder's understanding that, pursuant to *Texas v. New Jersey*, unclaimed property for which the Holder lacks last-known address information is generally escheatable to the Holder's state of incorporation (here, Delaware).


## Instructions From Other States

In connection with a recent multi-state review of the Holder's money transfer licenses multiple states indicated that these items should not be escheated to Delaware in its capacity as the Holder's state of incorporation. Instead, these states contend that such items are escheatable to the state of purchase as in accordance with applicable state law. As support for that position these states have relied upon their own statutory provisions that are similar, but not identical, to Section 4(d) of the 1981 Uniform Unclaimed Property Act.

In light of this conflict between the Holder's practice of escheating such items to Delaware, and instructions to the contrary from other states, we respectfully request written guidance from the State Escheator's office as to whether such items are properly escheatable to Delaware.

Very truly yours,

MC ELROY, DEUTSCH, MULVANEY & CARPENTER, LLP



Michael Rato



Clinton R. Rockwell  
Partner

BuckleySandler LLP  
100 Wilshire Boulevard, Suite 1000  
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Fax: 424-744-4151

April 5, 2012

Mr. David Field  
Auditor, Division of Audits  
State of California  
600 Corporate Pointe, Suite 1000  
Culver City, CA, 90230

**Re: Luther Burbank Savings Escheated Funds Inquiry**

Dear Mr. Field:

This letter is submitted on behalf of our client Luther Burbank Savings (“LBS”) in response to a verbal inquiry from the State of California, Division of Audits (the “Division”) regarding escheatment practices relating to teller’s checks written by LBS. Specifically, the Division is inquiring as to: (i) why more funds from these teller’s checks are not escheated to the State of California; (ii) whether LBS’s third party vendor, MoneyGram Payment Systems Inc. (“MPSI”), escheated those funds to another state; and (iii) whether MPSI has documentation of such remittance.

**Background**

MPSI and LBS entered into a written Agreement (“Agreement”) for MPSI to provide Official Check services to LBS. Banks routinely outsource official check services to third party vendors like MPSI to service customers in need of a check drawn on a bank or to pay the bank’s own obligations, with the additional benefit of enhanced fraud control and decreased back office expenses. Part of the official check service involves the use of a teller’s check, which is defined as “a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.” Cal. Com. Code § 3104(h).

In this case, MPSI provides blank teller’s checks to LBS, consistent with its practice with many other bank clients. These checks indicate on their face that they are issued by MPSI, the Drawee is Preferred Bank (“Preferred”), and the Drawer is LBS. In the regular course of LBS’s business, the checks are issued to various payees, and printed and sent by LBS. Per the Agreement, LBS sends the funds for the teller’s checks to MPSI on the next business day to cover the amounts of the checks written. MPSI receives information concerning the check number and the amount of the check; it does not receive the payee’s name or address. MPSI pays these teller’s checks through Preferred and submits a monthly report to LBS of any outstanding checks that have not

been paid. Should the teller's checks remain uncashed for five years, MPSI escheats such funds to its home state of Delaware.

Because the teller's checks are issued by LBS, a California corporation, and the funds for such checks are provided to MPSI, a Delaware corporation, the laws discussed herein are limited to those of California and Delaware.

### **MPSI is the Holder of the Funds, Not LBS**

Both California and Delaware law require a "holder" to escheat any sums outstanding on a teller's check after the prescribed dormancy period to the State. Cal. Code Civ. Proc. §§ 1501; Del. Code Ann., tit. 12, §§ 1170, 1198.

California defines "holder" as, "any person **in possession** of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation," and further requires sums **held or owing** by a business association payable on teller checks to be escheated three years from the date payable. Cal. Code Civ. Proc. §§ 1501, 1513 (emphasis added).

Delaware defines "holder" as, "any person **having possession, custody or control** of the property of another person and includes a post office, a depository, a bailee, a trustee, a receiver or other liquidating officer, a fiduciary, a governmental department, institution or agency, a municipal corporation and the fiscal officers thereof, a public utility, service corporation and every other legal entity incorporated or created under the laws of this State or doing business in this State." Del. Code Ann., tit. 12, § 1198 (emphasis added).

As previously noted, the funds for the teller's checks are remitted from LBS to MPSI on the following day the teller's checks are issued. MPSI, therefore, has possession of the funds at the time of escheatment and is the legal "holder" of the funds under California and Delaware law.

In addition, the Agreement specifically indicates that, "MPSI is responsible for unclaimed property related..." to the teller checks issued by MPSI. Therefore, LBS is contractually not responsible to escheat any unclaimed funds associated with the teller checks.

Even a claim under Cal. Code Civ. Proc. § 1518 that the funds are held in a fiduciary capacity for a business association, leads to the conclusion that MPSI is the holder of the funds. MPSI only acts in a fiduciary capacity until the funds are remitted by LBS. Once those funds are remitted by LBS, which occurs the very next business day after the checks are written by LBS, MPSI, as the issuer of the checks, also becomes the holder of the funds. Pursuant to the Agreement, LBS must, "remit the face amount of Checks issued...so that MPSI has collected funds by 11 AM PST on the next Business Day such face amounts are deemed **held in trust until remitted.**" (Emphasis added). Thus, once the funds are remitted, MPSI is contractually no longer a fiduciary, and under California law, becomes the holder.

Furthermore, Delaware's unclaimed property law, as indicated above, adopted an expansive definition of "holder" to include, "any person having possession, custody or control of the property of another person and includes ... a **fiduciary**..." Del. Code Ann., tit. 12, § 1198 (emphasis added). Under any circumstances, fiduciary or otherwise, MPSI is the holder of the

Mr. David Field  
April 5, 2012  
Page 3

unclaimed funds as a legal entity incorporated under Delaware law having possession of the unclaimed funds. Therefore, under Delaware law as well, MPSI is the holder of the funds.

Based on the foregoing, the holder of eligible funds is MPSI, not Preferred or LBS.

### **MPSI is Obligated to Escheat the Funds to Delaware**

Having established that MPSI is statutorily and contractually the appropriate holder of the funds, the next question is to which state such funds should be escheated. With respect to the obligation to escheat the uncashed teller's checks, the U.S. Supreme Court requires unclaimed property to be reported to the state of the lost owner's last known address, as shown in the records of the holder. *Texas v. New Jersey*, 379 U.S. 674 (1965); *Delaware v. New York*, 507 U.S. 490 (1993); Cal. Code Civ. Proc. § 1513; State of Delaware; Department of Finance; Division of Revenue; Bureau of Unclaimed Property Escheat Handbook, pg. 6. And if the owner's address is unknown to the holder, the unclaimed property is reported to the state of incorporation of the holder of the unclaimed property. *Id.*

As indicated above, MPSI receives the funds for the teller's checks and a report containing only the check numbers and amounts of the checks. MPSI is therefore, unaware of the name or location of the owner of the teller's checks funds, and takes the position that it is obligated to escheat the unclaimed funds to MPSI's state of incorporation (Delaware).

In light of the foregoing:

- The funds from the teller's checks are not escheated by LBS because LBS is neither statutorily nor contractually the "holder" of the funds at the time such funds are required to be escheated, nor is MPSI merely a fiduciary for LBS;
- MPSI escheated the unclaimed funds in connection with the teller's checks to Delaware, its state of incorporation, because MPSI is contractually and statutorily required to do so; and
- If the Division seeks proof of the proper escheatment of the unclaimed teller's check funds, the Division should reach out to the "holder" and reporter, MPSI, for such documentation.

Thank you in advance for your time and attention to this matter. Should the Division wish to further discuss the foregoing, please do not hesitate to contact me or my colleague Howard Eisenhardt (202-349-2945, [heisenhardt@buckleysandler.com](mailto:heisenhardt@buckleysandler.com)).

Sincerely yours,



Clinton R. Rockwell

Mail to:  
Unclaimed Property Division  
Michigan Department of Treasury  
P.O. Box 30756  
Lansing, MI 48909

# Michigan Holder Transmittal for Annual Report of Unclaimed Property

Issued under the authority of P.A. 29 of 1995. Filing is mandatory. Failure to file is punishable by fine.

This transmittal must accompany your annual report whether you are filing on paper, diskette or CD Rom. If your report does not meet Treasury specifications it will be returned to you. Holders filing from multiple branches under one federal employer number must coordinate a branch identification number with the UPD.

Report Year 2009
---------------------

General Information			
Holder's Name First State Bank of East Detroit		Federal Employer ID Number [REDACTED]	UPD Branch ID No.
Address 24300 Little Mack		State of Incorporation Michigan	Date of Incorporation
City, State, ZIP Code St. Clair Shores, MI 48080		County Macomb	Report Number <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3
Did you exercise due diligence this report year? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Did you file a Report of Unclaimed Property last year? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, explain:	
Primary business activity Bank	Report Type <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Compliance <input type="checkbox"/> First <input type="checkbox"/> Audit <input type="checkbox"/> Other	What media type are you filing? <input type="checkbox"/> CD Rom <input checked="" type="checkbox"/> disk <input type="checkbox"/> paper (Form 1223)	
Annual Sales/Premiums		Do not mix media types for the same report.	
Total Assets		is the company:	
No. of Employees		a wholly-owned subsidiary? ..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No a division? ..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No publicly traded? ..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No private? ..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

## Reporting Requirements

You must report and submit all property (defined in General Instructions) in your custody that belongs to someone else and has gone unclaimed.

Attach payment here.

Total number of safety deposit boxes reported .....	
Total number of shares of stock/mutual funds .....	
Enter the total amount paid with this transmittal .....	\$ 15,415.93
Make checks payable to "State of Michigan".	

## Certification

I declare under penalties imposed by P.A. 29 of 1995, as amended, that I have examined this report and to the best of my knowledge it is true and complete.

Print Contact Name RENEE BERTOSSI	Telephone Number 586-775-5000
E-mail Address [REDACTED]	Fax Number 580-445-4793
Authorizing Signature Renee Bertossi	Title ASSOCIATE AUDITOR
	Date 10/22/09

If you are a successor, attach a separate sheet listing the names and last known addresses of all previous holders of the property being reported. If you have changed your name during the reporting period, attach a separate sheet listing all prior names.

Treasury Use Only			
Holder ID	Report	Stock ID	Import Batch

October 2, 2009

State of Michigan  
Department of Treasury  
430 W. Allegan St.  
Lansing, MI 48922

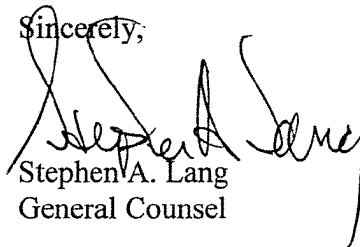
Re: Notice of unpaid cashier's checks

Dear Sir or Madam,

I am General Counsel with the First State Bank of East Detroit (the "Bank") and as such I have been asked to write to you concerning the referenced matter. Attached is a list of the remaining unpaid Cashier's Checks/Official Checks (the "Checks"), the amounts of which the Bank would normally be escheating to the State of Michigan. Unfortunately as the issuer of the Checks is refusing to return the amounts of the Checks which have not been negotiated to the Bank, I can do nothing more than we have in the past and put you on notice concerning the amounts outstanding.

The Checks although sold by the Bank to our customers were in fact issued by and in the name of MoneyGram Payment Systems, Inc. f/k/a Travelers Express Company, Inc ("MoneyGram"). Once the Checks were sold by the Bank, the amounts collected from the purchasers of the Checks were transferred to MoneyGram and it was and is MoneyGram's responsibility to pay the Checks upon negotiation. It had been previously the pattern of practice that once the Checks became stale (unpaid), MoneyGram would stop payment on the Checks and return the sums paid for the Checks to the Bank. The Bank in turn would escheat the sums to State of Michigan. MoneyGram is now however refusing to return the funds to be escheated and I (on behalf of the Bank) can do no more than again advise you of the situation.

Sincerely,

  
Stephen A. Lang  
General Counsel

# First State Bank of East Detroit

Cashier's Checks to be Escheated 2009

Prepared by: Internal Audit

<u>Check Number</u>	<u>Amount</u>	<u>Payee</u>	
4670429109	10.00	Unknown	Copy Unreadable
4670427992	14.00	Macomb County Register of Deeds	
5911130173	0.90	Unknown	Copy Unreadable
4670428796	2.47	Theresa McKoskey or Michael McKoskey	
4670431290	11.51	Unknown	Copy Unreadable
4670431309	42.00	St. Clair County Register of Deeds	
4670431324	14.53	Joseph Chambers or Yvonne Chambers	
4670431331	44.00	Macomb County Register of Deeds	
4670431333	372.50	Philip Greco Title Company	
4670429702	253.25	Henry Ford Hospital	
4670431346	138.00	Macomb County Register of Deeds	
4670429861	650.00	Unknown	Copy Unreadable
4670429445	1.18	Sharon M Winchester	
4670429237	30.97	Helen E Yahner	
4670431496	24.66	Janet Fopster	
4670431623	9.10	Unknown	Copy Unreadable
4670433087	10.00	Unknown	Copy Unreadable
4670431650	10.66	Charles Torr or Tong Torr	
4670433100	1.00	Unknown	Copy Unreadable
4670431693	11.95	Matthew Spezia or Sherry Spezia	
4670435006	200.00	Grego Title Company	
4670435007	44.00	Register of Deeds Oakland County	
4670432491	2,567.00	Comcast Construction	
4670435163	20.26	Debra Aker	
4670434554	3,971.52	Unknown	
4670433207	10.00	Richard A Speck	
4670432666	1,144.00	Social Security Administration	
4670432661	13.59	C.V.S.	
4670435555	80.20	Bon Secours Hospital	
4670436605	1.00	Mark Hanna	
4670433794	500.00	Unknown	Copy Unreadable
4679163316	6.44	Unknown	Copy Unreadable
4679164562	1,141.95	Washington Township Treasurer	
4679165295	750.00	Household Mortgage Services	
4679165803	14.00	Macomb County Register of Deeds	
4679163564	15.00	42-1 District Court	
4670436470	1.25	Jessica Bak	
4670436493	49.46	Worldwide Financial	
4679164838	50.00	American Heart Association	
4679164844	\$45,732.04	Macomb Community Bank	
4679167390	10.00	Phyllis Odonnell	
4679166596	2.14	Mayka Yang	
4679167411	10.00	Unknown	Copy Unreadable
4679166496	1.29	Charlotte Gawkosski Irrevocable Trust dtd 3/24/98	
4679169028	12.08	Christopher Level or Carrie Level	
4679171507	10.00	Keven D Corbeil	
4679171523	10.00	Rakesh K Khullar	
4679170411	797.50	Philip Greco Title Company	
4679170063	15.00	State of Michigan	
4679171751	250.00	Dimitrios Bastoumis or Ourania Bastoumis	
4679170522	1,268.31	Option One Payment Processing	
4679170484	500.00	Sarah E Sutherland	
4679172531	3,400.00	Public Schools of the city of Ann Arbor	
4679171598	1.00	Joyce W Tarby	
4679171860	28.29	Michael F Poppe or Nancy L Poppe	
4679171970	18.80	James Davis	



# First State Bank of East Detroit

Cashier's Checks to be Escheated 2009

Prepared by: Internal Audit

<u>Check Number</u>	<u>Amount</u>	<u>Payee</u>
4679172051	10.15	Scott Springer
4679171350	100.00	Unknown
4670439177	47.32	Elias Gutierrez
4670440090	2.00	Lighthouse Title Co.
4670440270	55.00	<b>First State Bank Mortgage Company</b>
4670440551	24.82	Marion Clark
4670440787	4.28	Washington Mutual Bank
4670441096	375.00	Home Protection One
4670440896	38.37	Thomas R Taylor
4670441243	78.00	Metropolitan Title Co.
4670441575	17.00	Leelanau County Register of Deeds
4670441969	14.83	Village of Empire
4679153552	31.04	Darryl E Thomas
4679153725	101.82	Vincenzo Mortillaro
4679154122	875.79	Michael Kenneson or Dena Kenneson
4679154067	59.36	Melinda A Harden
4679157988	2,850.00	Unknown
4679154077	467.97	James Ciarmitaro or Sheila Ciarmitaro
4679155018	14.00	Roscommon County Register of Deeds
4679155344	55.00	<b>First State Bank Mortgage Company</b>
4679155662	190.00	Gaetano Consiglio or Graziella Consiglio
4679155621	15.92	Thomas Elizabeth Lozon
	69,726.47	

Copy Unreadable

## **EXHIBIT 4**

**ROB BONTA**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555  
Telephone: (916) 210-7344  
Facsimile: (916) 323-7095  
E-Mail: Michael.Sapoznikow@doj.ca.gov

August 29, 2023

Nathaniel A.G. Zelinsky  
Katherine Wellington  
HOGAN LOVELLS US LLP  
555 Thirteenth Street N.W.  
Washington, D.C. 20004

RE: Arkansas et al. v. Delaware  
Supreme Court of the United States, Case Nos. 220145 and 220146

Dear Nathaniel:

This letter continues the meet and confer efforts that include my August 17, 2023 letter to you and your August 21, 2023 response. The Defendant States (including Pennsylvania) agree with your proposal that all discovery response deadlines will be extended by an additional 30 days, from September 4 to October 4, 2023, and the Defendant States will request jointly with Delaware that the close of discovery be extended by 30 days from January 31, 2024 to March 1, 2024.

