

**SUPREME COURT OF THE UNITED STATES**

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DELAWARE, *Plaintiff*

v.

Nos. 22O145 & 22O146 (Consolidated)

ARKANSAS, *et al.*, *Defendants*

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**APPENDIX IN SUPPORT OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT ON LIABILITY  
Volume III of III [App. 826 to App. 1270]**

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## TABLE OF CONTENTS

### *Deposition Exhibits*

---

Deposition Exhibit 2 .....	App. 1
Deposition Exhibit 4 .....	App. 16
Deposition Exhibit 5 .....	App. 36
Deposition Exhibit 6 .....	App. 51
Deposition Exhibit 7 .....	App. 52
Deposition Exhibit 8 .....	App. 53
Deposition Exhibit 9 .....	App. 54
Deposition Exhibit 10 .....	App. 56
Deposition Exhibit 11 .....	App. 57
Deposition Exhibit 12 .....	App. 60
Deposition Exhibit 13 .....	App. 182
Deposition Exhibit 14 .....	App. 219
Deposition Exhibit 15 .....	App. 226
Deposition Exhibit 16 .....	App. 236
Deposition Exhibit 17 .....	App. 239
Deposition Exhibit 18 .....	App. 262
Deposition Exhibit 19 .....	App. 283
Deposition Exhibit 20 .....	App. 307
Deposition Exhibit 21 .....	App. 328
Deposition Exhibit 24 .....	App. 331
Deposition Exhibit 26 .....	App. 341
Excerpts from Deposition Exhibit 28 .....	App. 351
Deposition Exhibit 37 .....	App. 369
Deposition Exhibit 42 .....	App. 375
Deposition Exhibit 43 .....	App. 379
Deposition Exhibit 44 .....	App. 383

Deposition Exhibit 47 .....	App. 386
Deposition Exhibit 50 .....	App. 416
Deposition Exhibit 71 .....	App. 583
Deposition Exhibit 72 .....	App. 584
Deposition Exhibit 73 .....	App. 585
Deposition Exhibit 103 .....	App. 586
Deposition Exhibit 123 .....	App. 594
Deposition Exhibit 125 .....	App. 617
Deposition Exhibit 126 .....	App. 618
Deposition Exhibit 128 .....	App. 620

***Produced Documents***

---

Letter to Rato from Delaware Dep. Attorney General (May 2, 2011) MG0002373 .....	App. 624
Letter to Rato from Delaware Dep. Attorney General (Feb. 24, 2015) MG0002475 .....	App. 628
E-mail to Rato from Delaware Dep. Attorney General (Oct. 12, 2015) MG0002494 .....	App. 630

***Historical Sources***

---

Laws of the State of New York - Ch. 697 (1943).....	App. 633
Uniform Disposition of Unclaimed Property Act (1954).....	App. 668
Revised Uniform Disposition of Unclaimed Property Act (1966).....	App. 686
Uniform Unclaimed Property Act (1981).....	App. 708
Excerpts from Uniform Commercial Code, Article 3 (1972) .....	App. 772
Excerpts from <i>The Report of the Presidents Commission on Financial Structure and Regulation</i> , (Dec. 1971) .....	App. 781

Robert E. Knight, *The Hunt Commission: An Appraisal*, Wall St. J., July 3, 1972.....App. 798

James L. Rowe, Jr., *Nixon Administration Readies Bank System Overhaul*, Wash. Post, Jan. 14, 1973 .....App. 799

***Expert Reports***

---

Expert Report of Ronald Mann (Sept. 19, 2018).....App. 800

Expert Report of Barkley Clark (Sept. 24, 2018) .....App. 826

Expert Report of Clayton Gillette (Sept. 24, 2018).....App. 876

Rebuttal Expert Report of Clayton Gillette (Oct. 24, 2018).....App. 928

***Deposition Excerpts***

---

Excerpts from Deposition of Barkley Clark (Oct. 16, 2018).....App. 938

Excerpts from Deposition of Alex Kauffman (June 21, 2018) .....App. 951

Excerpts from Deposition of Ronald Mann (Nov. 9, 2018).....App. 971

Excerpts from Deposition of Kate Petrick (June 5, 2018) .....App. 1012

Excerpts from Deposition of Eva Yingst (May 23, 2018) .....App. 1058

***Supplemental MoneyGram Declaration***

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Declaration of Eva Yingst (Jan. 30, 2019) .....App. 1266

## CERTIFICATE OF SERVICE

Counsel of record for Defendant States in Case No. 22O146 certifies that on February 1, 2019, this document was served, as required by Case Management Order No. 5, on the following counsel:

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# Expert Report

In the Matter of *Delaware v. Arkansas, et al.*,  
U.S. Supreme Court Case Nos. 220145 & 220146 (consolidated)

September 24, 2018

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### Qualifications of Barkley Clark

Based upon my credentials and experience in the area of negotiable instruments, banking and check law, I have been engaged by Kleinbard LLC as an expert on behalf of the state of Pennsylvania in the above-captioned litigation. My hourly rate for this engagement is \$715.

#### My Credentials

My vita is attached as Exhibit A. I am a partner in the law firm of Stinson Leonard Street LLP, Denver, Colorado. I am a member of the firm's Banking and Financial Services Practice Group. I have consulted with banks and other depository institutions for 53 years regarding commercial and banking law issues, with an emphasis on bank deposits, payment systems and negotiable instruments law. My consultations with financial institution clients have included review of: demand deposit account issues, account opening and closing, check fraud, check fraud detection systems, wire transfer litigation, remittance instruments such as cashier's checks, teller's checks and money orders, check fraud litigation, a drawee bank's "strict accountability" for late return of checks, check kiting issues including all-funds holds, check rules under the Uniform Commercial Code ("UCC") and Federal Reserve Board Regulation CC, Federal Reserve Board Operating Circulars, cash management products, bank setoff, expedited funds availability, automated deposit-taking and check payment, and credit and compliance issues. I have also drafted deposit account agreements, wire transfer agreements and account-opening documents for bank clients. I have been involved in the litigation of a number of payment-system issues under the UCC and related federal law and have advised banks regarding the handling of both commercial and consumer deposit accounts.

My career has also included a strong academic component. From 2003 to 2006, I served as an Adjunct Professor at the University of Virginia School of Law, where I taught courses on secured transactions, negotiable instruments, bank deposits and payments under the UCC, and



federal banking law. Prior to my appointment at the University of Virginia, I taught banking law as an Adjunct Professor at the Georgetown Law Center in Washington. Before that, I held an endowed chair in commercial and banking law at the University of Kansas School of Law. For four years, I served as Professor of Law at the National Law Center, George Washington University, where I taught courses on the UCC and Federal Regulation of Banking. I have also taught banking and commercial law courses at the University of Colorado, the University of Oregon, and the University of Michigan.

I regularly lecture throughout the country on banking, and other commercial law topics. I have taught special seminars on bank deposit issues, issues including check collection, setoff and holds, wire transfers, ACH, negotiable instruments, and various payment systems. I have given lectures on deposit account issues for the Southwest Legal Foundation at SMU in Dallas; the School of Banking of the South in Baton Rouge; the Louisiana Bankers Association in New Orleans; in-house personnel at the twelve Federal Reserve Banks; the Banking Law Institute; the UCC Institute; the American Bankers Association; the American Bar Association; ALI/ABA; the Practicing Law Institute; and the Bank Administration Institute.

I have co-authored three treatises that are widely used by bankers and their counsel around the country, by academicians, and by attorneys who practice banking and commercial Law. These treatises are regularly cited by federal and state courts around the country. They are published by Lexis/Nexis, and are titled: (1) *The Law of Bank Deposits, Collections and Credit Cards* (with Barbara Clark, supplemented three times a year), which discusses a variety of deposit account issues including various negotiable instruments, check collections and wire transfers; (2) *The Law of Secured Transactions under the UCC* (with Barbara Clark, also supplemented three times a year); and (3) *Compliance Guide to Payment Systems* (with Mark

Hargrave and Barbara Clark, supplemented semi-annually), which discusses a wide range of payment systems and negotiable instrument issues. I also co-edit a monthly newsletter entitled *Clarks' Bank Deposits and Payments Monthly*, which has subscribers around the country and has often included articles on topics such as various types of check fraud, bank deposit agreements, and payment finality. These treatises include discussion of negotiable instruments relevant to the present case. Chapter 24 of my Bank Deposits treatise, as well as Chapter 7 of the *Compliance Guide*, deal specifically with remittance instruments such as cashier's checks, teller's checks and money orders.

I have served as a special consultant to the Federal Reserve Board, the American Bankers Association, the Uniform Law Commission, and the American Law Institute, as well as a number of state legislatures regarding banking, commercial law, and consumer protection legislation. I have been active in banking law reform, serving on the original Study Committee that established the guidelines for Revised Article 9 of the UCC dealing with secured transactions. I have given in-house seminars on check and negotiable instruments issues for bank officers and employees. I serve on the Board of Editors of the Banking Law Journal and The UCC Law Journal. In 2012, I was awarded the Senator William Proxmire Lifetime Achievement Award from the American College of Consumer Financial Services Lawyers.

