

IN THE
Supreme Court of the United States

DELAWARE,

Plaintiff,

v.

PENNSYLVANIA AND WISCONSIN,
Defendants.

ARKANSAS, *et al.*,

Plaintiffs,

v.

DELAWARE,

Defendant.

**OPPOSITION TO PENNSYLVANIA'S MOTION FOR
IMMEDIATE WITHDRAWAL OF DEPOSITED FUNDS**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT RESPECTING ORAL ARGUMENT	3
BACKGROUND	3
ARGUMENT	7
I. PENNSYLVANIA HAS NOT DEMONSTRATED ITS ENTITLEMENT TO THE LUMP SUM DISTRIBUTION IT SEEKS	7
A. The FDA Requires The Debtors’ Books And Records To “Show” The State Of Purchase.....	9
B. MoneyGram’s Books And Records Do Not Show The State Of Purchase For The Lump Sum That Pennsylvania Seeks	10
II. PENNSYLVANIA’S MOTION IS DEFICIENT IN ADDITIONAL RESPECTS	19
CONCLUSION	21
CERTIFICATE OF SERVICE	

INTRODUCTION

The Special Master should reject Pennsylvania’s improper and unsupported motion for immediate disbursement of the escrowed funds. Pennsylvania seeks a check for over \$6 million, yet Pennsylvania has not shown it is entitled to those funds. Pennsylvania asserts—relying solely on the “financial institution address” column in MoneyGram’s records—that over \$6 million worth of MoneyGram Official Checks were purchased in Pennsylvania. But as Delaware pointed out at the May 4, 2023 hearing, MoneyGram’s records *do not contain* a data field “show[ing] the State in which” each MoneyGram Official Check was purchased. 12 U.S.C. § 2503(1).

Pennsylvania nevertheless argued in its motion—as well as at the hearing—that the “financial institution address” column in MoneyGram’s records is the State of purchase for each Official Check. *See* Dkt. 145 at 5. But that simply isn’t true. Following the hearing, Delaware asked MoneyGram for information regarding whether the “financial institution address” field lists the State of purchase for each Official Check—and MoneyGram said no. According to declarations by MoneyGram employees, the “financial institution address” field in MoneyGram’s records *does not reflect* the State of purchase for all instruments in the escrow. *See* Ex. C ¶¶ 8-12. Nor did MoneyGram design its books and records to “show the State in which” a MoneyGram Official Check was purchased. 12 U.S.C. § 2503(1); *see*

Ex. C ¶¶ 8-12.

Instead, MoneyGram's books and records simply reflect an address chosen by MoneyGram's customers, with apparently no requirement that this address reflect the State of purchase. That address *might* be the place of purchase. Or it might be something else, such as the bank's corporate headquarters, or even the address of a company that later acquired the bank that originally sold the instrument. This makes sense: Prior to the Supreme Court's decision in this case, MoneyGram had no need (and apparently did not) track the State of purchase for each Official Check.

The Special Master should not disburse millions of dollars to Pennsylvania based solely on records that MoneyGram *agrees* are flawed. In light of MoneyGram's admissions, Pennsylvania has not met its burden to establish its entitlement to the lump-sum disbursement it seeks. Instead, the Special Master should deny Pennsylvania's premature motion and permit the parties to engage in third-party discovery of MoneyGram and its client banks. This discovery should identify what information MoneyGram actually recorded, where gaps exist, and if there are records to fill in those gaps. For instance, it appears Official Checks were purchased online (including potentially from customers in Delaware). Discovery will plumb which banks sold Official Checks online, potentially reveal which specific Official Checks were purchased online, and may identify the State in which the checks were purchased. Moreover, expert discovery is necessary given the

complexity of determining the State of purchase for each instrument in the escrow account.

At the conclusion of the discovery process, Delaware submits that the parties should brief summary judgment motions to address both damages and the distribution of the escrowed funds. It makes sense to brief a single set of motions: The factual record the parties develop in discovery will inform both the distribution of the escrowed funds and the calculation of damages (if any). Briefing those issues at the same time will allow the Special Master to resolve them in the same way based on a fulsome record—rather than Pennsylvania’s say-so.

