

No. 22O145 & 22O146, Original (Consolidated)

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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DELAWARE,  
*Plaintiff,*

v.

PENNSYLVANIA AND WISCONSIN,  
*Defendants.*

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ARKANSAS, ET AL.,  
*Plaintiffs,*

v.

DELAWARE,  
*Defendants.*

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**PENNSYLVANIA'S BENCH MEMORANDUM ON THE  
DISPOSITION OF ABANDONED MONEY ORDERS AND  
TRAVELER'S CHECKS ACT**

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The Disposition of Abandoned Money Orders and Traveler's Checks Act establishes federal priority rules between states regarding which is entitled to take custody of certain abandoned financial instruments. The Act applies to "a money order, traveler's check or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable[.]" In light of the Act's scope, this matter poses the following basic question: Are "official checks" sold by MoneyGram Payment Systems, Inc. "third party bank checks" under the Disposition Act?

Based on the text, structure, history and purpose of the Disposition Act, MoneyGram official checks are not; instead, they are, at a minimum, "other similar written instruments," if not "money orders." As such, the sums payable on abandoned, un-cashed MoneyGram official checks sold in Pennsylvania must, as a matter of federal and Pennsylvania law, be remitted exclusively to custody of the Pennsylvania Treasurer. Nevertheless, Delaware has taken a contrary position, and has told MoneyGram to exclusively remit abandoned official checks—regardless of the state of purchase—to Delaware. This position, however, is without support under the Disposition Act. In consequence, Pennsylvania is entitled to judgment in its favor.

## **I. BACKGROUND**

### **A. MoneyGram's Prepaid Instruments**

MoneyGram Payment Systems, Inc. sells prepaid instruments; that is, checks whereby the customer pays an upfront sum to receive a check pre-printed with the exact value remitted by the customer. These instruments are described by MoneyGram as "money orders" and "official checks." MoneyGram believes its official checks are "cashier's checks, teller's checks and agent checks." Brief of Petitioners at 5, *MoneyGram Int'l, Inc. v. Comm'r of IRS*, Nos. 12231-12, 30309-12, 2014 WL 7795630 (Tax Feb. 28, 2014) (hereafter, MoneyGram Tax Brief)<sup>1</sup>;

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<sup>1</sup> MoneyGram Payment Systems, Inc. is a wholly-owned subsidiary of MoneyGram International, Inc. See MoneyGram Tax Brief

see also *MoneyGram Intl., Inc. v. Commr. of Internal Revenue*, 144 T.C. 1, 5 (Tax 2015) (“Financial institutions provide clients with official checks, such as bank checks, cashier’s checks, and teller checks, for use in various transactions.”), *vacated and remanded sub nom. MoneyGram Intl., Inc. and Subsidiaries v. Commr. of Internal Revenue*, 664 F. App’x 386 (5th Cir. 2016). It acknowledges that its official checks are “in some ways similar to a traditional teller’s check, in other ways similar to a money order[.]” MoneyGram Brief in Opposition to Motion for Leave to File Bill of Third-Party Complaint, at 3 (Dec. 28, 2016). Official checks are typically used in large dollar transactions, i.e., home and car purchases. *MoneyGram*, 144 T.C. at 5. Banks also use official checks to pay their own obligations. *Id.*

MoneyGram money orders and MoneyGram official checks are similar in a host of ways. For each, the customer of the instruments *prepays* the value to be reflected on the instrument; e.g., if a customer wants a \$400 money order or a \$400 official check, the customer pays \$400 upfront and is issued a check with that sum pre-printed on the “amount” line. For each, the MoneyGram selling agent remits to MoneyGram the value received for the instrument. *See MoneyGram Tax Brief* at 5-6. For each, the instrument reflects MoneyGram as the drawer/issuer and reflects MoneyGram’s own bank as the bank responsible for payment. For each, the instrument issued, once cashed, will not be debited from the customer’s bank account, but rather from a bank account owned by MoneyGram. For each, the instrument, once cashed, will clear through the interbank system of the Federal Reserve in the same way. *See MoneyGram Tax Brief* at 4, 5. Finally, for each, the purchasing customer has no direct way of knowing whether the instrument is ever processed for payment, since, again, the instrument is not debited from the customer’s own account once cashed. It is this final facet of money orders and official checks that makes them susceptible to abandonment.

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at 16 n.1. The brief in the Tax Court matter was submitted on behalf of both MoneyGram International and MoneyGram Payment Systems.

## B. Pennsylvania's Examination of MoneyGram

Pennsylvania contracted with an outside auditor to review MoneyGram's books and records. *See* Pennsylvania's Answer and Counterclaims to Delaware's Bill of Complaint, ¶ 61 (Oct. 28, 2016) (hereafter, Pennsylvania Answer). The purpose of the audit was to discover whether MoneyGram possessed property that should have been/should be remitted to the custodial care of the Pennsylvania Treasury under Pennsylvania law. Pennsylvania Answer ¶ 61. As a result of the audit, Pennsylvania discovered that the sums payable on some 151,022 un-cashed official checks sold in Pennsylvania had been erroneously submitted to Delaware instead of Pennsylvania. Pennsylvania Answer ¶ 62. Those checks covered years 2000 through 2009 and totaled some \$10,293,869.50. Pennsylvania Answer ¶ 62. Pennsylvania communicated the results of the audit to Delaware. Pennsylvania Answer ¶ 83.