Your August 21, 2023 letter requested additional details regarding the Defendant States' objections to Delaware's requests for production. You suggested that the Defendant States respond individually to each request, but we do not believe that preparing 30 sets of 68 discovery responses (i.e., 2040 responses) is the most efficient way to provide additional information so we can have a productive discussion about the Defendant States' objections. Instead, below, we have organized Delaware's requests into groups and provided, at a high level, some of our objections relating to the groups. This letter is intended to promote discussion, and does not constitute formal discovery responses or a waiver of any objections which the Defendant States may later assert.

During our meet and confer conversation, please be prepared to explain what issue each group of RFPs is directed toward, and how the documents Delaware seeks from the Defendant States would advance that issue. As a reminder, my August 17, 2023 letter identified four potential issues: (1) how the funds in the S.D.N.Y. escrow account should be distributed; (2) the value of unclaimed MoneyGram Official Checks purchased in States other than Delaware that MoneyGram paid to Delaware before the establishment of the escrow account; (3) how much Delaware should be ordered to pay to each of the Defendant States, and (4) whether there is a legal basis for the Defendant States to pursue funds relating to MoneyGram Official Checks that

MoneyGram paid to Delaware before establishment of the escrow account (which the Defendant States contend is a pure legal issue that requires no discovery). Your August 21, 2023 letter identifies the following potential additional issues: (5) the Defendant States' prior history of applying interest and penalties to private parties, (6) delay-based legal defenses such as statute of limitations, laches, and waiver, and (7) the Defendant States' practices regarding cashier's checks. We do not agree that topics 5, 6, and 7 are appropriate issues for discovery in this case, but the purpose of this letter is to further explain why Delaware's requests are objectionable even if those topics were relevant and seek additional information on Delaware's position as to why it presumably believes these requests represent good faith and narrowly tailored efforts to obtain relevant information in the damages phase of this litigation.

**Group 1: Communications relating to MoneyGram**

*Request Numbers:* 1, 2, and 3

*Example:*

Request No. 2: All DOCUMENTS and COMMUNICATIONS internal to STATE UNCLAIMED PROPERTY AGENCIES concerning MONEYGRAM from January 1, 2000 through the present.

*Documents responsive to this group of requests include:* All emails that reference MoneyGram in any capacity at any state unclaimed property agency for the last 23 years. Internal communications regarding MoneyGram products that are not at issue in this case, such as retail money orders, electronic bill pay services, gift certificates, and share drafts.

*Basis for objections:* These requests do not relate to any legitimate damages phase issue. In addition, these requests are extraordinarily and unnecessarily broad. The burden on the Defendant States in reviewing 23 years of emails is enormous. Because the requests are not limited to communications regarding Official Checks—the only instruments at issue in this litigation, *see* Dkt. No. 43, ¶ 5(b) (denying Delaware's request to expand scope of case to include additional instruments because doing so “might expand enormously the scope of the case”)—that burden is not justified by any potential relevance to the case.

Moreover, this group of requests is largely duplicative of Delaware's liability phase discovery requests issued in the merits phase of this case in October 2017, but those requests were much more narrowly tailored than the current RFPs (e.g., they defined a narrower relevant time period). And even those requests were significantly narrowed in scope following an informal conference with the Special Master. *See* Dkt. No. 59. The Defendant States, under the terms of this prior agreement with Delaware, already undertook a massive effort to produce all “[c]ommunications between the state agencies responsible for collecting unclaimed property and MoneyGram regarding Official Checks or money orders over the past ten years.” *See id.* Delaware now seeks to circumvent that prior agreement by issuing requests that are exponentially broader in scope, purportedly in service of defenses Delaware has never raised in this case.

If Delaware would like the Defendant States to refresh their productions to cover the period following the date of the Defendant States' last production in this case, then Delaware should ask for an updated production pursuant to Rule 26(e). But there is no justification for this massive expansion in the scope of the communications relating to MoneyGram that Delaware seeks. The Defendant States seek an explanation as to why Delaware believes these requests are made in good faith and believe that the search for and production of any additional responses would not be unduly expensive or burdensome. *See* Fed. R. Civ. P. 26(c).

**Group 2: Escheatment claims relating to MoneyGram**

*Request Numbers:* 4 and 5

*Example:*

Request No. 4: All DOCUMENTS and COMMUNICATIONS concerning any CLAIM or inquiry by anyone regarding a CLAIM to or the disposition of any MONEYGRAM INSTRUMENT from January 1, 2000 through May 26, 2016.

*Documents responsive to this group of requests include:* Claims relating to MoneyGram products that are not at issue in this case, such as retail money orders, electronic bill pay services, gift certificates, and share drafts, and all emails or communications relating to such claims.

*Basis for objections:* It is not clear what legitimate damages phase issue these requests relate to. These requests are also unnecessarily broad and burdensome because they are not focused on Official Checks, and that burden is not justified by any potential relevance to the case.

**Group 3: Communications with MoneyGram client banks**

*Request Numbers:* 6, 7, 8, and 9

*Example:*

Request No. 6: All COMMUNICATIONS between STATE UNCLAIMED PROPERTY AGENCIES and any MONEYGRAM CLIENT BANK from January 1, 2000 through the present.

*Documents responsive to this group of requests include:* Every email, letter, and unclaimed property report exchanged in the last 23 years between any state unclaimed property agency and any bank whose name appears in any spreadsheet produced by MoneyGram in this action, no matter what the topic.

*Basis for objections:* It is not clear what legitimate damages phase issue these requests relate to. For the same reasons explained above, these requests are also unnecessarily broad and burdensome because they are not focused on Official Checks, and that burden is not justified by any potential relevance to the case. These requests are even more unreasonable in that they are not even limited to communications related to MoneyGram at all, let alone the specific type of MoneyGram instruments at issue in the case.

**Group 4: Defendant states' practices and procedures**

*Request Numbers:* 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 63, 64, 65, 66, 67

*Examples:*

Request No. 10: All DOCUMENTS and COMMUNICATIONS concerning YOUR policies, practices, outlines, and procedures for training auditors, and conducting any audits, reviews, or similar evaluations that encompass the reporting and collection of abandoned or unclaimed property in YOUR state from January 1, 2000 through the present.

Request No. 18: All DOCUMENTS and COMMUNICATIONS reflecting any policies or practices of assessing penalties or waiving penalties against non-compliant or latereporting holders under each DEFENDANT STATE's unclaimed property laws.

Request No. 29: All DOCUMENTS and COMMUNICATIONS concerning any decision to forgo or not pursue an enforcement action with respect to a non-compliant or latereporting holder under each DEFENDANT STATE's unclaimed property laws.

Request No. 30: DOCUMENTS sufficient to show the calculation of the total amount of property not reported by any non-compliant or late-reporting holder because of a decision to forgo or not pursue an enforcement action for each year from 2000 until the present.

Request No. 42: DOCUMENTS sufficient to show the calculation of the total amount of unclaimed property, for each calendar year from 1965 until the present, transferred from any state to any of the DEFENDANT STATES or by any of the DEFENDANT STATES to any state based on a determination that the unclaimed property had been escheated to one state under the SECONDARY RULE but another state had a higher priority under the PRIMARY RULE, and for which property owner addresses were unknown at the time the property was reported under the SECONDARY RULE.

Request No. 58: DOCUMENTS sufficient to show the total amount of unclaimed property collected by each DEFENDANT for each year from January 1, 2000 through the present.

*Documents responsive to this group of requests include:* Internal email discussions regarding the proper procedure for audits relating to property that bears no relation to MoneyGram Official Checks—e.g., every email exchange between a more junior member and a more senior member of state unclaimed property agency staff regarding how to conduct audits and reviews. Extensive reports of quantitative data regarding whether and when states charged penalties and interest. Privileged internal communications relating to discretionary decisions like whether to pursue

enforcement actions. Documents such as audit manuals that were already produced in discovery under the terms of the parties' prior agreement limiting the scope of discovery. Dkt. 59.

*Basis for objections:* Delaware seeks a massive production of internal documents and quantitative data relating to the Defendant States' escheatment policies and procedures. Some basic information about how the Defendant States typically assess penalties and interest may be relevant, but the Defendant States already produced documents responsive to this more appropriately tailored inquiry during the merits phase of this case, and Delaware's new requests far exceed any reasonable bounds. For example, the Defendant States issued in their damages discovery requests a single, reasonable document request relating to practices and procedures: "Request for Production 14: All guides, handbooks, or manuals dated January 1, 2000, or later that relate to the reporting or escheatment of unclaimed property to Delaware, including each version of the Delaware Holder Handbook or Delaware Escheat Handbook that was made available to the public after that date." There is no justification for the massive scope and breadth of Delaware's requests for information relating to policies and procedures.

Delaware's August 21, 2023 letter attempts to justify Request No. 12 using improper arguments. Delaware contends "[i]f Defendants have taken contradictory positions regarding other unclaimed property [i.e., instruments other than Official Checks], that...is relevant to Delaware's equitable defenses," and Delaware specifically alleges that Ohio may have directed JP Morgan and U.S. Bank to report cashier's checks improperly. But any such allegations are entirely beyond the scope of this action. The Supreme Court expressly held that cashier's checks were not at issue in this case, *Delaware v. Pennsylvania*, 598 U.S. 115, 137 n.13 (2023), and thus Ohio's instructions to any holder of unclaimed cashier's checks does not relate to any relevant issue.

Indeed, these requests cannot be reasonably characterized as anything other than a broad fishing expedition seeking to find evidence of any allegedly incorrect practices by other states, involving types of unclaimed property that are not at issue here, in an attempt to distract from the fact that the Supreme Court unanimously determined that Delaware has incorrectly directed MoneyGram to remit unclaimed Official Checks for more than a decade in violation of federal law. But that attempt is contrary to the federal rules governing discovery, which must be focused on the claims and defenses at issue in this case. Delaware should be prepared to explain why it believes the Defendant States are not entitled to a protective order to prevent the "annoyance, embarrassment, oppression, or undue burden or expense" of having to respond to such requests. Fed. R. Civ. P. 26(c).

### **Group 5: Audits of MoneyGram**

*Request Numbers:* 13 and 14

*Examples:*

Request No. 14: All DOCUMENTS and COMMUNICATIONS concerning any audits, reviews, or similar evaluations, including

any reports of findings, conducted by YOUR state of MONEYGRAM from 2000 through May 26, 2016.

*Documents responsive to this group of requests include:* All internal state emails regarding any audit or investigation of MoneyGram of any kind, including proceedings that bear no relation to unclaimed property or MoneyGram Official Checks. The requests are not limited to state unclaimed property agencies—for example, Request No. 13 references “any state money transmission regulator.”

*Basis for objections:* It is not clear what legitimate damages phase issue these requests relate to. In particular, MoneyGram’s money transfer practices are not at issue in this case. These requests are unnecessarily broad and burdensome because they are not focused on unclaimed property or Official Checks, and that burden is not justified by any potential relevance to the case. Last, but not least, the Defendant States already produced communications with MoneyGram “regarding Official Checks or money orders over the past ten years,” and “[a]ny memos, instructions, or policies regarding how state agencies responsible for collecting unclaimed property should apply the terms ‘money orders,’ ‘other similar written instruments,’ or ‘third party bank checks’ in the context of the Federal Disposition Act when asked by holders for advice on where to report unclaimed property.” Dkt. No. 59. These previously produced documents represent all the conceivably relevant documents to which Delaware is entitled to seek discovery of in this case.

#### **Group 6: Other instruments used to transfer money**

*Request Numbers:* 15, 34, 35, 36, 37, 38

*Examples:*

Request No. 15: All DOCUMENTS and COMMUNICATIONS concerning any audits, reviews, or similar evaluations, including any reports of findings, conducted by any state agency which involved the reporting and collection of abandoned or unclaimed property by any company that issues, issued, sells, or sold remittance instruments from January 1, 2000 through the present. For purposes of this paragraph, a “remittance instrument” includes but is not limited to an official check, teller’s check, agent check, traveler’s check, cashier’s check, registered check, certified check, treasurer’s check, prepaid draft, money order, bank draft, bank check, or agent money order. For purposes of this paragraph, companies that issue, issued, sells, or sold remittance instruments from January 1, 2000 through the present include, but are not limited to, First Data Corporation, Integrated Payment Services, American Express, PNC Bank, JP Morgan Chase & Co., U.S. Bank, Wells Fargo, and their respective corporate parents, subsidiaries or affiliates.

Request No. 38: DOCUMENTS sufficient to show the calculation of the total amount of (i) cashier’s checks, and (ii) teller’s checks reported annually to each DEFENDANT STATE by each respective financial institution incorporated in that State and each



federally-chartered institution with a home office in that State, from 2000 to the present.

*Documents responsive to this group of requests include:* These shockingly overbroad requests encompass all documents regarding *any* audit or investigation that involved unclaimed instruments used to transfer money. For example, any documents relating to audit of a regional bank's unclaimed property reporting from the early 2000s that does not involve any instrument similar to MoneyGram's Official Checks would be covered by this request.

