

In The
Supreme Court of the United States

—◆—
STATE OF DELAWARE,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA
AND STATE OF WISCONSIN,

Defendants,

AND

STATE OF ARKANSAS, *et al.*,

Plaintiffs,

v.

STATE OF DELAWARE,

Defendant.

—◆—
**MOTION FOR LEAVE TO AMEND BILL OF
COMPLAINT AGAINST COMMONWEALTH OF
PENNSYLVANIA AND STATE OF WISCONSIN, AND
AMENDED BILL OF COMPLAINT**
—◆—

MATTHEW P. DENN
Attorney General
of Delaware

AARON R. GOLDSTEIN
State Solicitor

JENNIFER R. NOEL
CAROLINE LEE CROSS
Deputy Attorneys General
DEPARTMENT OF JUSTICE
STATE OF DELAWARE

Carvel State Office Building
820 N. French Street, SLC C600
Wilmington, DE 19801
(302) 577-8842

STEVEN S. ROSENTHAL*
MARC S. COHEN
TIFFANY R. MOSELEY
JOHN DAVID TALIAFERRO
LOEB & LOEB LLP
901 New York Avenue N.W.
3rd Floor East
Washington, DC 20001
(202) 618-5000
srosenthal@loeb.com

**Counsel of Record*

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**MOTION FOR LEAVE TO AMEND BILL OF
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The State of Delaware (“Delaware”) hereby moves this honorable Court for leave to amend the Bill of Complaint filed against the Commonwealth of Pennsylvania and the State of Wisconsin in Original Action No. 145.

Delaware seeks leave to amend its Bill of Complaint to assert claims for certain unclaimed negotiable instruments that Delaware believes have been wrongly escheated to Pennsylvania and Wisconsin. These unclaimed negotiable instruments, including but not limited to official checks which were issued by companies other than MoneyGram, do not fall within the definition of 12 U.S.C. § 2503 and should therefore have been escheated to Delaware, the domicile of the holder of this unclaimed property.

On December 6, 2016, Counsel for Delaware informed Counsel for Pennsylvania and Wisconsin that it intended to amend its claims against those respective States. Pennsylvania and Wisconsin oppose this motion.

Respectfully submitted,

MATTHEW P. DENN
Attorney General of Delaware

AARON R. GOLDSTEIN
State Solicitor

JENNIFER R. NOEL
CAROLINE LEE CROSS
Deputy Attorneys General
DEPARTMENT OF JUSTICE
STATE OF DELAWARE
Carvel State Office Building
820 N. French Street, SLC C600
Wilmington, DE 19801
(302) 577-8842

STEVEN S. ROSENTHAL*
MARC S. COHEN
TIFFANY R. MOSELEY
JOHN DAVID TALIAFERRO
LOEB & LOEB LLP
901 New York Avenue N.W.
3rd Floor East
Washington, DC 20001
(202) 618-5000
srosenthal@loeb.com

* *Counsel of Record*

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AMENDED BILL OF COMPLAINT

The State of Delaware, by and through its Attorney General, Matthew P. Denn, brings this suit against defendants, the Commonwealth of Pennsylvania and the State of Wisconsin, and for its cause of action states:

1. The Court has exclusive and original jurisdiction of this suit under Article III, Section 2, Clause 2, of the Constitution of the United States and Title 28, Section 1251(a) of the United States Code.

2. The Court is the sole forum in which Delaware may enforce its rights under the Supremacy Clause, Article VI of the Constitution of the United States.

3. The State of Delaware has been sued by the Commonwealth of Pennsylvania and the State of Wisconsin in federal district court over the right to escheat certain unclaimed and abandoned monetary instruments pursuant to the Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. §§ 2501-2503.

4. All 50 States have statutes regarding the States' ability to "take title to certain abandoned intangible personal property through escheat, a procedure with ancient origins whereby a sovereign may acquire title to abandoned property if after a number of years no rightful owner appears." *Texas v. New Jersey*, 379 U.S. 674, 675 (1965).

5. The Supreme Court has on three occasions resolved disputes between States regarding which State had priority to claim certain abandoned intangible personal property. See *Delaware v. New York*, 507 U.S. 490 (1993); *Pennsylvania v. New York*, 407 U.S. 206 (1972); and *Texas, supra*.

6. In *Texas*, the Supreme Court initially established what have become known as the "priority rules," whereby the first opportunity to escheat the property belongs to the State of the last known address of the creditor as shown by the debtor's books and records (the "primary rule"), and if there is no record of any address for a creditor, or because the creditor's last

known address is in a State which does not provide for the escheat of abandoned property, the property escheats to the State in which the debtor is incorporated (the “secondary rule”). *Texas*, 379 U.S. at 682.