Rather than correct the error, however, Delaware presented a novel, but faulty theory: the MoneyGram official checks are "third party bank checks" exempt from the Disposition Act's priority rules because they are "teller's checks" (checks issued by one bank from an account at another bank). *See* Letter from David Gregor to Brian Munley, at 3 (Sept. 29, 2015); *see also* Letter from Steven S. Rosenthal to Hon. Pierre N. Leval, at 2 (May 2, 2017). Curiously, however, Delaware appeared to acknowledge that a typical "cashier's check" *would be* subject to the Disposition Act. *See* Gregor Letter, at 3.

## II. ARGUMENT

This matter requires basic statutory construction to resolve issues of first impression regarding The Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. §§ 2501-03 (the Disposition Act).<sup>2</sup> Those issues, in particular, are whether the MoneyGram official checks at issue are "third party bank checks" or "money orders" or "other similar written instruments." Solely for purposes of this memorandum, Pennsylvania will accept Delaware's position in its letter brief to the Court that the checks at issue are "teller's checks."

Thus, accepting for the sake of argument Delaware's position, the text, structure, history and purpose of the Disposition Act nevertheless demonstrate that MoneyGram official checks are not "third party bank checks" but are, in fact, "other similar written instruments" that should be remitted to the custody of Pennsylvania. *Cf. POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2233 (2014) (examining text, history, and structure of two statutes to determine congressional purpose).

### **A. The plain text of the Disposition Act indicates that the MoneyGram official checks, as prepaid instruments, are subject to the Act's priority rules.**

The touchstone for interpreting a federal statute is to determine the intent, or "will," of Congress. *See Negonsott v. Samuels*, 507 U.S. 99, 104 (1993). The best manner of determining congressional intent is to examine the language of the statute itself. *See U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). If the language is clear, no further inquiry is required. *See id.*; *see also Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a

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<sup>2</sup> Though the issues presented here are ones of first impression, the Disposition Act has been subject to some judicial review. *See Travelers Express Co. v. Minnesota*, 506 F. Supp. 1379 (D. Minn. 1981), *aff'd*, 664 F.2d 691 (8th Cir. 1981).

legislature says in a statute what it means and means in a statute what it says there.”).

The plain text of the third section of the Disposition Act, 12 U.S.C. § 2503, reveals that Delaware’s construction of the statute is without justification. Indeed, Section 2503 uses and implicates a host of financial terms that at the time of enactment (October 28, 1974, *see* H.R. 11221, 93rd Congress, Title VI (1974)) and today have settled definitions. All of those definitions support Pennsylvania’s construction of the Act that “third party bank check” refers to ordinary personal or business checking account checks and that “similar written instruments” refers to prepaid bank instruments like cashier’s checks and teller’s checks.

Turning first to the text at issue, Section 2503 establishes state-to-state priority rules for prepaid instruments, stating in relevant part:

Where any sum is payable on a money order, traveler’s check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable—

(1) if the books and records of such banking or financial organization or business association show the State in which such money order, traveler’s check, or similar written instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State’s power under its own laws to escheat or take custody of such sum[.]

12 U.S.C. § 2503(1).<sup>3</sup> In light of the express text of Section 2503, and in light of potential terms implicated by the text, disposition of the issues

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<sup>3</sup> In this matter, the parties seemingly do not dispute that a “banking or financial organization, or a business association” is directly liable on the MoneyGram official checks, or dispute that Pennsylvania has enacted state legislation that allows it to take custody of the sums

here will require definitions for “third party bank check” as well as “bank check”; “money order”; “traveler’s check”; “teller’s check”; and “cashier’s check.”

1. **“Third party bank check” has at least two understood definitions, neither of which matches Delaware’s definition.**

Statutes, case law, and secondary sources reveal two meanings for “third party bank check.”

- (a) **A “third party bank check” is a non-prepaid check issued from a personal or business account; it is not a teller’s check or any other kind of prepaid instrument.**

The Disposition Act was enacted in October 1974. *See* H.R. 11221, 93rd Congress, Title VI (1974). Just nine years later in 1983, the State of Washington enacted its version of the Uniform Unclaimed Property Act, Wash. Rev. Code §§ 63.29.010-.906, 1983 Washington Laws ch. 179 §§ 1-47. As is material, the Washington Code provides as follows regarding the abandonment of money orders or similar written instruments: “[A]ny sum payable on a money order or similar written instrument, *other than a third party bank check*, that has been outstanding for more than five years after its issuance is presumed abandoned...” Wash. Rev. Code. § 63.29.040 (emphasis added). In turn, the State of Washington in 1983 defined “third party bank check” to mean, essentially, a standard checking account check: “Third party bank check’ means any instrument drawn against a customer’s account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.” Wash. Rev. Code § 63.29.010(17), 1983 Washington Laws ch. 179 § 1(15).

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payable on the MoneyGram official checks. *See* 72 P.S. §§ 1301.1 *et seq.* (Disposition of Abandoned and Unclaimed Property Act).

