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October 5, 2023

VIA EMAIL

Hon. Pierre N. Leval
Special Master
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Allison_Durkin@ca2.uscourts.gov

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

Dear Judge Leval:

On behalf of the Commonwealth, Pennsylvania Treasurer, I write to reply to the following claims in Delaware's letter to you of October 2, 2023 (dkt. no. 179).

(1) Delaware accuses Pennsylvania of “delay” and “not want[ing] to litigate[.]” DE Ltr. at 4, 5, 27. Like most states, Pennsylvania would prefer to avoid unnecessary litigation, so in this sense, Delaware is correct that Pennsylvania does not want to litigate. In fact, seven years ago, Pennsylvania made several attempts to resolve this dispute and avoid the protracted litigation Delaware forced upon the Defendant States. *Delaware's* insistence on not resolving the dispute is what caused seven years of litigation and a Supreme Court unanimous decision. In addition, this year, Pennsylvania willingly engaged in good faith negotiations throughout June and July with Delaware, which included the Pennsylvania Treasurer meeting directly with representatives of Delaware to settle this dispute. Unfortunately, Delaware's insistence that Pennsylvania accept concessions unrelated to the disputed MoneyGram property caused these discussions to fail. Since then, contrary to Delaware's claim, Pennsylvania has sought to avoid any additional delay. This is why on August 4, 2023, Pennsylvania served on Delaware interrogatories and requests for production. Yet, through the date of this letter (sixty days and counting), Delaware has not (1) objected to this discovery or (2) responded to it. Despite this fact, Delaware claims Pennsylvania is delaying—not so.

(2) Delaware's statements of “fact” concerning Pennsylvania's alleged lack of effort to respond to Delaware's requests for production are without any basis. DE Ltr. at 3. Specifically, Delaware declares Pennsylvania has “done *no work whatsoever* to determine whether Delaware's discovery requests are at all burdensome.” *Id.* (emphasis in original). This is false. Pennsylvania Treasury staff have, in fact, been working to evaluate each demand for records and assess whether each can be complied with. Pennsylvania is prepared to work with Delaware on the burden associated with responding, if needed, *after* Your Honor addresses Pennsylvania's over-arching objections to the requests, which



objections highlight how needlessly burdensome most of Delaware’s requests are. Indeed, some requests seek records going back to 1965, *nearly 60 years*.

(3) Delaware advances the silly accusation that Pennsylvania has filed “improper” and “troubling” FOIA requests. DE Ltr. at 4. As a matter of Delaware law, there is nothing improper or troubling about filing a request to review public documents held by a public agency. Moreover, Delaware even declares in its letter that the information sought in those requests is “irrelevant” to the dispute before this Court, so the connection between the requests and this case is unclear. *See* DE Ltr. at 4 n.1.

(4) Delaware suggests Pennsylvania is “manufactur[ing] urgency” with “no basis in reality.” DE Ltr. at 5 n.2. Because Delaware has been criticized for its troubling unclaimed property collection methods and for its dependance on unclaimed property funds as a revenue source to balance its annual state budgets,¹ it is unsurprising that Delaware would dismiss Pennsylvania’s urgency to reunite uncashed MoneyGram instruments with their owners. Yet, to be clear, it is a priority for Pennsylvania’s Treasurer to return unclaimed property to its owners: over \$270 million was restored last fiscal year alone. And presently, MoneyGram is not, as Delaware suggests, making any effort to reach out to the true owners to reunite them with their property.² Thus, continued delay in Pennsylvania receiving the Pennsylvania abandoned proceeds undermines the ability of property owners to recover their funds.

(5) Delaware argues Pennsylvania is asking the Supreme Court to “invent a cause of action[.]” DE Ltr. at 2. Delaware’s argument is one of convenience, not conviction, because Delaware championed the same “invention” *in this case*. Indeed, Delaware sought leave to amend its bill of complaint to add claims against Pennsylvania—seeking money damages—regarding non-MoneyGram instruments (dkt. no. 22; *see also* dkt. no. 23). In attempting to justify this amendment, and in explaining what it would do, Delaware candidly stated it was seeking to take money already received by Pennsylvania—the very thing it now claims is an innovation:

¹ *See e.g.*, Jessica Masulli Reyes, *Federal Judge Blasts Delaware’s Abandoned Property Practice*, Delaware Online (June 29, 2016), available at <https://www.delawareonline.com/story/news/local/2016/06/29/federal-judge-blasts-delawares-abandoned-property-practice/86505398/>.