STATEMENT RESPECTING ORAL ARGUMENT

Given the factual and legal complexity of the issues involved in disbursing the escrow account, Delaware respectfully requests that any hearings regarding this motion or the distribution of the escrowed funds be held in person.

BACKGROUND

This litigation involves the escheatment of certain unclaimed “Official Checks” issued by MoneyGram Payment Systems, Inc. (“MoneyGram”). MoneyGram is incorporated in Delaware and has its principal place of business in Minnesota. *See* Dkt. 102 at 1; Dkt. 78 at 1; *cf.* Dkt. 122 at 80 n.47. Prior to this litigation, MoneyGram escheated Official Checks to Delaware according to the federal common-law priority rules.

In 2016, Pennsylvania and Wisconsin sued Delaware’s State Escheator in federal district court. The lawsuit alleged that MoneyGram’s Official Checks were subject to the Federal Disposition of Abandoned Money Orders and Traveler’s Checks Act (FDA), 12 U.S.C. § 2501 *et seq.*, not the common-law priority rules. In response, Delaware filed a motion seeking to initiate an original jurisdiction action in the Supreme Court to resolve the status of MoneyGram Official Checks. Other States then sought leave to file an original jurisdiction action against Delaware.

The Supreme Court granted both motions, consolidated the two actions, and appointed the Special Master. In these proceedings, Delaware is styled the “Plaintiff” and the other 30 States are “Defendants.” In 2017, the parties stipulated that—going forward—MoneyGram would deposit all escheat into an escrow account maintained by the United States District Court for the Southern District of New York. *See* Dkt. 38.¹

According to the FDA’s *primary rule*, if “the books and records” of the “banking or financial organization or business association” that is “directly liable” on the instrument “show the State in which” the instrument “was purchased,” the State of purchase may “escheat or take custody of such sum.” 12 U.S.C. § 2503(1).

¹ In light of the Supreme Court’s opinion, in June 2023, the parties and MoneyGram filed a stipulation that MoneyGram “will begin to report and remit unclaimed Official Check proceeds in accordance with each State’s unclaimed property laws and the Federal Disposition Act.” Dkt. 152 at 1.

Under the FDA’s *secondary rule*, if those “books and records” “do not show the State in which” the instrument was purchased, “the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody” of the instrument unless other “written evidence” shows “the State of purchase.” 12 U.S.C. § 2503(2).

In his First Interim Report, the Special Master concluded that all MoneyGram Official Checks were subject to the FDA. *See* Dkt. 122 at 93. Delaware filed exceptions before the Supreme Court, which heard oral argument in October 2022. After argument, the Special Master announced he could no longer stand by his initial recommendation. The Special Master then issued a Second Interim Report, agreeing in large part with Delaware. Dkt. 140. Nevertheless, on February 28, 2023, the Supreme Court issued a decision tracking the First Interim Report and holding that the “FDA covers the instruments in question.” *Delaware v. Pennsylvania*, 143 S. Ct. 696, 701 (2023). The Supreme Court did not address what damages, if any, are warranted, and that question—along with the disposition of the escrow—is the focus of the present proceedings.²

² At oral argument, Justice Gorsuch suggested the FDA does not permit a cause of action for damages. In response, Defendants acknowledged that the Special Master would resolve that question on remand. *See* Oral Arg. Tr. 58-59. In addition, as Delaware indicated before the Supreme Court and in its April 27 submission to the Special Master, other legal doctrines may limit any available damages between States, including a statute of limitations, comity, sovereign immunity, state-law

Following its decision, the Supreme Court remanded the case to the Special Master. *Id.* at 701. On remand, the Special Master instructed the parties to “confer” and file a “joint submission” reflecting outstanding issues to be resolved. Dkt. 141. On April 18, counsel for all States conferred by telephone. Counsel for Pennsylvania never mentioned a forthcoming motion for immediate disbursement of the escrow account. In the days that followed, the parties exchanged draft text for the joint status report. Pennsylvania again said nothing about a motion.