7. Seven years after *Texas*, Pennsylvania proposed that for transactions where the debtor did not keep records showing the address of the creditor, “the State of origin of the transaction,” *i.e.*, the State of the place of purchase, should have the right to escheat the abandoned property, rather than the State of the debtor’s domicile as was required under the second priority rule in *Texas*. *Pennsylvania*, 407 U.S. at 213-14. The Supreme Court rejected this alternative and held that the priority rules first established in *Texas* should continue to apply. *Id.* at 214-15.

8. Following the Supreme Court’s decision in *Pennsylvania*, in 1974 Congress adopted the Disposition of Abandoned Money Orders and Traveler’s Checks Act, which had the effect of reversing the Supreme Court’s holding in *Pennsylvania* for certain types of property. Specifically, for 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,” the State in which such an instrument was purchased has the exclusive right to escheat or take custody of sums payable on such instruments. 12 U.S.C. § 2503. If the State in which such instruments were purchased is not known, then unclaimed property associated with such instruments escheats to the State

in which the banking or financial organization or business association has its principal place of business. *Id.*

9. MoneyGram Payment Systems, Inc. (“MoneyGram”) is a Delaware corporation that has its principal place of business in Texas. MoneyGram is a wholly owned subsidiary of MoneyGram International, Inc. MoneyGram provides Official Check services to financial institutions.

10. MoneyGram determined that the Disposition of Abandoned Money Orders and Traveler’s Checks Act did not apply to MoneyGram Official Checks and escheats unclaimed property from Official Checks to the State of Delaware, pursuant to the general priority rules outlined by the Supreme Court in *Texas, Pennsylvania*, and *Delaware*. Delaware concurs in this determination by MoneyGram.

11. Official Checks were known and recognized monetary instruments at the time the Disposition of Abandoned Money Orders and Traveler’s Checks Act was enacted but were not included in the scope of 12 U.S.C. § 2503. Official Checks are not money orders, traveler’s checks, or other similar written instruments under the Disposition of Abandoned Money Orders and Traveler’s Checks Act.

12. Official Checks differ from money orders in many respects, including, without limitation: (i) Official Checks are not labeled as money orders, (ii) Official Checks are generally issued by financial institutions and not by convenience stores and similar

small businesses, (iii) Official Checks are capable of being issued in substantially larger dollar amounts than money orders, and (iv) Official Checks are treated differently under various federal regulations relating to monetary instruments.

13. Official Checks differ from traveler's checks in many respects, including, without limitation: (i) Official Checks are not issued in fixed denominations generally of \$100 or less like traveler's checks, (ii) Official Checks do not require a counter-signature when used in a transaction, (iii) Official Checks are not issued in a manner and by companies that will facilitate replacement checks if lost or stolen, and (iv) Official Checks are not promoted so as to be widely and easily negotiable by individuals traveling overseas.

14. In the absence of specialized definitions in the Act, money orders and traveler's checks were intended to have the meaning given them in every day usage.

15. Pennsylvania, Wisconsin, and eighteen other States recently retained a third-party auditor, Treasury Services Group ("TSG"), to conduct a review of MoneyGram's Official Checks. At the conclusion of that audit, TSG declared that MoneyGram Official Checks were subject to the Disposition of Abandoned Money Orders and Traveler's Checks Act, and that the funds related to Official Checks that MoneyGram had been escheating to Delaware instead should have been escheated to the State where the Official Checks were sold.

16. On February 26, 2016, the Treasury Department of the Commonwealth of Pennsylvania sued Delaware State Escheator David M. Gregor and MoneyGram in the United States District Court for the Middle District of Pennsylvania. *See* Appendix A-5. In that Complaint, Pennsylvania sought from MoneyGram a sum equal to the amount previously escheated to Delaware for Official Checks that Pennsylvania asserts were purchased in Pennsylvania from 2000-2009, estimated to be \$10,293,869.50, and a declaration interpreting the Disposition of Abandoned Money Orders and Traveler's Checks Act such that all future sums payable on abandoned MoneyGram Official Checks that were purchased in Pennsylvania should be remitted to Pennsylvania.

17. On April 27, 2016, the Wisconsin Department of Revenue sued Delaware State Escheator David M. Gregor and MoneyGram in the United States District Court for the Western District of Wisconsin. *See* Appendix A-27. In that Complaint, Wisconsin sought from MoneyGram a sum equal to the amount previously escheated to Delaware for MoneyGram Official Checks that Wisconsin asserts were purchased in Wisconsin beginning in 2000, estimated to be in excess of \$13,000,000, and a declaration interpreting the Disposition of Abandoned Money Orders and Traveler's Checks Act such that all future sums payable on abandoned MoneyGram Official Checks that were purchased in Wisconsin should be remitted to Wisconsin.