² MoneyGram admitted in discovery it undertakes *no due diligence* to attempt to identify true owners before escheating proceeds from Official Checks. *See* Def. Stmt. of Undisputed Material Facts at ¶ 35 (dkt. no. 88).



Delaware further believes that its motions to amend its Bill of Complaint against Wisconsin and Pennsylvania and its Counterclaim against Arkansas et al. should be granted *to allow Delaware to recover funds from these instruments that were wrongfully escheated to the other States* to prevent the potential for unnecessary and highly duplicative litigation over the proper escheatment of these other financial instruments in the future.

See Delaware Reply Br. in Support of Motions for Leave to Amend Bill of Complaint, at 3 (dkt. no. 29) (emphasis added). Not only does Delaware omit its actions in this case, but also it has forgotten about its own suit against New York in 1988. In that matter, Delaware filed a complaint asking the Supreme Court for an order compelling New York to be “directed to pay or deliver to plaintiff, Delaware, all the Escheatable Property of Unknowns paid or delivered to New York by the Delaware Brokerage Corporations[.]” *See Delaware Complaint at 12, ¶ 5, No. 111 Original (U.S. Feb. 9, 1988) (Exhibit A) (motion and complaint only; brief omitted).* Delaware sought monetary damages (nearly \$1 billion, *see dkt. no. 148*) based on a viable cause of action—something the Supreme Court appeared to agree with in siding with Delaware and remanding for a damages assessment. *See Delaware v. New York, 507 U.S. 490, 509-10 (1993).* Delaware offers no justification as to why it can seek already escheated moneys from other States, but those States cannot do the same with Delaware.

Finally, while Delaware’s letter makes numerous other unsupported claims and allegations, Pennsylvania believes the foregoing adequately illustrates the lack of weight such averments should be afforded. Pennsylvania is eager to conclude this litigation and finally end this seven-years-and-counting saga. Once ended, Pennsylvania can do the important work of returning this money to its true owners to the greatest extent possible. The delay Delaware complains of is prejudicial to the property owners and solely beneficial to Delaware. Continued delay allows Delaware to withhold property it *unlawfully* possesses, as the Supreme Court *unanimously* found.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Joshua J. Voss", is written over a printed name. The signature is fluid and cursive, with a long horizontal flourish at the end.

Joshua J. Voss

cc: Counsel of record (via email)

Exhibit A

WHER
WORDS
AND
BRIEFS

No. 111 Original

Supreme Court, U.S.
FILED
FEB 9 1988
ROSEMARY SPANGLER, JR.
CLERK

In The
Supreme Court of the United States

October Term, 1987

— o —
STATE OF DELAWARE,
Plaintiff,

v.

STATE OF NEW YORK,
Defendant.

— o —
**MOTION FOR LEAVE TO FILE COMPLAINT,
COMPLAINT, AND BRIEF IN SUPPORT
OF MOTION FOR LEAVE TO FILE COMPLAINT**

— o —
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No. _____ Original

In The

Supreme Court of the United States

October Term, 1987

STATE OF DELAWARE,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Delaware, by its counsel, hereby moves the Court for leave to file the attached Complaint against the State of New York.

Respectfully submitted,

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Attorney General of Delaware

FRED S. SILVERMAN
Chief Deputy Attorney General

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No. _____ Original

In The

Supreme Court of the United States

October Term, 1987

STATE OF DELAWARE,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

COMPLAINT

The State of Delaware, plaintiff, by its counsel, brings this original action against the State of New York, defendant, and alleges as follows:

I.

1. The plaintiff, the State of Delaware ("Delaware"), and the defendant, the State of New York ("New York"), are states of The United States.

2. This is a controversy between two states of The United States and is, therefore, within the original jurisdiction of the Supreme Court of The United States, under Article III, Section 2 of the Constitution of The United States, and under the United States Code, Title 28, Section 1251(a).

3. This controversy concerns the wrongful escheating or threat to escheat by New York, from corporations

incorporated under the laws of Delaware engaged in the securities brokerage business (the "Delaware Brokerage Corporations"), of monies and other intangible property. The Delaware Brokerage Corporations had or have such property as the result of distributions made with respect to securities held or formerly held for the account of customers but as to which the brokers have no identification or last known address of anyone claiming to be the beneficial owner of such property (the "Escheatable Property of Unknowns").