As a result, the final joint status conference submission did not contemplate separate motions practice with respect to the escrow. In statements not joined by the other Defendants, Pennsylvania indicated its desire for the Special Master to “immediately” permit dispersal. Dkt. 144 at 11; *see id.* at 19. But Pennsylvania appeared to join Defendants’ proposed case-management schedule and never suggested it intended to file a separate motion regarding the escrow account. *Id.* at 22-23. On May 2, just two days before the hearing, Pennsylvania filed the pending motion for immediate disbursement. Dkt. 146.

At the May 4 hearing, Delaware explained that MoneyGram’s books and records—which take the form of spreadsheets listing information associated with each Official Check—did not appear to show the State of purchase. In many cases,

barriers, laches, and other equitable principles. *See* Dkt. 144 at 2-3; Del. First Exceptions 49 n.12; Sur-Reply 24; *see also* Defs. First Reply 55.

the spreadsheets MoneyGram provided seemed to reflect a generic mailing address, such the corporate headquarters of a financial institution that sells MoneyGram official checks, not the location where the check was sold. For their part, Defendant States maintained that MoneyGram’s records showed the State of purchase. The Special Master suggested that the parties seek further information from MoneyGram regarding its books and records. *See* Dkt. 150 at 42. The Special Master also directed Delaware to identify instruments in which it may have “a financial interest.” *Id.* at 45.

In June of 2023, the Special Master extended the deadlines in this case “to facilitate discussions between the parties working toward a potential resolution of this litigation.” Dkt. 153; *see* Dkt. 161; Dkt. 157. Those discussions have not led to a resolution as of this filing. Delaware now submits this Opposition to Pennsylvania’s pending motion for immediate disbursement of approximately \$6 million from the escrow account.

ARGUMENT

I. PENNSYLVANIA HAS NOT DEMONSTRATED ITS ENTITLEMENT TO THE LUMP SUM DISTRIBUTION IT SEEKS.

Pennsylvania’s motion is fatally flawed, and the Special Master should deny it. MoneyGram has now submitted declarations confirming Delaware’s concerns. MoneyGram’s books and records are not intended to show the State of purchase for any Official Check. Instead, MoneyGram’s records show an address *chosen by the*

selling bank. The selling bank could choose (and it appears, often did choose) the bank's corporate headquarters or a mailing address as the address in MoneyGram's records. That makes sense: MoneyGram was not escheating Official Checks in accordance with the FDA, and thus had no reason to record State of purchase information.

MoneyGram's admission is critically important: It means that Pennsylvania has failed to demonstrate its entitlement to the lump sum it seeks. Indeed, Pennsylvania has made *no attempt* to either withdraw its motion or update the Special Master with respect to the clear problems with MoneyGram's data, which became apparent to all parties weeks ago.

The inaccuracy of MoneyGram's records is a problem that extends far beyond the escrowed funds. Those inaccuracies likewise affect—and indeed are even more significant for—the years in which MoneyGram escheated Official Checks to Delaware. Discovery is thus necessary both with respect to the State of purchase of the escrowed funds and with respect to Defendants' retroactive claim for damages. Delaware submits that this discovery should take place before the Special Master disburses any funds to Defendant States from the escrow, and that the parties should address this recordkeeping problem in their expert reports and summary judgment motions following the close of discovery. This will allow the Special Master, as well as the Supreme Court, to consider these recordkeeping problems on a fulsome

record before disbursing millions of dollars in funds. Once money leaves the escrow account, it may be difficult or impossible to correct any problems that later come to light.