*Basis for objections:* It is not clear what legitimate damages phase issue these requests relate to. This case relates solely to Official Checks. Other instruments used to transfer funds like cashier's checks are not at issue. *Delaware v. Pennsylvania*, 598 U.S. 115, 137–38 & n.13. Nor are instruments issued by any entity other than MoneyGram relevant in the *damages phase* of this case. To the extent the Defendant States' treatment of other, arguably similar instruments were ever relevant to this case, they were at issue in the merits phase of this case. Accordingly, the Defendant States' produced communications regarding arguably similar instruments under the terms of the parties' prior discovery regarding the appropriate scope of discovery. *See* Dkt. No. 59. Now that the Supreme Court has held that Delaware's practices with respect to unclaimed MoneyGram Official Checks violated federal law, the only question before the Court is to what extent is Delaware liable for its illegal practices. These requests do not bear on that question at all, and they are not even reasonably tailored to obtain the evidence that Delaware's prior correspondence asserts is relevant to Delaware's defenses.

### **Group 7: Defendants' knowledge regarding MoneyGram's practices**

*Request Numbers:* 16, 59

*Example:*

Request No. 16: DOCUMENTS sufficient to show when each DEFENDANT STATE became aware of MONEYGRAM's practices regarding the escheatment of unclaimed Official Checks.

*Documents responsive to this group of requests include:* Communications already produced in discovery during the merits phase of this case under a previous agreement with Delaware.

*Basis for objections:* It is not clear what legitimate damages phase issue these requests relate to. Delay-based defenses have been forfeited and waived, as discussed in the August 15, 2023 letter.

Further, under the terms of the parties' discovery agreement as articulated in Delaware's January 31, 2018 letter, the Defendant States already produced all communications in their possession relating to MoneyGram's Official Checks dating back ten years. Dkt. No. 59. Delaware has received all the documents responsive to that request. Delaware's current position appears to reflect an attempt to re-trade that agreement reached more than five years ago.

This issue also exemplifies the prejudice the Defendant States will suffer if Delaware is permitted to untimely amend its pleadings to assert previously waived and forfeited defenses. If Delaware believed communications going even further back in time were relevant, it should have

demanded those documents during the merits phase of the case. Delaware's position would not require the Defendant States to spend significant resources going back and duplicating prior searches and discovery efforts. Delaware's sudden change in position is unreasonable at best, and represents bad faith efforts to delay the resolution of this case at worst.

**Group 8: The Federal Disposition Act**

*Request Numbers: 32, 33*

*Example:*

Request No. 33: All DOCUMENTS and COMMUNICATIONS concerning the status under the Federal Disposition Act of any official check, teller's check, agent check, traveler's check, cashier's check, registered check, certified check, treasurer's check, draft, money order, agent money order, gift certificate, or any other instrument or property of any kind regardless of the seller, issuer, or debtor of such instrument or property from 2000 to the present.

*Documents responsive to this group of requests include:* Communications already produced in discovery during the merits phase of this case under a previous agreement with Delaware.

*Basis for objections:* It is not clear what legitimate damages phase issue these requests relate to. The liability phase is complete and the Federal Disposition Act has been definitively interpreted by the Supreme Court. Further, as explained repeatedly above, this request is largely duplicative what the Defendant States agreed to produce under the agreement reached by the parties in January 2018, and Delaware has already received responsive documents. Dkt. No. 59.

**Group 9: Delaware's escheatment practices**

*Request Numbers: 59*

*Example:*

Request No. 59: All DOCUMENTS and COMMUNICATIONS regarding Delaware's escheatment of unclaimed property from January 1, 2000 through the present.

*Basis for objections:* It is not clear what legitimate damages phase issue these requests relate to. Delay-based defenses have been forfeited and waived, as discussed in the August 15, 2023 letter. Further, any documents responsive to this request are also in Delaware's possession and equally available to Delaware on that basis.

**Group 10: This litigation and potential future lawsuits**

*Request Numbers: 60, 62, 63*

*Example:*

Request No. 60: All DOCUMENTS and COMMUNICATIONS regarding any DEFENDANT STATE's decision to participate in this lawsuit.

Request No. 62: All other non-privileged DOCUMENTS and COMMUNICATIONS regarding this lawsuit.

Request No. 68: All DOCUMENTS and COMMUNICATIONS regarding any lawsuits, including any future lawsuits or potential lawsuits, in which a holder reported property to one state and another state asserted, or might assert, a higher claim to the property under any legal theory.

*Documents responsive to this group of requests include:* Scheduling emails, Outlook calendar items, drafts, and status updates relating to this litigation. All internal state emails regarding possible litigation involving unclaimed property held by another state, even if that potential litigation does not involve MoneyGram or Delaware.

*Basis for objections:* It is not clear what legitimate damages phase issue these requests relate to. At this stage in the proceedings, any state's decision to participate is not relevant. Delaware's requests for all documents relating to this litigation or possible future litigation are unfocused and not directed to any relevant issue. Delaware has yet to articulate a good faith basis why documents responsive to this request are relevant to the extent of its liability under the Supreme Court's ruling on the merits.

### **Group 11: Efforts to reunite unclaimed Official Checks with their owners**

*Request Numbers:* 61

*Example:*

Request No. 61: All DOCUMENTS and COMMUNICATIONS regarding any DEFENDANT STATE's ability, future efforts, or plans to reunite the unclaimed MONEYGRAM INSTRUMENTS at issue in this case with owners, including any efforts to conduct outreach to owners.

*Documents responsive to this group of requests include:* Publicly available procedures, processes, and unclaimed property laws relating to the assertion of claims to unclaimed property.

*Basis for objections:* It is not clear what legitimate damages phase issue these requests relate to. The merits of the procedures various states have adopted for reunited property owners with their unclaimed property is not relevant to the issue remaining in this case, which is the extent to which Delaware must return unclaimed Official Checks it escheated in violation of federal law. Delaware has no continuing interest in the MoneyGram Official Checks that were improperly reported to Delaware, and the efforts the Defendant States may or may not take to reunite unclaimed Official Checks with their proper owners are therefore no concern of Delaware's.

Further, documents relevant to this issue have already been produced, *see, e.g.*, STATES0000064 (describing initial notices sent by the California State Controller's Office to

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owners listed on unclaimed property reports), or are publicly and equally available to Delaware. See California State Controller's Office, "Search for Unclaimed Property," available at [https://www.sco.ca.gov/search\\_upd.html](https://www.sco.ca.gov/search_upd.html); California State Controller's Office, "Unclaimed Property Law and Regulations," available at [https://www.sco.ca.gov/Files-UPD/guide\\_upd\\_updlaw.pdf](https://www.sco.ca.gov/Files-UPD/guide_upd_updlaw.pdf).

We look forward to discussing these topics with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Sapoznikow".

MICHAEL SAPOZNIKOW  
Deputy Attorney General

For ROB BONTA  
Attorney General

## **EXHIBIT 5**



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September 5, 2023

**By Electronic Mail**

Michael Sapoznikow  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550

Re: *Delaware v. Arkansas*, Nos. 22O145 & 22O146 (U.S.)

Dear Mr. Sapoznikow,

Delaware has prepared this letter in response to Defendants' August 29, 2023 letter. Delaware would like to resolve this discovery dispute in good faith and narrow the issues, if any, that the parties present to the Special Master. Defendants' apparent refusal to produce any discovery—and indeed Defendants' refusal to even respond to Delaware's RFPs—is unreasonable. Defendants are seeking over \$150 million in damages from Delaware, in addition to extraordinary amounts of state law penalties and interest. Defendants' claims go back almost 20 years. Delaware is entitled to meaningful discovery to defend against such claims, and that discovery will necessarily involve records from each Defendant and stretch back into the past.<sup>1</sup> Indeed, Defendants' insistence at the May 4, 2023, status conference that the legal and factual arguments in this case are intermixed demonstrates why fact discovery is necessary. Defendants' claim that discovery is unduly burdensome because it involves 30 Defendant States simply reflects that *30 States are suing Delaware*; it is not a valid basis for refusing to produce any discovery at all from any State—let alone for refusing to respond to Delaware's RFPs. Nor can Defendants refuse to produce discovery based on their *de minimis*

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<sup>1</sup> For the avoidance of doubt, and without waiving or forfeiting any arguments, Delaware intends to raise at least the following arguments for precluding or limiting damages, penalties, interest, or other claims by Defendants: (1) Defendants lack a cause of action; (2) Defendants lack authority to escheat under state law, and thus under the FDA, where state statutes of limitations have run or where other state law barriers prevent escheat (such as acquiescence, laches, etc.); (3) a statute or statutes of limitations apply to the FDA and bar or limit Defendants' claims; (4) Defendants are barred by constitutional principles including federalism, comity, and sovereign immunity from pursuing Delaware for damages; (5) state statutes of limitations and other state law principles (such as acquiescence, laches, etc.) bar or limit Defendants' claims; (6) Defendants acquiesced to Delaware's escheat, and so cannot recover damages; (7) Defendants' claims are barred by laches; (8) Defendants' request for damages is barred by general equitable principles; (9) Defendants are unable to recover damages because their hands are unclean; and (10) the Supreme Court's decision in this matter, or any remedy based on that decision, should not apply retrospectively. Delaware notes that these arguments are either purely legal or depend on a core nucleus of operative facts, chiefly Defendants' actual, constructive, or inquiry knowledge and Defendants' escheatment practices. Delaware does not concede whether specific arguments are affirmative defenses. Finally, as Defendants know, Delaware intends to prove that MoneyGram's principal place of business is in Minnesota, or at a minimum was in Minnesota for the time period at issue here.

production during the liability phase. Defendants fought vigorously to avoid producing discovery, and Delaware's counsel's review indicates Defendants ultimately provided *128 documents*. That is far from the meaningful discovery this important litigation deserves.

In this letter, Delaware states its position on issues raised by Defendants, while seeking to understand Defendants' position. In particular, Delaware requests that Defendants explain, in detail, what documents they intend to produce in response to Delaware's discovery requests. Delaware's requests are reasonable in light of its defenses and arguments for limiting damages, the exorbitant sum sought by Defendants, and Defendants' demands for funds going back almost 20 years. Delaware does not believe it is unduly burdensome for each Defendant State to speak with the appropriate state officials, coordinate with the State's sophisticated unclaimed property vendors (which maintain many of the State's files, such as information regarding property reported to the State by holders and the State's audits of holders), review State records and communications relevant to Delaware's defenses and arguments for limiting damages, and produce documents. Delaware is willing to work with Defendants on specific custodians and search terms and to otherwise facilitate discovery in this matter. Delaware would prefer to resolve any technical questions related to discovery between the parties, without resort to the Special Master.

This letter is intended to facilitate the parties' meet-and-confer and does not waive or forfeit any arguments, nor does it supersede or replace Delaware's requests for production, which Defendants have yet to answer. Based on Defendants' August 29 letter and Delaware's requests for production, Delaware has identified the following 10 topics for the meet-and-confer. Delaware is happy to discuss any other topics that Defendants would like to discuss and would prefer to narrow or resolve any discovery disputes prior to holding a conference with the Special Master.

#### 1. MoneyGram

Discovery involving MoneyGram is plainly relevant to Delaware's defenses, and Defendants do not have any reasonable objection to this discovery. This information is critical to several of Delaware's defenses and arguments for limiting damages, including statute of limitations, laches, acquiescence, and other equitable defenses. Delaware seeks to show that each Defendant possessed actual or constructive knowledge about MoneyGram's practices for years, sat on their hands, and cannot now seek an unjust windfall from Delaware.

Communications with and documents regarding MoneyGram are extremely likely to yield pertinent information about Defendants' actual or constructive knowledge. MoneyGram reincorporated in Delaware in 2005, and MoneyGram changed some of its reporting practices for Official Checks at that time. Delaware has reasonably requested discovery involving MoneyGram going back to 2000 so that it can demonstrate what Defendants knew before and after MoneyGram's reincorporation. **Indeed, Defendants appear to acknowledge that discovery involving MoneyGram is relevant to this phase of the litigation. Defendants' discovery requests ask for MoneyGram's holder reports, internal documents regarding MoneyGram, external communications regarding MoneyGram, and audits involving MoneyGram, without any apparent limitation in time.**

Delaware has requested discovery about MoneyGram more broadly, rather than MoneyGram "Official Checks," for three reasons. First, Defendants' general knowledge about MoneyGram, MoneyGram's business and practices, and the products it was escheating to each Defendant will inform when that Defendant had actual knowledge or was on inquiry notice that MoneyGram was not escheating all of its products under the FDA. Thus, if a Defendant's unclaimed property office

contacted MoneyGram about MoneyGram's reporting of money orders or other products, that information would show that the Defendant could have and should have also asked MoneyGram about its other instruments. Similarly, if a Defendant's money transmission regulator audited MoneyGram, as multiple states did circa 2011 and even earlier, that audit and the documents surrounding it will demonstrate that the Defendant had actual or constructive knowledge of MoneyGram's escheat practices. Indeed, in the circa-2011 multistate audit, Defendant States definitively learned about MoneyGram's escheat practices for Official Checks in particular (and discovery may show they learned about MoneyGram's practices even earlier). Further discovery is critical to determining not only which Defendants participated in that audit, but also whether similar audits were conducted prior to and after that point. Indeed, it appears California's Department of Financial Institutions audited MoneyGram's escheat practices in or around 2009 and then *again* at a later date—yet California has produced no material regarding either audit, or any other audit California conducted of MoneyGram. Because these materials may not expressly mention "Official Checks," these materials may only be found if States search for "MoneyGram."

Second, it is very likely Defendants' employees and other actors frequently used the word "MoneyGram," and not some other term such as "Official Checks," when discussing the escheatment of MoneyGram Official Checks. Delaware thus believes it is appropriate to produce discovery that uses the word "MoneyGram" to capture documents related to MoneyGram Official Checks, rather than searching solely for terms like "Official Check," which is a term of art used in this litigation but may not have been used by unclaimed property offices or other state officials.

Third, for similar reasons, Defendants' internal documents referencing "MoneyGram" will lead to relevant information, even if a document does not directly reference "Official Checks." For example, if a Defendant's unclaimed property office communicated with the state money transmitter regulator about an audit, that communication—which may only reference MoneyGram generally—will reveal the existence of the audit and provide information about Defendant's knowledge of MoneyGram's practices.

Delaware's request is not unduly burdensome. It will require Defendants to identify custodians in the relevant state office(s) that handle unclaimed property and regulate money transmitters, coordinate with the State's unclaimed property vendors who maintain some of the State's files, collect paper and electronic files, and then run search terms related to MoneyGram, including the word "MoneyGram." This is standard discovery practice that every federal litigant must undertake. Indeed, it is Delaware's understanding that Defendants and their unclaimed property vendors routinely maintain data regarding the property that specific holders have reported to the State, as well as records concerning prior audits. Delaware is happy to discuss specific search terms and custodians with Defendants. Delaware acknowledges that this search would need to be run for each State, but that is a function of the fact that 30 States are suing Delaware for hundreds of millions of dollars. Like any other plaintiff in a federal civil case seeking exorbitant sums, each State is required to participate in meaningful discovery, which means it must collect data, run searches, and produce documents.