I have served as a director of a national bank and as an employee in the back office of another national bank. In my capacities as a bank director and employee, I have dealt with a variety of deposit and payment system issues, including suspected kites, "state of the art" deposit account provisions, security procedures, remittance instruments, automated check collection, and the duty of customers to review monthly bank statements.

During the past 30 years, I have testified often as an expert witness--by affidavit, deposition or at trial, including before federal and state courts and arbitration panels. List pursuant to Fed. R. Civ. P. 26(a)(2)(b)(v) is attached at Exhibit B.

**Materials Reviewed For This Report** (Exhibit C)

Pleadings:

- \* Original Complaint and other pleadings in *Pennsylvania v. Delaware and MoneyGram Payment Systems Inc.*, filed on Feb. 26, 2016, in Federal District Court, Middle District of Pennsylvania
- \* Delaware Motion for leave to file Bill of Complaint in State of *Delaware v. Commonwealth of Pennsylvania and State of Wisconsin*, in U.S. Supreme Court seeking original jurisdiction, with Hon. Pierre N. Leval, as Special Master
- \* Contents of pdf attachment docket files 1-66, beginning May 26, 2016
- \* Bills of Complaint and related motions and briefs of Pennsylvania, Delaware, Wisconsin and Arkansas in connection with the granting of original Supreme Court jurisdiction

Hearing Transcripts

- \* Transcript of the deposition of Eva Yingst, dated May 23, 2018, including exhibits
- \* Transcript of the deposition of Kate Petrick, dated June 5, 2018, including exhibits
- \* Transcript of hearing before Judge Leval on June 5, 2017

Documents

- \* Exemplars of certain negotiable instruments issued by MoneyGram, which are exhibits to the Yingst deposition transcript
- \* MoneyGram marketing materials for money orders and Official Checks, which are exhibits to the Yingst deposition
- \* Delaware Escheator David Gregor's letter dated September 29, 2015, with exhibits

- \* The Report of the President’s Commission on Financial Structure & Regulation (December 1971, revised September 1973), commonly called “The Hunt Commission Report”
- \* U.S. Treasury Department, Recommendations for Change in the U.S. Financial System (1973)
- \* Newspaper reports regarding the potential impact of the Hunt Commission Report: (1) Robert E. Knight, *The Hunt Commission: An Appraisal*, Wall Street Journal, July 3, 1972, at 4 and (2) James L. Rowe, Washington Post, January 13, 1973, at G2
- \* Affidavit of Jennifer Whitlock, with exhibits including check templates and marketing materials dated October 3, 2017
- \* Senate Report No. 93-505, to accompany S. 2705

Statutory Materials

- \* The Federal Disposition Act (now codified at 12 U.S.C. §§ 2501-2503)
- \* Edward Schmults’ commentary on Senator Scott’s original bill (S. 1895), in response to inquiry from the Senate Committee on Banking, Housing and Urban Affairs in 1973
- \* The Uniform Commercial Code, including Section 3-104 defining types of negotiable instruments and the Official Comments to that UCC provision
- \* Regulation CC, including 12 CFR § 229 defining various negotiable instruments
- \* 1983 statute from the State of Washington (Wash. Rev. Code § 63.29.020(17)), defining “third party bank check”
- \* Draft Model Unclaimed Property Act, 73 Bus. Law. 763 (2018)
- \* Pennsylvania Disposition of Abandoned and Unclaimed Property Act, Section 1301.1 et. seq.
- \* Chapter 177 Wisconsin Code, Uniform Unclaimed Property Act (1981)
- \* Uniform Law Commission, Revised Uniform Disposition of Unclaimed Property Act (1966)

### Judicial Materials

- \* *Pennsylvania v. New York*, 407 U.S. 206 (1972) (leading to enactment of FDA)
- \* *Texas v. New Jersey*, 379 U.S. 674 (1965)
- \* *MoneyGram International v. Commissioner of Internal Revenue*, 2014 WL7795630 (U.S. Tax Court (2014) (describing MoneyGram's business model)

### Secondary Source Materials

- \* *Personal money orders and Teller's Checks: Mavericks under the UCC*, 67 Colum. L. Rev. 524 (1967)
- \* Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527 (1947)
- \* Chapter 24 of Clark & Clark, *The Law of Bank Deposits, Collections and Credit Cards*
- \* Chapter 7 of Clark, Clark & Hargrave, *Compliance Guide to Payment Systems*
- \* Millar, Heyman and Noel, *Building a Better Unclaimed Property Act*, 73 Bus. Law. 711 (2018)

## I. INTRODUCTION

I have been retained to opine on the characteristics of certain prepaid instruments marketed and sold by MoneyGram Payment Systems, Inc. (“MoneyGram”) as “Official Checks” and to opine on whether such instruments are money orders—or written instruments similar to money orders and traveler’s checks—subject to the priority rules established under the Disposition of Abandoned Money Orders and Traveler’s Checks Act, 12 U.S.C. §§ 2501-03 (the “Federal Disposition Act” or “FDA”). I have been further asked to opine on what is a “third party bank check” as set forth under the FDA.

MoneyGram refers to the following instruments as “Official Checks”: (a) teller’s checks; (b) agent checks; (c) cashier’s checks; and (d) agent check money orders.<sup>1</sup> See deposition transcript of Eva Yingst, at p. 36:15-37:15. This report largely concerns the characteristics of these MoneyGram teller’s checks and agent checks and whether they are subject to the priority rules of the FDA.

### A. Section 2503 of the FDA

Section 2503 of the FDA establishes priority rules for the escheatment of certain prepaid negotiable instruments, stating in relevant part:

Where any sum is payable on 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—

(1) if the books and records of such banking or financial organization or business association show the State in which such money order, traveler’s check, or similar written instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State’s power under its own laws to escheat or take custody of such sum[.]

12 U.S.C. § 2503(1) [Emphasis Added].

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<sup>1</sup> MoneyGram also markets and sells another money order product it refers to as a “retail money orders,” which are generally purchased at retail establishment, such as 7-Elevens and check cashing agencies. These retail money orders do not fall under MoneyGram’s “Official Check” umbrella.

To determine whether MoneyGram Official Checks, specifically its “teller’s checks” and “agent checks,” are subject to the above priority rules, it is necessary to determine what is a “similar written instrument,” as well as a “third party bank check” excluded from these priority rules.

**B. Summary Opinion**

This case is about what I call “remittance instruments,” which are negotiable instruments that share common core characteristics (particularly prepayment and the obligation of a financial or business entity) that set them apart from ordinary bank checks. A money order is one type of remittance instrument; a teller’s check is another. In my opinion, all of the MoneyGram Official Checks at issue in this case are money orders or are “similar to” money orders. Therefore, they are subject to the priority rules of the Federal Disposition Act, 12 U.S.C. § 2503. This conclusion is strongly supported by the plain language of the statute, read in light of its clear and unmistakable purpose—to avoid a **windfall** in application of federal escheatment priority rules. As remedial legislation, the scope of the FDA should be construed broadly. Most important, Delaware should not be able to exclude itself from the priority rules of the FDA on the ground that, contrary to banking industry understanding, MoneyGram teller’s checks are “third-party bank checks.” 12 U.S.C. §§ 2501-2503. If Congress had wanted to exempt teller’s checks from the statute, it would have said so, but it did not. Under a proper construction of the statute, the term “third-party bank checks” means ordinary checks drawn out of ordinary checking accounts that are not prepaid; it does not mean teller’s checks, or what MoneyGram refers to as Official Checks.

## **II. BACKGROUND ANALYSIS**

### **A. The Commercial Function of Remittance Instruments and Their Common Characteristics**

The present case is at bottom about the nature and scope of remittance instruments, particularly money orders and teller's checks, as well as the contrast between bank checks used as remittance instruments and ordinary bank checks. The following addresses the characteristics of remittance instruments versus that of ordinary bank checks.

#### **1. Conditionality of the Ordinary Bank Check**

Ordinary bank checks are highly conditional. They are issued by an individual or entity to the order of the payee. The words "to the order of" are the "magic words" of negotiability. There are at least three parties to an ordinary check—the drawer, the drawee bank and the payee. As negotiable instruments, ordinary bank checks can be negotiated by the payee (by endorsement) to a third party "holder," who may be able to qualify as a holder in due course of the check, with power to enforce the check free of the drawer's personal claims and defenses. In either case, the check is deposited into the bank collection process, cleared through the interbank clearing system, and presented to the drawee bank for payment or return.

