

SUPREME COURT OF THE UNITED STATES

DELAWARE, *Plaintiff*,

v.

Nos. 220145 & 220146 (Consolidated)

ARKANSAS, *et al.*, *Defendants*.

RESPONSE TO DEFENDANTS' STATEMENT OF UNDISPUTED FACTS

1. All Defendant States have enacted state legislation that empowers them to take custody of the unclaimed property at issue in this case. See Table A (attached to Defendant States' concurrently filed motion for summary judgment on liability).

Response: Delaware disputes this fact. Even if the instruments at issue are found to be "similar written instruments," under 12 U.S.C. § 2503, a State is only entitled to take escheat of items otherwise subject to the FDA "to the extent of that State's power under its own laws to escheat or take custody of such sum." At a minimum, at least ten (10) Defendant States do not have the "power under [their] own laws" to take possession of "similar written instruments." *See, e.g.*, Code of Ala. § 35-12-74 (Alabama), A.R.S. § 44-304 (Arizona), A.C.A. § 18-28-204 (Arkansas), Ind. Code Ann. 32-34-1-21 (Indiana), IA Code § 556.2A (Iowa), K.S.A. 58-3936 (Kansas), Mont. Code Ann. § 70-9-805 (Montana), Nev. Rev. Stat. Ann. § 120A.530 (Nevada), Tex. Property Code Ann. § 72.102 (Texas), W. Va. Code § 36-8-4 (West Virginia).

2. MoneyGram Payment Systems, Inc. (“MoneyGram”) is a subsidiary of MoneyGram International, Inc. See App. 353 (Dep. Ex. 28 at 1).

Response: Not disputed.

3. MoneyGram International, Inc. is the second largest money-transfer business in the world. See App. 4 (Dep. Ex. 2 at 4); see also App. 1064 (Yingst Dep. 21:3–7).

Response: Not disputed.

4. MoneyGram International, Inc. processes over 750,000 transactions each day; its annual revenue exceeds \$1 billion; and it employs more than 2,300 employees. See App. 40 (Dep. Ex. 5 at 5). It is a publicly traded corporation that, as a money transmitter, is subject to extensive state regulation. See, e.g., Cal. Fin. Code § 2000, et seq.; 7 P.S. § 6101 et seq.

Response: Not disputed.

5. MoneyGram has served financial institutions for over 75 years by providing prepaid money transfer products for the financial institutions to sell or to use to pay their own obligations. See App. 40 (Dep. Ex. 5 at 5); App. 353 (Dep. Ex. 28 at 1); see also App. 1064 (Yingst Dep. 21:16–22).

Response: Delaware disputes the characterization of the instruments at issue in this case as “money transfer products.” The instruments at issue in this case are part of MoneyGram’s Financial Paper Product segment and are also sold through retail locations. Delaware Statement of Undisputed Facts (“Delaware SOF”) ¶ 5 (Yingst Ex. 29 at 6 (Ex. M to Taliaferro Declaration (“Taliaferro Decl.”))). Although MoneyGram Payment Systems, Inc. has been in business for over 75 years, it did not begin offering Official Check outsourcing until around 1979. Delaware SOF ¶ 60 (Ex. B to Massimino Decl. at 9, VIAD 65; Yingst 30:5-16 (Ex. A to Taliaferro Decl.)).

6. MoneyGram—which until approximately 2005 operated under the name Traveler’s Express, Inc.,—processes the prepaid money transfer products sold by thousands of financial institutions in the United States. See App. 40 (Dep. Ex. 5 at 5); App. 353 (Dep. Ex. 28 at 1); see also App. 1064, 1145–46 (Yingst Dep. 21:16–22, 124:23–125:10).

Response: Delaware disputes the characterization of the instruments at issue in this case as “money transfer products.” The instruments at issue in this case are part of MoneyGram’s Financial Paper Product segment and are also sold through retail locations. Delaware SOF ¶ 5 (Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.)). Although MoneyGram Payment Systems, Inc. has been in business for over 75

years, it did not begin offering Official Check outsourcing until around 1979.

Delaware SOF ¶ 60 (Ex. B to Massimino Decl. at 9, VIAD 65; Yingst 30:5-16 (Ex. A to Taliaferro Decl.)).

7. MoneyGram refers to these financial institutions, which consist of banks and credit unions that sell its prepaid money transfer products, as its customers. See App. 1064, 1066–67 (Yingst Dep. 21:8–22, 28:6–29:3).

Response: Delaware disputes the characterization of the instruments at issue in this case as “money transfer products.” The instruments at issue in this case are part of MoneyGram’s Financial Paper Product segment. Delaware SOF ¶ 5 (Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.)). Retail Money Orders are usually sold at retail locations; banks and credit unions do not generally sell Retail Money Orders. Delaware SOF ¶ 26 (Yingst 29:4-10 (Ex. A to Taliaferro Decl.)).

8. MoneyGram markets two lines of prepaid money transfer products for its customers: one line that MoneyGram markets as “Retail Money Orders,” and another that MoneyGram markets as “Official Checks.” See App. 1065–66, 1106, 1114 (Yingst Dep. 27:22–28:19, 85:6–22, 93:8–23).

Response: Delaware disputes the characterization of the instruments at issue in this case as “money transfer products.” The instruments at issue in this case are

part of MoneyGram’s Financial Paper Product segment. Delaware SOF ¶ 5 (Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.)). Delaware does not dispute that MoneyGram markets Retail Money Orders to the public and markets Official Checks to financial institutions. SOF ¶ 45 (Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.); Yingst 330:21-331:7 (Ex. A to Taliaferro Decl.)).

9. MoneyGram has provided representative examples of the MoneyGram Retail Money Orders sold between 2000 and 2017, which are sometimes but not always sold by financial institutions, in this litigation. See App. 16–33 (Dep. Ex. 4 [Exs. A–D]); see also App. 1102–03 (Yingst Dep. 81:17–82:22).

Response: Delaware disputes this fact. Retail Money Orders are almost universally sold by retail locations. MoneyGram agents include “mom and pop” stores as well as large chains like Walmart. Delaware SOF ¶ 26 (Yingst 29:4-10 (Ex. A to Taliaferro Decl.)).