18. Delaware filed a motion to dismiss the Pennsylvania action for lack of personal jurisdiction and lack of subject matter jurisdiction on April 20, 2016, arguing that the suit is, in fact, a dispute between States implicating core sovereign functions, and, as such the suit is subject to the original and exclusive jurisdiction of the United States Supreme Court pursuant to 28 U.S.C. § 1251(a), the Eleventh Amendment, and relevant case law. Delaware also argued that defendant David Gregor lacks the “minimum contacts” with Pennsylvania necessary for the Pennsylvania district court to exercise personal jurisdiction over him. On May 23, 2016, the Honorable Judge John E. Jones III placed the Pennsylvania action, at the request of Pennsylvania, in administrative suspension pending a ruling from this Court on a motion for leave to file a Bill of Complaint to resolve the dispute.

19. Delaware is required to answer or otherwise respond to Wisconsin’s complaint in the Western District of Wisconsin no later than July 5, 2016. At this time, Delaware intends to move to dismiss the Wisconsin action on the same grounds as the motion to dismiss in Pennsylvania.

20. MoneyGram, much like Western Union in *Pennsylvania*, is facing potential double-liability for the escheat of the same unclaimed property to two States unless the issue of whether Official Checks are subject to the Disposition of Abandoned Money Orders and Traveler’s Checks Act is fully and finally resolved in a decision that binds all fifty States.

21. The State of Delaware has no adequate remedy at law to enforce its superior right to that of the State of Wisconsin and the Commonwealth of Pennsylvania to receive abandoned property related to MoneyGram Official Checks.

22. On information and belief, other companies have erroneously applied 12 U.S.C. § 2503(1) and have wrongly escheated unclaimed negotiable instruments to the Commonwealth of Pennsylvania and the State of Wisconsin based on the State of purchase of the negotiable instruments.

23. These certain other unclaimed negotiable instruments, including but not limited to official checks which were issued by companies other than MoneyGram, do not fall within the definition of 12 U.S.C. § 2503.

24. Because these certain other unclaimed negotiable instruments do not fall within the definition of 12 U.S.C. § 2503, they should have escheated to Delaware, the domicile of the holder of this unclaimed property, pursuant to the priority rules established by the Supreme Court in *Texas v. New Jersey*, *Pennsylvania v. New York*, and *Delaware v. New York*.

25. However, these certain other unclaimed negotiable instruments were not escheated to the State of Delaware and instead were wrongfully escheated to Pennsylvania and Wisconsin – the States where these instruments were purchased.

26. Pennsylvania and Wisconsin unlawfully took custody of sums payable on these certain unclaimed negotiable instruments.

27. As the ultimate proper recipient of sums payable on these certain other unclaimed negotiable instruments, Delaware is entitled to bring this action to enforce its laws and recover property unlawfully remitted to – and currently in the custody of – Pennsylvania and Wisconsin.

28. The State of Delaware has no sufficient remedy except by invoking the Court’s original jurisdiction in this proceeding.

WHEREFORE, the State of Delaware respectfully prays that the Court:

A. Declare that MoneyGram Official Checks are not “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,” pursuant to 12 U.S.C. § 2503.

B. Declare that MoneyGram Official Checks are third party bank checks.

C. Issue its Decree commanding the State of Wisconsin and the Commonwealth of Pennsylvania not to assert any claim over abandoned and unclaimed property related to MoneyGram Official Checks.

D. Issue its Decree that all future sums payable on abandoned MoneyGram Official Checks should be remitted to the State of Delaware.

E. Declare that certain other unclaimed negotiable instruments are not “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,” pursuant to 12 U.S.C. § 2503.

F. Issue its Decree commanding the State of Wisconsin and the Commonwealth of Pennsylvania not to assert any claim over these certain other unclaimed negotiable instruments issued by entities other than MoneyGram.

G. Issue its Decree that all future sums payable on these certain other unclaimed negotiable instruments issued by entities other than MoneyGram should be remitted to the State of Delaware.

H. Declare that these certain other unclaimed negotiable instruments are third party bank checks.

I. Grant such costs and other relief as the Court deems just and proper.

Respectfully submitted,

MATTHEW P. DENN
Attorney General of Delaware

AARON R. GOLDSTEIN
State Solicitor

JENNIFER R. NOEL
CAROLINE LEE CROSS
Deputy Attorneys General

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* *Counsel of Record*

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