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VIA EMAIL

Hon. Pierre N. Leval
Special Master
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RE: *Delaware v. Arkansas*, Nos. 22O145 & 22O146 (consolidated)

Dear Judge Leval:

On behalf of the Commonwealth, Pennsylvania Treasurer, we write regarding what we understand will be a letter from Delaware asking for mediation of this dispute. The proposed mediation is at best, premature, and at worst, yet *another* source of needless delay caused by Delaware.

First, a point must be kept in mind at every turn in these proceedings: None of the money belongs to any State—not Pennsylvania and certainly not Delaware. It is property that belongs *to persons* across the Nation; in many cases, a living, breathing resident of each State. This summer this case reached its 7th anniversary (filed May 26, 2016, dkt. no. 1); 7 years is a long time to deny citizens their rights to funds Delaware should have never had in the first place. And the reality of unclaimed property is that the older the escheat, the less likely it will ever be restored to these owners.

On that front, even though the funds associated with abandoned MoneyGram Official Checks lack owner name and address information, this information deficiency does not prevent state unclaimed property administrators from conducting an extensive campaign to advertise the availability of the property and to provide instructions to owners to successfully reclaim the funds.¹ This is the case because MoneyGram

¹ Upon receipt of the proceeds at issue, Pennsylvania Treasury anticipates executing an outreach strategy that would involve print media, earned media, direct outreach, the internet, and the creation of a searchable database to advertise the availability of abandoned Official Checks. These efforts would assist Pennsylvania purchasers to reclaim their funds. This undertaking would be similar to the 2017-19 campaign by Pennsylvania Treasury used to reunite U.S. Savings Bond owners with their property, despite incomplete ownership records and missing purchaser names and



transaction records identify the state of purchase, date of purchase, and amount of the transaction (including the identity of the associated banking institution). This information would permit owners who may have receipts or other related billing or payment records to successfully reclaim their funds. Unfortunately, continued delay in returning these proceeds to the states of original purchase exponentially harms the ability of owners to reclaim their money.²

Against this, the mediation is premature because Pennsylvania has pending its Motion for Order Directing Withdrawal of Deposited Funds, seeking approximately \$6.3 million belonging to Pennsylvanians (dkt. no. 146). That Motion is fully briefed and ready for disposition. Given Delaware's response to the Motion (dkt. no. 166), which set forth *no* reasonable ground to delay disposition of the escrowed funds, Pennsylvania does not understand what needs mediated regarding the escrow account. Pennsylvania's right to the funds is clear; Delaware's defenses are invalid—indeed, it has no standing to pursue any of them. Thus, nothing exists to mediate vis-à-vis these funds. Pennsylvania advised Delaware that an agreement to release the escrowed funds was a precondition to mediation; Delaware declined that term, signaling it continues to believe it has grounds to negotiate these utterly non-negotiable sums.

addresses. In spite of these information deficits, Pennsylvania Treasury was still able to contact and reunite bondholders with their matured and unredeemed funds. Indeed, Treasury was able to locate verified addresses for 872 registered owners and returned 2,236 bonds (out of a total of 9,800) to their owners. Additionally, despite lacking complete ownership records, additional due diligence efforts permitted Treasury to locate 848 registered owners of 1,225 bonds and assist those owners in reclaiming the unredeemed bonds from the Federal government.

² Continued delay of transmitting the unclaimed funds and associated purchase records to each state's unclaimed property administrators significantly harms the ability of owners to reclaim their funds. The vast majority of owners claiming property do so within five years of the state assuming custody, beyond that period the likelihood of the property being reunited with its owner falls precipitously. See National Association of Unclaimed Property Administrators, *Establishing a Time-Bar on an Owner's Right to Reclaim Unclaimed Property From the State is Both Unnecessary and Contrary to the Purposes of the Unclaimed Property Laws*, at 2 (2019), available at <https://unclaimed.org/wp-content/uploads/time-bar-of-owner-claims-final.pdf>. In fact, it has been estimated that the claims payout percentage drops to as low as .08 percent 10 years following property abandonment. See Colorado Joint Budget Committee, Memorandum, *Unclaimed Property Program Legislative Options Addendum*, at 2 (January 17, 2018), available at https://leg.colorado.gov/sites/default/files/unclaimed_property-01-17-18.pdf.



Further, the proposed mediation will cause needless delay. Recall that on June 7, 2023, Delaware advised Your Honor that it was engaged in settlement discussions with Pennsylvania. The Court entered various Orders reflecting these negotiations (dkt. nos. 153 & 157). Ultimately on August 4, 2023—roughly two months later—the parties advised the Court those discussions had failed (dkt. no. 162). In the course of those nearly 60 days of negotiations, Pennsylvania supplied to Delaware written proposals reflecting the precise terms on which it would settle. Delaware provided the same to Pennsylvania. But neither side’s final proposal was acceptable to the other. Hence, they reached an impasse.

Nothing has changed since August. Delaware demands too much from Pennsylvania; we are quite sure Delaware feels the same way about Pennsylvania’s demands. Going to mediation to exchange these same unaccepted proposals is without purpose. Until Delaware signals through affirmative conduct that it genuinely wants to settle—by withdrawing its objections to the escrowed funds—its overtures about mediation ring hollow in Pennsylvania. Delaware is holding hostage money it has no claim to and Pennsylvania cannot delay further restoring that money to its true owners under the promise of potential settlement. We had that same “promise” in June; the promise was broken. As the expression goes: once bitten, twice shy.

As a final note, the Court should not forget that Delaware sued the State of New York for nearly one billion dollars in 1988 (dkt. no. 148), and after the Supreme Court rendered liability judgment in favor of Delaware, the matter ended less than a year later. It did so *only* because New York—the liable party—accepted its duty to pay *and did pay*. Delaware has not taken the same course here. So, Pennsylvania wishes to press forward to pursue Pennsylvanian’s rights. Pennsylvania cannot entertain “settlement” when Delaware will not make a good faith gesture of its serious intent to resolve the case.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Joshua J. Voss', with a stylized flourish at the end.

Joshua J. Voss

cc: Counsel of record (via email)