### ***Questions to Facilitate Discussion***

- **Are Defendants willing to produce any discovery regarding MoneyGram? If so, what are Defendants willing to search for and produce?**
- **What is Defendants' position with respect to the relevant time period for discovery?**



- **Are Defendants willing to produce communications with and documents regarding MoneyGram from Defendants' unclaimed property offices?**
  - **Is Ohio willing to produce documents from Ohio regarding its 2006 correspondence with MoneyGram, available at MG0002616-2619, in which Ohio indicated it knew about MoneyGram's escheat of Official Checks to Delaware?**
  - **Is Michigan willing to produce documents from Michigan regarding its 2011 correspondence with MoneyGram, available at States0002642, in which Michigan indicated it knew about MoneyGram's escheat of Official Checks to Delaware?**
  - **Are Defendants willing to search for and produce other similar correspondence with and documents regarding MoneyGram?**
- **Are Defendants willing to produce communications with and documents regarding MoneyGram from Defendants' money transmitter regulators?**
  - **Are Defendants willing to produce documents regarding the multi-state review circa 2011 of MoneyGram's money transfer licenses referenced at MG-004245, in the course of which review multiple States expressly indicated their knowledge of MoneyGram's escheatment practices?**
  - **Is California willing to produce documents regarding California's *multiple* audits of MoneyGram by the Department of Financial Institutions, referenced at MG0002379?**
  - **Are Defendants willing to search for and produce other similar correspondence and documents?**
- **Are Defendants willing to produce documents regarding Defendants' audits of MoneyGram?**
  - **Are Defendants willing to identify other regulators with a responsibility to regulate MoneyGram?**
  - **Are Defendants willing to determine whether those other regulators audited MoneyGram, and if so, produce documents regarding those audits?**

## **2. Banks That Sold MoneyGram Official Checks.**

Defendants' communications with and documents regarding banks that sold MoneyGram Official Checks will lead to relevant information regarding what Defendants knew or ought to have known regarding MoneyGram's reporting practices. For example, formal and informal audits of these banks will reveal that Defendants learned about MoneyGram's escheat practices, but acquiesced to MoneyGram reporting Official Checks to Delaware. Additionally, to the extent MoneyGram modified its escheat practices upon reincorporation in 2005, holder reports from banks, as well as Defendant's electronic records showing the amounts of unclaimed property reported to each State by those banks, may show a drop-off in reported MoneyGram Official Checks between the period before 2006 and the period after 2006, a fact that is highly relevant to Defendants' actual or constructive knowledge of

MoneyGram's escheatment practices.<sup>2</sup> See Delaware Supreme Court Appendix p. 598 (reproducing MoneyGram document indicating that, after reincorporation, MoneyGram began escheating Teller's Checks to its State of incorporation).

The limited discovery in the liability phase suggests this discovery will be relevant and fruitful. Ohio contacted MoneyGram in 2006 because Ohio learned of MoneyGram's practices during an audit of a client bank. See MG0002618. Correspondence in 2012 between California and a bank that sold MoneyGram Official Checks shows that California confronted MoneyGram's practice of reporting Official Checks to Delaware in the course of an informal inquiry of the client bank in 2012, if not earlier. See States0002650-2652. Yet more correspondence between California and a different bank in 2013 shows that California *again* confronted the same issue in a formal audit. See States0002644-2649. In that correspondence, California acknowledged MoneyGram's practices and *agreed that MoneyGram should escheat funds according to the common law*. See States0002646. (As noted above, California also audited MoneyGram in 2009, and potentially even earlier.) Similar correspondence between Michigan and a bank shows that Michigan learned of MoneyGram's practices as early as 2009, if not earlier, in the course of an informal inquiry of that bank. See States0002684.

Defendants should be able to readily determine based on electronic records which banks in their State sold MoneyGram Official Checks. Indeed, most of the States contract with sophisticated unclaimed property vendors that can easily search to determine whether a given MoneyGram client bank ever filed a report with a State, and can readily produce spreadsheets or similar datafiles detailing the unclaimed property each of those banks reported to each State. Defendants should also have copies of and should be able to produce all respective holder files, audits, and holders' reports for all banks that sold MoneyGram Official Checks, as well as records of informal inquiries. Much of that information, such as the records of audits, may also be maintained by the State's vendors, which can readily produce electronic or physical files.

Defendants can also search for correspondence and internal documents regarding banks that sold MoneyGram Official Checks—which again, Defendants can readily identify—using targeted search terms of specific custodians. For example, the spreadsheets MoneyGram produced identify 11 banks with addresses in the State of Arkansas. Arkansas can search its records for each bank's name and produce relevant communications referencing those banks. For California, Pennsylvania, and Texas, the top 15 banks with addresses associated in each respective State account for between 80%-90% of the instruments to which those States claim an entitlement. It would again be reasonable for those States to search for relevant communications referencing those 15 banks at a minimum, as well as relevant communications referencing the names of any bank where the State's records indicate that the State audited the bank.<sup>3</sup> Delaware is happy to discuss specific search terms and custodians.

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<sup>2</sup> To be clear, it appears MoneyGram escheated at least some Official Checks to Minnesota, its then state of incorporation, prior to reincorporation in Delaware. Thus, even before 2006, Defendants may have had actual or constructive knowledge of MoneyGram's escheat of those Official Checks. See Delaware Supreme Court Appendix p. 601 (reproducing MoneyGram document indicating that, prior to incorporation, MoneyGram escheated Agent Checks to its State of incorporation).

<sup>3</sup> Delaware neither concedes that the addresses in MoneyGram's spreadsheets reflect the place purchase of an instrument, nor concedes that the addresses necessarily reflect the sum total of MoneyGram client banks that filed holder reports with a given State.

### ***Questions to Facilitate Discussion***

- **Are Defendants willing to produce any discovery regarding banks that sold MoneyGram Official Checks?**
  - **If so, what documents are Defendants willing to search for and produce, including in cooperation with third party audit firms?**
  - **It is Delaware's understanding that some Defendants' unclaimed property offices may lack authority to conduct audits of banks, and instead must work with another regulator such as a banking commissioner to conduct audits. Additionally, just as state money transmitter regulators audited MoneyGram's escheat practices, banking regulators may audit compliance with state unclaimed property laws. Are Defendants willing to identify potential custodians outside of unclaimed property offices who possess relevant records?**
  - **Are Defendants willing to produce holder reports for banks that sold MoneyGram Official Checks, and data files in unclaimed property databases showing the unclaimed property banks escheated to the State and the information associated with that property?**
  - **Are Defendants willing to identify which banks Defendants audited that sold MoneyGram Official Checks?**
  - **Are Defendants willing to search their unclaimed property databases for NAUPA files that are typically labeled "audit" or "examination" or "exam" in some manner and show the reporting of property by a holder at the conclusion of an audit?**
  - **Are Defendants willing to produce the audits of and documents regarding audits of those banks that sold MoneyGram Official Checks?**
  - **If a Defendant or its third party audit firm did not maintain records of audits, is that Defendant willing to search records that reveal of the existence of prior audits, such as invoices or periodic status or "work-in-progress" reports with third-party audit firms?**
  - **Are Defendants willing to produce communications and documents from unclaimed property offices and other relevant regulators regarding banks that sold MoneyGram Official Checks?**
  - **Is California willing to produce documents from California related to States0002650-2652 and States0002644-2649, which are 2012 and 2013 communications with client banks regarding MoneyGram's escheat practices?**
  - **Is Michigan willing to produce documents from Michigan related to States0002684, which is a 2009 communication with client banks regarding MoneyGram's escheat practices?**
- 3. Defendants' Audit Policies and Practices.**

Defendants' audit policies and practices related to unclaimed property for the time periods relevant to this lawsuit can show Defendants' actual or constructive knowledge of MoneyGram's

practices. For example, where a Defendant audited a bank that sold MoneyGram Official Checks, the fact of the audit coupled with the State's practices would show that Defendants gained actual or constructive knowledge of MoneyGram's practice of escheating Official Checks to Delaware. Training materials, manuals, and procedures regarding how to conduct audits will demonstrate the kind of inquiry the auditors conducted, or at a minimum should have conducted. Similarly, such materials may demonstrate what each State viewed as sufficiently suspicious to warrant an audit—including a decrease in a bank's reporting of unclaimed property. Coupled with information showing that a bank's reporting changed, this information will demonstrate that Defendants knew or should have known about any change in MoneyGram's escheat practices that occurred in 2006. Alternatively, this information may demonstrate that certain Defendants simply do not audit holders in any meaningful way. It would be deeply inequitable for the Supreme Court to award Defendants millions of dollars reported in good faith to Delaware when those Defendants did not conduct a reasonable inquiry into the escheatment practices of holders—particularly when Delaware has been a leader among States in promoting holder compliance in ways that benefit many Defendants States. **Defendants have sought information regarding Delaware's policies dating back to 2000, acknowledging that this kind of information is relevant and proportional to the needs of this case.**

Contrary to the assertion in Defendants' August 29 letter, Defendants have not produced this kind of internal policy and process material in the prior phase of the litigation. Instead, Defendants' prior production largely consisted of a minimal amount of *external* instructions provided to holders. See *infra* Topic No. 10. These are different sets of information. Defendants should be able to readily collect and produce this information based on discussions with unclaimed property officials and money transmitter regulators in each State (given that those regulators appear to take an active role in auditing financial institutions' practices regarding the escheat of unclaimed property). For instance, Defendants should be able to readily produce internal training materials, manuals, and procedures. Defendants should also be able to provide information regarding their engagement of private audit firms to investigate holders, and the nature of those private firms' efforts. And Defendants should be able to provide records identifying prior audits during the relevant time period, either conducted by private firms or the state itself. Again, as noted above, it is Delaware's understanding that states—and their unclaimed property vendors—typically maintain lists of prior audits and data or files related to those audits. Delaware again stands ready to discuss potential methods of identifying this information.

#### ***Questions to Facilitate Discussion***

- **Are Defendants willing to produce discovery regarding Defendants' audit policies and practices, including audit outlines and training manuals, and communications regarding the same from Defendants' respective unclaimed property offices?**
- **Are Defendants willing to produce discovery regarding Defendants' audit policies and practices involving unclaimed property, including audit outlines and training manuals, and communications regarding the same from State money transmitter regulators?**
- **Are Defendants willing to produce discovery regarding Defendants' audit policies and practices involving unclaimed property, including audit outlines and training manuals, and communications regarding the same from other regulators in Defendant States that audit compliance with that State's unclaimed property laws?**

- **Are Defendants willing to produce information listing audits conducted by unclaimed property offices and relevant regulators from 2000 to the present?**
- **Are Defendants willing to produce information regarding their retention of third party firms to conduct audits on the State’s behalf, and the nature of those firms’ audits?**

**4. Audits of MoneyGram’s Competitors IPS and PNC.**

How Defendants handled the escheatment of products sold by MoneyGram’s competitors is relevant to Delaware’s defenses. **For example, as Defendants’ own complaint makes clear, before filing this lawsuit, Defendants knew that other “entities—including Integrated Payment Systems, Inc., and PNC Bank N.A.—also issue[d] official checks,” and “report[ed] and remit[ted] sums payable on unclaimed and abandoned official checks to the State of purchase.”** Defs.’ Complaint ¶ 33. It is Delaware’s understanding that Integrated Payment Systems (“IPS”) provided similar services for client banks. Documents related to Integrated Payment Systems may show that Defendants knew or should have known that, unlike Integrated Payment Systems, MoneyGram was reporting its official checks under the common law secondary rule. (As reflected in Delaware’s RFPs, IPS’s related corporations include “First Data” and “American Express.” Responsive files may exist under those entities’ names.) The same is true regarding documents involving other MoneyGram competitors. Defendants should be able to readily produce this information.

***Questions to Facilitate Discussion***

- **Are Defendants willing to produce discovery regarding audits of MoneyGram’s competitors, including IPS and PNC?**
- **Are Defendants willing to produce documents and communications regarding MoneyGram’s competitors, including IPS and PNC?**
- **If so, what documents are Defendants willing to search for and produce?**

**5. Audits Of Banks Selling Remittance Instruments.**

Audits of banks selling remittance instruments are highly relevant to Delaware’s defenses and arguments for limiting damages. These audits may demonstrate that individual Defendant States knew that banks in their states were escheating official checks or other remittance instruments in accordance with the common law, rather than the FDA. This will show that Defendants were on notice of, and acquiesced to, holders escheating remittance instruments under the common law.

This information can be readily identified and produced. Defendants’ unclaimed property vendors can generate lists of holders reporting remittance instruments to each State and can use programs to cross-reference that material with lists of Defendants’ prior audits. Defendants and their vendors should have lists, paper files, or electronic files related to these audits. Indeed, audit information is more likely to have been maintained over the period relevant to this litigation than other kinds of files, making this a particularly important area for discovery. It is feasible and not unduly burdensome for Defendants to work with their vendors, and locate and produce documents related to these audits, including the results of the audits and internal communication regarding the audits. Delaware is happy to discuss specific questions related to audit materials, including custodians and search terms.

### ***Questions to Facilitate Discussion***

- **Are Defendants willing to produce discovery regarding audits of banks selling remittance instruments?**
- **If so, what documents are Defendants willing to search for and produce?**
- **Are Defendants willing to produce discovery regarding audits of and communications with JP Morgan and US Bank, which for years now have been the subject of lawsuits alleging that the FDA applies to their remittance instruments?**
- **It is Delaware's understanding that some Defendants' unclaimed property offices may lack authority to conduct audits of banks, and instead must work with another regulator, such as a banking commissioner, to conduct audits. Additionally, just as state money transmitter regulators audited MoneyGram's escheat practices, banking regulators may audit compliance with state unclaimed property laws. Are Defendants willing to identify potential custodians outside of unclaimed property offices who possess relevant records and produce those records?**

#### **6. Defendants' Waiver of Damages, Penalties, and Interest Assessed Against Holders.**

Defendants seek to impose state-law damages, penalties, and interest on Delaware, a sovereign state. The FDA does not provide a cause of action for damages—let alone a cause of action that permits another State to impose *its own state laws* on a sister sovereign. States are sovereigns of equal dignity, and one State cannot reach over its borders and impose its laws on another. But Defendants' claims are even more constitutionally suspect for an additional reason: Many of them rarely, if ever, impose these very same penalties on non-complaint private holders. To be clear, Delaware does not believe it is even analogous to a private holder. But it violates bedrock principles of comity for Defendants to treat Delaware's public *fisc* with less solicitude than Defendants treat a private company.

By seeking unprecedented damages and state-law penalties from a sister sovereign, Defendants put their own practices at the center of this controversy. Delaware deserves and is entitled to know if and when Defendants impose or waive damages, penalties, and interest against private parties. Delaware stands ready to discuss the best way to search for these documents, including appropriate search terms and custodians.