10. The appendix contains a representative sample MoneyGram Retail Money Order. See App. 18–19 (Dep. Ex. 4 [Ex. A]).

Response: Not disputed.

11. The appendix contains a sample of a template for printing a Retail Money Orders. See App. 34–35 (Dep. Ex. 4 [Ex. F]).

Response: Delaware disputes this fact. Although the cited App. 34 is a sample of a template for printing a Retail Money Order, cited App. 35 is a sample template for printing an Agent Check Money Order. Additionally, both templates are incomplete.

12. A purchaser of a Retail Money Order buys a Retail Money Order by remitting the monetary amount imprinted on the face of the instrument, plus any applicable fee, to the seller. See App. 1079, 1083–84 (Yingst Dep. 45:7–15, 49:17–50:19).

Response: Not disputed.

13. The Retail Money Order seller is an agent for MoneyGram and is not considered a party on the instrument. See App. 1075–76 (Yingst Dep. 41:22–42:17).

Response: Not disputed.

14. In return, the purchaser receives a written instrument on which the purchaser can identify the desired recipient or payee. See App. 1077 (Yingst Dep. 43:10–15).

Response: Not disputed, as to Retail Money Orders.

15. MoneyGram is designated as the “issuer” and the “drawer” of the Retail Money Order instrument. See App. 1078 (Yingst Dep. 44:1–14); see also App. 18–19 (Dep. Ex. 4 [Ex. A]).

Response: Not disputed.

16. The Retail Money Order can then be redeemed by the recipient of the instrument for the face value imprinted on the instrument. See App. 1075–77 (Yingst Dep. 41:22–43:24).

Response: Not disputed.

17. MoneyGram typically caps the value of Retail Money Orders at \$1,000, though a customer may buy more than one money order at a time. See App. 58 (Dep. Ex. 11 at 2); see also App. 1092–93 (Yingst Dep. 58:16–59:11).

Response: Not disputed.

18. MoneyGram’s decision to typically cap on the value of Retail Money Orders at \$1,000 is a business decision and not one required by law. App. 1097–98 (Yingst Dep. 63:16–64:5).

Response: Delaware disputes this fact. MoneyGram’s witness testified that she was *unaware* of any legal restrictions. Yingst 307:9-15 (Ex. DD to Supplemental Taliaferro Declaration (“Supp. Taliaferro Decl.”)). By capping the value of Retail Money Orders at \$1,000, retail agents are not required to register as money services businesses. 31 CFR §1010.100(ff)(3). Otherwise, states a legal conclusion to which no response is required.

19. MoneyGram considers and markets the Retail Money Order instruments as “safe payment mechanism[s]” that are “accepted pretty much universally” and are “as good as cash.” See App. 1081–82, 1084–85, 1219–21 (Yingst Dep. 47:20–48:23, 50:20–51:7, 198:21–200:3).

Response: Not disputed, as to Retail Money Orders.

20. When a MoneyGram agent sells a Retail Money Order, it reports four pieces of information back to MoneyGram: the dollar amount of the instrument, the instrument’s serial number, the date of sale, and the customer-identification

number of the location that sold the instrument. See App. 1247–49 (Yingst Dep. 263:5–265:6).

Response: Not disputed.

21. That customer-identification number of the location that sold the Retail Money Order allows MoneyGram to determine the State in which the instrument was sold. See App. 1249 (Yingst Dep. 265:9–21).

Response: Not disputed.

22. The information conveyed back to MoneyGram from the MoneyGram agent does not include any information related to the party who purchased the instrument, including that party’s last-known address. See App. 1091–92 (Yingst Dep. 57:17–58:4).

Response: Delaware disputes this fact. In a case where a consumer purchases more than \$3,000 of Money Orders in a single day, that individual’s information is collected and maintained for five years. Delaware SOF ¶ 20 (Yingst 57:22-58:9 (Ex. A to Taliaferro Decl.)).

23. Additionally, MoneyGram does not receive an image of the Retail Money Order until it has been presented for payment and cleared. See App. 1200 (Yingst Dep. 179:12–23).

Response: Delaware disputes this fact, as the cited deposition testimony is discussing Agent Check Money Orders.

24. The money that is remitted to purchase a MoneyGram Retail Money Order is transferred from the seller of the instrument to MoneyGram. See App. 1087 (Yingst Dep. 53:9–21).

Response: Delaware disputes this fact. The money remitted to purchase a MoneyGram Retail Money Order is not transferred from the agent to MoneyGram, but is directly debited by MoneyGram from the bank account of the agent.

Delaware SOF ¶ 39 (Yingst 339:9-21 (Ex. A to Taliaferro Decl.)).

25. MoneyGram then holds the money remitted to purchase a MoneyGram Retail Money Order in a portfolio of accounts and investments, where it comingles the balance of all its outstanding Retail Money Orders and other MoneyGram paper-based payment products—including that of its Official Checks products. See App. 1088–89, 1262 (Yingst Dep. 54:5–55:4, 278:15–22).

Response: Not disputed.

26. The money that is remitted to purchase a MoneyGram Retail Money Order then remains in that commingled portfolio referred to in the previous paragraph until the Retail Money Order is presented for payment or remains dormant for long enough to become subject to unclaimed-property laws. See App. 1089–90, 1128–29 (Yingst Dep. 55:13–56:5, 107:11–108:11).

Response: Not disputed.

27. When a Retail Money Order is presented for payment, it goes through the Federal Reserve clearing process using the routing number and transit number on the bottom of the instrument. See App. 1100–01, 1130–31 (Yingst Dep. 71:4–72:20, 109:7–110:8).

Response: Not disputed.

28. Those routing and transit numbers on the Retail Money Order are associated with a certain “clearing bank” that MoneyGram has contracted with to use its routing and transit numbers to intercept the MoneyGram items. See App. 1071–72, 1130–31 (Yingst Dep. 33:8–34:6, 109:7–110:8); see also App. 239–306 (Dep. Exs. 17–19).

Response: Not disputed.

29. A clearing bank is listed as the “payable through” entity on the face of the Retail Money Order. See App. 18–19 (Dep. Ex. 4 [Ex. A]); see also App. 1075–76, 1100–01 (Yingst Dep. 41:22–42:17, 71:10–72:11).

Response: Not disputed.

