

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

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

DELAWARE,
Plaintiff,

v.

PENNSYLVANIA AND WISCONSIN,
Defendants.

ARKANSAS, ET AL.,
Plaintiffs,

v.

DELAWARE,
Defendants.

**PENNSYLVANIA'S BRIEF IN SUPPORT OF MOTION FOR
ORDER DIRECTING WITHDRAWAL OF DEPOSITED FUNDS**

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On February 28, 2023, the Supreme Court overruled the exceptions to the First Interim Report and adopted the proposed order attached thereto. As a result, the question of liability is now resolved. As such, under FRCP 67(b) and 28 U.S.C. § 2042, the Court should immediately enter an order directing the Clerk of Court for the Southern District of New York, at docket 1:18-mc-00064-PNL, to withdraw the sum of **\$6,331,070.91** from the Court Registry Investment System and remit the same to Pennsylvania. Such order should also direct the Clerk to remit to Pennsylvania appropriate interest accrued on the foregoing sum, less the assessment fee authorized by the February 21, 2018 Order.

I. BACKGROUND

A. MoneyGram and the Parties' Stipulation

On November 11, 2016, Pennsylvania filed a motion for leave to file a third party complaint against MoneyGram Payment Systems, Inc. (docket entry 15). MoneyGram opposed the motion (docket entry 21), and Pennsylvania then filed a reply in further support of the motion (docket entry 24).

Sometime thereafter, the parties appeared before the Special Master in a transcribed conference on June 5, 2017 (docket entry 39) to discuss, among other things, Pennsylvania’s motion. Delaware made several important representations at the conference regarding MoneyGram as a party as well as Delaware’s willingness to pay disputed sums. For instance, Delaware stated: “And we have no position about whether MoneyGram should be in, but if the only reason they’re in is because of some doubt here that we will honor a decree, that should not be a reason to do it.” Transcript at 152:21-25.

Then Delaware made a further—abundantly clear—representation about its willingness to pay, if ordered: “We have represented to you, and we represent to the Court that we will honor a decree entered in this case.” Transcript at 154:17-20.

The Special Master specifically pressed Delaware on this representation, asking as follows: “So what is Delaware’s position? I take it that Delaware’s position, as you stated, and what you stated was if the judgment of the Supreme Court tells us we owe money to other states, we will pay?” Transcript at 154:25-155:6.

Delaware's answer was unequivocal: "Absolutely, Your Honor."

Transcript at 155:7-5.¹

In response to the June 5 conference and the various discussions about a potential stipulation as to MoneyGram, on June 12, 2017, the parties entered into stipulations concerning MoneyGram's participation (docket entry 38). Among the stipulations, the parties and MoneyGram agreed that MoneyGram "will not remit the proceeds from any unclaimed 'Official Checks' to any state during the pendency of this lawsuit." Further, MoneyGram committed to "attempt to make arrangements to deposit the proceeds from current and future unclaimed 'Official

¹ The Special Master also questioned MoneyGram about the final payment it made to Delaware *after* the litigation commenced but *before* the conference:

[JUDGE LEVAL:] Did I understand you correctly that as to payments made by MoneyGram to Delaware after, after Pennsylvania and perhaps some other states as well expressed to MoneyGram you should be paying us and not Delaware, that MoneyGram received a contractual commitment from Delaware to indemnify you for -- is that correct?

MR. RATO: That is correct, Your Honor.

JUDGE LEVAL: So you're saying that with respect to such funds, Delaware has guaranteed contractually that whatever you pay to Pennsylvania will be reimbursed?

MR. RATO: That's the understanding.

Transcript at 159:2-17.

Checks' ... into the registry of the United States District Court for the Southern District of New York[.]” On October 17, 2017, MoneyGram filed a motion asking the Court to effectuate the stipulation by entering an order permitting it to remit funds to the Southern District registry (docket entry 50).

In furtherance of the parties’ stipulation and MoneyGram’s motion, this Court entered an Order dated February 21, 2018 in the Southern District at docket number 1:18-mc-00064-PNL, directing the Clerk of Court to accept funds for deposit under FRCP 67 into the Court Registry Investment System (CRIS), “pending further order.” The February 21 Order authorized the Clerk to deduct a fee for handling the funds, equal to 10% of the income earned on the investment. The Court issued notice to the parties on February 22, 2018 regarding the February 21 Order (docket entry 61).

B. MoneyGram’s Records Production

By letter directed to MoneyGram dated April 21, 2023, Delaware requested that it produce to all parties spreadsheets reflecting the funds MoneyGram had deposited into the CRIS. Delaware requested such a production from MoneyGram so the parties could have “a single,

agreed upon and comprehensive set of information regarding the funds in escrow[.]” In response, on May 1, 2023, MoneyGram produced various records.

Specifically, MoneyGram produced several spreadsheets showing abandoned instruments purchased in 2012-2016. The spreadsheets provided detailed instrument-by-instrument information, including the state of purchase. The spreadsheets from MoneyGram were produced as “native” Excel documents, meaning they could be filtered, sorted, and used to calculate totals in various ways.