The problem with ordinary checks signed by an individual or business is that payment upon presentment is subject to a number of conditions. Because there is no direct bank liability, enforcement by the payee/holder as against the drawer or prior endorser is always a risk. The holder of the check relies on the obligation of the drawer to pay by debit of its deposit account at the drawee bank. If the drawee bank wrongfully dishonors the check, the drawer may have a cause of action against the bank, but the payee does not. Dishonor of the check can occur for a number of reasons. Examples of conditionality include the drawer's stop payment order,



insolvency of the drawer, insufficient funds (NSF), bank setoff, garnishment, account closed, or simply “refer to maker.”

The Uniform Commercial Code (“UCC”) is central to the present case because Article 3 of that statute has, since the 1950s, codified banking industry practice and understanding with respect to the rules defining and governing all negotiable instruments, including not only ordinary checks but also money orders, cashier’s checks, teller’s checks, certified checks and traveler’s checks. Once negotiable checks enter the bank collection system, headed toward the drawee bank to be paid or returned, Article 4 of the UCC provides the legal framework. The present case is governed more by Article 3 than Article 4. Closely related to the uniform state rules of the UCC are the federal rules of Regulation CC, which were authorized by the Expedited Funds Availability Act, effective in 1988. Definitions found in Reg. CC generally follow the UCC.

The term “check” is defined in UCC 3-104(f) as an order from the drawer to its bank to pay to the payee or third-party holder a specified amount out of the drawer’s deposit account. It is a negotiable instrument, governed by the UCC, a draft payable on demand and drawn on the drawer’s account. With an ordinary check, there is no prepayment of the drawer’s obligation to the payee; the only direct obligor is the nonbank drawer, whose obligation to pay arises following dishonor of the check by the drawee bank upon presentment. Because a check is not an assignment of funds in the drawer’s deposit account (UCC 3-408), the drawee bank has no obligation to pay the holder, even though the drawer might be able to sue its bank for wrongful dishonor. In short, an ordinary check is highly conditional and could bounce. If the payee of an ordinary check negotiates the item to a third party holder, the instrument is known in the banking industry as a “third-party check” or “twice-endorsed” check. The term “check” as defined in the

UCC 3-104(f) includes cashier's checks and teller's checks, and the UCC states that "[a]n instrument may be a check even though it is described on its face by another term, such as 'money order.'"

2. **Overcoming the Conditionality of an Ordinary Check by Using a Remittance Instrument**

To overcome the conditionality of an ordinary check, and to encourage commercial transactions between creditors and debtors, over the past century the financial services industry has developed a number of payment instruments where the underlying obligor is a bank or a regulated business organization.<sup>2</sup> The debtor in the underlying transaction prepays in cash (or by the immediate debiting of its deposit account) and in return receives a "remittance instrument" on which a bank or regulated business organization is primarily obligated, and on which the payee's name and amount are indicated by the seller of the instrument.

These instruments take a number of forms and names, but they all have four core characteristics: (1) prepayment by the debtor/remitter; (2) the direct obligation of a bank or other regulated business entity on the new instrument, to replace the original obligation of the debtor/remitter to the payee; (3) the form of a written negotiable instrument, governed by the UCC, that is collected and paid through the interbank clearing system; and (4) treatment of the instrument as a "cash-equivalent" in order to encourage transactions where the creditor would otherwise balk because of the conditional nature of ordinary checks. In my opinion, prepayment is the most important core characteristic.

As a group, these instruments can be referred to as "remittance" instruments. The debtor who pays the bank for the instruments is called the "remitter," as a matter of industry practice

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<sup>2</sup> In Pennsylvania, a non-bank issuer of such payment instruments is generally required to obtain a license and satisfy minimum net worth and bonding requirements. Pennsylvania Money Transmitter Act of 2016, P.L. 1002, No. 129.

and understanding. Under UCC 3-103(11), the term “remitter” means “a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.” Although the term “remittance instrument” is not defined in the UCC, Chapter 24 of my treatise, *The Law of Bank Deposits, Collections and Credit Cards*, discusses these instruments as a group and is titled “Remittance Instruments.” Similarly, I have co-authored Chapter 7 of another treatise, *Compliance Guide to Payment Systems*, which deals specifically with remittance instruments. Set forth below is a brief description of seven key remittance instruments, with a focus on the common denominators that characterize them all, and more importantly, distinguish them from ordinary bank checks. Throughout this report, I use the term “remittance instruments” as a convenient umbrella term to describe a variety of negotiable instruments with common core characteristics.

### 3. Cashier’s Check

One of the most popular remittance instruments is the cashier’s check, which is defined in UCC 3-104(g) as “a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.” Reg. CC (12 CFR § 229.2(i)) defines a cashier’s check as “a check that is (1) drawn on a bank; (2) signed by an officer or employee on behalf of the bank as drawer; (3) a direct obligation of the bank; and is (4) “provided to the customer of the bank or acquired from the bank **for remittance purposes.**” [Emphasis added.] Following prepayment to a seller, the cashier’s check is used by the remitter to satisfy a debt that the remitter owes to a creditor, who is normally the payee of the instrument. Cashier’s checks are granted next-day availability under Reg. CC.

A typical example of how a cashier’s check is used in commerce is the requirement that it be prepaid and then tendered by a prospective buyer of real estate to satisfy the down payment on a home in a real estate contract. As another example, many state statutes require that a

cashier's check be posted as a bond to secure a contractual obligation. In both cases, the creditor wants to avoid the conditionality of an ordinary bank check. When used as remittance instruments, cashier's checks satisfy all four criteria listed above. (Cashier's checks can also be used by the issuing bank to pay its own debts.) As with many other remittance instruments, the remitter's giving of a cashier's check to its creditor will immediately discharge the remitter's underlying obligation to the creditor. By contrast, if a debtor tenders an ordinary check, its obligation to pay the underlying debt is suspended until the check is paid by the drawee bank; if the check is dishonored, the drawer's obligation ripens. UCC 3-310. As a general matter, the remitter has no right to stop payment on a cashier's check based on a dispute with the payee, though the issuing bank can stop payment based on its own defenses (such as nonpayment), so long as the instrument has not gotten into the hands of a holder in due course.

#### 4. Teller's Check

Teller's checks are defined in UCC 3-104(h) as "drafts" that are "drawn by a bank (1) on another bank, or (2) payable at or through a bank." The Reg. CC definition (12 CFR § 229.2(gg)) generally tracks that of the UCC, and puts great emphasis on the use of teller's checks "for remittance purposes." Like cashier's checks, teller's checks are considered standard remittance instruments, they involve prepayment, they are the direct obligation of a bank, they are used by the remitter to pay an underlying obligation, the remitter prepays with cash or by having his/her account debited for the face amount of the instrument (plus a fee), and teller's checks get their commercial utility because of their cash-equivalence. They also get next-day funds availability under Reg. CC. Teller's checks, like cashier's checks, are collected through the interbank clearing system and they both came into the UCC together, as defined terms, in the 1990 Revision of Article 3. A teller's check is always signed by a bank as "drawer" of the instrument even though another financial company such as MoneyGram can be liable as "issuer."

## 5. Certified Check

One remittance instrument that has lost some popularity in recent years to the cashier's check and the teller's check is the certified check. The term is defined in UCC 3-409(d) as an ordinary check that is "accepted" in writing by the bank on which it is drawn. The term "accepted" means the drawee bank's signed engagement to pay the draft as presented. The acceptance must be written on the face of the check and signed by an authorized agent for the bank. The nonbank drawer of the check also remains secondarily liable, but the bank's written acceptance on the face of the check is what gives the certified check its market value/cash-equivalence. Reg. CC makes it clear that the bank certifies not only the genuineness of the drawer's signature, but also that the bank has obtained prepayment from the remitter, normally through a debiting of the remitter's deposit account. 12 CFR § 229.2(j). As with all remittance instruments, the issuer/drawer's contemporaneous receipt of value from the remitter is critical. Although certified checks remain an important remittance instrument, I understand they were not a product sold by MoneyGram.

## 6. Money Order

The term "money order" is not defined in either the UCC or Reg. CC. A "money order" is defined by Black's Law Dictionary (10th ed. 2014) as "a negotiable draft issued by an authorized entity (such as a bank, telegraph company, post office, etc.) to a purchaser, in lieu of a check, to be used to pay a debt or otherwise transmit funds on the credit of the issuer." Retail money orders are typically purchased at nonbank retail locations such as convenience stores, by individuals in relatively small amounts. The issuer/drawer of a retail money order may be either a bank or a nonbank such as MoneyGram in the present case. A bank money order is a teller's check under another name. With respect to money orders, the instrument has long been characterized as a "one-check checking account" for use by the remitter in paying his/her

creditor. In most cases, the money order is prepaid by the remitter in cash, and thus becomes a prefunded cash-equivalent in the remitter's hands, with an indicated payee and amount imprinted on the instrument. Unlike cashier's checks and teller's checks, retail money orders do not get next-day funds availability under Reg. CC, although retail money orders are still considered by the banking industry as cash-equivalents because they are prefunded.