30. MoneyGram uses funds from its commingled portfolio (described above) to pay the clearing banks for the amount of the cleared Retail Money Orders. See App. 1101 (Yingst Dep. 72:12–20).

Response: Not disputed.

31. The clearing banks do not receive any information about the Retail Money Orders presented to them for payment, and the clearing banks have no relationship with the agents that sell Retail Money Orders. See App. 1072–73, 1130–31 (Yingst Dep. 34:22–35:11, 109:7–110:8).

Response: Not disputed.

32. The role of the clearing banks is simply to provide routing and transit numbers for MoneyGram’s use. See App. 1130–31 (Yingst Dep. 109:7–110:8).

Response: Not disputed.

33. If a Retail Money Order is not presented for payment, MoneyGram—as the holder of the unclaimed property—is responsible for reporting the sum representing the unclaimed balance. See App. 1040–41, 1053 (Petrick Dep. 131:17–132:3, 185:1–3).

Response: Assumed “reporting” means complying with unclaimed property laws. So assumed, not disputed.

34. Neither the agent that sold the Retail Money Order nor the clearing bank plays any role in the reporting of unclaimed Retail Money Orders. See App. 1042, 1048 (Petrick Dep. 133:14–16, 139:16–19).

Response: Assumed “reporting” means complying with unclaimed property laws. So assumed, not disputed.

35. Because MoneyGram has established its systems to not collect records that would allow it to identify the purchaser of the Retail Money Order, it does not perform due diligence to try to identify the rightful owner before reporting the unclaimed property. See App. 1091–92 (Yingst Dep. 57:17–58:4); see also App. 421 (Dep. Ex. 50 at MG004667).

Response: MoneyGram disputes this fact, as there is no testimony that states MoneyGram established its system for those purposes. Additionally, in a case

where a consumer purchases more than \$3,000 of Money Orders in a single day, that individual's information is collected and maintained for five years. Delaware SOF ¶ 20 (Yingst 57:22-58:9 (Ex. A to Taliaferro Decl.)).

36. Pursuant to the Federal Disposition Act, MoneyGram remits the unclaimed property to the State in which the Retail Money Order was purchased. See App. 1021 (Petrick Dep. 36:18–20); see also App. 425 (Dep. Ex. 50 at MG004671).

Response: Not disputed.

37. In addition to Retail Money Orders, MoneyGram offers another line of prepaid money transfer products for financial institutions to sell, which it markets as “Official Checks.” See App. 1066 (Yingst Dep. 28:6–19).

Response: Delaware disputes the characterization of the instruments at issue in this case as “money transfer products.” The instruments at issue in this case are part of MoneyGram's Financial Paper Product segment. Delaware SOF ¶ 5 (Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.)). Additionally, Retail Money Orders are almost universally sold at retail locations. Delaware SOF ¶ 26 (Yingst 29:4-10 (Ex. A to Taliaferro Decl.)). Official Checks are exclusively sold by financial institutions. Delaware SOF ¶ 65 (Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.)).

38. An “Official Check” is not a defined type of instrument in the Uniform Commercial Code (the “U.C.C.”); it is a label MoneyGram uses to describe the prepaid instruments processed through its “Official Check” platform. See App. 1122 (Yingst Dep. 101:2–14); see also App. 182, 217 (Dep. Ex. 13 at 1, 36) (“Primelink Official Checks Operating Instructions”).

Response: Delaware disputes this fact. In Defendant States’ expert’s own casebook and case outline, he states that an “official check” is a “teller’s check,” which is a defined type of instrument in the U.C.C. Gillette Ex. 149 at 55 (Ex. FF to Supp. Taliaferro Decl.); Gillette Ex. 150 at 8 (Ex. GG to Supp. Taliaferro Decl.).

39. MoneyGram sells its Official Check processing service to its banks and credit union customers. See App. 1066–67 (Yingst Dep. 28:6–19, 28:20–29:3).

Response: Not disputed.

40. In its line of Official Checks, MoneyGram offers four products: what it labels as “Cashier’s Checks,” “Agent Check Money Orders,” “Agent Checks,” and “Teller’s Checks.” See App. 1074 (Yingst Dep. 36:15–21); see also App. 226 (Dep. Ex. 15 § 2).

Response: Delaware disputes this fact. In her testimony, MoneyGram’s witness clarified that although these four instruments are *processed* on the Official

Check platform, Agent Check Money Orders *cannot* be titled “Official Checks.” Yingst 36: 17-21 (Defendant States’ Appendix (“DS App.”) 1074); Yingst 162:17-163:6 (DS App. 1183-1184); Delaware SOF ¶ 91 (Yingst 162:7-13 (Ex. A to Taliaferro Decl.); Yingst Ex. 11 at MG-000298 (Ex. E to Taliaferro Decl.)).

41. In some cases, MoneyGram appears to have sold Retail Money Orders through its Official Check platform as well. See App. 1074 (Yingst Dep. 36:15–21); see also App. 307 (Dep. Ex. 20 § 2).

Response: Delaware disputes this fact. The cited evidence does not refer to Retail Money Orders.

42. Because MoneyGram is not responsible for reporting the unclaimed balances of abandoned Cashier’s Checks, those instruments are not subject to this lawsuit. See App. 1242 (Yingst Dep. 229:17–22).

Response: Not disputed.

43. A representative example of the product that MoneyGram labels as an “Agent Check Money Order” is included in the appendix. See App. 32–33 (Dep. Ex. 4 [Ex. E]); see also App. 1113–14 (Yingst Dep. 92:22–93:7).

Response: Not disputed.

44. MoneyGram provides a template to its selling financial institutions showing what must be printed on an Agent Check Money Order. See App. 35 (Yingst Dep. Ex. 4 [Ex. G]); see also App. 1119 (Yingst Dep. 98:6–24).

Response: Delaware disputes this fact. App. 35 is an incomplete template.

45. The documents attached to Deposition Exhibit 4 as Exhibits E and G are representative of the Agent Check Money Orders issued by MoneyGram since 2000. See App. 16–17 (Dep. Ex. 4 at ¶ 4).

Response: Delaware disputes this fact. Exhibit G is a template for the front of an Agent Check Money Order.

46. Another example of an Agent Check Money Order appears in the record at App. 53 (Dep. Ex. 8).

Response: Not disputed.