4. Delaware claims herein that, under *Texas v. New Jersey*, 379 U.S. 674 (1965), and *Pennsylvania v. New York*, 407 U.S. 206 (1972), the Escheatable Property of Unknowns is properly escheatable not to New York but to Delaware, pursuant to its Escheat Law. Del. Code Ann. tit. 12, §§ 1197-1211 (1987) (the "Delaware Escheat Law"). Delaware seeks herein (a) a judgment that New York pay to Delaware the Escheatable Property of Unknowns taken by New York and (b) a prospective declaration that Delaware has the right in the future to escheat the Escheatable Property of Unknowns from the Delaware Brokerage Corporations without further interference or competing claims from New York.

5. No other state has been joined as a defendant in this action because Delaware is not aware of any state which is asserting a right which may be contrary to the claim being asserted herein by Delaware. However, Delaware has, upon the filing of the Motion for Leave to File Complaint, mailed a copy of the Motion, the Complaint and the Brief in Support of Motion for Leave to File Complaint, to each of the other states, in order that any other state which might believe it has some claim to the Escheat-

able Property of Unknowns may seek leave of this Court to intervene in these proceedings.

6. None of the Delaware Brokerage Corporations which had or have Escheatable Property of Unknowns has been joined as a defendant in this action, because such entities (a) have no claim as to the Escheatable Property of Unknowns and (b) are held harmless by New York from any competing claims to the Escheatable Property of Unknowns taken by New York. (N.Y. Abandoned Property Law § 1404 (McKinney Supp. 1988)).

II.

7. The Delaware Brokerage Corporations include the following (and their predecessors):

Bear, Stearns & Co. Inc.
 Dean Witter Reynolds Inc.
 Donaldson, Lufkin & Jenrette Securities Corporation
 Drexel Burnham Lambert Incorporated
 The First Boston Corporation
 Kidder, Peabody & Co. Incorporated
 Merrill Lynch, Pierce, Fenner & Smith Incorporated
 Morgan Stanley & Co. Incorporated
 Oppenheimer & Co., Inc.
 PaineWebber Incorporated
 Prudential-Bache Securities Inc.
 Salomon Brothers Inc.
 Shearson Lehman Hutton Inc.
 Smith Barney, Harris Upham & Co. Incorporated
 Thomson McKinnon Securities Inc.

Each of the Delaware Brokerage Corporations has offices and conducts business in New York, as well as in other states of The United States.

8. The Delaware Brokerage Corporations, in the course of their business, act as record owners of securities, primarily stocks and bonds, the beneficial ownership of which is in the account of customers of the Delaware Brokerage Corporations. As record owners, the Delaware Brokerage Corporations from time to time receive distributions with respect to the securities, such as dividends and interest (the "Payments"). As the Payments are received, the Delaware Brokerage Corporations regularly allocate to the accounts of their customers the Payments to which they are beneficially entitled.

9. In certain instances, however, the Delaware Brokerage Corporations are unable to identify the beneficial owners of the Payments. For example, a Delaware Brokerage Corporation may sell in the open market a customer's securities and the ultimate acquiror in the market of those securities thereafter may fail to remove that Delaware Brokerage Corporation as the record owner of such securities before the record date on which a Payment becomes payable to that Delaware Brokerage Corporation. Unless a claim to pay over such Payment is made by the ultimate acquiror of such securities, that Delaware Brokerage Corporation will not know who the beneficial owner of such Payment is or what the address is for such beneficial owner. Accordingly, where no claim to pay over the Payments is made, the Delaware Brokerage Corporation has Escheatable Property of Unknowns.

III.

10. Since at least July 13, 1971, Delaware has provided, by the Delaware Escheat Law, for the escheat of personal property of every kind or description, including the Escheatable Property of Unknowns, held by every legal entity incorporated under Delaware law, including the Delaware Brokerage Corporations, having possession, custody or control of such property, where such property has remained unclaimed by its beneficial owner for a period of seven years. Delaware Escheat Law § 1198(6), (8) and (10). The Delaware Escheat Law is set forth in Exhibit "A", attached to the Brief in Support of Motion for Leave to File Complaint, attached hereto.

IV.

11. Notwithstanding the Delaware Escheat Law, and Delaware's right thereunder to escheat the Escheatable Property of Unknowns in the hands of Delaware Brokerage Corporations, New York has continued to claim and to seize such property, which rightfully belongs to Delaware.