Although the term "money order" is not separately defined in the UCC, the drafters of the statute explain the instrument in Comment 4 to UCC 3-104:

"Money orders" are sold both by banks and nonbanks. They vary in form and their form determines how they are treated in Article 3. The most common form of money order sold by banks is that of an ordinary check drawn by the purchaser, except that the amount is machine impressed. That kind of money order is a check under Article 3 and is subject to a stop order by the purchaser-drawer as in the case of ordinary checks. The seller bank is the drawee and has no obligation to a holder to pay the money order. **If the money order falls within the definition of a teller's check, the rules applicable to teller's checks apply.** Postal money orders are subject to federal law. [Emphasis added.].

In short, under the UCC, money orders can be many things, including teller's checks.

#### 7. Traveler's Check

The term "traveler's check" is defined in UCC 3-104(i) as "an instrument that (1) is payable on demand, (2) is drawn on or payable at or through a bank, (3) is designated by the term 'traveler's check' or by a substantially similar term and (4) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument."

A traveler's check is a cash-equivalent, based on prepayment by the remitter/traveler. The obligor/issuer of traveler's checks may be a bank or a nonbank financial services company such as Western Union. The remitter is protected from loss of the instrument where it has not been countersigned. The unique aspect of the traveler's check is the countersignature requirement at the time it is cashed. It gets next-day availability under Reg. CC.

**8. Agent Check**

As a matter of industry practice, some remittance instruments are labeled as “agent checks” to designate that a particular bank is serving as agent for a nonbank issuer/drawer of the instrument. These “agent checks” are typically in the form of money orders, with prepayment by the remitter indicated. The term “agent checks” is not defined in either the UCC or Reg. CC, but in my opinion they clearly qualify as remittance instruments because they share their core characteristics, including prepayment.

**9. Postal Money Order**

Postal money orders are like bank money orders except that the issuer is the U.S. Postal Service rather than a bank. They are subject to special federal regulations. Like other remittance instruments, postal money orders are sometimes designated as two types: domestic and international. They get expedited funds availability under Reg. CC.

**B. The Official Checks at Issue in This Matter are Remittance Instruments**

Based upon review of the pleadings and documents I received, it is my opinion that both “money orders” and MoneyGram “Official Checks” at issue in this case fit the definition of “remittance instruments” like a glove. Both products are prepaid by a remitter, which makes them cash-equivalents. In both cases, no funds are “pulled” from the remitter’s checking account when the instruments are presented for payment, as is the case with standard bank checks. In both cases, after receiving payment in cash or by debiting the remitter’s deposit account, the seller of the instrument issues the money order or official check that reflects the value of the payment that is remitted by the customer. In both cases, MoneyGram is directly liable, as issuer/drawer, for the value that has been prepaid. The only substantive difference between retail money orders and Official Checks is the larger size of official check transactions (as a matter of company policy, MoneyGram retail money orders are generally limited to \$1,000), and the fact

that retail money orders are sold at retail nonbank establishments while Official Checks are outsourced and sold at financial institution locations. Otherwise, they are similar instruments.

Conversely, it is my opinion that ordinary, non-prepaid bank checks are **not** remittance instruments. (Under standard banking industry practice and understanding, the term “bank checks” is synonymous with “checks.” A leading treatise, *Brady on Bank Checks*, uses the terms interchangeably.) With respect to such instruments, in a typical transaction the drawer is a nonbank debtor who is liable on the instrument if it is dishonored, but the drawee bank has no direct obligation on the check. The payee (or a third-party holder) deposits the check, which is then collected through the interbank collection system. Upon presentment, funds are “pulled” from the drawer’s deposit account. There is no prepayment of ordinary, uncertified checks, nor is there any remitter. Since payment of ordinary bank checks is highly conditioned at presentment, they are the antithesis of “cash-equivalents.” In short, standard bank checks are drawn on a bank and collected through the interbank check collection system, but they are not “remittance instruments.”

C. **The FDA is Remedial Legislation that Should be Construed Broadly to Include all Remittance Instruments, in order to Promote its Underlying Purposes**

The Federal Disposition of Abandoned Money Orders and Traveler’s Checks Act (FDA), enacted in 1974 and codified at 12 U.S.C. §§ 2501-2503, establishes escheat priority rules for **all** remittance instruments. It covers “any sum [that is] payable on a money order, traveler’s check, or similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable....” If the books and records of such an organization show the state in which an instrument was purchased, “that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State’s power under its own laws to escheat or take custody of such sum;....”



The immediate purpose of the FDA was to overturn *Pennsylvania v. New York*, 407 U.S. 206, decided in 1972, with respect to remittance instruments such as money orders. The Supreme Court decision gave New York priority over Pennsylvania to abandoned Western Union money orders. Under federal common law prior to enactment of the FDA in 1974, New York had priority because it was the state of Western Union's incorporation, even though Pennsylvania was the state where the purchase of the money orders took place. In direct response to the 1972 decision, in 1973 Senator Hugh Scott of Pennsylvania introduced S. 1895, which was the escheat legislation that was to become the FDA. He inserted into the Congressional Record the overarching rationale of the legislation:

The difficulty with the Supreme Court's decision is that in the case of traveler checks and commercial money orders where addresses do not generally exist large amounts of money will, if the decision applies to such instruments, escheat as a windfall to the state of corporate domicile and not to the other 49 states where purchasers of travelers checks and money orders actually reside . . . Finally, Congress should note that the problem to which this bill is directed is a matter of important public concern in that the bill would, in effect, free for distribution among the states several million dollars in proceeds from abandoned property now being claimed by one state. The bill is eminently fair and equitable because it would permit the state where a traveler's check or money order was purchased and which is the state of the purchasers' actual residence in over 90% of the transactions to escheat the proceeds of such instruments...." 119 Cong. Rec. at S9750.

Senator Scott's views were also incorporated into the recitals in the final legislation, which are now codified in section 1 of the FDA, at 12 U.S.C. § 2501:

The Congress finds and declares that—

(1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;

(2) a substantial majority of such purchasers reside in the States where such instruments are purchased;

(3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment;

(4) it is a burden on interstate commerce that the proceeds of such; instruments are not being distributed to the States entitled thereto; and

(5) the cost of maintaining and retrieving addresses of purchasers of money orders and traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments.

In short, while the *immediate* purpose of the FDA was to overturn the 1972 Supreme Court decision, the *overarching* purpose was to eliminate a windfall that unfairly benefitted corporate domicile states, to the detriment of states where the abandoned money orders, traveler's checks and similar instruments had been sold. Eliminating a windfall is a public policy goal of the law of escheat, just as is its consumer protection goal. The FDA was intended to bring certainty to an issue that had given rise to much escheat litigation over the years.

The principle of *ejusdem generis* (*i.e.*, of the same kind) is a staple of statutory construction. That principle is directly applicable to the present case. The statute begins by stating its scope: "Where any sum is payable on a money order, traveler's check or other similar written instrument..." Unless the plain language of the statute otherwise prohibits it (which is not the case here), the catchall word "similar" at the end of the series should be broadly construed to effectuate the underlying purpose of the statute, *i.e.*, the elimination of an abandoned property windfall. As discussed above, all remittance instruments have core common characteristics such as prepayment, financial entity liability, and cash-equivalence. Money orders and traveler's checks fit comfortably under the umbrella of "remittance instruments."

These common denominators are shared by money orders and traveler’s checks as “similar instruments.” If Congress identified money orders and traveler’s checks for coverage under the FDA, it follows that other members of the family of remittance instruments such as cashier’s checks and teller’s checks should also be covered under the FDA as “similar written instruments.” They are all negotiable instruments covered by the UCC. Traveler’s checks have a unique characteristic of required countersignatures at the time of encashment, yet the statute expressly includes traveler’s checks because, in spite of the countersignature requirement, they still share the core characteristics—particularly prepayment—of all remittance instruments. The umbrella is wide, given the basic purpose of the statute.

**III. CONCLUSIONS CONCERNING MONEYGRAM OFFICIAL CHECKS AT ISSUE IN THIS CASE**

**A. All of the Official Checks at Issue in This Case are Money Orders or “Similar to” Money Orders and Traveler’s Checks Under Generally Accepted Usage of Those Terms in Banking Practice.**

For escheat purposes, MoneyGram reports its “money order” product to Pennsylvania, the state of sale. Petrick 36:18-20. Presumably, it does this because of the mandate imposed by the plain language of the FDA. By contrast, MoneyGram’s product manager, Eva Yingst, describes in her deposition the “official check umbrella” under which MoneyGram markets four specific types of instruments: “agent checks,” “agent check money orders,” “teller’s checks” and “cashier’s checks.” Yingst 36:15-21; 92:22-93:7; 101:6-14; 188:10-189:2; and exhibit Yingst-11. At page 183 of her deposition, Ms. Yingst concedes that there are no specific instruments designated as “Official Checks,” instead, the “official check umbrella” includes specific instruments called agent checks, money orders, teller’s checks and cashier’s checks. The “umbrella” term “Official Checks,” therefore, is simply a marketing label. Yingst 101:6-14.