47. The appendix contains a representative sample Agent Check Money Order. See App. 53 (Dep. Ex. 8).

Response: Not disputed.

48. A MoneyGram Agent Check Money Order functions in the same way as a MoneyGram Retail Money Order. See App. 1106, 1114–15, 1137–38 (Yingst Dep. 85:6–22, 93:24–94:17, 116:8–117:7).

Response: Not disputed.

49. Agent Check Money Orders are sold by financial institutions, which act as agents for MoneyGram and are not considered parties who are liable on the instruments. See App. 1195 (Yingst Dep. 174:15–22); see also App. 32–33 (Dep. Ex. 4 [Ex. E]); App. 53 (Ex. 8); App. 226–27 (Ex. 15 § 3).

Response: Not disputed.

50. An individual wishing to purchase an Agent Check Money Order pays the desired face value of the Agent Check Money Order to the selling financial institution, and then signs the instrument. See App. 53 (Dep. Ex. 8); App. 64–65 (Dep. Ex. 12 at 5–6); see also App. 1198–1200 (Yingst Dep. 177:14–20, 178:19–179:1).

Response: Not disputed. However, a financial institution may also charge a fee in addition to the face value of the Agent Check Money Order. Yingst 406:7-13 (Ex. DD to Supp. Taliaferro Decl.).

51. MoneyGram imposes no limits on the face value of an Agent Check Money Order or any other type of Official Check, though the selling financial institution may choose to do so. See App. 1211–12 (Yingst Dep. 190:4–191:3).

Response: Not disputed.

52. MoneyGram is designated as both the “drawer” and the “issuer” of the Agent Check Money Order. See App. 32–33 (Dep. Ex. 4 [Ex. E]); App. 53 (Dep. Ex. 8); App. 226–27 (Dep. Ex. 15 § 3); see also App. 1118 (Yingst Dep. 97:4–10).

Response: Not disputed.

53. The purchaser then delivers the Agent Check Money Order to the intended recipient, who can redeem the instrument for its face value in the same way as the recipient of a Retail Money Order. See App. 1106–07, 1114–15 (Yingst Dep. 85:6–86:15, 93:24–94:17).

Response: Not disputed.

54. At its own discretion, the selling financial institution may label its Agent Check Money Orders more generally as “personal” or “international” money orders. See App. 1194–95 (Yingst Dep. 173:22–174:14); see also App. 53 (Dep. Ex. 8); App. 58 (Dep. Ex. 11 at 2).

Response: Not disputed.

55. The selling financial institution of the Agent Check Money Order then sends the same four pieces of information to MoneyGram as with a Retail Money Order—the amount of the instrument, the date of purchase, the serial number, and the customer identification number of the financial institution that sold the Agent Check Money Order. See App. 1250–51 (Yingst Dep. 266:16–267:6); see also App. 1254 (Yingst Dep. 270:5–11).

Response: Not disputed.

56. MoneyGram can use that information gleaned from the selling financial institution of the Agent Check Money Order to determine the State in which the purchaser bought the Agent Check Money Order. See App. 1025 (Petrick Dep. 68:2–10).

Response: Not disputed.

57. The selling financial institution does not convey any information about the purchaser of the Agent Check Money Order, and MoneyGram does not receive an image of the Agent Check Money Order until it is presented for payment. See App. 1139–42 (Yingst Dep. 118:24–121:12).

Response: Not disputed.

58. Also like a Retail Money Order, the selling financial institution of the Agent Check Money Order transfers the money (equal to the face value of the Agent Check Money Order) to satisfy the obligation thereunder to MoneyGram. See App. 1253–54 (Yingst Dep. 269:12–270:4).

Response: Delaware disputes this fact. The selling financial institution usually wires MoneyGram the face value of the Agent Check Money Order. Yingst 269:15-24 (DS App. 1253).

59. MoneyGram then holds that money identified in the previous paragraph in the same commingled portfolio where it holds the funds to satisfy Retail Money Orders. See App. 1136–37 (Yingst Dep. 115:15–116:6).

Response: Not disputed.

60. When an Agent Check Money Order is presented for payment, it goes through the Federal Reserve clearing process in the same manner as Retail Money Orders by using the routing and transit numbers of one of MoneyGram’s clearing banks. See App. 1118–19, 1138–39 (Yingst Dep. 97:8–98:5, 117:8–118:23).

Response: Not disputed.

61. MoneyGram can use the same clearing bank for both Retail Money Orders and Agent Check Money Orders. See App. 1121 (Yingst Dep. 100:6–18).

Response: Not disputed.

62. MoneyGram, not the selling financial institution, selects the clearing banks for Agent Check Money Orders. See App. 1120 (Yingst Dep. 99:8–15).

Response: Not disputed.

63. The clearing banks identified in the previous paragraph are designated as the “drawees” on the Agent Check Money Orders. See App. 1118 (Yingst Dep. 97:11–20); see also App. 32–33 (Dep. Ex. 4 [Ex. E]); App. 53 (Dep. Ex. 8).

Response: Not disputed.

64. Like with Retail Money Orders, MoneyGram is the holder of the funds that represent the proceeds of unclaimed Agent Check Money Orders. See App. 1023 (Petrick Dep. 66:11–23).

Response: Not disputed.

65. MoneyGram does not collect information related to the purchaser of the unclaimed Agent Check Money Orders, so it does not perform any due diligence

before reporting the property as unclaimed. See App. 1139–42 (Yingst Dep. 118:24–121:12); see also App. 421 (Dep. Ex. 50 at MG004667).

Response: Not disputed.

66. As with Retail Money Orders, MoneyGram reports the funds representing unclaimed Agent Check Money Orders to the State in which the Agent Check Money Order was purchased. See App. 1021 (Petrick Dep. 36:1–4); App. 210 (Dep. Ex. 13 at 29).

Response: Not disputed.

67. A representative example of the product that MoneyGram labels as an “Agent Check” is included in the appendix. See App. 343–44 (Dep., Ex. 26 [Ex. A]); see also App. 1204–06 (Yingst Dep. 183:14–185:19).