- **Are Defendants willing to produce discovery regarding their frequent formal and informal waiver of damages, penalties, and interest against private holders?**
- **If so, what documents are Defendants willing to search for and produce?**
- **Are Defendants willing to produce settlement agreements in which they have waived damages, penalties, and interest against private holders, and non-privileged documents concerning such settlement agreements?**
- **Are Defendants willing to search and produce datafiles from their unclaimed property database reflecting property transmitted to Defendants as the result of an audit, which records show whether or not penalties and interest were assessed against the holder?**

## **7. Movement of Funds Between States (Or Lack Thereof).**

Defendants' case for damages is built on a fiction that States often redistribute unclaimed funds amongst themselves. That is misleading: The funds that move between States are typically extremely limited. For example, States may enter into a reciprocal agreement under which, if a holder reports property to one State intentionally or in error, that State will subsequently forward property to the appropriate States. But the first State simply acts as a conduit. That kind of reciprocal claim pales in comparison to the massive redistribution that Defendants seek, in which one State accepted property in good faith for years, its sister States acquiesced to the practice for years, and now those States seek a windfall payment. And States certainly do not pay *penalties and interest* on funds that move between States.

Delaware accordingly requests documents showing when funds moved between States. In particular Delaware seeks documents related to Defendants' reciprocal claims process and documents related to any other movements of funds related to unclaimed property between States. Defendants' vendors should have records regarding the payment of such reciprocal claims. Defendants can then search for and produce communications related to those records, as well as search for terms such as "reciprocal claim" or "exchange program." Delaware's request for documents dating to 1965 was intended to request all records in Defendants' possession dating back to *Texas v. New Jersey*, 379 U.S. 674 (1965), to the extent they exist and are reasonably available. It is Delaware's understanding that Defendants' unclaimed property databases often contain records regarding property reported well before 2000. Delaware is happy to discuss custodians and search terms, as well as how far back Defendants' records extend.

### ***Questions to Facilitate Discussion***

- **Are Defendants willing to produce documents regarding the movement of funds related to unclaimed property between States?**
- **If so, what documents are Defendants willing to search for and produce?**
- **What time period do Defendants think is reasonable for this request?**

## **8. Retention of Unclaimed Property.**

Defendants claim that Delaware is improperly retaining unclaimed property where the relevant address—here, the place of purchase—lists an address in another State. It is Delaware's belief and understanding that Defendants are likewise retaining unclaimed property where the relevant address—in particular, the customer's last known address—lists another State. It is also Delaware's belief and understanding that Defendants are similarly retaining unclaimed property for which there is *no* relevant address, and the holder is not incorporated in the State and may in fact be incorporated in Delaware. This is relevant to Delaware's equitable defenses, and in particular Delaware's argument that it is unfair to require Delaware to pay over \$150 million to Defendant States that are also retaining property where the associated address record or similar data field lists another State, or indicates that the property lacks an address and that the State is not the holder's State of incorporation.

It is straightforward for Defendants or their vendors to search their unclaimed property databases for property that shows an address in another State and produce that data to Defendants. It is likewise straightforward for Defendants or their vendors to search their unclaimed property databases for owner unaddressed property, and filter out those holders incorporated in the State. Indeed, it is Delaware's

understanding that the vendors likely already have tools built to facilitate this exact search, and employ programmers who readily create scripts for this type of searching. This is all highly relevant and readily accessible information that is directly relevant to Delaware's fairness defenses. Delaware is happy to discuss the best way to produce this information.

### ***Questions to Facilitate Discussion***

- **Are Defendants willing to produce documents or data files regarding Defendants' retention of unclaimed property where the relevant address field or similar record field lists another State, or where there is no relevant address and the holder is not incorporated in the State?**
- **If so, what documents or data files are Defendants willing to search for and produce?**
- 9. **Defendants' Understanding of and Guidance On The FDA.**

Defendants' internal understanding of the FDA and guidance to holders is highly relevant to Delaware's defenses, including Delaware's defense that it is unfair to require Delaware to pay over \$150 million based on a good-faith understanding of the FDA that individual Defendant States may have shared. **Indeed, Defendants have asked Delaware to produce information regarding its guidance to holders regarding the FDA.** Delaware has reason to believe that specific states, such as Ohio, may have taken contradictory positions on the interpretation of the FDA during the course of this lawsuit, given ongoing litigation over the FDA in Ohio. Delaware believes it is highly likely that non-privileged records from Ohio's unclaimed property office will show that Ohio knowingly adopted two contradictory positions regarding the FDA in the course of this litigation. Delaware has a good faith belief that similar records exist in the other States.

It is similarly important that the Supreme Court understand the States' current interpretation of the scope of the FDA. The Supreme Court will need to determine whether to infer a cause of action into the statute, to infer a corresponding statute of limitations, and to permit other limitations on retroactive damages. If Defendants are currently taking the position that the FDA applies—retroactively—to large swaths of instruments aside from the Official Checks at issue in this case, it is imperative that the Court has this information when it considers whether to permit damages, upset longstanding reliance interests, and invite a parade of future lawsuits. Delaware is also concerned that Defendants have reached internal agreements to target Delaware in the future, and potentially to forgo actions against one another (in particular, against Ohio for its retention of JP Morgan and US Bank's instruments). Delaware will argue that federalism principles prevent the intentional targeting of a sister state, and counsel against the Court permitting damages in this action.

Delaware is happy to discuss custodians and search terms.

- **Are Defendants willing to produce documents regarding their guidance on, understanding of, and approach to the FDA?**
- **If so, what documents are Defendants willing to search for and produce?**
- **Are Defendants willing to produce documents from Ohio regarding their position on the FDA, including their communications with JP Morgan and US Bank?**



- **Are Defendants willing to produce any non-privileged documents reflecting an agreement or understanding between States regarding the FDA?**

**10. Defendants' Prior Discovery.**

Defendants take the position that the prior discovery in this case is sufficient. The prior discovery in this case, however, was directed at the proper interpretation of the FDA. The discovery relevant at this stage of the case is different, and it includes questions such as Defendants' actual and constructive knowledge of MoneyGram's practices. Discovery has not been conducted on Delaware's arguments for limiting damages, which were not litigated in the first phase of discovery. Delaware is entitled to conduct discovery on its defenses and arguments for limiting damages.

Defendants' characterization of the prior discovery as representing "a massive effort" is implausible on its face. Defendants did everything they could to withhold discovery in the liability phase. Thus, on January 24, 2018, Defendants told the Special Master that "discovery in the liability phase" was of "limited scope," and that any discovery would be "of minimal probative value at best" in interpreting the FDA. Dkt. 58 at 2. Pennsylvania likewise argued that discovery should be "rather discrete" because the "Disposition Act means what it means as a matter of law." Dkt. 57 at 2. Indeed, Defendants argued that the Special Master should bifurcate the proceedings because in their words, the liability phase involved a pure "question of law" which "may be decided through dispositive motions following a limited and expedited period of discovery." Dkt. 33 at 1.

As a result of Defendants' narrow view on permissible discovery, it appears from Delaware's counsel's files that all 30 Defendants provided a grand total of 128 documents.<sup>4</sup> This *de minimis* production amounted to about four documents per State; was not focused on Defendants' actual or constructive knowledge; did not involve obvious repositories of information (such as money transmitter regulators, who conducted an audit of MoneyGram circa 2011); and was extremely limited in both time and scope. The suggestion that, at Delaware's request, Defendants would have willingly produced additional information in 2018 regarding their knowledge, audit practices, and policies that was not relevant to that stage of the litigation is as facially implausible as it sounds.

Nor can Defendants litigate Delaware's right to engage in discovery. As explained in Delaware's prior letter, Defendants vigorously advocated that the parties must conduct discovery before litigating Delaware's defenses, Defendants conceded in the liability phase that Delaware could raise arguments for limiting damages, and basic principles of civil procedure permit Delaware to raise these arguments now.

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<sup>4</sup> In addition to these 128 documents, States provided lists of holders who reported certain instruments by NAUPA code. This latter production underscores how Defendants and their unclaimed property vendors can readily search the States' unclaimed property databases.

Sincerely,

/s/ Katherine B. Wellington

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Enclosures:

MG0002379  
MG0002616-2619  
MG-004244-4245  
States0002642-2643  
States0002644-2649  
States0002650-2652  
States0002683-2686

*Apparent Statutory Violation of California Code of Civil Procedure Section 1520(a): Escheatment of Unclaimed Property*

The State of California's Unclaimed Property Law (Code of Civil Procedure, Section 1500 et seq.) requires organizations to review their records annually to determine if they are holding any funds, securities, or other property that has been unclaimed for the required dormancy period.

During the previous examination California examiners noted that MoneyGram escheated the unclaimed money transmission funds to the California State Controller using the seven-year dormancy period. The California Department of Financial Institutions contended at the time that money transmission funds were to be escheated to the State of California if unclaimed in three years. Subsequently, MPSI sought a ruling from the California State Controller to clarify the proper dormancy period for escheatable money transfers. On December 18, 2009, the California State Controller provided a legal opinion affirming that retail money transfers that are completed by the payment of cash to the recipient do not constitute money orders within the meaning of Section 1511. Consequently, such transfers are escheatable pursuant to Section 1520(a) upon the three-year dormancy period.

Contrary to the California State Controller's opinion, current tests of dormant instrument reporting revealed that MPSI continues to use the 7-year dormancy period for unclaimed money transmission funds and remains in violation of CCC 1520(a) for the second consecutive year.

Also, it was noted during the current examination that MPSI escheats unclaimed official checks after five years to the state of incorporation, i.e. Delaware, even though the official checks were purchased in the State of California. California Department of Financial Institutions contends that official checks that were purchased in the State of California, and that have been outstanding for more than three years should be escheated to the State of California pursuant to CCC 1513(a)(4). Accordingly, MPSI is advised to seek guidance from the California State Controller's Office in order to determine both the proper reporting state and the dormancy period for escheating outstanding, California-issued official checks.

MPSI Unclaimed Property Reporting Procedures were created on September 28, 2006 and revised on June 22, 2010. The procedures do not include any state-specific information regarding the dormancy periods or deadlines for remittance of escheatable property. To ensure proper escheatment procedures are followed by MPSI personnel, it is recommended that the licensee develop, and submit to the Board of Directors for approval, a California-specific set of policies for the escheatment of unclaimed property. The policy should also include procedures for notification of property owners pursuant to California Unclaimed Property Law.



Joseph F. Henderson  
State Regulatory and Government Affairs Counsel  
Email: [jhenderson@moneygram.com](mailto:jhenderson@moneygram.com)

Fax 952-591-3859  
Direct 952-591-3852



August 24, 2006

Ms. Kim Cole  
Legal Counsel  
Ohio Department of Commerce  
Division of Unclaimed Funds  
77 South High St., 20<sup>th</sup> Floor  
Columbus, OH 43215-6108

Dear Ms. Cole:

Thank you for your letter of August 3, 2006 concerning unclaimed property. We have carefully reviewed your letter and consulted with our outside counsel who is a national leading authority on unclaimed property. He advised us specifically with respect to your letter and, in turn, MoneyGram International respectfully disagrees with your conclusions for the following reasons.

First, it is clear beyond any doubt that P. L. 93-495 does not "overrule" *Texas v. New Jersey*, 85 S.Ct. 626 (1965). P.L. 93-495 was a lengthy, omnibus banking bill, dealing with several aspects of the federal banking and credit laws, and for the most part its provisions were completely irrelevant to the subject of unclaimed property and the states' jurisdictional claims to such property. Neither the Senate nor the House committee reports on the bill contain any commentary regarding the Supreme Court's decision in *Texas v. New Jersey*. During forty years subsequent to that decision, and continuing through the present, it has been universally recognized that *Texas v. New Jersey* continues as the seminal case on jurisdiction over unclaimed property.

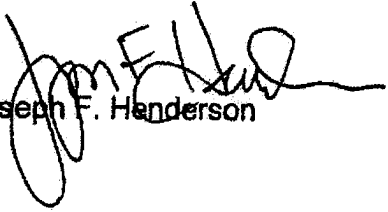
What you have cited as an "overruling" statute was merely the enactment of a narrow exception. Tacked onto the end of P.L. 93-495 was a brief section titled "Disposition of Abandoned Money Orders and Travelers Checks," codified later as 12 U.S.C. sections 2501-2503. It was in only those three sections that there appeared any language concerning unclaimed property. And that language is not as expansive as your letter seems to represent. Section 2501-2503 did indeed, as you note, reverse the result in *Pennsylvania v. New York*.<sup>1</sup> In stating

<sup>1</sup> Pennsylvania and several other states had sued New York, which was escheating all uncashed Western Union money orders, wanting a share of those escheated funds. When they lost in the Supreme Court, the

the breadth of the exception, however, you refer to it as applying to all "money orders, travelers checks, and similar written instruments." That is not a complete quotation of what the section provides. What section 2503 actually states is that a sum payable on "a money order, traveler's check or other similar instrument (*other than a third party bank check*)" (*emphasis added*) may be escheated to the state where the instrument was purchased. Teller's checks and agent's checks are third party bank checks and therefore are not within the scope of the exception. Those instruments continue to be reportable, in the absence of an owner's address, only to the state of the holder's domicile. MoneyGram, being a party liable on the instruments under its agreement with the bank, is of course a "holder" of such instruments and is obligated to report them to the state of its domicile, Delaware.

If, after due consideration, you do not agree with this conclusion, I trust you will so advise us.

Best regards,

  
Joseph F. Henderson

---

plaintiff states went to their congressional representatives who carved out an exception for money orders and travelers checks.



# Ohio Department of Commerce

Division of Unclaimed Funds  
77 South High Street • 20<sup>th</sup> Floor  
Columbus, OH 43215-6108  
(614) 466-4433 FAX (614) 995-7535  
www.com.state.oh.us

Bob Taft  
Governor

Doug White  
Director



August 3, 2006

Recd TECI Legal Dept

AUG 07 2006

Joe Henderson  
State Regulatory and  
Government Affairs Counsel  
MoneyGram International  
1550 Utica Avenue, South  
St. Louis Park, Minnesota 55416

Dear Mr. Henderson:

Materials issued by MoneyGram International to a financial institution, regarding unclaimed funds, have been referred to me. The items, located during an audit, specifically reveal that MoneyGram has instructed financial institutions that as they have been reincorporated in Delaware, that unclaimed teller and agent checks will now be reported to Delaware.

It is acknowledged that the U.S. Supreme Court, in the case of Texas v. New Jersey 85 S.Ct. 626 (1965), held that intangible unclaimed funds are to be reported to the state of the creditor's last known address as seen on the books of the debtor, and if there is no record of the creditor's address, then to the state of the debtor's corporate domicile. Subsequently, in a case involving money orders, the court in Pennsylvania v. New York 92 S.Ct. 2075 (1972), held that unclaimed money orders are reportable to the state of the creditor's address, whether the creditor is a payee of an unpaid draft, the sender of a money order entitled to a refund, or an individual whose claim has been erroneously underpaid. If the records show no address for the creditor, then the funds are reportable to the state of the debtor's domicile.