In my opinion, the Official Checks marketed by MoneyGram as “agent checks” or “agent checks money orders” are literally “money orders” such that they are subject to the FDA disposition rules by the plain language of the statute. By way of support, in one sample contract, MoneyGram’s predecessor, Travelers Express Company, even expressly stated that agent checks “may be used as money order” at the agent’s choosing. See Exhibit Yingst-14. Next, even assuming that the other Official Checks, including teller’s checks, do not qualify literally as money orders, they are “similar to” money orders because they share the same core characteristics of money orders, travelers checks and other remittance instruments: (1) the teller’s checks, like the other Official Checks, are prepaid or “prefunded” by the remitter; (2) upon sale of the instrument, the obligation to the creditor shifts from the remitter to an institutional obligor; (3) the instrument is widely accepted by creditors as “near cash;” (4) the instrument is collected through the interbank clearing system; and (5) having the instrument paid from MoneyGram’s account increases the risk of abandonment. Another point of similarity is that all remittance instruments replace the conditionality of the ordinary bank check.

A further strong similarity between Official Checks and money orders is reflected in the way the instruments are sold. For example, in the case of MoneyGram’s “retail money orders,” which are purchased from a participating MoneyGram location (usually a retail store), the customer/remitter pays a transaction fee and prepays the value in cash required to be sent to the creditor. MoneyGram becomes liable for the preprinted value of this retail money order, with the remitter now out of the picture after delivering the retail money order to the indicated payee. Money orders are collected through the interbank collection system. They are ultimately presented to MoneyGram’s drawee bank, and paid. On pages 156-157 of her deposition

transcript, Ms. Yingst concedes that the remitter's prepayment of the instrument in cash is the same or "similar" for both MoneyGram money orders and teller's checks.

The sales transaction is structured the same way for instruments under the Official Check umbrella, which are purchased by the remitter from a financial institution that has contracted with MoneyGram. As with a retail money order, the customer buying an Official Check from a financial institution pays a transaction fee and pays the preprinted value of the official check. After receiving payment, the seller of the Official Check issues an instrument that is preprinted with the value of the payment remitted by the customer. MoneyGram is liable for the preprinted value of the Official Check. Finally, like retail money orders, Official Checks are collected through the interbank collection system.

There are some operational, marketing and nomenclature differences between Official Checks and retail money orders: (1) retail money orders are sold at retail outlets like 7-Eleven, while Official Checks are sold at financial institutions that use MoneyGram as a vehicle for outsourcing these products; (2) MoneyGram retail money orders are generally limited to \$1,000 per transaction while official check products have no such ceilings; (3) a retail money order is considered a "one-shot checking account" by an unbanked consumer who pays with cash, while an official check is usually drawn on a bank account established by MoneyGram out of which the purchase price can be debited; and (4) the labeling/nomenclature are different. In my opinion, the similarities between retail money orders and Official Check far outweigh the differences.

The most notable outcome in the Yingst deposition is her admission that the term "official check" is nothing more than a marketing label. Yingst 181:16-182:2 and 183:1-7. MoneyGram and its financial institution customers seem to prefer the label of "Official Checks"

to “money orders,” “teller’s checks” or “cashier’s checks” because it sounds more “official.” Yingst 181:16-182:2. Whatever label is put on a check issued by a bank (according to Ms. Yingst in her deposition the physical labeling of an instrument can be done by the seller of the instrument, Yingst 413:6-14), however, the underlying instrument still carries the legal status of a cashier’s or teller’s check under the UCC and Reg. CC, where the statutory definitions focus upon who is the drawer and who is the drawee of the instrument.

In its Bill of Complaint against Pennsylvania and Wisconsin, filed in May 2016, Delaware tries to avoid the impact of the FDA, a statute it apparently had ignored.<sup>3</sup> It argues that Official Checks were “known and recognized monetary instruments” in 1974 when the FDA was enacted, yet Official Checks were not included in the scope of the federal statute like money orders and travelers checks. But it is not surprising that the FDA does not explicitly describe Official Checks as covered instruments. Nor does it describe cashier’s checks. The statute only mentions money orders and traveler’s checks, then uses the catchall phrase “similar written instruments” under the *ejusdem generis* principle. Moreover, Official Checks were not included in the statutory language since the term “Official Check” is not a recognized UCC instrument but rather is simply an umbrella term, a convenient label, used by MoneyGram for marketing purposes. The way the federal statute is structured, the issue is whether the recognized negotiable instruments covered by the marketing umbrella—agent checks, cashier’s checks and teller’s checks—are in fact money orders or “similar to” money orders and traveler’s checks. Based on their shared core characteristics, they are indeed money orders or “similar” instruments.

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<sup>3</sup> This is not surprising, given that noted commentators in the area downplay the significance of the FDA. See Millar, Heyman and Noel, "*Building a Better Unclaimed Property Act*," *The Business Lawyer*, Summer, 2018)(minimizing the federal statute in footnote 14 as "the **only** exception that has been adopted to the jurisdictional rules established by the [Supreme Court]" (emphasis the authors'). Tellingly, the authors don't mention the "similar written instruments" language found in the FDA.

Delaware alleges that “Official Checks differ from money orders in a number of respects, including: (i) Official Checks are not labeled as money orders, (ii) Official Checks are generally issued by financial institutions and not 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 [unnamed] federal regulations relating to monetary instruments.” It is notable that first on Delaware’s “dissimilar” list is MoneyGram’s use of the label “Official Checks” on the negotiable instruments that it issues. What Delaware is seeking to do is to reify the label, in order to make the underlying instruments “dissimilar” to money orders. In my opinion, that reification does not work. In spite of the “Official Check” label, the MoneyGram “Agent Checks” are in fact money orders, while the cashier’s checks and teller’s checks are, **at a minimum**, “similar to” money orders and traveler’s checks because of their common core characteristics—particularly prepayment, institutional obligor, and acceptance in the market as cash-equivalents.

**B. As a Matter of Banking Industry Practice and Understanding, the Term “Third Party Bank Check” Does Not Mean a Teller’s Check**

The FDA covers “any sum [that] is payable on 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--....” Delaware asserts that most of MoneyGram’s Official Checks are in fact teller’s checks under Section 3-104(h) of the UCC, and that teller’s checks are excluded from the priority rules of the FDA because they qualify as third party bank checks. I disagree.

Teller’s checks had become a well-recognized form of remittance instrument by the 1960’s and early 1970s, when the FDA was drafted. The issue that generated most litigation at the time was whether remitters of money orders and teller’s checks could stop payment on those

instruments. The leading case dealing with teller's checks is *Malphrus v. Home Sav. Bank*, 44 Misc.2d 705, 254 NYS2d 980 (Albany County Ct.), a 1965 New York decision which held that the remitter could not stop payment on a teller's check because, as with certified checks, the teller's check was a cash-equivalent. The leading law review commentary analyzed the case law in "*Personal Money Orders and Teller's Checks: Mavericks under the UCC*," 67 Colum. L. Rev. 524 (1967). Teller's checks had substantial visibility during that era, as they still do. In September 1974, the Federal Reserve Board reported that remittance instruments (referred to as "certified and officers' checks, etc.") totaled \$9.637 billion in aggregate value. Like certified and cashier's checks, teller's checks were well-established negotiable remittance instruments.

If Congress had intended to exempt a single type of remittance instrument from the FDA priority rules, as Delaware contends, surely the parenthetical phrase would have identified the specific remittance instrument category that was to be excluded so that the phrase would read "(other than a teller's check)" instead of "(other than a third party bank check)." When Congress wanted to refer to a specific type of remittance instrument, it did so in the statute, i.e., "money order" and "traveler's check." Yet neither the statute as written nor the legislative record includes any reference at all to teller's checks. One searches in vain for a rationale that would support exclusion of a single type of remittance instrument, continuing the "windfall" that Senator Scott was seeking to eliminate. That is the way that Delaware reads the statute, but that is not the way the parenthetical phrase was written by Congress. In short, it is my opinion that the FDA covers all remittance instruments, with no stand-alone exception for teller's checks.

This is a case where a number of principles of statutory construction converge. The first is that remedial legislation should be broadly construed to effectuate the purpose of the statute. If ever there was remedial legislation, the escheat bill introduced by Senator Scott in 1973 is it.