Response: Not disputed, but clarified that there are two different types of MoneyGram Agent Checks. Delaware SOF ¶ 87 (Ex. A to Whitlock Official Check Aff. at MG0000004); Delaware SOF ¶ 88 (Yingst 419:7-420:21 (Ex. A to Taliaferro Decl.); Yingst Ex. 10 (Ex. D to Taliaferro Decl.)).

68. MoneyGram provides a template to its selling financial institutions showing what must be printed on an Agent Check. See App. 345–46 (Dep. Ex. 26 [Ex. B]).

Response: Not disputed.

69. The aforementioned Agent Checks are representative of the Agent Checks issued by MoneyGram since 2000. See App. 342 (Dep. Ex. 26); App. 1180–81, 1204 (Yingst Dep. 159:22–160:5, 183:14–21); see also App. 52, 56 (Dep. Exs. 7, 10) (further examples of Agent Checks); see App. 1266–68 (Supp. Yingst Decl. ¶¶ 2–3 & [Ex. A]) (giving example of a “blank stock” Agent Check).

Response: Not disputed, as to the Exhibits to the Whitlock Declaration.

70. Just as with Retail Money Orders and Agent Check Money Orders, an Agent Check purchaser remits the face value of the Agent Check to the selling financial institution. See App. 64–65 (Dep. Ex. 12 at 5–6).

Response: Delaware disputes this fact. Agent Checks are not usually purchased by consumers, but are used by banks to pay their own obligations. Yingst 169:11-170:8 (Ex. A to Taliaferro Decl.).

71. As with Retail Money Orders and Agent Check Money Orders, the selling financial institution of an Agent Check acts only as an agent for MoneyGram, who is identified as the drawer and issuer of the Agent Checks. See App. 236–38 (Dep. Ex. 16); see also App. 1185 (Yingst Dep. 164:13–24).

Response: Delaware disputes this fact. One variety of MoneyGram Agent Check indicates that the drawer of the instrument is MoneyGram, and that the individual signing the check is signing as “Agent for MoneyGram.” Delaware SOF ¶ 87 (Ex. A to Whitlock Official Check Aff. at MG0000004). A second variety of MoneyGram Agent Check lists the drawer of the instrument as MoneyGram, but simply lists the individual signing the check as “authorized signature.” In the absence of language indicating otherwise, “a signature in the lower right hand corner of an instrument indicates an intent to sign as the maker of a note or the drawer of a draft.” Delaware SOF ¶ 88 (U.C.C. § 3-204, cmt. 1; Yingst 419:7-420:21 (Ex. A to Taliaferro Decl.); Yingst Ex. 10 (Ex. D to Taliaferro Decl.)).

72. MoneyGram’s clearing bank is designated as the drawee on an Agent Check. See App. 236–38, 343–44 (Dep. Exs. 16, 26 [Ex. A]); see also App. 1186 (Yingst Dep. 165:6–15).

Response: Not disputed.

73. An Agent Check also can be labeled simply as an “Official Check” on its face. See App. 56 (Dep. Ex. 10); see also App. 1204–05 (Yingst Dep. 183:14–184:19).

Response: Not disputed.

74. Using the same system that processes Agent Check Money Orders, the selling financial institution informs MoneyGram of the amount of the Agent Check, the date of purchase, the serial number, and the customer identification number of the selling financial institution. See App. 1250–51, 1254 (Yingst Dep. 266:16–267:6; 270:5–11).

Response: Not disputed.

75. As with Agent Check Money Orders, the selling financial institution does not convey to MoneyGram any information about the purchaser of the Agent Check or an image of the Agent Check. See App. 1150–52 (Yingst Dep. 129:4–131:13).

Response: Not disputed.

76. MoneyGram holds the money obtained from the purchase of the Agent Check (which is equal to the face value of the Agent Check) in the same

commingled portfolio of investments and accounts as with those from Agent Check Money Orders and Retail Money Orders. See App. 1088–89 (Yingst Dep. 54:17–55:7); see also App. 1136–37, 1174 (Yingst Dep. 115:15–116:6; 153:7–16).

Response: Not disputed.

77. An Agent Check presented for payment goes through the same clearing process as with Agent Check Money Order and Retail Money Order, using a clearing bank’s routing and transit number. See App. 1185, 1188–92 (Yingst Dep. 164:6–12; 167:23–171:8).

Response: Not disputed.

78. The backend processing that MoneyGram provides for Agent Checks is no different than the backend processing that MoneyGram provides for Agent Check Money Orders and Retail Money Orders. See App. 1191, 1243 (Yingst Dep. 171:3–8, 258:14–20).

Response: Not disputed.

79. Unlike with Agent Check Money Order and Retail Money Orders, however, MoneyGram reports the proceeds of all of its unclaimed Agent Checks to

the State of its incorporation—Minnesota until 2005, and Delaware since then. See App. 375–78 (Dep. Ex. 42); see also App. 210

Response: Not disputed.

80. MoneyGram does not collect any information related to the purchaser of the unclaimed Agent Check, so it does not perform any due diligence before reporting the property. See App. 1150–52 (Yingst Dep. 129:14–131:13); see also App. 421 (Dep. Ex. 50 at MG004667).

Response: Not disputed.

81. Despite the functional equivalency of Agent Checks, Agent Check Money Orders, and Retail Money Orders, MoneyGram’s corporate designee on its escheatment practices, Kate Petrick could not state the basis for MoneyGram’s policy of reporting unclaimed Agent Checks to its State of incorporation. See App. 1042–44 (Petrick Dep. 133:17–135:4).