A. The FDA Requires The Debtors’ Books And Records To “Show” The State Of Purchase.

Under the FDA’s primary rule, a State may escheat an instrument if the debtor’s “books and records” “show the State in which” the instrument “was purchased.” 12 U.S.C. § 2503(1). This analysis cannot be conducted in gross; the debtor’s books and records must *show* the State of purchase for each instrument.³

This conclusion flows from a plain reading of the statute. The verb “show” means “[t]o demonstrate,” “[t]o make apparent or clear, either to the eye or to the understanding or to both, by display, by evidence, by illustration, or by other means.” *Ballentine’s Law Dictionary* (3d ed. 1969); *see also, e.g., Black’s Law Dictionary* (11th ed. 2019) (“To make (facts, etc.) apparent or clear by evidence; to prove.”); *Merriam-Webster Online Dictionary* (“[T]o give indication or record of[.]”), *available at* <https://tinyurl.com/b3kz74uv>. Thus, the debtors’ books and records must constitute actual “evidence” of the State of purchase. *Ballentine’s Law Dictionary, supra; Black’s Law Dictionary, supra.*

³ Pennsylvania’s motion recognizes that States must conduct an instrument-by-instrument analysis. *See* Dkt. 145 at 5 (alleging MoneyGram’s “spreadsheets provided detailed *instrument-by-instrument information*, including the state of purchase”) (emphasis added).

The surrounding context confirms that the FDA requires an instrument-by-instrument analysis. Section 2503 does not speak about instruments in the aggregate. Instead, Section 2503 is written in the singular. The FDA governs “any sum” which “*is payable on a money order, traveler’s check, or other similar written instrument.*” 12 U.S.C. § 2503 (emphases added). Section 2503 applies that rule to “*such money order, traveler’s check, or similar written instrument*” based on what “the books and records” “show” for that specific instrument. 12 U.S.C. § 2503(1)-(3) (emphasis added).

The FDA’s focus on specific, singular instruments is important: It is not enough to show that certain instruments tend to be purchased in a particular State. The evidentiary showing must be specific to each individual instrument on a “transaction-by-transaction basis.” *Cf. Delaware v. New York*, 507 U.S. 490, 509 (1993) (“If New York or any other claimant State fails to offer such *proof on a transaction-by-transaction basis* or to provide some other proper mechanism for ascertaining creditors’ last known addresses, the creditor’s State will not prevail under the primary rule, and the secondary rule will control.”) (emphasis added). Pennsylvania bears the burden of proof, *cf. id.*, and it has not met that burden here.

B. MoneyGram’s Books And Records Do Not Show The State Of Purchase For The Lump Sum That Pennsylvania Seeks.

Pennsylvania’s motion seeks the unilateral dispersal to Pennsylvania of \$6,331,070.91. Dkt. 145 at 1. Pennsylvania agrees it is entitled only to checks

purchased in Pennsylvania, and it also agrees it must prove its entitlement on an instrument-by-instrument basis. *Id.* at 5. To determine the State of purchase, Pennsylvania relies on MoneyGram’s “spreadsheets,” which Pennsylvania says “provide detailed instrument-by-instrument information, including the state of purchase.” *Id.*

But MoneyGram has now made clear that its records *are not intended* to show the State of purchase for each instrument. *See* Ex. C ¶¶ 8-12. Instead, MoneyGram’s spreadsheets simply reflect an address chosen by a financial institution. *See id.* That address need not be the place of purchase—it is whatever address the financial institution decided to select. *See id.* It is hardly surprising that MoneyGram’s “financial institution address” information does not reflect the State of purchase for each instrument. MoneyGram’s records were prepared prior to the Supreme Court’s ruling in this case, which established the relevant standard going forward.

As MoneyGram’s declarant explains, “each Client has the ability, *but not the obligation*, to identify to MoneyGram all of the locations from which Official Checks would be sold and/or issued and have data for those locations tracked separately.” *Id.* ¶ 8 (emphasis added). “[A] Client financial institution with multiple physical locations” may have “only one address” in MoneyGram’s systems, and that address may not reflect the place of purchase. *Id.* ¶¶ 11-12. As a result, “MoneyGram cannot verify that the specific financial institution address associated

with a specific Official Check” in MoneyGram’s records “is the physical location where the item was purchased (though it is [MoneyGram’s declarant’s] understanding that is usually the case).” *Id.* ¶ 10.⁴

These statements by MoneyGram demonstrate that Pennsylvania’s unquestioning reliance on MoneyGram’s “financial institution address” data is deeply flawed. The problems with MoneyGram’s data affect *millions of dollars* of instruments in the escrow, and they almost certainly affect the total amount Delaware (and other States) should receive from the escrow. Consider the following issues Delaware has preliminarily identified *without any discovery*:

Corporate headquarters. In many cases, MoneyGram’s spreadsheet lists what open-source data suggests is a corporate headquarters or a similar office as the “financial institution address” for a particular instrument. In these circumstances, absent further evidence, MoneyGram’s records do not “show” the State of purchase for that instrument. 12 U.S.C. § 2503(1). Instead, the spreadsheets merely show the financial institution’s corporate headquarters.