The perceived mischief was a priority rule that escheated abandoned remittance instruments to the favored few states of incorporation instead of the state where the purchase of the instruments took place. Following the 1972 decision of the Supreme Court in *Pennsylvania v. New York*, which affirmed the “federal common law” priority rule, the Scott bill was introduced to curtail the mischief by reversing the priority rule. The plain language of the Scott bill sought to give the benefit of the new rule to all remittance instruments by including money orders, traveler’s checks and “other similar written instruments.” Use of the catchall word “similar” allowed all other remittance instruments to fill the gap. The goal was to avoid the kind of “windfall” enjoyed by a few states like Delaware. The same principle that invites a great variety of remittance instruments to be considered “similar” to money orders and traveler’s checks, requires a narrow construction of the parenthetical term “third party bank checks,” which is an exception to the general rule.

Reading the parenthetical exception to mean teller’s checks, thus lopping off an entire subset of remittance instruments from the scope of the statute, is a **drastic change** in the statute that would require some explanation from the drafters. It is hardly a mere “technical” change, as assumed by the Senate Committee on Banking, Housing, and Urban Affairs. Such a reading totally undercuts the remedial purpose of the FDA.

A closely related principle of statutory construction is that, in some cases, statutory silence can be just as strong as affirmative language. In his seminal law review article entitled *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 536 (1947), Justice Felix Frankfurter offers a warning: “One more caution is relevant when one is admonished to listen attentively to what a statute says. One must also listen attentively to what it does not say.” This principle applies directly to the present case, where there is no mention of teller’s checks in the

text of the statute or anywhere in the legislative history. The silence is deafening. Teller's checks were (and are) an important remittance instrument. If Congress had wanted to suddenly remove teller's checks from the scope of the FDA, it would have said so plainly in the parenthetical text, *i.e.*, by referring to the well-understood term "(teller's checks)" and not "(third-party bank checks)."

Another principle of statutory construction is that, if the language is clear enough, the analysis ends there. For example, if the FDA stated that remittance instruments "(other than teller's checks)" were covered by the escheat priority rule, it would make no difference that the purpose of the statute conflicted with the plain language. Teller's checks would be excluded. But the FDA legislation does not exclude teller's checks, only "third party bank checks." Moreover, if Congress intended to exclude teller's checks from the FDA, presumably it would have used the accepted commercial law term "teller's checks."

A final principle of statutory construction is that, if possible, a statute should not be construed to yield an absurd result. In the present case, neither the text nor the legislative history of the FDA mentions any exclusion of teller's checks from the scope of the FDA. There is no statutory plain language that would require teller's checks to be excluded. There is no mention in the text or legislative history of any operational problems that would require teller's checks to be excluded. The exclusion of teller's checks as "third-party bank checks" is **drastic legislation** that severely undercuts the "windfall" purpose of the Scott bill, yet there is no warning of this conflict in the text or legislative record. In my opinion, that is an absurd result.

In his letter dated September 29, 2015, Delaware Escheator David Gregor contends that teller's checks issued by MoneyGram are exempt from the priority rules of the FDA because they qualify as "third party bank checks." He asserts that this conclusion is supported by the

definition of teller's checks in the UCC and Reg. CC as checks drawn by one bank on the funds of a second bank—the drawee bank. Under his analysis, the drawee bank is the “third party” referred to in the statutory phrase “third party bank check.”

In my opinion, however, the “third party” in the parenthetical is not the drawee bank in a teller's check as Delaware contends, but is the payee of an ordinary check who receives a transfer of funds from the drawer. As discussed below, this conclusion is supported by the United States Treasury Department's own definition of “third party payment services”: “Any mechanism whereby a deposit institution **transfers a depositor's funds to a third party** upon the negotiable or non-negotiable order of the depositor may be called a third-party payment service. Checking accounts are the most common type of third-party payment services.” [Emphasis added.] It is the transmission of funds, through a checking account, from the drawer of an ordinary check to a payee, that gives rise to the “third party.” In short, the “third party” is the transferee of the funds in an ordinary check transaction, not the drawee bank in a teller's check transaction. Mr. Gregor's drastic construction not only focuses on the wrong “third party”, but completely undercuts the purpose of the FDA—to eliminate a windfall. In my opinion, the term “third party bank check” means an ordinary check, as set forth in detail below.

C. **As Used in the Federal Disposition Act, the Term “Third Party Bank Checks” Means Ordinary Checks That Are Not Prepaid**

At the same time that Senator Scott was introducing his FDA to deal with escheatment priorities and to eliminate the “windfall” enjoyed by corporate domicile states, Congress was also working on a significant “checking account deregulation” project that had an entirely different focus. In 1970 President Nixon organized the Commission on Financial Structure and Regulation, popularly known as the Hunt Commission. In December 1971, a first draft of the Hunt Commission report was completed. The final report, titled *The Report of the President's*

*Commission on Financial Structure and Regulation*, was filed in July 1972. In its appraisal of the report on July 23, 1972, the Wall Street Journal stated that the charge of the Commission was to review the “existing financial and regulatory structure.”

The December 1971 version of the Hunt Commission report included recommendations on a variety of regulatory issues:

- \* Regulation of interest rate ceilings on deposits, including demand deposits, *i.e.*, checking accounts;
- \* Regulation of the functions of depositor financial institutions, covering savings and loan associations, mutual savings banks, commercial banks and credit unions;
- \* Chartering and branching of depository financial institutions;
- \* Deposit reserve requirements for thrifts and credit unions;
- \* Taxation of financial institutions; and
- \* Deposit insurance.

A critical aspect of the 1971 report is its emphasis on “third party payment services.” On page 8, the drafters of the report state:

It is essential, for example, that *all institutions offering third party payment services* have the same reserve requirements, tax treatment, interest rate regulation, and supervisory burdens. The critical need for competition on equal terms causes the Commission to emphasize the interdependence of the recommendations and warn against the potential harm of taking piece-meal legislative action. [Emphasis added, here and below.]

In Part II of the report, the first major recommendation involves the deregulation of interest rate ceilings on deposits. One such recommendation, at page 23, is to give standby power to the Federal Reserve Board including the power to “establish for a period of five years ceiling differentials between institutions providing *third party payment services*.” The report

then defines the critical term in footnote 1: “Third party payment services, as here defined, include any mechanism whereby a deposit intermediary transfers a depositor’s funds to a third party or to the account of a third party upon the negotiable or non-negotiable order of the depositor. *Checking accounts are one type of third party payment service.*”

On page 27 of the report, the Hunt Commission recommends that the prohibition against the payment of interest on demand deposit accounts be retained: “Nonetheless, the Commission believes that its recommendation against the removal of the prohibition should be reviewed in the future. There are important trends in *the use of demand deposits and other third party payment services* that should be noted.”

Another important recommendation, found at page 33, is that “under specified conditions, savings and loan associations and mutual savings banks be permitted to provide third party payment services, including checking accounts and credit cards, to individuals and non-business entities only....The Commission believes deposit thrift institutions should not be permitted to offer third party payment services for business and professional purposes. Such powers should be obtained and exercised only under a commercial bank charter.”

On page 43, the report emphasizes that commercial banks “are now the only type of institution generally *permitted to offer unrestricted third party payment services*. That is, they operate the mechanism for check funds transfer and, in their lending and investing operations, create money. In all other activities, they compete with other financial and non-financial institutions. ... As stated above, the Commission believes that the public would benefit from increased competition within the financial system.”

In its recommendations regarding deposit reserve requirements (page 65), the Commission recommends that membership in the Federal Reserve System be made mandatory

for all state chartered commercial banks “and for all savings and loan associations and mutual savings banks that offer *third party payment services*.” In short, variations of the phrase “third party payment services” was on the lips of many people working on the Hunt Commission project in the early 1970s. This phrase was consistently and strongly linked to treatment of ordinary checking accounts.

In addition to these multiple and consistent references in the Hunt Commission report equating “third party payment services” with ordinary checking accounts, other contemporary sources make the same point. Good examples include Robert E. Knight, *The Hunt Commission: An Appraisal*, in the Wall Street Journal, July 3, 1972, at 4: “To ensure that financial institutions will be responsive to economic and social needs of the future, the commission generally recommended that regulatory barriers be lowered and that increased reliance be placed on competition. Thus nonbank depository institutions would be permitted to offer *third-party payment privileges (checking accounts, automatic bill payment, credit cards*.” James L. Rowe, in a Washington Post article dated January 13, 1973, at G2, makes the same point: “*Third party payment’ today means essentially a checking account although bank credit cards are rapidly rising in importance.*” [Emphasis added.]

On September 24, 1973, the U.S. Department of the Treasury published its own summary of the Hunt Commission report entitled *Recommendations for Change in the U.S. Financial System*. That summary contains a glossary of key terms, including (at page 44) the term “*THIRD-PARTY PAYMENT SERVICES*.” The glossary defines that critical term: “Any mechanism whereby a deposit institution transfers a depositor’s funds to a third party upon the negotiable or non-negotiable order of the depositor may be called a third-party payment service. *Checking accounts are the most common type of third-party payment services.*” [Emphasis

added.] The glossary in which the term “third party payment services” is defined to mean ordinary checking accounts was published by the Treasury Department on September 24, 1973. When it was published, the general counsel of Treasury was Edward P. Schmults, who undoubtedly was familiar with the Treasury document and the recurrent term “third party payment services.”