Response: Delaware disputes the “functional equivalency” of Agent Checks, Agent Check Money Orders, and Retail Money Orders. For example, there is no service charge contract on the back of MoneyGram Official Checks, Delaware SOF ¶¶ 50, 51 (and cited evidence therein), MoneyGram Official Checks are sold exclusively through financial institutions and cannot be purchased at retail

locations, Delaware SOF ¶ 48 (and cited evidence therein), and MoneyGram Official Checks are not limited to a maximum value of \$1,000 and may be issued for any amount. Delaware SOF ¶ 68 (and cited evidence therein). Additionally, MoneyGram Official Checks have marketing and operational differences, such as: Branding, Delaware SOF ¶¶ 52, 31 (and cited evidence therein); Marketing, Delaware SOF ¶¶ 27, 45, 46 (and cited evidence therein); Use and Acceptability of Instruments, Delaware SOF ¶¶ 21, 24, 68, 73, 74 (and cited evidence therein); Size of Market, Delaware SOF ¶¶ 21, 66 (and cited evidence therein); Public Availability of Information, Delaware SOF ¶¶ 22, 49 (and cited evidence therein); Competitors, Delaware SOF ¶¶ 30, 72 (and cited evidence therein); Processing of Refunds, Delaware SOF ¶¶ 23, 53 (and cited evidence therein); Split of Interest on Uncashed Instruments, Delaware SOF ¶¶ 56, 40 (and cited evidence therein); Average Time Until Redemption, Delaware SOF ¶¶ 34, 71 (and cited evidence therein); Dollar Limits, Delaware SOF ¶¶ 36, 68 (and cited evidence therein); Processing of Proceeds, Delaware SOF ¶¶ 39, 54 (and cited evidence therein); and Right to Stop Payment, Delaware SOF ¶¶ 41, 55 (and cited evidence therein). Delaware avers that the inability of Kate Petrick to state the legal basis is not a fact requiring response. However if it is, Delaware disputes that MoneyGram lacks a legal basis for the policy.

82. Rather, Petrick testified that the decision to report unclaimed Agent Checks to MoneyGram's State of incorporation was made by MoneyGram's "attorneys and outside counsel." App. 1042–44 (Petrick Dep. 133:17–135:4).

Response: Not disputed, but advice was provided by counsel for TECI, MoneyGram's predecessor entity. Delaware SOF ¶ 95 (Petrick 73:2-12 (Ex. O to Taliaferro Decl.); Petrick Ex. 42 (Ex. Q to Taliaferro Decl.); Petrick 134:17-135:11 (Ex. O to Taliaferro Decl.); Petrick 255:13-256:2 (Ex. O to Taliaferro Decl.)).

83. A representative example of the product that MoneyGram labels as a "Teller's Check" is included in the appendix. See App. 347–48 (Dep. Ex. 26 [Ex. C]).

Response: Not disputed.

84. Other examples of Teller's Checks appear in the record. See, e.g., App. 51, 54 (Dep. Exs. 6, 9); see also App. 1156, 1201 (Yingst Dep. 135:17–22, 180:4–18); App. 1266, 1269–70 (Supp. Yingst Decl. ¶¶ 2, 4 & [Ex. B]) (giving example of a "blank stock" Teller's Check).

Response: Not disputed.

85. MoneyGram provides a template to its selling financial institutions showing what must be printed on a Teller's Check. See App. 349–50 (Dep. Ex. 26 [Ex. D]).

Response: Not disputed.

86. These documents are representative of the Teller's Checks issued by MoneyGram since 2000. See App. 342 (Dep. Ex. 26 ¶ 7).

Response: Not disputed, as to the Exhibits to the Whitlock Declaration.

87. A MoneyGram Teller's Check is issued and paid in the same way as Retail Money Orders and Agent Check Money Orders:

Response: Delaware disputes this fact. There are many differences between Teller's Checks and Money Orders. For example, a MoneyGram Teller's Check is accepted as a form of payment in a wider range of circumstances than a money order. A MoneyGram Teller's Check is used by a consumer that needs funds for a purpose for which a money order would not be accepted because money orders lack next day funds availability. Delaware SOF ¶ 74 (and cited evidence therein). MoneyGram Teller's Checks can only be issued by a financial institution, and the selling financial institution is listed as the drawer on MoneyGram Teller's Checks. Delaware SOF ¶ 80 (and cited evidence therein). All MoneyGram Teller's Checks

are “good funds checks,” and are accepted by financial institutions as “good funds checks.” MoneyGram operationally recognizes the difference between a MoneyGram Teller’s Check, which is a next day “good funds” item, and a MoneyGram Money Order, which is not. Delaware SOF ¶ 82 (and cited evidence therein). A MoneyGram Teller’s Check is subject to Regulation CC Next-Day Funds Availability and Regulation D Reserve Requirement. Delaware SOF ¶ 83 (and cited evidence therein).

a. The purchaser of the Teller’s Check remits the value of the Teller’s Check to the selling financial institution, which then issues the written instrument. See App. 1158–60 (Yingst Dep. 137:23–139:13).

Response: Delaware disputes this fact. A Teller’s Check is purchased by an existing customer of the financial institution and the payment for the Teller’s Check is transferred directly from the customer’s account at the financial institution. Yingst 138:7-139:13 (DS App. 1159-1160); Delaware SOF ¶ 45 (Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.); Yingst 330:21-331:7 (Ex. A to Taliaferro Decl.)).

b. The selling financial institution of the Teller's Check transfers the money (equal to the face value of the Teller's Check) to satisfy the obligation thereunder to MoneyGram. See App. 1150–52 (Yingst Dep. 129:14–131:13).

Response: Not disputed, but the money is usually wired to MoneyGram the next day. Delaware SOF ¶ 54 (Yingst 340:5-15 (Ex. A to Taliaferro Decl.)).

c. The selling financial institution of the Teller's Check provides the following information to MoneyGram: the amount of the instrument, the date of purchase, the serial number, and the customer identification number of the financial institution that sold the Teller's Check. See App. 1150–52 (Yingst Dep. 129:14–131:13).

Response: Not disputed.

d. The selling financial institution does not report to MoneyGram any information regarding the purchaser of the Teller's Check. See App. 1150–52 (Yingst Dep. 129:14–131:13).

Response: Not disputed.

88. And like the other Official Check products, Teller's Checks are made payable to a named payee. See App. 347–48 (Dep. Ex. 26 [Ex. C]).

Response: Not disputed.

89. Money from the Teller's Check purchase (equal to the face value of the Teller's Check) remains in the same commingled investment portfolio with the proceeds from Retail Money Orders, Agent Check Money Orders, and Agent Checks (as previously described) until the Teller's Check is cleared through the Federal Reserve using the clearing bank's routing and transit numbers. See App. 1174 (Yingst Dep. 153:7–16).

Response: Not disputed.

90. Like Agent Checks, Teller's Checks will sometimes simply be labeled as "Official Checks" on their face. See App. 54–55 (Dep. Ex. 9) (Teller's Check); App. 56 (Dep. Ex. 10 (Agent Check)).

