

Nos. 22O145 & 22O146, Original (Consolidated)

In the Supreme Court of the United States

DELAWARE,

Plaintiff,

v.

PENNSYLVANIA AND WISCONSIN,

Defendants.

ARKANSAS, *et al.*,

Plaintiffs,

v.

DELAWARE,

Defendant.

On Bill of Complaint in Original Action

**PENNSYLVANIA'S RESPONSE TO DELAWARE'S
MOTION FOR LEAVE TO AMEND
BILL OF COMPLAINT**

Matthew H. Haverstick*
Mark E. Seiberling
Joshua J. Voss
KLEINBARD LLC
One Liberty Place, 46th Floor
1650 Market Street
Philadelphia, PA 19103
(215) 568-2000
(215) 568-0140 (fax)
mhaverstick@kleinbard.com
mseiberling@kleinbard.com
jvoss@kleinbard.com

Christopher B. Craig
Chief Counsel
Treasury Department
Office of Chief Counsel
127 Finance Building
Harrisburg, PA 17120
(717) 787-2740
ccraig@patreasury.gov

*Attorneys for Commonwealth
of Pennsylvania*

**Counsel of Record*

Dated: January 18, 2017

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. ARGUMENT	1
II. CONCLUSION	3

TABLE OF AUTHORITIES

REGULATIONS AND STATUTES

12 C.F.R. § 229.2	2
12 U.S.C. §§ 2501-03	2
6 Del.C. § 3-104 <i>et seq.</i>	2
13 Pa.C.S. § 3104	2

I. ARGUMENT

The Court should deny Delaware’s Motion for Leave to Amend Bill of Complaint for three reasons.

First, with its Motion, Delaware asks the Court to take a discrete case regarding a particular instrument—MoneyGram Payment Systems, Inc. official checks—and turn it into an unnecessary wide-ranging inquiry. No need exists for the Court to grant such license. Whatever principles emerge from the Court’s disposition of the dispute regarding MoneyGram official checks will apply with equal force to whatever “unclaimed negotiable instruments” Delaware has a “belief” may exist within Pennsylvania’s custody. *See* De. Mot. 2; De. Amd. Compl. ¶ 22.

Second, Delaware’s request would require a substantial, two-way expansion of this case. Indeed, if the request is granted, not only would the Court need to examine whatever so-called “official checks” and other “negotiable instruments” were escheated to Pennsylvania, but also the Court would need to examine whatever additional instruments were escheated to Delaware by entities other than MoneyGram. In consequence, this case would greatly expand beyond the single instrument before the Court.

Third and finally, Delaware’s request is predicated in part on the flawed belief that “official checks” are a term of art in the banking industry (rather than a marketing designation for various business institutions), such that all “official checks” can be grouped together for purposes of discovery. Yet as Pennsylvania has previewed in its Answer to

Delaware's present Complaint, "official checks" do not have a set meaning. *See* Pa. Answer to De. Compl. ¶ 9 ("Pennsylvania admits that MoneyGram provides services regarding an instrument that it nominates as an 'Official Check'; Pennsylvania denies that 'Official Checks' or 'Official Check services' have a uniform definition or meaning."). In fact, as will be illuminated further as this case proceeds, "official checks" are not subject to a uniform definition under accepted authorities like Article 3 of the Uniform Commercial Code (concerning negotiable instruments). *See generally* 13 Pa.C.S. § 3104 (Pennsylvania UCC, Article 3; definitions for various negotiable instruments but not "official checks"); 6 Del.C. § 3-104 *et seq.* (Delaware UCC, Article 3; definitions for various negotiable instruments but not "official checks"); *see also* 12 C.F.R. § 229.2 (Federal Regulation CC, definitions for various negotiable instruments but not "official checks"). As such, while whatever rules the Court may establish regarding MoneyGram's "official checks" will apply to other instruments, *see supra*, examining those instruments in discovery will result in nothing other than identifying additional instruments that may be subject to re-allocation. But this examination will do nothing to aid the Court in its legal interpretation of the Disposition of Abandoned Money Orders and Traveler's Checks Act. 12 U.S.C. §§ 2501-03.

Accordingly, the expansion of the case sought with Delaware's Motion is unwarranted, and, as such, the Court should deny the Motion.

II. CONCLUSION

Delaware's Motion for Leave to Amend Bill of Complaint should be denied.

Respectfully submitted,

Matthew H. Haverstick*
Mark E. Seiberling
Joshua J. Voss
KLEINBARD LLC
One Liberty Place
46th Floor
1650 Market Street
Philadelphia, PA 19103
(215) 568-2000
(215) 568-0140 (fax)
mhaverstick@kleinbard.com
mseiberling@kleinbard.com
jvoss@kleinbard.com

Christopher B. Craig
Chief Counsel
Treasury Department
Office of Chief Counsel
127 Finance Building
Harrisburg, PA 17120
(717) 787-2740
ccraig@patreasury.gov

*Attorneys for
Commonwealth of
Pennsylvania*

**Counsel of Record*

Dated: January 18, 2017