12. Effective April 1, 1952, the State of New York adopted a provision entitled "Unclaimed Property Held by Brokers." Article V-A of the New York Abandoned Property Law §§ 510-514 (McKinney Supp. 1988) (the "New York Escheat Law"). The New York Escheat Law provides for the escheat of personal property, including the Escheatable Property of Unknowns, held by any corporation engaging in New York in the purchase, sale or exchange of securities for or on behalf of any customers. Unlike the Delaware Escheat Law, which

requires property to be abandoned for seven years before its escheat, the New York Escheat Law provided for escheat after five years until December 31, 1975, when the dormancy period was further reduced to three years. *See generally id.* §§ 510(4) and (5), 511, as amended by 1973 N.Y. Laws c.617, § 6. The New York Escheat Law is set forth in Exhibit "B", attached to the Brief in Support of Motion for Leave to File Complaint, attached hereto.

13. New York publishes and disseminates to securities brokers, including the Delaware Brokerage Corporations, a publication entitled "Abandoned Property Law Handbook for Brokers and Dealers" ("Handbook"), which states that it was "published to inform brokers and dealers in securities concerning their responsibilities under Article V-A." Relevant excerpts from the Handbook are set forth in Exhibit "C", attached to the Brief in Support of Motion for Leave to File Complaint, attached hereto.

14. The Handbook sets forth the statutory language of Article V-A, and makes clear New York's position that the escheat to it of abandoned property includes Payments where they are attributable to beneficial owners who "cannot be identified," *See, e.g.,* Exhibit "C" at p. 71, ¶ 1 ("The unpaid amounts in category (a) [of Section 511.1] often occur when the broker or dealer ceases to hold the security at the time of receipt of the dividend or bond interest, the security having already been traded, and *the persons or customers entitled to such payment cannot be identified (unknown).*"—emphasis supplied); *id.*, ¶ 2 ("The unpaid amounts in category (a) [of Section 511.1-a] often occur when the broker or dealer receives

dividend or bond interest other than from a dividend disbursing agent, but rather from another broker or dealer as a result of an overpayment, and *the persons or customers entitled to such payment cannot be identified (unknown).*"—emphasis supplied); and p. 73, ¶ 4 ("*This class of unclaimed property [covered by Section 511.3] generally results from an inability to identify the owner of the security, to locate the owner of a dormant customer account or to have a customer accept delivery of his securities or amounts paid thereon to which he is entitled. The unknown owner situation often occurs as discussed in subparagraph 1 above when a stock dividend is received by the broker or dealer after the underlying security had already been traded and delivered.*"—emphasis supplied)

15. The Handbook further provides that Payments received by a broker in New York, including the Delaware Brokerage Corporations, are escheatable to New York even when not attributable to the account of a New York customer:

[I]tems received as the holder of record of a security which a broker or dealer ceased to actually hold prior to receipt of the item, are deemed abandoned property (if unpaid to the entitled customer for three years) if received in this state, without regard to the location of the office in which the original transaction in respect to the security may have occurred. (Sec. 510, Subd. 6, par. b and Sec. 511, Subd. 1)

Id., p. 75, ¶ 6.

V.

16. From before 1971 up to the present time, New York has demanded from the Delaware Brokerage Corporations all of the Escheatable Property of Unknowns after the running of the three or five year dormancy period pro-

vided for under the New York Escheat Law. Most of the Delaware Brokerage Corporations have acceded to New York's demands to pay over the Escheatable Property of Unknowns and, accordingly, Delaware, after the running of its seven year dormancy period, has been refused payment of the Escheatable Property of Unknowns on the basis that such property has already been paid over to New York, and in reliance on a representation contained in the General Provisions of the New York Escheat Law that New York will hold harmless any entity in respect of subsequent claims made on property escheated to New York. New York Escheat Law §1404 (McKinney Supp. 1988) (attached to the Brief in Support of Motion for Leave to File Complaint as part of Exhibit "B" thereto).

17. Plaintiff is aware of only three of the Delaware Brokerage Corporations which to date have challenged New York's claim to the Escheatable Property of Unknowns.

18. In the early 1980's, PaineWebber Incorporated ("PaineWebber"), a Delaware Brokerage Corporation, informed New York that it would no longer include the Escheatable Property of Unknowns in the property paid over to New York, and informed New York that if the Escheatable Property of Unknowns was escheatable, it was escheatable only to Delaware, as the state of its incorporation, pursuant to Delaware's Escheat Law. Shortly thereafter, New York commenced an administrative proceeding, seeking the recovery of the Escheatable Property of Unknowns. That administrative proceeding still pends.