In other words, shortly after Congress enacted the Disposition Act, at least one state interpreted identical language used by Congress to simply mean a standard checking account check, and not prepaid instruments such as teller's checks, cashier's checks, money orders, or traveler's checks.

And this near contemporaneous legislative definition by the State of Washington comports with recent, modern uses by the United States Department of Justice, an entity responsible for prosecution of interstate financial crimes involving financial instruments. For example, in an indictment from 2000, various individuals were accused of money laundering based, in part, on their use of "third party bank checks" to distribute proceeds from drug transactions:

It was part of the conspiracy that, since on or about June 1997, HEBRONI, Moshe Hebroni, and MIZRAHI, doing business as SPEED and ARGENTO, established and utilized several methods by which they knowingly received and transacted business with drug proceeds, including coordinating and receiving drug proceeds from cash pick ups, receipt of wire transfers, cashier's checks, and *third party bank checks*.

See Superseding Indictment at ¶ 7, *U.S. v. Joyeros*, No. 00-cr-960, 2000 WL 35598634 (E.D.N.Y. Dec. 13, 2001) (emphasis added). The meaning of the emphasized phrase is made clear later in the indictment where the use of checks issued from business and personal accounts are described: "On or about the dates listed in the chart below, SPEED deposited the following bank checks of drug proceeds, *which were issued by CW-3 on his business account* based on instructions of representatives of a Columbian drug trafficking and money laundering organization[.]" See *id.* at ¶ 11(A)-(B) (emphasis added).<sup>4</sup>

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<sup>4</sup> Further, Department of Justice news releases issued about the case referred to the third party bank checks at issue, describing them separately from certified checks. See News Release, Department of Justice, U.S. Marshalls to Sell Nearly Five Tons of Bulk Gold and

Next, in 2004, the Department of Justice again used the phrase “third party bank checks” in an indictment, this time to accuse an individual of fraud related to payments received for distributing photocopied checks: “ROBINSON caused to be transmitted by wire communication approximately \$1000 as payment for photocopies of signed third party bank checks[.]” Indictment at ¶ 4, *U.S. v. Robinson*, No. 04-cr-1360 (S.D.N.Y. Dec. 20, 2004). The Second Circuit’s decision on the appeal in the matter, as well as the defendant-appellant’s own briefing on appeal, reveal that “third party bank checks” meant standard checking account checks; i.e., non-prepaid checks:

- “Beginning around 1998, Robinson supplied various swindlers with checks or copies of checks from other persons’ accounts, which were then counterfeited or otherwise altered and used to obtain funds fraudulently.” *U.S. v. Robinson*, 294 F. App’x 630, 632 (2d Cir. 2008).
- “The appellant at the time worked at the Salvation Army as a financial auditor. The appellant received approximately \$1000.00 for mailing Salvation A[rmy] checks to the informant.” Brief of Defendant-Appellant at 7, *U.S. v. Robinson*, No. 07-3680-cr, 2007 WL 6196833 (2d Cir. Dec. 13, 2007).

In light of the foregoing, according to a near contemporaneous statutory definition from the State of Washington and various modern uses by the Department of Justice, a “third party bank check” simply

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Silver Jewelry, 2011 WL 1747944 (May 9, 2011) (“According to evidence presented in the case, the money-laundering conspiracy included coordinating and receiving drug proceeds from the United States through cash pick-ups, wire transfers, cashier’s checks, and third-party bank checks.”); News Release, Department of Justice, More Than \$40 Million Worth of Gold, Silver and Jewelry Forfeited in International Money Laundering Case, 2010 WL 1436632 (Apr. 12, 2010) (“According to evidence presented in the case, Hebroni and her companies were involved in a money laundering conspiracy that included coordinating and receiving drug proceeds from the United States through cash pick-ups, wire transfers, cashiers checks and third party bank checks.”).

means a check issued from a personal or business account, which is, critically, not a prepaid instrument. The MoneyGram official checks are prepaid checks and are not issued from standard personal or business accounts; hence, they are not “third party bank checks” under the plain meaning of the Disposition Act.

**(b) “Third party bank check” has also been used to mean an instrument endorsed over to a third party (which does not describe MoneyGram’s official checks).**

At least one other known definition for the phrase “third party bank check” exists in a case decided nearly contemporaneously with the enactment of the Disposition Act, which research reveals to be the only known published decision even implicitly defining “third party bank check.” In 1982, the Southern District of New York was asked to compel the U.S. Marshal to accept the bid of two individuals at a property foreclosure sale. *U.S. v. Thwaites Place Assocs.*, 548 F. Supp. 94 (S.D.N.Y. 1982). The Marshal had conducted a foreclosure sale whereby he announced that the winning bidder needed to produce 10% of the winning bid in either cash or a certified check made out to the U.S. Marshal or the U.S. Treasury. The winning bidder produced two checks: both made out to another person and not the Marshal or U.S. Treasury. The checks were, however, endorsed over to the U.S. Marshal. The Marshal rejected the checks, saying he was unable to accept “third party bank checks.” *Id.* at 95-96. After reviewing the facts, the court concluded that “third party bank checks” were not the equivalent of cash or a cashier’s check under the circumstances. *Id.* at 96-97.

