

SUPREME COURT OF THE UNITED STATES

DELAWARE, *Plaintiff*,

v.

Docket Nos. 22O145 & 22O146
(Consolidated)

ARKANSAS, *et al.*, *Defendants*.

NON-PARTY MONEYGRAM PAYMENT SYSTEMS INC.'S
MEMORANDUM OF LAW IN SUPPORT OF CROSS-MOTION FOR AN ORDER
DIRECTING PARTIAL RELEASE OF DEPOSITED FUNDS PURSUANT TO
28 U.S.C. § 2042 AND TO FILE DOCUMENTS UNDER SEAL

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PRELIMINARY STATEMENT

Currently before the Special Master is the Commonwealth of Pennsylvania's May 2, 2023 Motion for an Order Directing the Withdrawal of Deposited Funds, seeking payment of \$6,331,070.91 from the escrow account established in this action. (Docket Entry 146). While MoneyGram does not object to Pennsylvania's motion, it is entitled to reimbursement from the escrow for those deposited items that MoneyGram has since honored and paid. As described in greater detail below, the applicable state unclaimed property laws explicitly provide for such "holder reimbursement" in this scenario, and the parties have previously recognized MoneyGram's entitlement to such reimbursement. Accordingly, before the escrow deposits are transmitted to the applicable state(s), MoneyGram seeks an order, pursuant to 28 U.S.C. § 2042, for reimbursement of those deposited funds that MoneyGram has paid to the rightful owner.

STATEMENT OF FACTS

This case involves a dispute among several dozen states over the characterization, for unclaimed property purposes, of a MoneyGram product known as an "Official Check." Delaware Br. in Supp. of Mot. for Leave to File Bill of Compl., at p. 9-10, *Delaware v. Pennsylvania*, Docket No. 22O145 (filed May 26, 2016). On May 26, 2016, the State of Delaware filed a Motion for Leave to File a Complaint with the U.S. Supreme Court requesting that the Court resolve whether Official Checks escheat pursuant to the Federal Disposition Act, 12 U.S.C. § 2501, *et seq*, or the common law priority rules established under *Texas v. New Jersey*, 379 U.S. 674

(1965). *Id.* On June 3, 2016, the State of Wisconsin filed a brief concurring in Delaware's request that the Court exercise jurisdiction, and sought leave to file a counterclaim. Wisconsin Mot. for Leave to File Counterclaim (filed June 3, 2016). On June 14, 2016 the Commonwealth of Pennsylvania filed a brief seeking similar relief. Pennsylvania Br. in Resp. to Delaware's Mot. to File Bill of Complaint (filed June 14, 2016).

On June 8, 2016, the states of Arkansas, Texas, Alabama, Arizona, Colorado, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, South Carolina, Utah, and West Virginia (hereinafter the "Defendant States") filed their own Motion for Leave to File a Bill of Complaint raising precisely the same issue. *See* Mot. for Leave to File a Bill of Complaint, *Texas v. Delaware*, Docket No. 22O146 (filed June 9, 2016). Other states later joined the Defendant States, and by order dated October 3, 2016 the Supreme Court accepted jurisdiction over the matter and consolidated the two cases. On March 29, 2017 the Court entered an order appointing Hon. Pierre N. Leval as the Special Master overseeing this matter.

While the case has been ongoing, uncashed MoneyGram Official Checks continued to age and became subject to state unclaimed property laws. Accordingly, on June 12, 2017, the parties and MoneyGram entered into a stipulation providing for MoneyGram "to make arrangements to deposit the proceeds from current and future unclaimed 'Official Checks' that have been unclaimed for five (5) years or more into the registry of the United States District Court for the Southern District of New

York.” (Docket Entry 38). In furtherance of that stipulation, by order dated February 21, 2018, the Special Master directed the Clerk of the United States District Court for the Southern District of New York to open a miscellaneous case (1:18-mc-00064-PNL) and to establish an account for the acceptance of funds for deposit in the Court Registry Investment System (the “Escrow Account”). (Docket Entry 61).