At this very same time, it was none other than Mr. Schmults who was working with the Senate Banking Committee to add Treasury Department language exempting “third party bank checks” from the scope of the FDA. On November 1, 1973, Mr. Schmults wrote the Senate Banking Committee that the language of the Scott bill might be “broader than intended by the drafters.” On behalf of the U.S. Treasury Department, he suggested that the bill add a “clarifying” amendment that excluded from its scope “third party payment bank checks.” The Senate Banking Committee accepted the Treasury Department’s “technical suggestions,” although the Committee deleted the word “payment” in the final text adopted—namely, third party bank checks. By these drafting decisions and related text changes, the broader term “third-party payment services” used by Treasury in its glossary morphed into the more narrow term, “third party bank checks” but for good reason, since the U.S. Treasury definition of third party payment services included payment instruments such as credit cards, as well as demand deposits including checking accounts. In the context of the FDA clarification, Treasury’s proposed clarifying language was sound. Treasury properly focused on the impact of the FDA’s original language and its potential effect solely on ordinary checks, since credit cards would clearly fall outside the scope of the FDA language without needing any additional exemption language. It might be argued that deletion of the word “payment” as well as the substitution of bank checks for the word “services” slightly weakens the linguistic bridge between Treasury’s comprehensive

glossary definition of “third-party payment services” (*i.e.*, ordinary checking accounts along with other payment services such as credit cards) and “third party bank checks” (the final language in the FDA, as amended.). Nonetheless, the strong connection remains. Indeed, the legislative record makes it clear that other types of third party payment services, such as credit cards, are not covered by the FDA. The result is that the term “third party bank checks” means ordinary checks drawn on ordinary demand deposit accounts, not remittance instruments like teller’s checks.

Another element of legislative history illustrates why Mr. Schmults equated third-party bank checks with ordinary, non-prepaid checks. When Senator Scott introduced S. 1895, he stated in the Senate Record that his bill was intended to provide uniform priority rules governing disposition of the proceeds of “abandoned travelers checks, money orders and *similar instruments for the transmission of money.*” 119 Cong. Rec. at S9750 [Emphasis added]. It seems likely that Mr. Schmults saw that the Scott bill was overbroad because ordinary checks from ordinary checking accounts, just like remittance instruments, are “instruments for the transmission of money.” Therefore, it was necessary to explicitly carve out ordinary checks from the scope of the FDA so that his bill would be limited to remittance instruments, *i.e.* “traveler’s checks, money orders and similar instruments” that were prepaid. In Mr. Schmults’ view, ordinary checks should remain separate from remittance instruments in the legislative scheme.

None of the many state abandoned property laws define the term “third party bank check” as a teller’s check. By contrast, at least one jurisdiction—the State of Washington—has enacted its version of the Uniform Unclaimed Property Act to define the term “third party bank check” to mean an ordinary check drawn on an ordinary checking account: “Third party bank check’



means any instrument drawn against a customer’s account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.” Wash. Rev. Code § 63.29.010(17). The drawer of such a check—a business or individual—is the party primarily liable. In my opinion, the drawee bank is “secondarily liable” under the UCC rules if (1) it holds the item beyond its midnight deadline, (2) the item is forged or counterfeit such that it is not “properly payable,” (3) the item has been altered or bears a forged endorsement such that the drawee bank has a warranty claim against upstream banks in the collection stream, or (4) the item is wrongfully dishonored.

Reading “third party bank checks” to mean “teller’s checks” totally undercuts the purpose of the FDA because it carves out an important type of remittance instrument whose history long predates the early 1970s. It also leaves a large piece of the “windfall” in place. There is nothing “technical” about such a massive carve-out, and there is no indication in the legislative history that the parenthetical phrase was intended to do anything but “clarify” the scope of the FDA. In my opinion, the purpose of the parenthetical was to eliminate any potential confusion between the two legislative “check” projects that were being considered by Congress at the same time.

Delaware contends Congress was concerned that teller’s checks posed a particular problem of “bifurcated” recordkeeping obligations, that is, with respect to abandoned teller’s checks, the drawer bank and the drawee bank would need to communicate with one another to determine which checks were abandoned. Yet that same operational issue applies to money orders, where the selling agent has no way of comparing records with the drawee bank because of “bifurcated” recordkeeping. My review of the legislative history reveals not one whiff of evidence that Congress or Mr. Schmults intended to single out teller’s checks as the only remittance instrument not covered by the FDA. The argument that “third party bank checks”

meant teller's checks did not surface until the Delaware Escheator, Mr. Gregor, advanced this position in a letter dated September 29, 2015.

The legislative record from 1973 never mentions any "bifurcated" recordkeeping problems that had arisen with respect to teller's checks. Mr. Schmults never mentions it. The UCC never mentions it. In fact, it is my opinion that all types of remittance instruments are covered by the FDA, not just teller's checks. Cashier's checks are covered. Money orders are covered. Official Checks are covered. Agent checks are covered. Traveler's checks are covered. Certified checks are covered. If Congress were carving out teller's checks as exempt from the FDA, surely it would have said so. Instead, Congress accepted Mr. Schmults' "scope" amendment because it was described as "technical" in nature, a "clarification" of the law, not a drastic change like the exemption of a large and established class of remittance instruments.

As a matter of banking industry practice and understanding, the term "third party bank checks" also means twice-endorsed checks. An ordinary bank check is payable "to the order of" a payee. In most cases, the payee will deposit the check, run it through bank clearings, and present it to the drawee bank, which will pay the item. Sometimes, however, the payee of a check will endorse the item to a third-party holder who may qualify as a holder in due course under the law of negotiable instruments. In this scenario, it is the third-party holder who will endorse the check a second time and then deposit the check and get the instrument paid (or returned). As a matter of banking industry practice and understanding, such a check is called a "third-party" check and is also known as a "twice-endorsed" check. The "third party" in this scenario is simply the payee's transferee under the law of negotiable instruments. Similarly, the "third party" in the phrase "third party payment services," used by Treasury in its summary of the Hunt Commission report, refers to the scenario where "a deposit institution transfers a

depositor's funds to a third party upon the negotiable or non-negotiable order of the depositor." In both scenarios, the "third party" is a transferee of the check. For a leading case finding that a twice-endorsed check was a "third party bank check", for purposes of posting a bond, see *United States v. Thwaites Place Associates*, 548 F. Supp. 94 (S.D.N.Y. 1982).

In the present case, Delaware seems to be arguing that a teller's check always involves a "third party" simply because two different banks are involved—a drawer bank and a drawee bank. In my opinion, that use of "third party" is very different from the other two defined uses of the term and provides no support for Delaware's argument that teller's checks are "third party bank checks" just because two banks are involved. Instead, the term "third party payment services" was well understood in 1973-1974 to mean a banking service under which ordinary checks were drawn on ordinary checking accounts in order to transfer deposited funds to a third party. Thus, the term "third party bank checks" simply means ordinary checks.

There is a further explanation of Mr. Schmults' exclusion of "third party bank checks" from the scope of the FDA. The escheat statute, with its focus on remittance instruments such as money orders and traveler's checks, occupied a field that had nothing to do with the legislative reforms that Congress was considering in the Hunt report for ordinary checking accounts. He saw the importance of keeping the two legislative efforts in separate compartments because, although both dealt with "checks," the legislative record does not indicate any concern that Senator Scott's efforts had any impact on, or were related to, the separate effort to deregulate ordinary checking accounts so thrift institutions could be on a more even playing field with commercial banks.

With respect to the legislative history of the FDA, Senator Scott's original bill, S.B. 1895, was introduced on May 29, 1973. It is important to note that the original Scott Bill

did not include the “third party bank check” language. Instead, the bill described its scope in unmistakably broad terms to include “any sum payable on a money order, travelers check, or similar written instrument on which a banking or financial organization or a business association is directly liable....”

It may be that even Delaware would concede that the escheat priority rules of the Scott bill, before Mr. Schmults’ suggested changes, would cover a classic remittance instrument like a teller’s check. The changes suggested by Mr. Schmults were described as “technical” in nature and it seems clear that he had no intent to suggest language that would exclude teller’s checks from the priority rules. Instead, the statute as enacted by Congress should be read to keep the escheat priority rules as Senator Scott requested. The language in parentheses should not be read to exclude teller’s checks, but to exclude “third party payment bank checks,” which was slightly reshaped to be “third party bank checks,” *i.e.*, ordinary bank checks that are drawn on ordinary checking accounts with no prepayment. Only in this way could the escheat priority rules cover all remittance instruments, while ordinary checks would be placed outside the scope of the FDA, where they belong.