Under this definition of third party bank checks, the MoneyGram official checks are still not subject to Delaware’s control. The checks at issue here are not in the nature of cashier’s checks endorsed over to a third party. Hence, even the only known published decision employing a working definition of the phrase “third party bank check” does not support Delaware’s position.

**2. The terms with undisputed meanings in the Disposition Act also show the MoneyGram official checks are not “third party bank checks.”**

The express text of Section 2503 of the Disposition Act, and Delaware’s interpretation of the text, implicates the meaning of the terms “bank check”; “money order”; “traveler’s check”; “teller’s check”; and “cashier’s check.” Each of these terms, in turn, inform what “third party bank check” means in context.

Turning first to the term “bank check,” that phrase has long been regarded as simply a check from a bank, as opposed to some particular type of bank instrument. Indeed, a leading treatise in the area of financial instruments, *Brady on Bank Checks*, uses the word “bank check” interchangeably with “check”: “The term ‘bank check’ as used in this work is, unless the context specifies otherwise, interchangeable with the word ‘check.’ Bank check does not necessarily describe a direct bank obligation, such as a certified check, cashier’s check, bank draft or teller’s check.” *Brady on Bank Checks*, ¶ 1.01 n.1 (Richard B. Hagedorn ed., current through Jan. 2015) (“Origin and History of Bank Checks”); *see generally* Barkley Clark and Barbara Clark, *The Law of Bank Deposits, Collections and Credit Cards*, ¶ 1.06[1] (current through Oct. 2013 update) (“A Brief History of Bank Checks”; describing the history of checks in the early to mid-20th century).

Turning next to the terms “money order,” “traveler’s check,” “teller’s check,” and “cashier’s check,” each have an understood meaning in, among other things, Article 3 of the Uniform Commercial Code (which both Pennsylvania and Delaware have adopted) as well as in federal Regulation CC, 12 C.F.R. §§ 229.1-229.60 (promulgated under the Expedited Funds Availability Act, 12 U.S.C. §§ 4001-10).<sup>5</sup>

To illustrate, while money order is not directly defined by the UCC, it is indirectly defined, in part, as simply a “check”: “Check’

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<sup>5</sup> Article 3 of the Uniform Commercial Code was introduced in 1962, *see Brady on Bank Checks*, ¶ 1.05, some 12 years before the enactment of the Disposition Act.

means: (1) a draft, other than a documentary draft, payable on demand and drawn on a bank; or (2) a cashier's check or teller's check. *An instrument may be a check even though it is described on its face by another term, such as 'money order.'*" 13 Pa.C.S. § 3104(f) (emphasis added); 6 Del.C. § 3-104(f) (stating same); 12 C.F.R. § 229.2(k) (Regulation CC, note to definition of "check," stating "A draft may be a check even though it is described on its face by another term, such as money order."). In practical terms, according to MoneyGram, money orders are "essentially one-check checking accounts available to the general public. When a customer wishes to obtain a money order, he enters a store operated by a MoneyGram money order agent and deposits with the agent cash equal to the money order amount (plus a fee). The customer receives a written money order for the requested amount." *See MoneyGram Tax Brief at 4 (internal citations omitted).*

Next, a traveler's check is directly defined by the UCC as follows: "an instrument that: (1) is payable on demand; (2) is drawn on or payable at or through a bank; (3) is designated by the term 'traveler's check' or by a similar term; and (4) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument." 13 Pa.C.S. § 3104(i); 6 Del.C. § 3-104(i); *see also* 12 C.F.R. § 229.2(hh) (similarly defining traveler's check).

Further, teller's check is directly defined by the UCC as follows: "a draft drawn by a bank: (1) on another bank; or (2) payable at or through a bank." 13 Pa.C.S. § 3104(h); 6 Del.C. § 3-104(h); *see also* 12 C.F.R. § 229.2(gg) (teller's check means "a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.").

Finally, a cashier's check is defined by the UCC as "a draft with respect to which the drawer and drawee are the same bank or branches of the same bank." 13 Pa.C.S. § 3104(g); 6 Del.C. § 3-104(g); *see also* 12 C.F.R. § 229.2(i) (defining cashier's check as "a check that is— (1) Drawn on a bank; (2) Signed by an officer or employee of the bank on behalf of the bank as drawer; (3) A direct obligation of the bank; and

(4) Provided to a customer of the bank or acquired from the bank for remittance purposes.”).

What the above definitions reveal is simply this: a money order, a traveler’s check, a teller’s check, and a cashier’s check are just various species of “checks.” *See* 13 Pa.C.S. § 3104(f); 6 Del.C. § 3-104(f). The term “bank check” does not just mean specifically an instrument a person receives directly from a bank teller (like a teller’s check or cashier’s check); instead, it means a check generally. *See Brady on Bank Checks*, ¶ 1.01 n.1; *see also* 13 Pa.C.S. § 3104(f) (definition of “check”); 6 Del.C. § 3-104(f) (same).

But what a money order, traveler’s check, teller’s check, and cashier’s check all have in common—that is, how they are “similar”—is they are *prepaid*, “written instruments” that are *not* payable through the account of the individual who purchases the instrument. *See Center Video Indus. Co. v. Roadway Package System, Inc.*, 90 F.3d 185, 190 (7th Cir. 1996) (noting difference between cashier’s checks, certified checks, and money orders on the one hand, and “ordinary personal or business checks” on the other, is that each of the former group is an “institutionally guaranteed instrument where money has already been paid or set aside”).