C. Deposits into the CRIS

The records produced from MoneyGram on May 1, 2023 showed MoneyGram made three deposits into the CRIS as follows:

- April 9, 2018: \$20,726,250.41;
- March 18, 2021: \$55,898,657.95; and
- September 8, 2022: \$17,543,024.79.

See also Docket, 1:18-mc-00064-PNL (SDNY). These deposits total \$94,167,933.15 (hereafter, the Deposited Funds). The Deposited Funds reflect the sums payable on abandoned Official Checks purchased in 2012-2016.

D. Deposits Attributable to Official Checks Purchased in Pennsylvania

According to MoneyGram's records, a total of **\$6,331,070.91** of the Deposited Funds is attributable to sums payable on abandoned Official Checks purchased in Pennsylvania (hereafter, the Pennsylvania Funds).² More specifically, the sums attributable to Pennsylvania, by purchase year, are as follows:

- 2012: \$1,412,686.19;
- 2013: \$1,091,348.00;
- 2014: \$1,607,569.41;
- 2015: \$1,502,258.26; and
- 2016: \$1,132,263.97.

The foregoing sums, when totaled, equal \$6,746,125.83. This exceeds the total of the Pennsylvania Funds because in 2021 and 2022, MoneyGram deducted—with Pennsylvania's consent—\$109,586.52 and \$305,468.40, respectively, before making its deposit into the CRIS. These two deductions (totaling \$415,054.92) reflect sums MoneyGram ultimately paid on Official Checks purchased in Pennsylvania, but

where MoneyGram had already deposited into the CRIS the sums payable on those instruments.

II. ARGUMENT

In light of the Supreme Court's February 28 Opinion and the records produced by MoneyGram to all parties, the Court should immediately enter an order directing the Clerk of Court for the Southern District of New York to remit to Pennsylvania **\$6,331,070.91**, plus appropriate interest accrued thereon. This Court's February 21 Order authorizing deposits into the CRIS was issued under FRCP 67. Under FRCP 67(b), moneys paid into a court registry can only be withdrawn per 28 U.S.C. § 2042. That statute, provides, in relevant part: "No money deposited under section 2041 of this title shall be withdrawn except by order of court." As is further material, the February 21 Order likewise directs the Clerk to hold the deposited sums "pending further order."

The time to issue a withdrawal order is now. The Supreme Court's Opinion on liability is definitive and final as to which state should take

² According to MoneyGram's records, a total of \$628,199.34 of the Deposited Funds is attributable to sums payable on abandoned Official Checks purchased in Delaware. This equates to 0.67% of the total funds on deposit in the CRIS.

custody of the sums payable on abandoned MoneyGram Official Checks: the state of the place of purchase. *See* Opinion at 22-23. According to MoneyGram's records, some \$6.3 million is presently on deposit in the CRIS attributable to abandoned Official Checks purchased in Pennsylvania. No law nor fact is in dispute as to how much Pennsylvania should receive from the Deposited Funds.

Also, no reasonable basis exists to justify delay in payment of the Pennsylvania Funds. The funds belong, by statutory presumption under the FDA, to citizens of Pennsylvania, who should either be restored to custody of their property (if possible) or who should receive the indirect benefit from such property through public expenditures in their home state. Further, both liability and the amount of recovery are fixed and certain—at least as this matter concerns the Deposited Funds—so nothing needs resolved in discovery or otherwise. Next, since the funds are sitting in the Clerk's control—rather than having been received and spent by Delaware—this Court need not entertain any hardship claims that Delaware might raise as to purported difficulties it might face from payment. The Pennsylvania Funds reflect moneys Delaware never received, never spent, and would not have to pay from

its own accounts. Delaware is, effectively, a disinterested party to the withdrawal Pennsylvania asks this Court to order.

Finally, in resolving this Motion, the Court need also address the amount of appropriate interest payable to Pennsylvania because, upon information and belief, the Deposited Funds earned interest, only a portion of which is payable to the Clerk as an administrative fee. On this question, of the \$94,167,933.15 on deposit in the CRIS, \$6,331,070.91 is attributable to Pennsylvania, which represents 6.72% of the deposit. As such, Pennsylvania respectfully requests that in addition to an order directing the Clerk to remit to Pennsylvania the Pennsylvania Funds, the Court also order the Clerk to remit to Pennsylvania 6.72%—less the administrative fee—of any interest earned on the total Deposited Funds.

III. CONCLUSION

Liability in this matter is now certain. But so too is the amount of recovery, at least as far as recovery concerns sums on deposit in the CRIS attributable to Pennsylvania. Accordingly, under FRCP 67(b) and 28 U.S.C. § 2042, Pennsylvania requests the Court enter an order directing the Clerk of Court to withdraw from the CRIS, and remit to

Pennsylvania, the sum of \$6,331,070.91, plus 6.72% of all interest earned on MoneyGram deposits in the CRIS, less any authorized administrative fee.

Respectfully submitted,

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