Response: Not disputed.

91. The selling financial institution's role in the process of selling a Teller's Check is limited in the same way as it is with respect to Retail Money Orders and other Official Checks – the institution issues the instrument to the purchaser, collects the purchaser's money, and forwards that money and certain information

along to MoneyGram. See App. 1150–52, 1177–79, 1188 (Yingst Dep. 129:14–131:13, 156:2–158:9, 167:15–19).

Response: Delaware disputes this fact as to the role of the selling financial institution, as it is not limited in the same way as Retail Money Orders. A financial institution that sells MoneyGram Official Checks has a number of operational rights that a seller of a MoneyGram Retail Money Order does not have. Delaware SOF ¶ 55 (and cited evidence therein). *See also, e.g.,* Processing of Refunds, Delaware SOF ¶¶ 23, 53 (and cited evidence therein), Split of Interest on Uncashed Instruments, Delaware SOF ¶¶ 56, 40 (and cited evidence therein), Processing of Proceeds, Delaware SOF ¶¶ 39, 54 (and cited evidence therein), and Right to Stop Payment, Delaware SOF ¶¶ 41, 55 (and cited evidence therein).

92. There are some differences between Teller’s Checks and the previously-discussed instruments:

Response: Not disputed.

a. While MoneyGram continues to be identified as the issuer of its Teller’s Checks, the local financial institution is typically described as a drawer. See App. 347–48 (Dep. Ex. 26 [Ex. C]).

Response: Delaware disputes this fact. The selling financial institution is *always* and *exclusively* described as the drawer of a MoneyGram Teller's Check. Delaware SOF ¶ 80 (Yingst 136:8-13 (Ex. A to Taliaferro Decl.); Ex. D to Whitlock Official Check Aff. at MG0000010).

b. MoneyGram's agreements with its financial institution customers refer to these Teller's Checks as being "drawn by" both the financial institution and MoneyGram. See App. 307–08 (Dep. Ex. 20 § 3).

Response: Delaware does not dispute that this language appears in MoneyGram's agreements with financial institutions, but Delaware disputes that this language is relevant as to whether these instruments are teller's checks under the U.C.C. and other relevant laws.

c. While MoneyGram's corporate representative, Eva Yingst testified that the selling financial institutions do not act as agents for MoneyGram in selling Teller's Checks (unlike the other instruments previously discussed); however, at least some of the financial institution agreements specifically appoint the financial institution as MoneyGram's agent for purposes of selling Teller's Checks and other Official Checks. See App. 1187–88 (Yingst Dep. 166:24–167:14); see also App. 227 (Dep. Ex. 15 § 5).

Response: Delaware disputes this fact. Defendant States cite a single contract that references the financial institution serving as MoneyGram’s “limited agent . . . for the sole purpose of using and selling” a small number of financial instruments, including MoneyGram Money Orders and Agent Checks. Yingst Ex. 15 (Ex. I to Taliaferro Decl.). At least two other versions of the MoneyGram Financial Institution Contract make no reference to “agency” or “agents.” Yingst Ex. 14 (Ex. H to Taliaferro Decl.); Yingst Ex. 20 (DS App. 307). MoneyGram’s Fed. R. Civ. P. 30(b)(6) witness expressly disclaimed agency with respect to MoneyGram Teller’s Checks. Yingst 166:24-167:14 (DS App. 1187-1188) (“Q. In the instance of a teller's check is Elizabethton Federal considered an agent of MoneyGram? A. No . . . they are not an agent of MoneyGram. They're not defined as an agent of MoneyGram. They are issuing that check. They are the drawer of that check, people who are getting payment, and we are the issuer of the item, but they are not an agent.”).

d. Teller’s Checks may have next-day availability under federal Regulation CC, which means the depositor has a right to with-draw the funds represented by a Teller’s Check on the day after its deposit. See App. 58 (Dep. Ex. 11 at 2).

Response: Delaware disputes this fact. All MoneyGram Teller’s Checks *do* have next-day availability. Delaware SOF ¶ 82 (Yingst 142:9-13 (Ex. A to Taliaferro Decl.); Yingst 143:10-17 (Ex. A to Taliaferro Decl.)).

93. As with Retail Money Orders, Agent Check Money Orders, and Agent Checks, MoneyGram is responsible for reporting the funds representing unclaimed Teller’s Checks. See App. 1020–22 (Petrick Dep. 35:11–37:1).

Response: Not disputed.

94. But unlike Retail Money Orders and Agent Check Money Orders, today MoneyGram reports the proceeds of unclaimed Teller’s Checks to the State of its incorporation. See App. 1020–22 (Petrick Dep. 35:11–37:1); see also App. 210 (Dep. Ex. 13 at 29).

Response: Not disputed.

95. As was true of Agent Checks, MoneyGram cited only the instruction from its “attorneys and outside counsel” to explain its current reporting of Teller’s Checks differently than Retail Money Orders and Agent Check Money Orders. See App. 1044 (Petrick Dep. 135:5–11).

Response: Not disputed, but advice was provided by counsel for TECI, MoneyGram's predecessor entity. Delaware SOF ¶ 95 (Petrick 73:2-12 (Ex. O to Taliaferro Decl.); Petrick Ex. 42 (Ex. Q to Taliaferro Decl.); Petrick 134:17-135:11 (Ex. O to Taliaferro Decl.); Petrick 255:13-256:2 (Ex. O to Taliaferro Decl.)).

96. From the time that MoneyGram began offering Teller's Checks as part of its "Official Check" line of products until 2005, MoneyGram reported funds from unclaimed Teller's Checks to the States in which they were purchased or in which their financial-institution customer was incorporated. See App. 375–85 (Dep. Exs. 42–44).

Response: Not disputed.

97. MoneyGram changed its practice in 2005 and began to report all of its unclaimed Teller's Check proceeds to Delaware. See App. 375–85 (Dep. Exs. 42–44).

Response: Not disputed.

98. By reporting its unclaimed Teller's Check proceeds to its state of incorporation, MoneyGram acknowledges that its books and records do not contain

information about the purchaser or intended payee of the instrument. See App. 375–85 (Dep. Exs. 42–44).

Response: Not disputed that MoneyGram acknowledges that its books and records do not contain information about the purchaser or intended payee of the instrument.