The one “similar written instrument” that is different in this context, however, is an ordinary personal or business check. With such checks, the drawee bank is a “third party” to the transaction between the check-issuing party (the person on whose account the check will be paid) and the receiving party, with the drawee bank only being obligated to pay funds subject to the availability in the check-issuing party’s account. Further, if the personal/business check goes uncashed, the person issuing the check is never deprived in their account of the value written on the face of the instrument, which is unlike the case with a money order, traveler’s check, teller’s check, or cashier’s check where the funds to support the check are handed over immediately at the time of purchase of the instrument.

The above interpretation of the “similar written instrument” language has the benefit of giving that language meaning. In other words, under Pennsylvania’s definition of the phrase, specific

instruments are identifiable that are subject to the Act (prepaid instruments, like teller’s checks and cashier’s checks). But under Delaware’s definition, *no* instrument is similar to a money order or traveler’s check, and Delaware, in turn, would have the Court believe Congress enacted a meaningless phrase. This is an absurd result. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (“It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.”)

In the end, and simply stated, MoneyGram official checks—be they money orders, teller’s checks, or otherwise<sup>6</sup>—are prepaid instruments that are not “third party bank checks” but are, even under Delaware’s position (again, accepted solely for purposes of this memorandum), “other similar written instruments” under the plain meaning of the text of the Disposition Act.

**B. The structure of Section 2503 confirms that the MoneyGram official checks, as prepaid instruments, are subject to the Disposition Act’s priority rules.**

If the plain text of a statute does not reveal the meaning of certain text, the provision at issue should be examined in the context of the “whole statutory text.” *See Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006). Applying that principle here, Congress’s intent with the “similar written instrument” phrase is made clear from (1) its place in the structure of Section 2503, and (2) a basic canon of statutory construction.

Under the principle of *eiusdem generis* “when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration.” *Norfolk*

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<sup>6</sup> “Official checks” are not a defined term in either the UCC or Regulation CC. As noted in the background section, MoneyGram describes its “official checks” as “cashier’s checks, teller’s checks and agent checks.” MoneyGram Tax Brief at 5. Notably, “agent checks” are likewise not defined by the UCC or Regulation CC.

*and Western Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 129 (1991). With the Disposition Act, Congress supplied two specific instruments—money orders and traveler’s checks—and then a general phrase—“other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable.” To find meaning for this general phrase, the Court must look to the meaning of the first two specific instruments. As noted above, the key tie between money orders and traveler’s checks is that they are prepaid instruments, which become cash-equivalents once issued. *See supra* § II.A.2 (discussing Pennsylvania and Delaware UCC definitions and Regulation CC definitions); *see also Brady on Bank Checks*, ¶ 1.19 (“A traveler’s check is a device first put into use in 1891, intended to provide an instrument with the marketability of cash and the safety of a bank draft[.]”); *Brady on Bank Checks*, ¶ 1.20 (“A money order is a form of credit instrument calling for the payment of money to the named payee and providing a safe and convenient means of remitting funds by persons not having checking accounts.”).

Against these qualities of the specifically named instruments, the general phrase must be interpreted in kind. That interpretation must lead to the conclusion that prepaid, cash-equivalent instruments, i.e., teller’s checks and cashier’s checks, are included within the phrase “similar written instruments.”

Accordingly, under these proper constructions of Section 2503 as written, the MoneyGram official checks at issue, as prepaid instruments, are—even under Delaware’s position that the instruments are teller’s checks—“other similar written instruments” and not “third party bank checks.”

**C. The legislative history of the Disposition Act underscores that the Act was intended to apply to prepaid instruments, such as the MoneyGram official checks.**

When statutory text is ambiguous, a court can turn to “extrinsic materials” such as legislative history; however, such materials “have a role in statutory interpretation only to the extent they shed a reliable

light on the enacting Legislature’s understanding of otherwise ambiguous terms.” *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 568 (2005). In this matter, if the above defined terms in Section 2503 and the structure thereof do not convince the Court of the true nature of the MoneyGram official checks, then the legislative history from 1973 and 1974 demonstrates that Pennsylvania’s construction of the Disposition Act is indeed correct.

To understand the legislative history, however, brief historical context from the early 1970s must be supplied, which context provides meaning for the “third party” language inserted into the Disposition Act.

- 1. In the early 1970s, Congress was concerned with regulating “third party payment systems” such as personal checking accounts, not bank-issued, prepaid instruments.**

In 1970, President Richard Nixon organized “the Commission on Financial Structure and Regulation,” also known as the “Hunt Commission.” Robert E. Knight, *The Hunt Commission: An Appraisal*, Wall Street Journal, July 3, 1972, at 4. The charge of the Hunt Commission was to “review and study the structure, operation, and regulation of private financial institutions in the United States, for the purpose of formulating recommendations that would improve the functioning of the private financial system.” President’s Comm’n on Fin’l Structure & Regulation, *The Report of the President’s Commission on Financial Structure & Regulation*, at 1 (Dec. 1971) (hereafter, the Hunt Commission Report). In late 1971, the Hunt Commission issued its report. *See id.* The final report contained various proposals. *See id.* at 23-106.

