

Supreme Court of the United States

DELAWARE, *Plaintiff*,

v.

Nos. 22O145 & 22O146 (Consolidated)

ARKANSAS, *ET AL.*, *DEFENDANTS*

JULY 24, 2017

ORDER

PIERRE N. LEVAL, *Special Master*:

1. All proceedings in Nos. 145 and 146 will henceforth be consolidated under No. 145. No further entries will be made under No. 146.
2. For all purposes, Delaware will be regarded as Plaintiff against all of the other States that are parties to either proceeding, as well as Counterclaim Defendant with regard to the claims asserted against it by the States in the two proceedings. All of the States that are parties in either proceeding will be considered Defendants with respect to the claims of Delaware against them, as well as Counterclaim Plaintiffs with respect to their claims against Delaware.
3. Accordingly, the claims filed by various States against Delaware in No. 146 will be considered counterclaims filed in No. 145, and the counterclaims filed by Delaware in No. 146 will be considered claims in No. 145.
4. The Special Master understands the filing of the Stipulation relating to MoneyGram in No. 145, Docket No. 38, to be in satisfaction of Pennsylvania's motion for Leave to File Bill of Third Party Complaint against MoneyGram, Docket No. 17, and that Pennsylvania's motion is therefore **WITHDRAWN**.
- 5(a). Delaware moves to amend its Counterclaim in No. 146 (henceforth deemed its Claim in No. 145) to also assert claims against California, Iowa, Maryland, Oregon, Virginia, and Washington. That aspect of Delaware's motion to amend is **GRANTED**.
- 5(b). Delaware also moves to amend to assert similar claims against the other States with respect to the escheat of "other similar instruments" issued by MoneyGram and other unnamed issuers. Such a pleading might expand enormously the scope of the case and significantly delay its resolution to an unknown extent. The Supreme Court has cautioned that "the solicitude for liberal amendment of pleadings animating Federal Rules of Civil Procedure, Rule 15(a) . . . does not suit cases within [the Supreme Court's] original jurisdiction." *Nebraska v. Wyoming*, 115 S. Ct. 1933, 1938 (1995). Delaware's motion to amend is therefore **DENIED**.
6. By letter dated April 26, 2017, Texas advocated bifurcation of the proceedings, so that liability would be adjudicated in a first phase, and damages deferred. All parties have agreed that such bifurcation is desirable. It is therefore **ORDERED** that the question which State or States are entitled to escheat the so-called "Official Checks" of MoneyGram will be first presented to the

Special Master in a liability phase, prior to presentation of evidence on damages.¹ During the liability phase, parties may demand discovery on any issue relevant to the merits of a State's entitlement to the escheat. Discovery that relates only to the potential amount of damages may not be sought during the liability phase.

IT IS SO ORDERED.



PIERRE N. LEVAL, *Special Master*
Thurgood Marshall United States
Courthouse
40 Foley Square, Room 1901
New York, New York 10007
(212) 857-2310

¹ Pennsylvania urged at the June 5, 2017, conference that the Special Master should first “define what Congress meant by the term ‘third-party bank check,’” and that, only after a decree is rendered on that question, would the proceedings advance to “a next stage where we compare [the] hallmarks of what each of those things mean against eight particular instruments.” Docket No. 39, at 76–77. Delaware objected. The Special Master will not bifurcate the proceedings in the manner suggested by Pennsylvania.