99. Per its internal policies, MoneyGram does not perform any due diligence to try to locate the rightful owner of Teller’s Checks despite the acknowledgement that the selling financial institutions may indeed have that information. See App. 375–85 (Dep. Exs. 42–44); see also App. 421 (Dep. Ex. 50 at MG004667).

Response: Not disputed.

100. MoneyGram has admitted that escheating funds from abandoned Official Checks to every State of purchase is as easy for MoneyGram as escheating to just one State. See Petrick Dep. 81:1–22, 83:21–84:4.2

Response: Not disputed.

101. In or around 2014, certain of the Defendant States contracted with Treasury Services Group (“TSG”) to audit MoneyGram’s books and records to

determine compliance with unclaimed-property laws. See App. 958–65 (Kauffman Dep. 18:5–25:14); see also App. 583–85 (Dep. Exs. 71–73).

Response: Not disputed.

102. The TSG audit of MoneyGram’s books and records found that MoneyGram should have remitted to Delaware only approximately \$12 million—not the more than \$250 million that Delaware in fact received from MoneyGram. See App. 593 (Dep. Ex. 103 at ALF00001796).

Response: Delaware disputes that TSG made any findings regarding where MoneyGram “should have remitted” unclaimed MoneyGram Official Checks. TSG made no legal determinations and its role was limited to gathering data to confirm a determination that “had been made already by the State of Arkansas.” Kauffman 33:24-34:14 (Ex. II to Supp. Taliaferro Decl.); Kauffman 45:19 (Ex. II to Supp. Taliaferro Decl.). TSG made no distinctions between MoneyGram Agent Checks and MoneyGram Teller’s Checks. Kauffman 100:15-20 (Ex. II to Supp. Taliaferro Decl.). The demand letter sent to MoneyGram at the conclusion of TSG’s work contained no supporting information, legal analysis or calculations demonstrating how the demand amount was calculated. Kauffman 110:23-111:16 (Ex. II to Supp. Taliaferro Decl.). TSG made its so-called conclusions without ever reviewing (or even receiving) examples of MoneyGram Official Checks.

Kauffman 134:21-135:25 (Ex. II to Supp. Taliaferro Decl.). Even when providing information to State clients of TSG, TSG tried to “make it as simple as possible” by, for example, not providing States with MoneyGram Money Order Terms and Conditions or images of MoneyGram Teller’s Checks. Kauffman 138:4-142:22 (Ex. II to Supp. Taliaferro Decl.). In providing examples to the States, TSG chose example instruments that were “most similar,” omitted dissimilar ones, and omitted terms and conditions from the MoneyGram Money Order provided to the States. Kauffman 146:16-147:3 (Ex. II to Supp. Taliaferro Decl.). TSG issued its report without taking into consideration any market research, market differences, or regulatory differences between MoneyGram Money Orders, MoneyGram Teller’s Checks, and MoneyGram Agent Checks. Kauffman 53:22-61:24 (Ex. II to Supp. Taliaferro Decl.). Even with respect to a simple calculation of the aggregate amount of MoneyGram Teller’s Checks and MoneyGram Agent Checks, TSG was advised by MoneyGram that their calculation was overstated. Kauffman 127:22-128:21 (Ex. II to Supp. Taliaferro Decl.); Kauffman Ex. 95 (Ex. JJ to Supp. Taliaferro Decl.).

103. Between 2002 and 2017, less than one half of one-percent of all official check property escheated to Delaware was actually purchased in Delaware. App.

593 (Dep. Ex. 103 at ALF00001796); see also App. 967–68 (Kauffman Dep. 192:16–193:2).

Response: Delaware disputes that TSG made any findings regarding where MoneyGram “should have remitted” unclaimed MoneyGram Official Checks. TSG made no legal determinations and its role was limited to gathering data to confirm a determination that “had been made already by the State of Arkansas.” Kauffman 33:24-34:14 (Ex. II to Supp. Taliaferro Decl.); Kauffman 45:19 (Ex. II to Supp. Taliaferro Decl.). TSG made no distinctions between MoneyGram Agent Checks and MoneyGram Teller’s Checks. Kauffman 100:15-20 (Ex. II to Supp. Taliaferro Decl.). The demand letter sent to MoneyGram at the conclusion of TSG’s work contained no supporting information, legal analysis or calculations demonstrating how the demand amount was calculated. Kauffman 110:23-111:16 (Ex. II to Supp. Taliaferro Decl.). TSG made its so-called conclusions without ever reviewing (or even receiving) examples of MoneyGram Official Checks. Kauffman 134:21-135:25 (Ex. II to Supp. Taliaferro Decl.). Even when providing information to State clients of TSG, TSG tried to “make it as simple as possible” by, for example, not providing States with MoneyGram Money Order Terms and Conditions or images of MoneyGram Teller’s Checks. Kauffman 138:4-142:22 (Ex. II to Supp. Taliaferro Decl.). In providing examples to the States, TSG chose example instruments that were “most similar,” omitted dissimilar ones, and

omitted terms and conditions from the MoneyGram money order provided to the states. Kauffman 146:16-147:3 (Ex. II to Supp. Taliaferro Decl.). TSG issued its report without taking into consideration any market research, market differences, or regulatory differences between MoneyGram Money Orders, MoneyGram Teller's Checks, and MoneyGram Agent Checks. Kauffman 53:22-61:24 (Ex. II to Supp. Taliaferro Decl.). Even with respect to a simple calculation of the aggregate amount of MoneyGram Teller's Checks and MoneyGram Agent Checks, TSG was advised by MoneyGram that their calculation was overstated. Kauffman 127:22-128:21 (Ex. II to Supp. Taliaferro Decl.); Kauffman Ex. 95 (Ex. JJ to Supp. Taliaferro Decl.). Delaware lacks sufficient basis to admit or deny the percentage of all MoneyGram Official Checks that were actually purchased in Delaware.

104. Minnesota, MoneyGram's prior state of incorporation, has paid previously remitted unclaimed official check proceeds to a number of States. See App. 968-69 (Kauffman Dep. 193:3-194:8).

Response: Delaware disputes this fact. Defendant States have not cited any evidence of the basis for any payment Minnesota may have made to any States.

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