One of the proposals in the Hunt Commission Report was to allow certain depository institutions (such as savings & loan associations, mutual savings banks, and credit unions) to offer “third party payment services.” Hunt Commission Report at 33, 55; *see also* Knight, *The Hunt Commission*, at 4. The Hunt Commission defined “third party payment services” as follows: “Third party payment services, as here defined,

include any mechanism whereby a deposit intermediary transfers a depositor's funds to a third party or to the account of a third party upon the negotiable or non-negotiable order of the depositor. Checking accounts are one type of third party payment services." Hunt Commission Report at 23 n.1.

The Hunt Commission's definition of "third party payment services" as including checking accounts was reported on and adopted by various contemporaneous sources:

- "To ensure that financial institutions will be responsive to economic and social needs of the future, the commission generally recommended that regulatory barriers be lowered and that increased reliance be placed on competition. Thus, nonbank depository institutions would be permitted to offer *third-party payment* privileges (checking accounts, automatic bill paying, credit cards)..." See Knight, *The Hunt Commission*, at 4 (emphasis added).
- "Adams said that provided all financial institutions are taxed uniformly, commercial banking would welcome the competition envisaged by the Hunt Commission. Currently only commercial banks are permitted to offer checking accounts, though mutual savings banks ... are offering similar '*third party payment*' services." James L. Rowe, *Bankers Seen Backing Hunt Recommendations*, *The Washington Post, Times Herald*, Dec. 20, 1972, at D12 (emphasis added).
- "*Third party payment* today means essentially a checking account although bank credit cards are rapidly rising in importance." James L. Rowe, *Nixon Administration Readies Bank System Overhaul*, *The Washington Post, Times Herald*, Jan. 14, 1973, at G2 (emphasis added).
- "The [Hunt Commission] also recommended broadening the ways in which funds might be secured. The principal one proposed was to permit savings institutions to offer '*third-party payment*' services to individuals. The nature of these services was not spelled out but seems to embrace all plans by which transfers of

funds can be made on demand.” Roland I. Robinson, *The Commission Report: A Search for Politically Feasible Solutions to the Problems of Financial Structure*, 27 *Journal of Finance* 765, 770-71 (1972) (emphasis added).<sup>7</sup>

The critical takeaway from the above is that in October 1974, when Congress enacted the Disposition Act, the phrase “third party payment” had a readily accepted, technical meaning. And though that precise phrase did not end up in the finally enacted Disposition Act, the phrase’s meaning informs exactly what did appear in the statute. How the enacted language came to exist is explained next.

**2. The legislative history of the Disposition Act reflects Congress’s concern about ordinary checking accounts, not concern about teller’s checks.**

On May 29, 1973, Pennsylvania Senator Hugh Scott introduced Senate Bill 1895, S. 1895, 93rd Congress (1973), known as the Disposition of Unclaimed Property Act. *See* 119 *Cong. Rec.* S9749-9750 (daily ed. May 29, 1973). (Senator Scott’s express motives for introducing S. 1895 are discussed in Section II.D below.) When introduced, S.1895 did not contain the “third party bank check” language; instead, it stated in relevant part: “Where any sum is payable on a money order, travelers check, or similar written instrument on which a banking or financial organization or a business association is directly liable ....” *Id.* at S9749 (Section 2 of the bill as printed into the record).

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<sup>7</sup> *See also* Donald I. Baker, *An Agenda for the National Commission on Electronic Fund Transfers*, 93 *Banking L.J.* 389, 416 (1976) (“The Hunt Commission recommended a number of measures which would broaden the investment and other powers of thrift institutions to compete with commercial banks. .... Some states have granted thrift institutions *third-party payment* powers ....” (internal citations omitted; emphasis added)).

During the consideration of S. 1895, the Senate Committee on Banking, Housing, and Urban Affairs solicited input on the bill from various sources, including the United States Department of Treasury. *See* S. Rep. No. 93-505 (1973). On November 1, 1973, U.S. Treasury General Counsel Edward C. Schmults wrote the Committee. *See id.* at 5. Schmults described the intent of S. 1895 as “intend[ing] to clarify and make more equitable the rules governing the disposition among the several states of the proceeds of abandoned traveler’s checks, money orders and *similar instruments for the transmission of money.*” *Id.* (emphasis added). On behalf of U.S. Treasury, Schmults made clear that the department had “no objection to legislation clarifying the escheat laws with regard to traveler’s checks, money orders *or similar instruments[.]*” *Id.* (emphasis added).

Schmults noted, however, what he perceived to be language that is “broader than intended by the drafters.” *Id.* Specifically he noted as follows (language that is critical for Delaware’s mistaken interpretation of the Disposition Act): “The introductory language of section 2 could be interpreted to cover ***third party payment bank checks*** since it refers to a ‘money order, traveler’s check, or similar written instrument on which a bank or financial organization or business association is directly liable.’ It is recommended that this ambiguity be cured by defining these terms to exclude *third party payment bank checks.*” *Id.* (emphasis added).