For example, Pennsylvania seeks approximately \$1 million worth of

⁴ MoneyGram’s declarant cited no evidence for her “understanding.” At a minimum, the parties will need to depose MoneyGram’s declarant to explore the basis—if any—for her speculation.

unclaimed instruments associated with a Pennsylvania office of [REDACTED].⁵ But publicly available information suggests [REDACTED] has branches in multiple States where official checks may have been sold. This problem is not limited to Pennsylvania. For instance, approximately \$1.6 million worth of unclaimed instruments are associated with [REDACTED].⁶ MoneyGram's records contain only one address for [REDACTED], which appears to be an office in [REDACTED], Michigan. Meanwhile, [REDACTED] appears to have branches in multiple States where Official Checks may have been sold. Similarly, approximately \$1 million worth of unclaimed instruments are associated with [REDACTED], which likewise appears to have branches in multiple States where Official Checks may have been sold, but lists an office in [REDACTED], Alabama.⁷

These are just some examples of the problem posed by MoneyGram's records. In total, Delaware's initial review has identified tens of thousands of instruments worth multiple millions of dollars where the "financial institution address" appears

⁵ **6,275 instruments worth \$999,703** are associated with [REDACTED] in [REDACTED], PA [REDACTED].

⁶ **960 instruments worth \$1,604,299** are associated with [REDACTED], [REDACTED], MI [REDACTED].

⁷ **2,836 instruments worth \$1,034,328** are associated with [REDACTED], [REDACTED], AL [REDACTED].

to be the corporate headquarters of the bank.⁸ The problem is not limited to the escrow account. Indeed, it appears to extend to the older instruments escheated to Delaware prior the initiation of this lawsuit that are the basis for Defendants' claim for damages.

Without further discovery, it is impossible to know whether instruments were in fact purchased at the bank's corporate headquarters, rather than a bank branch in another State (or online, as discussed below). More broadly, the fact that MoneyGram did not design its records to show the State of purchase raises a question in all cases whether MoneyGram's "financial institution address" reflects a purchase made in Pennsylvania or somewhere else, including Delaware.

Cross-border transactions. MoneyGram's data and publicly available sources also suggest that Official Checks may be purchased online. This raises the question of how to determine the State of purchase under the FDA when a purchaser

⁸ Consider three specific examples: **1,956 instruments worth \$834,620** are associated with the following address of [REDACTED], which does not appear to be a branch location: [REDACTED], [REDACTED], OH, [REDACTED]. [REDACTED] appears to also have branches in at least two other States. **1,989 instruments worth \$805,718** are associated with the following address of [REDACTED], which appears to be a corporate headquarters: [REDACTED], [REDACTED], SD [REDACTED]. Meanwhile, [REDACTED], SD [REDACTED] appears to have branches in at least seven States. **2,152 instruments worth \$727,750** are associated with the following address of [REDACTED], which appears to be its mailing address: [REDACTED], [REDACTED], RI [REDACTED]. Meanwhile, [REDACTED] (which since changed its name to "[REDACTED]") appears to have locations in at least one other State.

and the selling bank are in different States at the time of purchase, and it makes it impossible for Delaware to determine without further discovery what funds in the escrow it may be entitled to.