19. Another Delaware Brokerage Corporation, Smith Barney, Harris Upham & Co. Incorporated ("Smith

Barney"), has also recently determined not to escheat to New York any Escheatable Property of Unknowns on the ground that such property could properly be escheated only by Delaware under the Delaware Escheat Law. Smith Barney communicated that decision to the New York abandoned property authorities. In response, New York has made a demand upon Smith Barney to report and to pay such property to it and has stated that, absent compliance with such demand, New York intends to commence an administrative proceeding against Smith Barney to recover such property.

20. Another Delaware Brokerage Corporation, Kidder, Peabody & Co. Incorporated ("Kidder Peabody"), declined in 1987 to escheat to New York Escheatable Property of Unknowns for the year 1983, on the ground that such property can properly be escheated only by Delaware under the Delaware Escheat Law. New York has informed Kidder Peabody that it will make a demand for payment of such property to it and that, absent compliance with such demand, New York intends to commence an administrative proceeding against Kidder Peabody to recover such property.

VI.

21. The amount of Escheatable Property of Unknowns wrongfully demanded by New York from the Delaware Brokerage Corporations has been substantial. For example, in the years 1981 to 1984 alone, Dean Witter Reynolds Inc. ("Dean Witter"), one of the Delaware Brokerage Corporations, reported and paid over to New York the following Escheatable Property of Unknowns:

<i>Year</i>	<i>Amount</i>
1981	\$ 284,005
1982	274,089
1983	967,925
1984	995,532
	<hr/>
	\$2,521,551

Plaintiff is informed that the amounts of Escheatable Property of Unknowns paid over by Dean Witter to New York in those years were not atypical. For example, Smith Barney paid New York more than one million dollars in Escheatable Property of Unknowns in each of the years 1985 and 1986. Merrill Lynch, Pierce, Fenner & Smith Incorporated, another Delaware Brokerage Corporation, paid New York more than two million dollars in Escheatable Property of Unknowns in 1982. Accordingly, plaintiff believes that, since July 13, 1971, New York has taken many millions of dollars in Escheatable Property of Unknowns which rightfully belongs to Delaware. The resolution of New York's competing claim thus is of substantial monetary importance to Delaware.

VII.

22. By reason of New York's past and continuing claims to the Escheatable Property of Unknowns, there is a controversy between Delaware and New York as to which of the two states may properly escheat such property.

23. The previous taking by New York of Escheatable Property of Unknowns from the Delaware Brokerage Corporations, and its continuing demand to take such property in the future, are contrary to this Court's de-

cisions in *Texas v. New Jersey, supra*, and *Pennsylvania v. New York, supra*, that abandoned property attributable to a beneficial owner for whom the holder has no name or address record is escheatable only pursuant to the laws of the holder's state of incorporation.

24. Under the rule of *Texas v. New Jersey* and *Pennsylvania v. New York*, Delaware is entitled, as the state of incorporation of the Delaware Brokerage Corporations, to recover from New York all such property which has heretofore been paid over or transferred to New York by them.

25. Delaware cannot be protected from irreparable injury and loss of property unless this Court grants the relief sought by this Complaint.

26. Delaware has no adequate remedy at law.

WHEREFORE, the plaintiff prays:

1. That this Court take jurisdiction of the parties and subject matter herein;

2. That this Court hear and determine the controversy herein in such manner as the Court deems appropriate;

3. That a temporary injunction be issued restraining the defendant, New York, from proceeding with any action now pending, or from instituting any action hereafter, to escheat and/or take custody of any portion of the Escheatable Property of Unknowns held by the Delaware Brokerage Corporations;

4. That judgment be entered that the Escheatable Property of Unknowns, held by the Delaware Brokerage Corporations, is subject only to the escheat of Delaware, under the Delaware Escheat Law;

5. That the defendant, New York, be directed to pay or deliver to plaintiff, Delaware, all the Escheatable Property of Unknowns paid or delivered to New York by the Delaware Brokerage Corporations, which has been abandoned for a period of seven years or more and which hereafter becomes abandoned under the Delaware Escheat Law; and

6. That the plaintiff, Delaware, have such other and further relief as this Court may deem just.

Respectfully submitted,

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The State of Delaware*

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**BRIEF IN SUPPORT OF MOTION FOR LEAVE
TO FILE COMPLAINT**

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