The Committee eventually adopted the “technical” suggestion from Schmults. *See* S. Rep. No. 93-505, at 6. The bill was then re-introduced as S. 2705, and it contained the “technical” change adopted by the Committee by using the phrase “third party bank check.” *See* S. 2705, 93rd Congress § 3 (1974). Later, S. 2075 was wholly incorporated into H.R. 11221, 93rd Congress, Title VI (1974), and was enacted into law. *See* 12 U.S.C. §§ 2501-03.

The above context and legislative history demonstrates that when the U.S. Treasury Department suggested that Congress amend the then-pending Disposition Act to exclude “third party *payment* bank checks” it intended something very specific. “Third party payment” was an understood term in 1973 that meant personal third party payment

systems such as checking accounts, direct bill pay, and credit cards. *See* Hunt Commission Report at 23 n.1; Knight, *The Hunt Commission*, at 4; Rowe, *Nixon Administration Readies*, at G2. By adding the phrase “bank check” after “third party payment” (to create “third party payment bank check”), the U.S. Treasury made clear that it wanted a specific type of third party payment system—ordinary checking accounts—excluded from the Disposition Act. When the Banking Committee adopted what it described as Treasury’s “technical” amendment (albeit by dropping the word “payment”), the Banking Committee expressed its intent to exclude only ordinary checking account checks from the reach of the Disposition Act. In doing so, however, the Committee maintained the bill’s original intent to apply to “instruments for transmission of money,” *see* S. Rep. No. 93-505, at 5 (Schmulds letter), that were similar to money orders and travelers’ checks; i.e., *prepaid* instruments unlike ordinary checking account instruments. When the bill was enacted into law, the intent was codified. That intent must now be applied.

**3. Delaware’s construction of the legislative history of the Disposition Act ignores the historical record and improperly speculates about congressional motives.**

Despite the above history, Delaware maintains that Congress and the U.S. Treasury in 1973 were solely concerned with record-keeping obligations in teller’s check transactions, which is why U.S. Treasury purportedly wanted to exclude this single prepaid instrument for the transmission of money. *See* Gregor Letter, at 3. Specifically, Delaware misguidedly argues that in teller’s check transactions, if subject to the Act, the two banks at issue would have to compare notes to determine which checks were abandoned. *See id.* This position is without foundation for at least two reasons.

*First*, the position again ignores the acquired meaning of the phrases actually used by U.S. Treasury: “third party payment” and “bank checks.” Indeed, in 1973, the Hunt Commission proposals were very much the subject of lively debate in Washington D.C.; it thus stands to reason that the U.S. Treasury and Congress would have been

acutely concerned about legislation potentially impacting “third party payment” mechanisms. Delaware’s story about purported record-keeping concern is speculative and ignores the contemporaneous historical record regarding the ongoing debate about “third party payment” systems.

*Second*, the purported record-keeping concerns for teller’s checks are no different for money orders, which *are* expressly subject to the Act. The selling entity (like one of MoneyGram’s selling agents) has no way of knowing whether the instrument was ever cashed without comparing records with the drawee bank. This is the same scenario Delaware claims makes teller’s checks exempt from the Deposition Act. Thus, the position cannot withstand scrutiny.<sup>8</sup>

In sum, in light of the historical context of the Disposition Act and the limited legislative history, the MoneyGram official checks at issue here are not third party bank checks.

**D. The underlying purpose of the Disposition Act is furthered by an interpretation that MoneyGram official checks are “other similar written instruments.”**

The purpose of the Disposition Act is primarily made plain in various Congressional declarations. To a lesser extent, the purpose is clarified in various contemporaneous records related to the then-bill’s

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<sup>8</sup> Delaware’s position that teller’s checks were specifically contemplated by Congress for exclusion also asks the Court to accept that in 1973-1974 Congress had some specific concern for teller’s checks. Yet, given that the word “teller’s check” never appears in a federal statute until 1987, *see* Competitive Equality Banking Act of 1987, Pub.L. 100-86, Title VI, §§ 602-604 (1987) (codified at 12 U.S.C. §§ 4001-03), Delaware’s position seems dubious. By way of contrast, the terms “money order” and “cashier’s checks” were first part of a congressional enactment in 1954. *See* Internal Revenue Code of 1954, Pub.L. 83-59, § 6311 (1954) (codified at 26 U.S.C. § 6311).

proposed enactment. All of these sources support Pennsylvania's construction of the Disposition Act.

Before turning to these sources, however, examination of a 1972 decision by the United States Supreme Court is material to set the context. In *Pennsylvania v. New York*, 407 U.S. 206 (1972), the Supreme Court was asked to decide as a matter of federal common law whether Pennsylvania was entitled to take custody of abandoned Western Union money orders purchased in Pennsylvania or whether New York, Western Union's state of corporate domicile, was entitled to them. After reviewing existing federal common law on the matter, the Court held that New York had the superior right to the funds. *Id.* at 215-16. Less than a year after the decision in *Pennsylvania v. New York*, Senator Hugh Scott of Pennsylvania introduced S. 1895 (the decision was handed down on June 19, 1972; S. 1895 was introduced on May 29, 1973).