However, the U.S. Congress, in P.L. 93-495, which became effective October 28, 1974, demonstrated its intent to overrule the Texas v. New Jersey and Pennsylvania v. New York cases, by establishing a 'place of sale' test. Congress made this test applicable to all sums payable on money orders, traveler's checks, and similar written instruments, and provided that the 'state of purchase' of these types of properties would be entitled to claim the unclaimed properties. The test was held to apply to properties deemed abandoned on or after February 1, 1965, the date of the Texas v. New Jersey decision. It is noted that the 8<sup>th</sup> Circuit Court of Appeals, in the case of Travelers Express Co., Inc. v. Minnesota, 664 F2d 691 (1981), in which the applicability of P.L. 93-495 was challenged, found that Minnesota's unclaimed property law's 'omnibus' or 'catch-all' provisions applied to the properties provided for in P.L. 93-495.

There appears to be no constitutional impediment to P.L. 93-495, as the Court in Texas v. New Jersey specifically stated that the issue was "not controlled by statutory or constitutional provisions or by past decisions." Further, the Court held that, "Since the States separately are without constitutional power to provide a rule to settle this interstate controversy and since there is no applicable federal statute, it becomes our responsibility in the exercise of our original jurisdiction to adopt a rule which will settle the question of which State will be allowed to escheat this intangible property." As the Court attempted to look to federal statute on the issue, thereby acknowledging that federal statute is appropriate to determine this matter, the subsequent P.L. 93-495 is controlling.

FINANCIAL INSTITUTIONS	INDUSTRIAL COMPLIANCE	LABOR & WORKER SAFETY	LIQUOR CONTROL
REAL ESTATE & PROFESSIONAL LICENSING	SECURITIES	STATE FIRE MARSHAL	UNCLAIMED FUNDS

"An Equal Opportunity Employer and Service Provider"

Lastly, it is noted that Ohio's Unclaimed Property Law, Chapter 169 of the Ohio Revised Code, specifically provides for the property in question in R.C. 169.02(F), which also states, "If there is no address of record for the owner or other person entitled to the funds, such address is presume to be the address where the instrument was certified or issued." Ohio also has an omnibus provision in R.C. 169.02(P). A holder may rely on the 'place of sale' for reporting purposes, and the holder is not required, nor it is relevant, to determine if the 'owner' transferred his interest to another in a different state than the place of sale.

Therefore, MoneyGram International is to report its unclaimed teller and agent checks to the state of the place of sale, and not to its state of incorporation. Of course, the place of sale may or may not be, Ohio. Further, the Division respectfully requests that MoneyGram inform the financial institutions and other entities to which it supplies unclaimed funds reporting information, that unclaimed teller and agent checks are to be reported to the state of place of sale, as provided for in Ohio and federal law, and please refrain from informing them that teller and agents checks are to be reported to the state of incorporation. It is noted that MoneyGram's 'table' does state that money orders are to be reported to the 'state in which the money order was originally issued.'

If you have any questions, you may contact me at 614-466-1385.

Sincerely,



Kim Cole  
Legal Counsel

Cc: James Dowley, Compliance Supervisor, Unclaimed Funds  
Michael Roark, Division of Financial Institutions

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**CONFIDENTIAL TREATMENT  
REQUESTED**

April 20, 2011

**Via Electronic Mail & Federal Express**

Mr. Mark Udinski  
Delaware State Escheator  
Bureau of Unclaimed Property, Division of Revenue  
820 North French Street, 8<sup>th</sup> Floor  
Wilmington, Delaware 19801

**RE: Request for Guidance Regarding Conflicting Escheat Claims**

Dear Mr. Udinski:

This firm represents a company (the "Holder") that reports and remits unclaimed property to the several states pursuant to those states' unclaimed property/escheat/abandoned property laws. Recently, a few states have informed Holder that certain property historically escheated to Delaware should instead be escheated to those other states. The purpose of this letter is to seek your guidance and confirmation as to whether the subject property is properly escheatable to Delaware.<sup>1</sup>

**A Description of the Holder and the Property at Issue**

The Holder is a Delaware incorporated company that is involved in payment processing, electronic commerce, and prepaid services. The Holder is not a national bank or state-chartered financial institution, though some of its products require it to be licensed under state money transmitter licensing statutes. Among other businesses, the Holder issues payment instruments that are sold by (but not drawn on) client financial institutions so as to allow those clients to outsource their traditional cashier's check/teller's check functions.

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<sup>1</sup> Since the identity of the Holder would not seem relevant to the inquiry, as well as the fact that the Holder is understandably reluctant to get involved in what may amount to a conflict among multiple states (all of which exercise some regulatory and administrative authority over the Holder), we are presenting this inquiry on a "no names" basis. Should you determine that disclosure of the Holder's identity is necessary, please contact me.

NEW JERSEY  
CONNECTICUT

NEW YORK  
MASSACHUSETTS

PENNSYLVANIA  
COLORADO



# MC ELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

Page 2

While the features of these check-like items vary depending upon the needs of the client, all such items have the same relevant characteristics:

- All of the items are issued by the Holder (which is not a financial institution);
- All such items are drawn on the Holder's bank account (which is, in most cases, not maintained at the client financial institution);
- The Holder does not have payee address information for these items; and
- The payee of the item is generally not the same as the purchaser.

## Holder's Current Unclaimed Property Practice

The Holder currently escheats these items to the State of Delaware using the NAUPA property type code CK15 "Other Outstanding Official Checks." Such items are escheated to Delaware because it is the Holder's understanding that, pursuant to *Texas v. New Jersey*, unclaimed property for which the Holder lacks last-known address information is generally escheatable to the Holder's state of incorporation (here, Delaware).


## Instructions From Other States

In connection with a recent multi-state review of the Holder's money transfer licenses multiple states indicated that these items should not be escheated to Delaware in its capacity as the Holder's state of incorporation. Instead, these states contend that such items are escheatable to the state of purchase as in accordance with applicable state law. As support for that position these states have relied upon their own statutory provisions that are similar, but not identical, to Section 4(d) of the 1981 Uniform Unclaimed Property Act.

In light of this conflict between the Holder's practice of escheating such items to Delaware, and instructions to the contrary from other states, we respectfully request written guidance from the State Escheator's office as to whether such items are properly escheatable to Delaware.

Very truly yours,

MC ELROY, DEUTSCH, MULVANEY & CARPENTER, LLP



Michael Rato



STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

RICK SNYDER  
GOVERNOR

NICK A. KHOURI  
STATE TREASURER

March 15, 2011

MONEYGRAM PAYMENT SYSTEMS INC  
ATTN: KATE PETRICK  
1550 UTICA AVE SOUTH  
MINNEAPOLIS, MN 55416-

Reportable Property Missing

Dear Ms. Petrick,

Under Michigan's Uniform Unclaimed Property Act, holders of unclaimed property are required to report, and remit to the State Treasurer, property belonging to owners who cannot be located or for whom there is no known address. **The purpose of this letter is to request a response from your office regarding information supplied to the Michigan Unclaimed Property Division by First State Bank of East Detroit.**

This office has been made aware of cashier's checks and official checks, sold by First State Bank of East Detroit, that have not been presented for payment. According to the General Counsel with First State Bank, the escheatment period for these uncashed checks is over and they are due to be reported to the State of Michigan. It was further explained that First State Bank requested MoneyGram return the value of the outstanding checks in order for First State to file their annual unclaimed property report. MoneyGram has, allegedly, refused First State Bank's request. A copy of the letter received by Michigan's Unclaimed Property Division has been attached for your review.

Upon reviewing all past reports submitted to the State of Michigan by MoneyGram Payment Systems, it was discovered that none of the checks listed as escheatable by First State Bank of East Detroit have been turned over to the Unclaimed Property Division. We are thereby requesting a response regarding the status of the outstanding cashier's checks and official checks purchased by customers of First State Bank of East Detroit.

**Respond Within 90 Days to Avoid Penalty**

Review your records to determine if you are holding this unclaimed property. If you file a past-due report and remit unclaimed property within **90 days** of the date on this Notice, we will waive penalty on the unclaimed property reported and remitted, although the property may still have interest assessed for late filing. If you are not in possession of the property in question, a letter of explanation will suffice.

The mailing address to direct your report and/or correspondence is:

Unclaimed Property Division

PO Box 30756

Lansing, MI 48909

**When responding, please be sure to enclose a copy of this letter. It facilitates the documentation of the company's compliance with the Unclaimed Property Act.**

If you have any questions, please contact **Laura Herrin** in the Unclaimed Property Division at **517-636-5314**.

Sincerely,

Gonzalo Llano, Administrator

Unclaimed Property Division



JOHN CHIANG  
California State Controller

May 28, 2013

Daniel B. Burbott  
Moore Brewer Wolfe Jones Tyler & North  
4180 La Jolla Village Dr. Ste. 540  
La Jolla, California 92037

Re: *Disputed Unclaimed Property Law Audit Issues-Redwood Credit Union*

Dear Mr. Burbott:

This letter serves as the State Controller's reply to your request for a written response to the memorandum you provided on behalf of Redwood Credit Union (RCU) entitled, "Disputed Unclaimed Property Law Audit Issues." Your memorandum set forth RCU's positions regarding the escheat of automatic renewing share certificate accounts, teller's checks, and Uniform Transfers to Minors Act (UTMA) accounts. The State Controller's position regarding escheat of these types of properties is explained in more detail below.

**Share Certificate Accounts with Automatic Renewal**

According to your memorandum, RCU provides its members a share certificate account that features an automatic rollover upon maturity to another share certificate. As I understand it, RCU takes the position that such accounts do not escheat as long as they are subject to automatic renewal. Your position relies on the conclusion that such accounts do not mature, though by your own admission, automatic rollover only occurs "upon maturity." We disagree with your application of the Unclaimed Property Law in this instance.

It is our long-standing position that automatic renewal provisions do not prevent the running of the three-year escheat period provided for in Code of Civil Procedure section 1513.

In relevant part, Code of Civil Procedure section 1513 provides:

- (a) Subject to Sections 1510 and 1511, the following property held or owing by a business association escheats to this state:

\* \* \*

(2) (A) Except as provided in paragraph (6), any demand, savings, or matured time deposit . . . or other interest in a financial organization or any deposit made therewith . . . when the owner, for more than three years, has not done any of the following:

- (i) Increased or decreased the amount of the funds or deposit, cashed an interest check, or presented an appropriate record for the crediting of interest or dividends.
- (ii) Corresponded electronically or in writing with the financial organization concerning the funds or deposit.
- (iii) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization.

Thus, when a deposit is made for a specified term, the deposit would escheat three years from the expiration of the term even if the deposit was subject to an automatic renewal provision. The deposit would be “matured” within the meaning of Section 1513, upon expiration of the original term, and would escheat three years following maturity if none of the required contacts occurred within that period.

You incorrectly conclude that, because automatic renewal provides for the funds to rollover to another share certificate at maturity, the dormancy period will never expire unless the accountholder stops further renewals. If this interpretation were correct, such automatic rollover provisions would be tantamount to the establishment of an impermissible private escheat law. The Unclaimed Property Law, “as a law established for a public reason, cannot be contravened by a private agreement . . . .”<sup>1</sup> Any such private escheat provision would frustrate the operation of the Unclaimed Property Law, and therefore, cannot prevail over public law.<sup>2</sup>

Furthermore, one of the purposes of the Unclaimed Property Law is to give California, rather than the holders, the beneficial use of unclaimed property.<sup>3</sup> If the automatic rollover provision could be used to avoid escheat, California would lose the beneficial use of the property. Consequently, under your interpretation, automatic rollover provisions would be unlawful under California Civil Code section 1667 as “contrary to

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<sup>1</sup> *Screen Actors Guild, Inc. v. Cory*, (1979) 91 Cal.App.3d 111, 115.

<sup>2</sup> *Id.*

<sup>3</sup> *Douglas Aircraft Co. v. Cranston*, (1962) 58 Cal.2d 462, 463.

the policy of expressed law, though not expressly prohibited” as it applies to the Unclaimed Property Law. As a result, an automatic renewal or rollover provision cannot be used to prevent escheat.

### **Teller’s Checks**

According to your memorandum, RCU takes the position that MoneyGram Payment Systems, Inc. (MoneyGram) is the holder of unclaimed teller’s checks purchased from RCU. Based on our understanding of the facts, we concur with this conclusion.

It is our understanding that RCU entered into an agreement with MoneyGram for the purpose of issuing teller’s checks. Pursuant to the agreement, teller’s checks are drawn by RCU and MoneyGram on MoneyGram’s bank, the Bank of New York Mellon. RCU is listed as the drawer, MoneyGram is listed as the issuer, and Bank of New York Mellon is listed as the drawee on the face of the teller’s checks. When a teller’s check is purchased, issued, or used at RCU, RCU transfers the face amount of the check to MoneyGram the next business day. RCU does not transmit, nor does MoneyGram request, any information regarding the payees’ names or addresses. As a result of this practice, MoneyGram’s records do not contain any information regarding the payees of outstanding checks. Consequently, unclaimed checks that may otherwise escheat to the State of California have been remitted to the State of Delaware.

Based on this factual situation, the State Controller’s Office believes that MoneyGram is the holder of funds related to outstanding teller’s checks, and as such, MoneyGram is responsible for reporting the unclaimed funds to the appropriate states.

Although MoneyGram is responsible for reporting escheated teller’s checks, RCU should have provided MoneyGram with the names and addresses of the payees where available in order to fully comply with California Unclaimed Property Law.

Pursuant to Code of Civil Procedure section 1530(b)(1), a holder is required to report “the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of at least fifty dollars (\$50) escheated under [the Unclaimed Property Law].” Thus, a holder is required to report the owner’s name and last known address if the holder has such information. The necessary implication of this reporting requirement is that the holder must collect and retain the owner’s name and address where possible.<sup>4</sup> While the statute leaves room for the possibility that a holder may not always have such information, the statute does not

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<sup>4</sup> *Rushing v. Powell*, (1976) 61 Cal. App.3d 597, 604; see also *State v. Chubb Corp.*, (1989) 239 N.J. Super. 257, 259.

allow for a holder to remain willfully blind of such information. In the instant case, RCU does not provide, and MoneyGram does not collect, the names and addresses of the payees even though many of the names and addresses of the payees are apparently found in the records of the RCU. This practice does not appear to comply with the requirements of Section 1530.

That RCU and MoneyGram are required to exchange payee information is evidenced by their contractual agreement. The parties to a contract are presumed to know all applicable laws in existence when the agreement is made, and such laws are made a part of the contract as if they were expressly referred to and incorporated.<sup>5</sup> In this case, the contract between RCU and MoneyGram requires MoneyGram to be responsible for unclaimed property related to the teller's checks. Therefore, both parties to the contract are presumed to know the unclaimed property reporting requirements, and both parties are obligated to ensure that MoneyGram has the information necessary to meet its unclaimed property reporting requirements. Accordingly, MoneyGram should have requested the names and addresses of the payees, and RCU should have furnished such information.

### **Uniform Transfers to Minors Act Accounts**

Your memorandum set forth RCU's position that Uniform Transfers to Minors Act (UTMA) accounts deposited with RCU escheat pursuant to Code of Civil Procedure section 1518. The State Controller's Office disagrees with this RCU's interpretation because, as explained below, UTMA accounts deposited with RCU escheat pursuant to Code of Civil Procedure section 1513.