For instance, MoneyGram’s spreadsheets list approximately \$1 million of abandoned official checks associated with [REDACTED], a digital credit union *with no physical branch locations*.⁹ According to its website, [REDACTED] customers may purchase an “Official Credit Union Check” online.¹⁰ MoneyGram’s records contain just one address for [REDACTED], an office in [REDACTED], Illinois. If a customer purchases an official check from her home in Wilmington, that official check “was purchased” in Delaware, not Illinois. 12 U.S.C. § 2503(1).¹¹

This problem is not limited to online-only banks. Banks with physical branches similarly enable customers to purchase Official Checks online. For instance, approximately \$720,000 worth of unclaimed instruments in the escrow are associated with [REDACTED], which—based on the bank’s

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ Consider another example: Approximately \$1 million of escrowed instruments are associated with [REDACTED], which likewise appears to lack any physical locations aside from its headquarters in the Defendant State of Utah. [REDACTED].

website—also allows customers to purchase official checks through the Credit Union’s online banking service.¹² More broadly, numerous publicly available sources show that many banks frequently enable customers to purchase bank checks online.¹³ Third-party discovery of MoneyGram’s clients is necessary to determine which MoneyGram clients permit customers to purchase Official Checks online. Expert discovery is also necessary regarding how online purchases of Official Checks are conducted and how that affects the place of purchase for purposes of the FDA.

Delaware respectfully submits that the parties must conduct discovery on this issue. Otherwise, neither Pennsylvania nor Delaware (nor any other State) is able to determine whether it is entitled to any of the escrowed funds with a “financial

¹² [REDACTED]

¹³ See, e.g., Rebecca Lake, Investopedia, *What Is a Cashier’s Check and How Can I Get One* (Mar. 20, 2023), <https://tinyurl.com/2y4dntcm> (“You can get a cashier’s check by visiting your bank branch or credit union or going to its website if it offers these checks online.”); Navy Federal Credit Union, *Cashier’s Checks*, <https://tinyurl.com/2pzarhj6> (“It’s easy and convenient to order a cashier’s check from home. Use digital banking* to place an order and choose to have the check delivered to your home or available for pickup at your local branch.”); Huntington National Bank, *What is a Cashier’s Check: How and Where to Get Them*, <https://tinyurl.com/2tjz35bv> (similar).

institution address” in Pennsylvania. Given this clear problem with MoneyGram’s data, the Special Master should deny Pennsylvania’s motion and allow the parties to proceed to discovery, taking into account the time necessary to conduct third-party discovery on individual banks.

“Care of” addresses and bank acquisitions. MoneyGram has confirmed that some addresses in its records—in particular, addresses listed as “care of” another institution—certainly do not reflect the State of purchase. MoneyGram’s records contain hundreds of addresses listed “care of” another institution. According to MoneyGram, such addresses may reflect a circumstance in which a “financial institution is subsequently acquired by a different financial institution,” and the “address information [was] updated to the acquirer’s address information.” Ex. C ¶ 17. In that circumstance, “the state listed is of the acquirer, not the original customer,” and MoneyGram’s data does not reflect the State of purchase, but something else. *Id.*

This problem, however, almost certainly extends beyond records that include the notation “care of” and encompasses any situation where one bank acquired another bank.¹⁴ Pennsylvania’s motion does not address this issue at all or explain

¹⁴ MoneyGram also indicated that some “care of” addresses reflect a circumstance in which a check was “issued and sent out by a third-party service provider.” Ex. C ¶¶ 15-16. The nature of that transaction is unclear, but MoneyGram’s declarant implies the transactions could involve cross-border purchases that require further investigation, including expert discovery.

how Pennsylvania intends to show that the “financial institution address” information in MoneyGram’s data is the State of purchase for an instrument, rather than the address of an acquiring bank.

These are just a few of the most obvious problems with MoneyGram’s data. Again, MoneyGram’s data *was not intended* to reflect the State of purchase for each instrument; it instead reflects an address that MoneyGram’s customer bank selected for whatever reason—which is why Pennsylvania is not entitled to blindly rely on that data when seeking a lump sum of over \$6 million dollars. And again, this issue does *not* affect only the escrowed instruments. It also impacts the instruments MoneyGram escheated to Delaware prior to the parties stipulating to the escrow account in 2017.