On March 20, 2018, MoneyGram made its first deposit into the Escrow Account (each, an “Escrow Deposit”) in the amount of \$20,726,250.41. *See* Declaration of Michael Rato, Ex. A. On March 10, 2021, MoneyGram made its second deposit into the Escrow Account, in the amount of \$55,878,657.95 (the “Second Deposit”). *Id.* Before doing so, however, MoneyGram and the parties entered into a stipulation recognizing that “MoneyGram is entitled to reimbursement” for items deposited into the Escrow Account that MoneyGram later paid or reimbursed, and permitted MoneyGram to “deduct and withhold” such amounts from the Second Deposit. *See* Rato Dec., Ex. B. Similarly, on August 30, 2022, MoneyGram deposited 17,543,024.79 into the Escrow Account (the “Third Deposit”). *See* Rato Dec., Ex. A. Pursuant to a stipulation, MoneyGram again was permitted to deduct from this deposit amounts associated with escrowed Official Checks that it later paid or reimbursed. *See* Rato Dec., Ex. C. Currently, there is \$94,147,933.15 in the Escrow Account. *Id.* at Ex. A.

On February 28, 2023, the Supreme Court ruled that the Federal Disposition Act applies to uncashed Official Checks, and that such instruments are escheatable to the state of purchase. *Delaware v. Pennsylvania*, 598 U.S. __ (2023) (slip op. at 2). Thereafter, on May 2, 2023 the Commonwealth of Pennsylvania filed a Motion for an

Order Directing the Withdrawal of Deposited Funds, seeking an Order from the Special Master directing the Clerk to transmit the sum of \$6,331,070.91 from the CRIS Account to Pennsylvania. (Docket Entry 146).

Since MoneyGram's last deposit into the Escrow Account, many additional escrowed Official Checks were presented to MoneyGram by the owner for payment or by the financial institution seller for credit (e.g., in response to a stop payment). *See* First Declaration of Colleen Elvin Concerning 2022 Paid Items ("Elvin 2022 Dec.") at ¶ 3. As per its prior practice, MoneyGram honored those items. *Id.* at ¶ 4. From the time of its last reimbursement through December 31, 2022, MoneyGram has honored 461 previously deposited Official Checks in the aggregate amount of \$4,063,298.36 (the "2022 Paid Items"). *Id.* Likewise, from the period January 1, 2023 to May 31, 2023, MoneyGram honored 92 previously deposited Official Checks in the aggregate amount of \$ 1,279,941.06 (the "2023 Paid Items"). *See* Second Declaration of Colleen Elvin Concerning 2023 Paid Items ("Elvin 2023 Dec."). MoneyGram now brings this application for reimbursement of the 2022 Paid Items and the 2023 Paid Items.

ARGUMENT

I. **MONEYGRAM IS ENTITLED TO REIMBURSEMENT OF THE PAID ITEMS**

MoneyGram's Escrow Deposits represented funds associated with Official Checks that remained unpaid for five years or more after the date of issuance and that would have been escheated to Delaware in the absence of litigation. Elvin 2023 Dec. at ¶ 2. MoneyGram continued to honor those Official Checks presented for payment or submitted for reimbursement even after they were deposited into the

Escrow Account. *Id.* at ¶ 4. This is consistent with MoneyGram’s historical practices, whereby it honored Official Checks presented for payment even after the underlying item was escheated. *Id.* at ¶ 5. Historically, after making payment, MoneyGram filed a reimbursement request with the State of Delaware, which was honored in most instances. *Id.*

MoneyGram’s present motion seeks reimbursement for those Official Checks that were deposited into the Escrow Account, but later honored or paid by MoneyGram. The state unclaimed property laws generally have statutory provisions that explicitly provide for holder reimbursement in such circumstances. For example, pursuant to the Arkansas Unclaimed Property Act:

A holder who has paid money to the administrator pursuant to this subchapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under § 18-28-219.