The Uniform Transfers to Minors Act (Probate Code section 3900 et seq.) establishes procedures for transferring property to a custodian for the benefit of a minor. Pursuant to Probate Code section 3909(a)(2), an UTMA account is established when a transferor transfers funds to a financial institution to the credit of an account in the name of the transferor, an adult other than the transferor, or a trust company followed by the words: "as custodian for (name of minor) under the California Uniform Transfers to Minors Act." Once the transfer is made, the custodian named on the account holds the funds, and is obligated to manage the funds for the benefit of the minor pursuant to Probate Code section 3912. In other words, the custodian named on the account holds the funds in a fiduciary capacity for the benefit of the minor.

Whether property escheats pursuant to Code of Civil Procedure section 1513 or section 1518 is determined by the relationship between the holder and the owner. Property will

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<sup>5</sup> *Torrance v. Workers' Comp. Appeals Bd.*, (1982) 32 Cal.3d 371, 378.

escheat pursuant to Section 1513 if the holder is a financial organization holding a deposit account belonging to the owner. The relevant portion of Section 1513(a)(2) is set forth above. Property will escheat pursuant to Section 1518 when the holder is holding property in a fiduciary capacity for the benefit of the owner. In relevant part, Section 1518 states:

[A]ll intangible personal property, including intangible personal property maintained in a deposit or account, and the income or increment on such tangible or intangible property, held in a fiduciary capacity for the benefit of another person escheats to this state if for more than three years after it becomes payable or distributable, the owner has not done any of the following:

- (A) Increased or decreased the principal.
- (B) Accepted payment of principal or income.
- (C) Corresponded in writing concerning the property.
- (D) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file with the fiduciary.

Your memorandum asserts that UTMA accounts deposited with RCU escheat pursuant to Section 1518 because you believe that RCU holds the funds in a fiduciary capacity. This position is incorrect because the credit union is not holding UTMA account funds in a fiduciary capacity for the benefit of the minor. The fiduciary duty imposed by Probate Code section 3912 applies only to the custodian of the funds, and not to the financial institution in which the funds are deposited. In fact, the provisions of UTMA allow the custodian to withdraw UTMA account funds from the credit union, and reinvest those funds elsewhere at any time.<sup>6</sup> Thus, the credit union has no greater control, and owes no greater duty, for UTMA accounts than on regular savings accounts on deposit. Therefore, UTMA account funds on deposit with RCU must be treated like any other dormant account held by a financial organization. Consequently, UTMA accounts escheat pursuant to Section 1513.

To be clear, a financial organization may escheat funds pursuant to Section 1518, but only if the financial organization is holding funds in a fiduciary capacity for the benefit of the owner. This situation would occur for UTMA accounts if the financial organization itself was named as the custodian. For example, an account established in the name of “Redwood Credit Union as custodian for (name of minor)” would likely escheat pursuant to Section 1518. When the custodian is any person other than the financial organization, the funds on deposit with the financial organization will escheat pursuant to Section

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<sup>6</sup> A custodian shall hold, manage, invest and reinvest custodial property pursuant to Probate Code § 3912(a)(3).



Daniel B. Burbott  
Moore Brewer Wolfe Jones Tyler & North  
5/28/2013  
Page 6

1513. As I understand it, RCU is not the custodian of the UTMA accounts on deposit. Therefore, the UTMA accounts held by RCU do not escheat under Section 1518.

Very truly yours,

DAVID I BROWNFIELD  
Staff Counsel



Clinton R. Rockwell  
Partner

BuckleySandler LLP  
100 Wilshire Boulevard, Suite 1000  
Santa Monica, CA 90401  
crockwell@buckleysandler.com  
Ph: 424-203-1002  
Fax: 424-744-4151

April 5, 2012

Mr. David Field  
Auditor, Division of Audits  
State of California  
600 Corporate Pointe, Suite 1000  
Culver City, CA, 90230

**Re: Luther Burbank Savings Escheated Funds Inquiry**

Dear Mr. Field:

This letter is submitted on behalf of our client Luther Burbank Savings (“LBS”) in response to a verbal inquiry from the State of California, Division of Audits (the “Division”) regarding escheatment practices relating to teller’s checks written by LBS. Specifically, the Division is inquiring as to: (i) why more funds from these teller’s checks are not escheated to the State of California; (ii) whether LBS’s third party vendor, MoneyGram Payment Systems Inc. (“MPSI”), escheated those funds to another state; and (iii) whether MPSI has documentation of such remittance.

**Background**

MPSI and LBS entered into a written Agreement (“Agreement”) for MPSI to provide Official Check services to LBS. Banks routinely outsource official check services to third party vendors like MPSI to service customers in need of a check drawn on a bank or to pay the bank’s own obligations, with the additional benefit of enhanced fraud control and decreased back office expenses. Part of the official check service involves the use of a teller’s check, which is defined as “a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.” Cal. Com. Code § 3104(h).

In this case, MPSI provides blank teller’s checks to LBS, consistent with its practice with many other bank clients. These checks indicate on their face that they are issued by MPSI, the Drawee is Preferred Bank (“Preferred”), and the Drawer is LBS. In the regular course of LBS’s business, the checks are issued to various payees, and printed and sent by LBS. Per the Agreement, LBS sends the funds for the teller’s checks to MPSI on the next business day to cover the amounts of the checks written. MPSI receives information concerning the check number and the amount of the check; it does not receive the payee’s name or address. MPSI pays these teller’s checks through Preferred and submits a monthly report to LBS of any outstanding checks that have not

been paid. Should the teller's checks remain uncashed for five years, MPSI escheats such funds to its home state of Delaware.

Because the teller's checks are issued by LBS, a California corporation, and the funds for such checks are provided to MPSI, a Delaware corporation, the laws discussed herein are limited to those of California and Delaware.

### **MPSI is the Holder of the Funds, Not LBS**

Both California and Delaware law require a "holder" to escheat any sums outstanding on a teller's check after the prescribed dormancy period to the State. Cal. Code Civ. Proc. §§ 1501; Del. Code Ann., tit. 12, §§ 1170, 1198.

California defines "holder" as, "any person **in possession** of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation," and further requires sums **held or owing** by a business association payable on teller checks to be escheated three years from the date payable. Cal. Code Civ. Proc. §§ 1501, 1513 (emphasis added).

Delaware defines "holder" as, "any person **having possession, custody or control** of the property of another person and includes a post office, a depository, a bailee, a trustee, a receiver or other liquidating officer, a fiduciary, a governmental department, institution or agency, a municipal corporation and the fiscal officers thereof, a public utility, service corporation and every other legal entity incorporated or created under the laws of this State or doing business in this State." Del. Code Ann., tit. 12, § 1198 (emphasis added).

As previously noted, the funds for the teller's checks are remitted from LBS to MPSI on the following day the teller's checks are issued. MPSI, therefore, has possession of the funds at the time of escheatment and is the legal "holder" of the funds under California and Delaware law.

In addition, the Agreement specifically indicates that, "MPSI is responsible for unclaimed property related..." to the teller checks issued by MPSI. Therefore, LBS is contractually not responsible to escheat any unclaimed funds associated with the teller checks.

Even a claim under Cal. Code Civ. Proc. § 1518 that the funds are held in a fiduciary capacity for a business association, leads to the conclusion that MPSI is the holder of the funds. MPSI only acts in a fiduciary capacity until the funds are remitted by LBS. Once those funds are remitted by LBS, which occurs the very next business day after the checks are written by LBS, MPSI, as the issuer of the checks, also becomes the holder of the funds. Pursuant to the Agreement, LBS must, "remit the face amount of Checks issued...so that MPSI has collected funds by 11 AM PST on the next Business Day such face amounts are deemed **held in trust until remitted.**" (Emphasis added). Thus, once the funds are remitted, MPSI is contractually no longer a fiduciary, and under California law, becomes the holder.

Furthermore, Delaware's unclaimed property law, as indicated above, adopted an expansive definition of "holder" to include, "any person having possession, custody or control of the property of another person and includes ... a **fiduciary**..." Del. Code Ann., tit. 12, § 1198 (emphasis added). Under any circumstances, fiduciary or otherwise, MPSI is the holder of the

Mr. David Field  
April 5, 2012  
Page 3

unclaimed funds as a legal entity incorporated under Delaware law having possession of the unclaimed funds. Therefore, under Delaware law as well, MPSI is the holder of the funds.

Based on the foregoing, the holder of eligible funds is MPSI, not Preferred or LBS.

### **MPSI is Obligated to Escheat the Funds to Delaware**

Having established that MPSI is statutorily and contractually the appropriate holder of the funds, the next question is to which state such funds should be escheated. With respect to the obligation to escheat the uncashed teller's checks, the U.S. Supreme Court requires unclaimed property to be reported to the state of the lost owner's last known address, as shown in the records of the holder. *Texas v. New Jersey*, 379 U.S. 674 (1965); *Delaware v. New York*, 507 U.S. 490 (1993); Cal. Code Civ. Proc. § 1513; State of Delaware; Department of Finance; Division of Revenue; Bureau of Unclaimed Property Escheat Handbook, pg. 6. And if the owner's address is unknown to the holder, the unclaimed property is reported to the state of incorporation of the holder of the unclaimed property. *Id.*

As indicated above, MPSI receives the funds for the teller's checks and a report containing only the check numbers and amounts of the checks. MPSI is therefore, unaware of the name or location of the owner of the teller's checks funds, and takes the position that it is obligated to escheat the unclaimed funds to MPSI's state of incorporation (Delaware).

In light of the foregoing:

- The funds from the teller's checks are not escheated by LBS because LBS is neither statutorily nor contractually the "holder" of the funds at the time such funds are required to be escheated, nor is MPSI merely a fiduciary for LBS;
- MPSI escheated the unclaimed funds in connection with the teller's checks to Delaware, its state of incorporation, because MPSI is contractually and statutorily required to do so; and
- If the Division seeks proof of the proper escheatment of the unclaimed teller's check funds, the Division should reach out to the "holder" and reporter, MPSI, for such documentation.

Thank you in advance for your time and attention to this matter. Should the Division wish to further discuss the foregoing, please do not hesitate to contact me or my colleague Howard Eisenhardt (202-349-2945, [heisenhardt@buckleysandler.com](mailto:heisenhardt@buckleysandler.com)).

Sincerely yours,



Clinton R. Rockwell

Mail to:  
Unclaimed Property Division  
Michigan Department of Treasury  
P.O. Box 30756  
Lansing, MI 48909

# Michigan Holder Transmittal for Annual Report of Unclaimed Property

Issued under the authority of P.A. 29 of 1995. Filing is mandatory. Failure to file is punishable by fine.

This transmittal must accompany your annual report whether you are filing on paper, diskette or CD Rom. If your report does not meet Treasury specifications it will be returned to you. Holders filing from multiple branches under one federal employer number must coordinate a branch identification number with the UPD.

Report Year 2009
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General Information			
Holder's Name First State Bank of East Detroit		Federal Employer ID Number [REDACTED]	UPD Branch ID No.
Address 24300 Little Mack		State of Incorporation Michigan	Date of Incorporation
City, State, ZIP Code St. Clair Shores, MI 48080		County Macomb	Report Number <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3
Did you exercise due diligence this report year? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Did you file a Report of Unclaimed Property last year? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, explain:	
Primary business activity Bank	Report Type <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Compliance <input type="checkbox"/> First <input type="checkbox"/> Audit <input type="checkbox"/> Other	What media type are you filing? <input type="checkbox"/> CD Rom <input checked="" type="checkbox"/> disk <input type="checkbox"/> paper (Form 1223)	
Annual Sales/Premiums		Do not mix media types for the same report.	
Total Assets		is the company:	
No. of Employees		a wholly-owned subsidiary? ..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No a division? ..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No publicly traded? ..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No private? ..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

## Reporting Requirements

You must report and submit all property (defined in General Instructions) in your custody that belongs to someone else and has gone unclaimed.

Attach payment here.

Total number of safety deposit boxes reported .....	
Total number of shares of stock/mutual funds .....	
Enter the total amount paid with this transmittal .....	\$ 15,415.93
Make checks payable to "State of Michigan".	

## Certification

I declare under penalties imposed by P.A. 29 of 1995, as amended, that I have examined this report and to the best of my knowledge it is true and complete.

Print Contact Name RENEE BERTOSSI	Telephone Number 586-775-5000
E-mail Address [REDACTED]	Fax Number 580-445-4793
Authorizing Signature Renee Bertossi	Title ASSOCIATE AUDITOR
	Date 10/22/09

If you are a successor, attach a separate sheet listing the names and last known addresses of all previous holders of the property being reported. If you have changed your name during the reporting period, attach a separate sheet listing all prior names.

Treasury Use Only			
Holder ID	Report	Stock ID	Import Batch

October 2, 2009

State of Michigan  
Department of Treasury  
430 W. Allegan St.  
Lansing, MI 48922

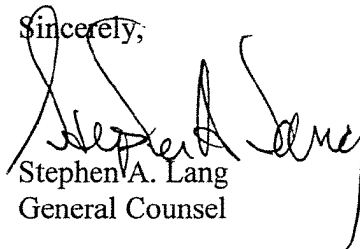
Re: Notice of unpaid cashier's checks

Dear Sir or Madam,

I am General Counsel with the First State Bank of East Detroit (the "Bank") and as such I have been asked to write to you concerning the referenced matter. Attached is a list of the remaining unpaid Cashier's Checks/Official Checks (the "Checks"), the amounts of which the Bank would normally be escheating to the State of Michigan. Unfortunately as the issuer of the Checks is refusing to return the amounts of the Checks which have not been negotiated to the Bank, I can do nothing more than we have in the past and put you on notice concerning the amounts outstanding.

The Checks although sold by the Bank to our customers were in fact issued by and in the name of MoneyGram Payment Systems, Inc. f/k/a Travelers Express Company, Inc ("MoneyGram"). Once the Checks were sold by the Bank, the amounts collected from the purchasers of the Checks were transferred to MoneyGram and it was and is MoneyGram's responsibility to pay the Checks upon negotiation. It had been previously the pattern of practice that once the Checks became stale (unpaid), MoneyGram would stop payment on the Checks and return the sums paid for the Checks to the Bank. The Bank in turn would escheat the sums to State of Michigan. MoneyGram is now however refusing to return the funds to be escheated and I (on behalf of the Bank) can do no more than again advise you of the situation.

