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January 24, 2018

**VIA EMAIL**

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

**RE: Delaware v. Arkansas, No. 22O145**

Dear Judge Leval:

On behalf of Pennsylvania, we write in follow up to the Order of January 22, 2018 in the above matter, which solicits the basis for Pennsylvania's opposition to the two discovery requests set forth in Delaware's January 19, 2018 letter. The opposition to both requests is simple: Delaware is seeking to needlessly expand discovery by soliciting information that will not advance disposition of the sole issue presently before the Court. That issue, based on Pennsylvania's interpretation of paragraphs 5(b) and 6 of your Order of July 24, 2017, is whether the "Official Checks" sold by MoneyGram Payment Systems, Inc. are "money orders"; "similar written instruments"; or "third party bank checks" under the Disposition of Abandoned Money Orders and Traveler's Checks Act ("the Disposition Act"). Despite this narrow issue, Delaware is seeking information that will neither give legal meaning to the statutory terms in the Disposition Act nor give one detail about the qualities of the MoneyGram Official Checks.

More specifically, as to Delaware's first request, it is infected with at least two faulty premises. *One*, even though only MoneyGram instruments are in dispute, Delaware believes the factual qualities of official checks sold *by other entities* will define the legal meaning of the Disposition Act or explain the factual qualities of the MoneyGram instruments. This is illogical and will result in nothing but delay. *Two*, Delaware believes holder reports containing so-called NAUPA codes will likewise give meaning to the statutory terms or the MoneyGram instruments. Not so. Holder reporting is a holder-driven, self-reporting system; that is, the holders select which codes *they believe* apply to the property they possess and then submit that code to the respective states. The holder's selection of a code does not mean the property actually fits that code as a matter of law or that the state agrees with the holder's selection. In this way, holder reporting is like filing a tax return: just because a taxpayer claims something is tax deductible on a return does not mean it is actually tax deductible. Until the IRS audits the filing or otherwise challenges it, the deductions the taxpayer claimed don't carry some automatic quality of being "right" or "lawful." Here, it appears Delaware wants to use holder reports as proof Pennsylvania has adopted the holders' views as to what the property actually is, which Pennsylvania has not. At best, Delaware wants the identities of these other holders so it can propound discovery on them, which will not result in one quality of the MoneyGram instruments being further identified nor one statutory term being defined.



As to Delaware's second request, it, like the first, appears destined to delay disposition of the simple legal and factual questions before the Court. The Disposition Act means what it means as a matter of law; what any state has *said* to anyone in recent years about the statute or the instruments referenced therein does not change what Congress meant in October 1974. Further, the MoneyGram Official Checks are what they are objectively; i.e., the factual qualities of them do not depend on the factual qualities of instruments sold by other entities.

In the end, Pennsylvania believes this matter is rather simple and discovery rather discrete, and that which Delaware presently seeks is immaterial, irrelevant, and a waste of state resources. In short, nothing Delaware wishes to pursue in discovery aids in the disposition of this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Matthew H. Haverstick', written in a cursive style.

MATTHEW H. HAVERSTICK

cc: All counsel (via email)