Along with his bill, Senator Scott entered into the Senate Record an explanatory memorandum for the bill. In the memorandum, Senator Scott explained the singular purpose of the bill was to end interstate disputes about the entitlement to the proceeds of abandoned financial instruments: "The sole purpose and function of this bill is to resolve a long-standing and much litigated conflict problem as to which state (among several having contacts with a particular item of abandoned property) has the superior right to escheat proceeds from such property by means of its abandoned property or escheat laws." *See* 119 Cong. Rec. at S9750. He further made clear that the bill was intended to apply to multiple instruments for the transmission of money, stating: "The proposed [Act] and this memorandum are submitted for consideration by Congress in response to an urgent need for clear, equitable and uniform rules governing the disposition among the several states of the proceeds of abandoned travelers checks, money orders and *similar instruments for the transmission of money.*" *See id.* (emphasis added). Finally, Senator Scott made plain that the overriding goal of the bill was to eliminate the inequitable Supreme Court rule that allowed millions of dollars generated in all 50 states to be remitted to but 1 state:

The difficulty with the Supreme Court's decision is that in the case of travelers checks and commercial money orders where addresses do not generally exist large amounts of money will, if the decision applies to such instruments, escheat as a windfall to the state of corporate domicile and not to the other 49 states where purchasers of travelers checks and money orders actually reside.

....

Finally, Congress should note that the problem to which this bill is directed is a matter of important public concern in that the bill would, in effect, free for distribution among the states several million dollars in proceeds from abandoned property now being claimed by one state. The bill is eminently fair and equitable because it would permit the state where a travelers check or money order was purchased and which is the state of the purchasers' actual residence in over 90% of the transactions to escheat the proceeds of such instruments. ....

See 119 Cong. Rec. at S9750. Much of Senator's Scott's views on the inequities created by the Supreme Court's decision in *Pennsylvania v. New York* found their way into the "Congressional findings and declaration of purpose," codified in Section 1 of the Act, 12 U.S.C. § 2501.<sup>9</sup>

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<sup>9</sup> 12 U.S.C. § 2501. Congressional findings and declaration of purpose:

The Congress finds and declares that--

(1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;

(2) a substantial majority of such purchasers reside in the States where such instruments are purchased;

The Disposition Act's purpose is further explained in contemporaneous materials submitted to President Gerald Ford after H.R. 11221 had been passed by Congress, but before it had been enacted into law. (Note: the Disposition Act was found in Title VI of H.R. 11221.) For example, in an October 16, 1974 letter, the General Counsel of the U.S. Treasury expressed his understanding (on behalf of the U.S. Treasury) that the enrolled bill applied to multiple types of instruments for the transmission of money, stating: "Title VI is intended to clarify and make more equitable the rules governing the disposition among the several States of the proceeds of abandoned traveler's checks, money orders and *similar instruments for the transmission of money*. The Department has no objection to this title." Letter from The General Counsel of the Treasury to Director of Office of Management and Budget, at 3 (Oct. 16, 1974). Further, in an October 1974 memorandum to the President from the Office of Management and Budget, the "Purpose" of H.R. 11221, as it concerns the Disposition Act, was described as follows: "Provides for distribution among the States of the proceeds of abandoned *checks* and money orders." Memorandum for the President from the Office of Management and Budget, at 1 (Oct. 23, 1974).

Taken collectively, these materials support that the purpose of the Disposition Act was to once and for all end interstate disputes about prepaid instruments for the transmission of money. No hint of material exceptions such as the one suggested by Delaware appear in the

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(3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment;

(4) it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto; and

(5) the cost of maintaining and retrieving addresses of purchasers of money orders and traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments.

contemporaneous record. Seemingly, all sides (Congress, the President, and even the U.S. Treasury) understood that the inequitable outcome from *Pennsylvania v. New York* needed to be reversed to ensure that when a prepaid instrument is purchased in a state, and the purchaser likely lives in that state, then the state of purchase should be the one that equitably receives custody of abandoned sums payable on the prepaid instrument.

Nevertheless, Delaware's position requires one to accept that while Congress found it unfair for 1 state to receive funds from 49 other states for prepaid instruments like money orders and travelers checks, Congress found it perfectly fair to allow 1 state to sweep in funds related to other, indistinguishable financial instruments. This is an absurd interpretation and it requires blinders to the plain language used in the law and the intent of the law expressed in the contemporaneous legislative record. In short, the purpose of the Disposition Act at the time of enactment supports that the MoneyGram official checks at issue here are subject to Pennsylvania's exclusive custody.

### III. CONCLUSION

The Disposition Act was intended to once-and-for all end interstate disputes regarding prepaid financial instruments. Yet, some 40 years after the Act's enactment, Delaware is trying to revive the corpse of the long-dead doctrine that allowed one state to inequitably reap rewards for financial activities that occur in 49 other states. But nothing in the text, structure, history, or purpose of the Disposition Act supports Delaware's position. It asks that blinders be put on to well-understood terms and plain language to net an effect that benefits a single state—Delaware—to the detriment of all others. The Disposition Act does not allow this.

Therefore, for the reasons set forth above, the MoneyGram official checks at issue here are, even under Delaware's view of the instruments, "other similar financial instruments" and not "third party bank checks." As such, Pennsylvania is entitled to exclusive custody of all sums payable on the abandoned instruments at issue in this dispute.

Respectfully submitted,

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