Sincerely,

  
Stephen A. Lang  
General Counsel

# First State Bank of East Detroit

Cashier's Checks to be Escheated 2009

Prepared by: Internal Audit

<u>Check Number</u>	<u>Amount</u>	<u>Payee</u>	
4670429109	10.00	Unknown	Copy Unreadable
4670427992	14.00	Macomb County Register of Deeds	
5911130173	0.90	Unknown	Copy Unreadable
4670428796	2.47	Theresa McKoskey or Michael McKoskey	
4670431290	11.51	Unknown	Copy Unreadable
4670431309	42.00	St. Clair County Register of Deeds	
4670431324	14.53	Joseph Chambers or Yvonne Chambers	
4670431331	44.00	Macomb County Register of Deeds	
4670431333	372.50	Philip Greco Title Company	
4670429702	253.25	Henry Ford Hospital	
4670431346	138.00	Macomb County Register of Deeds	
4670429861	650.00	Unknown	Copy Unreadable
4670429445	1.18	Sharon M Winchester	
4670429237	30.97	Helen E Yahner	
4670431496	24.66	Janet Fopster	
4670431623	9.10	Unknown	Copy Unreadable
4670433087	10.00	Unknown	Copy Unreadable
4670431650	10.66	Charles Torr or Tong Torr	
4670433100	1.00	Unknown	Copy Unreadable
4670431693	11.95	Matthew Spezia or Sherry Spezia	
4670435006	200.00	Grego Title Company	
4670435007	44.00	Register of Deeds Oakland County	
4670432491	2,567.00	Comcast Construction	
4670435163	20.26	Debra Aker	
4670434554	3,971.52	Unknown	
4670433207	10.00	Richard A Speck	
4670432666	1,144.00	Social Security Administration	
4670432661	13.59	C.V.S.	
4670435555	80.20	Bon Secours Hospital	
4670436605	1.00	Mark Hanna	
4670433794	500.00	Unknown	Copy Unreadable
4679163316	6.44	Unknown	Copy Unreadable
4679164562	1,141.95	Washington Township Treasurer	
4679165295	750.00	Household Mortgage Services	
4679165803	14.00	Macomb County Register of Deeds	
4679163564	15.00	42-1 District Court	
4670436470	1.25	Jessica Bak	
4670436493	49.46	Worldwide Financial	
4679164838	50.00	American Heart Association	
4679164844	\$45,732.04	Macomb Community Bank	
4679167390	10.00	Phyllis Odonnell	
4679166596	2.14	Mayka Yang	
4679167411	10.00	Unknown	Copy Unreadable
4679166496	1.29	Charlotte Gawkosski Irrevocable Trust dtd 3/24/98	
4679169028	12.08	Christopher Level or Carrie Level	
4679171507	10.00	Keven D Corbeil	
4679171523	10.00	Rakesh K Khullar	
4679170411	797.50	Philip Greco Title Company	
4679170063	15.00	State of Michigan	
4679171751	250.00	Dimitrios Bastoumis or Ourania Bastoumis	
4679170522	1,268.31	Option One Payment Processing	
4679170484	500.00	Sarah E Sutherland	
4679172531	3,400.00	Public Schools of the city of Ann Arbor	
4679171598	1.00	Joyce W Tarby	
4679171860	28.29	Michael F Poppe or Nancy L Poppe	
4679171970	18.80	James Davis	

# First State Bank of East Detroit

Cashier's Checks to be Escheated 2009

Prepared by: Internal Audit

<u>Check Number</u>	<u>Amount</u>	<u>Payee</u>
4679172051	10.15	Scott Springer
4679171350	100.00	Unknown
4670439177	47.32	Elias Gutierrez
4670440090	2.00	Lighthouse Title Co.
4670440270	55.00	<b>First State Bank Mortgage Company</b>
4670440551	24.82	Marion Clark
4670440787	4.28	Washington Mutual Bank
4670441096	375.00	Home Protection One
4670440896	38.37	Thomas R Taylor
4670441243	78.00	Metropolitan Title Co.
4670441575	17.00	Leelanau County Register of Deeds
4670441969	14.83	Village of Empire
4679153552	31.04	Darryl E Thomas
4679153725	101.82	Vincenzo Mortillaro
4679154122	875.79	Michael Kenneson or Dena Kenneson
4679154067	59.36	Melinda A Harden
4679157988	2,850.00	Unknown
4679154077	467.97	James Ciarmitaro or Sheila Ciarmitaro
4679155018	14.00	Roscommon County Register of Deeds
4679155344	55.00	<b>First State Bank Mortgage Company</b>
4679155662	190.00	Gaetano Consiglio or Graziella Consiglio
4679155621	15.92	Thomas Elizabeth Lozon
	69,726.47	

Copy Unreadable



## **EXHIBIT 6**

**From:** [Michael Sapoznikow](#)  
**To:** ["Wellington, Katherine"](#)  
**Cc:** [Zelinsky, Nathaniel](#); [Joshua Voss](#); [Matt Haverstick](#); [Lorena Ahumada](#); [Craig Rust](#); [Nicholas Bronni](#); [Josh Patashnik](#); [Keckhaver, Karla Z.](#); [Ryan Walters](#); [Morris, Michael D.](#); [Jordan Broyles](#); [Dylan Jacobs](#); [Asher Steinberg](#); [Fuller, Anthony](#); [Osmani, Safa](#)  
**Subject:** RE: Delaware v. Arkansas, Nos. 22O145 & 22O146, Request for Production  
**Date:** Tuesday, September 5, 2023 4:23:00 PM

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Katie,

Delaware's list of items in your September 5 letter do not match our groupings from our August 29 letter, and it is not clear which RFPs are included in each of your items. To facilitate our discussion tomorrow, this is my understanding of how your 10 items correspond to our 11 groups.

- Your item 1 relating to MoneyGram corresponds to our groups 1, 2, 5, and 7 (RFPs 1, 2, 3, 4, 5, 13, 14, 16, and 59)
- Your item 2 relating to MoneyGram client banks corresponds to our group 3 (RFPs 6, 7, 8, and 9)
- Your items 3 relating to the Defendant States' policies and practices, 6 relating to Defendant States' penalties and interest, 7 relating to payments between states, and 8 relating to address searching correspond to our group 4 (RFPs 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,30,31, 39,40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 63, 64, 65, 66, and 67)
- Your item 4 relating to Integrated Payment Services and PNC corresponds to part of RFP 15, which we had included in our group 6
- Your item 5 relating to audits of banks that sell instruments used to transfer funds corresponds to our group 6 (RFPs 15, 34, 35, 36, 37, and 38)
- *As mentioned above, your items 6, 7, and 8 along with your item 3 correspond to our group 4*
- Your item 9 relating to the FDA corresponds to our group 8 (RFPs 32, 33)
- Your item 10 relates generally to the Defendant States' prior productions and does not correspond to a specific group

I don't believe your letter includes anything that corresponds to our groups 9 (RFP 59), 10 (RFP 60, 62, and 63, or 11 (RFP 61).

Mike

Michael Sapoznikow  
Deputy Attorney General  
(916) 210-7344

---

**From:** Wellington, Katherine <katherine.wellington@hoganlovells.com>  
**Sent:** Tuesday, September 5, 2023 1:50 PM  
**To:** Michael Sapoznikow <Michael.Sapoznikow@doj.ca.gov>  
**Cc:** Zelinsky, Nathaniel <nathaniel.zelinsky@hoganlovells.com>; Joshua Voss <jvoss@kleinbard.com>; Matt Haverstick <mhaverstick@kleinbard.com>; Lorena Ahumada <lahumada@kleinbard.com>; Craig Rust <Craig.Rust@doj.ca.gov>; Nicholas Bronni <nicholas.bronni@arkansasag.gov>; Josh Patashnik <Josh.Patashnik@doj.ca.gov>; Keckhaver, Karla Z. <KeckhaverKZ@doj.state.wi.us>; Ryan Walters <Ryan.Walters@oag.texas.gov>; Morris, Michael D. <morrismd@doj.state.wi.us>; Jordan Broyles <jordan.broyles@arkansasag.gov>; Dylan Jacobs <dylan.jacobs@arkansasag.gov>; Asher Steinberg <asher.steinberg@arkansasag.gov>; Fuller, Anthony <anthony.fuller@hoganlovells.com>; Osmani, Safa <safa.osmani@hoganlovells.com>  
**Subject:** RE: Delaware v. Arkansas, Nos. 22O145 & 22O146, Request for Production

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

All,

Delaware's response to Defendants' August 29, 2023, discovery correspondence is attached.

Best regards,  
Katie

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**From:** Michael Sapoznikow <[Michael.Sapoznikow@doj.ca.gov](mailto:Michael.Sapoznikow@doj.ca.gov)>  
**Sent:** Tuesday, September 5, 2023 3:17 PM  
**To:** Wellington, Katherine <[katherine.wellington@hoganlovells.com](mailto:katherine.wellington@hoganlovells.com)>  
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**Subject:** RE: Delaware v. Arkansas, Nos. 22O145 & 22O146, Request for Production

**[EXTERNAL]**

All,

To join the meet and confer call tomorrow at 10:00 a.m. Eastern/9:00 Central/7:00 Pacific, please dial 916-382-0506, conference ID 496 093 036 #

## **EXHIBIT 7**

*J*

Supreme Court, U.S.

October Term, 19 88

No. 111 Original

DELAWARE,

Plaintiff,

vs.

NEW YORK

Answer of Delaware to complaint  
in intervention of Texas

*5/11, p 14*

*6/8, p 5*

Filed 4/24/89, 19

No. 111 Original

Supreme Court, U.S.

FILED

APR 24 1989

JOSEPH F. SPANIOL, JR.

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IN THE  
**Supreme Court of the United States**

October Term, 1987

STATE OF DELAWARE,

v.

STATE OF NEW YORK,

Defendant.

STATE OF TEXAS,

Intervenor Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

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SUPREME COURT, U.S.

**ANSWER OF PLAINTIFF, THE STATE OF DELAWARE,  
TO THE COMPLAINT IN INTERVENTION  
OF THE STATE OF TEXAS**

Charles M. Oberly, III  
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Attorneys for Plaintiff  
The State of Delaware

April 24, 1989

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No. 111 Original

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IN THE  
**Supreme Court of the United States**

October Term, 1987

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STATE OF DELAWARE, Plaintiff,

v.

STATE OF NEW YORK, Defendant.

---

STATE OF TEXAS, Intervenor Plaintiff,

v.

STATE OF NEW YORK, Defendant.

---

**ANSWER OF PLAINTIFF, THE STATE OF DELAWARE,  
TO THE COMPLAINT IN INTERVENTION  
OF THE STATE OF TEXAS**

Plaintiff, The State of Delaware ("Delaware"), answers  
the Complaint in Intervention of The State of Texas ("Texas"),  
as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Delaware is without knowledge or information suffi-

cient at present to form a belief as to the truth of the averments of paragraph 4.

5. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 5, except admitted that, as originally filed by Delaware, this action sought to resolve the conflicting claims of The State of New York ("New York") and Delaware with respect to the Escheatable Property of Unknowns, as defined in paragraphs 8 and 9 of Delaware's Complaint (hereinafter "Escheatable Property of Unknowns"), and that New York's current practice is to claim Escheatable Property of Unknowns after the applicable dormancy period.

6. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 6.

7. Denied.

8. Denied.

9. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 9.

10. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 10, except that denied, if it is alleged that Chapter 72 of the Texas Property Code provides for any taking of the Escheatable Property of Unknowns.

11. through 19. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraphs 11 through 19. Further, Delaware alleges that such averments insofar as they are directed to Delaware are unnecessary and immaterial.

20. Delaware admits and alleges that Delaware's claim is supported by the rulings of this Court in *Texas v. New Jersey* and *Pennsylvania v. New York*, and respectfully refers the Court to the opinions in such cases for a full statement of the rulings. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments as to New York.

21. Delaware incorporates by reference herein its Com-

plaint in this action and respectfully refers the Court thereto for a complete statement of Delaware's claim, and admits and alleges that Escheatable Property of Unknowns should be remitted to Delaware as the state of incorporation of the Delaware Brokerage Corporations which hold, or have held, such funds.

22. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 22, except denied that New York is entitled to claim any portion of the Escheatable Property of Unknowns.

23. Denied, except Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments as to New York.

24. Denied, except that the averments of the first two sentences of paragraph 24 are admitted.

25. through 38. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraphs 25 through 38, except admitted that there are no records of ownership as to the Escheatable Property of Unknowns, and that it is neither cost effective nor feasible to maintain or reconstruct such records. Further, Delaware alleges that the averments of paragraphs 25 through 38 insofar as they are directed to Delaware are unnecessary and immaterial.

39. Denied, except admitted that neither DTC nor any Delaware Brokerage Corporation has claimed any legal ownership interest to the Escheatable Property of Unknowns.

40. Denied.

41. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 41, except admitted that Delaware has identified in its complaint fifteen Delaware Brokerage Corporations, including Dean Witter Reynolds, Inc., from which New York has either wrongfully taken or demanded the Escheatable Property of Unknowns at issue herein, that Texas claims the right to take possession of any portion of such Escheatable Property of Unknowns which is attributable to



Issuers incorporated in Texas, and denied, if it is alleged that Texas is entitled to any portion of the Escheatable Property of Unknowns.

42. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 42, except denied, if it is alleged that Texas is entitled to any portion of the Escheatable Property of Unknowns.

43. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 43, except denied, if it is alleged that Texas is entitled to any portion of the Additional Excess Receipts.

44. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 44.

45. through 50. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraphs 45 through 50. Further, Delaware alleges that such averments insofar as they are directed to Delaware are unnecessary and immaterial.

51. and 52. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraphs 51 and 52.

53. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 53, except denied, if it is alleged that Texas is entitled to any portion of the Escheatable Property of Unknowns.

54. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 54.

55. Denied, except Delaware admits the averments of the second sentence of paragraph 55 and alleges that the averments of paragraph 55 insofar as they are directed to Delaware are redundant or immaterial.

56. Denied, except Delaware admits the averments of the second sentence of paragraph 56 and that in accordance with

Delaware's claim all Escheatable Property of Unknowns held by DTC Participants would go to Delaware, and except that Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 56 as to New York. Further, Delaware alleges that the averments of paragraph 56 insofar as they are directed to Delaware are redundant or immaterial.

57. Delaware admits the averments of the first sentence of paragraph 57, denies the averments of the following two sentences of paragraph 57, and is without knowledge or information sufficient at present to form a belief as to the truth of the remaining averments in paragraph 57.

58. Denied.

59. Denied, except Delaware admits the averments of the second sentence of paragraph 59, and is without knowledge or information sufficient at present to form a belief as to the truth of the averments as to New York.

### Defenses

1. Texas' claim in intervention should be dismissed for failure to state a claim under the prior controlling decisions of this Court.

2. Texas is estopped from asserting its claim in intervention by reason of its prior positions before this Court.

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Attorney General of Delaware  
Fred S. Silverman  
Chief Deputy Attorney General  
J. Patrick Hurley, Jr.  
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April 24, 1989

### PROOF OF SERVICE

I, RICHARD L. SUTTON, certify that I am counsel of record for plaintiff, the State of Delaware, that I am a member of the Bar of the Supreme Court of the United States, and that on the 24th day of April, 1989, I served copies of the foregoing Answer Of Plaintiff, The State Of Delaware, To The Complaint In Intervention Of The State Of Texas, on all parties required to be served by depositing such copies, first-class postage prepaid, in a United States Post Office, addressed as follows:

Mary F. Keller, Esquire  
First Assistant Attorney General  
P.O. Box 12548  
Capitol Station  
Austin, Texas 78711  
Christopher Keith Hall, Esquire  
Assistant Attorney General  
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