* * *

The significant problems with MoneyGram’s data belie Defendants’ initial suggestions that distributing the escrow will be effortless. And contrary to Pennsylvania’s assertions in its pending motion, Pennsylvania has not demonstrated that it has “detailed instrument-by-instrument information, including the state of purchase,” as to each of the instruments in the escrow. Dkt. 145 at 5. Nor has Pennsylvania indicated what additional analysis it intends to perform, what discovery it intends to seek, or what additional records it intends to review to verify

the State of purchase for the instruments that it claims should be escheated to Pennsylvania.

Without Pennsylvania's submission of records *showing* Pennsylvania is the State of purchase—and a period of discovery to attempt to obtain such records—Delaware has no way to verify which instruments should be escheated to Pennsylvania as opposed to other States, including Delaware. The Special Master should not disburse millions of dollars to Pennsylvania without records showing that Pennsylvania is entitled to those funds. Absent an agreement among the parties with respect to the distribution of the escrowed funds, the only path forward is third-party and expert discovery. The parties should conduct the necessary discovery, both with respect to the escrow and Defendants' damages claims, and brief both the distribution of the escrow and Defendants' damages claims at summary judgment. This will prevent the Special Master from having to revise an initial recommendation based on information later uncovered in discovery.

II. PENNSYLVANIA'S MOTION IS DEFICIENT IN ADDITIONAL RESPECTS.

Pennsylvania's motion is also deficient in four additional respects.

First, Pennsylvania's motion for immediate disbursement was procedurally improper. Pennsylvania filed its motion just two days before the May 4 hearing—without discussing the motion in the parties' April meet and confer, without including the motion in the joint status report, and without seeking leave to file.

Pennsylvania's actions were inimical to cooperation and were designed to disrupt the orderly process of this litigation. The Special Master should deny the motion for this reason alone.

Second, Pennsylvania's motion accounts *only* for its alleged portion of the escrow account. But such piecemeal distribution is dangerous. Once money leaves the escrow account, it could be difficult to unwind the distribution and fix any errors. Pennsylvania's own motion demonstrates this danger. Pennsylvania's initial motion made a "calculation error." Dkt. 158 at 1-2 n.1. Pennsylvania also failed to account for the possibility that MoneyGram had honored instruments and would need to be reimbursed before the escrow fund was distributed to the States. *Id.* at 1-2. In a footnote to a subsequent filing, Pennsylvania confessed its errors and sought to correct them. *Id.* at 1-2 n.1. Yet those errors show the risks of releasing funds to one State without determining how the entire escrow should be distributed. At a minimum, if the Special Master disburses the escrow, he should do so in a single order that resolves the entire account, and only after the parties have submitted expert reports regarding the proper calculation of each respective State's share of the funds.

Third, Pennsylvania has not submitted a spreadsheet identifying which specific instruments it believes should be escheated to Pennsylvania and acknowledging that Pennsylvania intends to take responsibility for reimbursing

potential claimants, including MoneyGram, for those instruments. Such a spreadsheet is critical to make clear which instruments Pennsylvania claims should be escheated to that State, and accordingly which instruments Pennsylvania intends to reimburse if a proper claimant comes forward or MoneyGram honors a specific instrument. This will help prevent future disputes among the States and MoneyGram.

Fourth, Pennsylvania has not adequately addressed how to distribute the interest on the escrow among the parties. Pennsylvania claims that it is entitled to “6.72% of all interest earned on MoneyGram deposits in the CRIS, less any authorized administrative fee,” Dkt. 145 at 10, apparently on the theory that the interest should be distributed among the States pro rata in accordance with each State’s disbursement from the escrow. But as Delaware has explained, Pennsylvania has not established that it is entitled to “6.72%” of the funds in escrow. It is thus not entitled to any interest, either, at this point.

CONCLUSION

For the foregoing reasons, the Special Master should deny Pennsylvania’s motion.

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CERTIFICATE OF SERVICE

Counsel for Delaware in Case Nos. 22O145 & 22O146 certifies that on August 4, 2023, this document was served by email on counsel for all Defendants identified in the Amended Service list.

August 4, 2023

/s/ Neal Kumar Katyal
Neal Kumar Katyal