Ark. Code Ann. § 18-28-210(c). The other states involved in this litigation all have similar provisions or policies relating to holder reimbursement. *See e.g.*, Ala. Code § 35-12-79(c); Ariz. Code § 44-310(B); Cal. Code Civ. Proc. § 1560(b); Colo. Rev. Stat. § 38-13-605(1)(b); Delaware Office of Unclaimed Property, FAQ’s *available at* <https://unclaimedproperty.delaware.gov/app/faq-claim> (describing process for “holder

reimbursement); Fla. Stat. § 717.1201(2); Idaho Code § 14-520(2); Indiana Code § 32-34-1.5-31(a)(2); Iowa Code § 556.14(4); Kan. Stat. § 58-3953(c); Ky. Rev. Stat. § 393A.350(1)(b); La. Rev. Stat. § 9:162(C); Md. Com. Law § 17-313; Mich. Comp. Laws § 567.241(2); Mont. Code Ann. § 70-9-811(3); Neb. Rev. Stat. § 69-1313; Nev. Rev. Stat. § 120A.590(3)(b); N.D. Cent. Code § 47-30.2-34(1)(b); Ohio Rev. Code § 169.08(4); 60 Okla. Stat. § 664(B); Or. Stat. § 98.366(2); 72 Pa. Con. Stat. § 1301.14; S.C. Code § 27-18-210(B); Tex. Prop. Code § 74.502(b); Utah Code § 67-4a-605(1)(b); Va. Code § 55.1-2526(A); Wash. Code § 63.30.360(1)(b); W.V. Code § 36-8-10(c); Wis. Stat. § 177.0605(1)(b); Wyo. Stat. § 34-24-121(b).

Accompanying this motion are two declarations, one relating to escrowed Official Checks paid by MoneyGram in 2022, the other relating to items paid in 2023. *See generally*, Elvin 2022 Dec.; Elvin 2023 Dec. Attached as exhibits to those declarations are copies of each cancelled Official Check presented for payment as well a MoneyGram internal record showing that the item has been paid or reimbursed. *Id.* Similar records were submitted to, and accepted by, the party states in connection with MoneyGram's previous applications for reimbursement. *Id.*

MoneyGram respectfully submits this documentation demonstrates its entitlement to reimbursement of \$ 4,063,298.36 from the Escrow Account on account of the 2022 Paid Items and \$ 1,279,941.06 on account of the 2023 Paid Items, for a total of \$ 5,343,239.42. Accordingly, MoneyGram requests that the Special Master enter an order, pursuant to 28 U.S.C. § 2042, directing payment of \$ 5,343,239.42 to MoneyGram out of the Escrow Account.

II. RESERVATION OF RIGHTS

Except as it relates to Official Check funds that are included in the 2022 Paid Items or the 2023 Paid Items, MoneyGram does not object to Pennsylvania's Motion for the Release of Escrowed Funds, except as to those amounts that are the subject of this reclaim request (\$ 184,532.01 in total for Pennsylvania). However, MoneyGram reserves its right to seek reimbursement from the Commonwealth of Pennsylvania for such released funds associated with Official Checks that are later paid or reimbursed by MoneyGram. *See* 72 Pa. Con. Stat. § 1301.14. Similarly, MoneyGram reserves the right to file reclaim applications under the applicable state law(s) for escrowed Official Check assets that are distributed to other states that MoneyGram later pays or reimburses.

III. REQUEST TO FILE UNDER SEAL

Pursuant to a Stipulation and Protective Order approved by the Special Master on January 16, 2018, MoneyGram is entitled to designate certain documents and information disclosed during these proceedings as "Confidential." (Docket Entry 54). The Protective Order further provides that documents so designated will be filed under seal. *Id.* at ¶ 15. MoneyGram's present motion necessarily includes the specific Official Checks for which MoneyGram seeks reimbursement which, in turn, contain financial account numbers and information concerning the private financial dealings of persons and entities not a party to this litigation (the "Check Information"). That Check Information is entitled to "Confidential" designation under the Stipulation and Protective Order, and MoneyGram accordingly requests an order allowing the filing of the Check Information under seal. MoneyGram has

coordinated this request with the parties to this matter, none of whom object to the relief sought herein. Rato Dec. ¶ 7.

CONCLUSION

For the foregoing reasons, non-party MoneyGram respectfully requests that the Special Master enter an order: (1) permitting MoneyGram to file the Check Information under seal; (2) directing the Clerk of the U.S. District Court for the Southern District of New York to release the amount of \$ 5,343,239.42 from the CRIS Account to MoneyGram; and (3) for such other and further relief as the Special Master may deem just and proper.

Dated: New York, New York
 June 7, 2023

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