Money orders have long been considered by the banking industry to be “one-check checking accounts.” See, e.g., *MoneyGram International, Inc. v. Commissioner of Internal Revenue*, 2014 WL 7795630 (U.S. Tax. Ct. 2014) (Tax Court uses that phrase to describe MoneyGram’s retail money order business). Mr. Schmults may well have been concerned that ordinary (not one-shot) checking accounts would inadvertently be brought within the scope of the FDA, with unintended consequences. Because of this concern, he suggested the insertion of the parenthetical language to keep a strong separation between the two legislative efforts. Treasury described these efforts as “technical suggestions,” not drastic substantive changes that

would exempt all teller's checks or any other class of remittance instruments from coverage by the FDA.

It is a venerable principle of statutory construction that two intersecting statutes should be construed in a way that harmonizes one with the other. In my opinion, reading the term "third party bank check" to mean ordinary checks from ordinary checking accounts, where funds are transferred to a payee and then perhaps to an additional holder under a second endorsement, is the only way to harmonize the two separate legislative efforts that engaged Congress in the early 1970s. In short, the "third party" in "third party bank checks" means a transferee of the drawer's funds, not a second bank on a MoneyGram teller's check.

Mr. Schmults wanted to keep the two legislative projects dealing with checks in their separate spheres: (1) the deregulation of ordinary checking accounts and (2) the priority rules governing escheatment of remittance instruments. Only in that way could harmony be preserved.

Dated: 9/24/18

  
Barkley Clark

**EXHIBIT A: CURRICULUM VITA OF BARKLEY CLARK**

Stinson Leonard Street LLP, Denver, Colorado

Barkley.clark@stinson.com

(303) 376-8418

**EDUCATION**

Amherst College (B.A. 1962)

Harvard Law School (LL.B. 1965)

**CURRENT POSITION**

Partner, Stinson Leonard Street LLP, Denver, Colorado; Member, Banking and Financial Services Practice Group

**PRIOR POSITIONS**

Partner, Shook Hardy & Bacon, LLP, Washington, DC, 1989-2006

Adjunct Professor of Commercial and Banking Law, Georgetown Law Center (2001-2003)

Adjunct Professor of Law, University of Kansas, 1990 – 1998

Adjunct Professor of Law, University of Virginia (2003-2006)

Visiting Professor of Law, University of Michigan, summer 1991

Professor of Law, National Law Center, George Washington University, Washington D.C., 1985-1989

Robert A. Schroeder Distinguished Professor of Law, University of Kansas, 1982-1985

Professor of Law, University of Kansas, 1972-1982

Associate Professor of Law, University of Kansas, 1969-1972

Visiting Professor of Law, University of Oregon, 1972

Visiting Professor of Law, University of Colorado, 1968

Practice of law at Holme Roberts & Owen in Denver, Colorado, from 1965-1969, with emphasis on commercial and banking law

### LAW PRACTICE

My law practice has concentrated on various aspects of banking, commercial law and financial services. Subjects include deposit accounts and payment systems; product warranties under Article 2 of the UCC and the Magnuson-Moss Warranty Act; bank deposits, collections and payments under Articles 3 and 4 of the UCC, Regulation CC and Regulation J; negotiable instruments; warranties and disclaimers of consequential damages; check collections and returns; check fraud; check kiting; drafting of bank deposit agreements; documentary drafts; wire transfers under Article 4A of the UCC and FRB Reg. J; letters of credit under Article 5 of the UCC and the UCP; investment securities under Article 8 of the UCC; secured transactions under Article 9 of the UCC and related consumer credit legislation; bank regulatory problems; commercial and consumer compliance issues for financial institutions; deceptive trade practices; alternative payment systems; deposit account issues; check kiting litigation; check forgery issues; bank liability for fraud of customer; consultant to sellers of goods and financial institutions and their counsel around the country; frequent qualification as expert witness in commercial/banking law litigation in federal and state courts and before arbitration panels

## TEACHING

My teaching interests have included commercial law, bank deposits, negotiable instruments, payment systems, consumer protection, federal regulation of banking, consumer financial services, creditors' rights and bankruptcy, sales and warranty liability, legislation, and local government; winner of six "best teacher" awards at the University of Kansas School of Law and the National Law Center, George Washington University; winner of "best lecturer" awards for the Colorado and Kansas Bar Review courses; since 1971, frequent speaker at legal seminars throughout the country sponsored by ALI/ABA, the UCC Institute, Practising Law Institute, School of Banking of the South, Baton Rouge, American Bankers Association, Virginia CLE, the Banking Law Institute, National Association of Bankruptcy Trustees, International Factoring Association and other organizations, on subjects including banking law, deposit accounts and check collection, secured transactions, factoring, product warranties, wire transfers, letters of credit, UCC and bankruptcy; conductor of in-house seminars on commercial law and banking topics at large law firms such as Shearman & Sterling in New York; Akin Gump in Washington; Milbank Tweed in New York; and Mayer Brown in Chicago.

## LOCAL GOVERNMENT/ PUBLIC POLICY

Served as member of the City Commission in Lawrence, Kansas for ten years (1973-1983) and served two terms as Mayor of Lawrence. Member of the Board of Directors of the League of Kansas Municipalities. Substantial intergovernmental work with Douglas County Commission. Taught Local Government Law at KU Law School and in the KU MPA program for 16 years. Written several law review articles on Kansas local government Law. Argued cases before the Kansas Supreme Court on local government law issues. Worked with the Kansas legislature on various aspects of local government law, including governmental tort immunity. Served as counsel to the KCK/Wyandotte County Consolidation Commission. Strong interest in the legislative process and public policy.



## BAR AND OTHER PROFESSIONAL/CONSULTING ACTIVITIES

(Past and Present)

American Bar Association, Co-Chair of Committee on Article 9 of the UCC; American Law Institute and Uniform Law Commission, member of Special Committee to Redraft UCC Article 9; Reporter, The Business Lawyer, in its Annual Review of Secured Transactions; Board of Editors, The Banking Law Journal; Board of Editors, The UCC Law Journal; Board of Editors, Journal of Payment Systems Law, Special Consultant to the Federal Reserve Board (Equal Credit Opportunity and Truth-in-Lending); Special Counsel to the Uniform Law Commission (Uniform Consumer Credit Code); Member, American College of Consumer Financial Services Attorneys and American College of Commercial Finance Lawyers; Special Advisor to the Colorado, Nebraska and Kansas Legislatures on the UCC, the Consumer Credit Code, and deceptive trade practice legislation; Board of Directors, League of Kansas Municipalities; Associate Dean, University of Kansas School of Law; Director, Lawrence National Bank; consultant to major law firms, financial institutions, and the American Bankers Association on various aspects of commercial and banking law; special counsel to the Kansas Bankers Association in dealing with a wide variety of community banks and bank legislation; listed in Best Lawyers in America, from 1994.

### PUBLICATIONS: BOOKS

(1) *The Law of Bank Deposits, Collections and Credit Cards* (co-authored by Barbara Clark). This treatise is published by Lexis/Nexis, one of the most important publishers of commercial law books in the country. The treatise is continuously supplemented. The book has become one of the two standard works in the field (along with Brady on Bank Checks), frequently cited by federal courts and state appellate courts. It discusses wire transfers, bank deposits and collections, payment finality, kiting, forged checks and other kinds of check fraud, impact of automation on bank deposits and collections, documentary collections, federal regulatory compliance issues, Regulation CC (in Chapters 7 and 8), electronic fund transfers, and related subjects such as letters of credit and bank setoffs. It also discusses bank liability for customer fraud, identity theft, money laundering, federal preemption, deposit account holds and setoffs, Truth in Savings, the Know Your Customer principle, Federal Reserve Board Operating

Circulars, adverse claims, and other deposit-side compliance issues. Chapter 24 of the treatise is devoted to remittance instruments. This treatise has been cited many times by federal and state courts.

(2) *The Law of Secured Transactions Under the Uniform Commercial Code* (co-authored by Barbara Clark). This treatise, also published by Lexis/Nexis, is supplemented tri-annually. It is also one of the standard works in the field, frequently cited by state and federal courts around the country. This book won the Rice Prize for Scholarship at the University of Kansas in 1981.

(3) *The Law of Product Warranties* (Revised Edition) (with C. Smith and Barbara Clark). This treatise is published by West Publishing Co., and is supplemented annually. It synthesizes the law of consumer and commercial product warranties, drawing on both Article 2 of the UCC and the Federal Magnuson-Moss Warranty Act. The book won the Rice Prize for Scholarship in 1985.

(4) *Cases and Materials on Consumer Protection* (1990) (with F. Miller). This casebook was published by Michie/Bobbs-Merrill as part of its “contemporary legal education” series.

(5) *Handling Consumer Credit Cases* (1972) (with J. Fonseca), published by Lawyers Cooperative Publishing Co.

(6) Volumes 2, 4 and 7 of the Kansas Statutes Annotated, Kansas Comments to the Uniform Consumer Credit Code, the Kansas Consumer Protection Act, and the Uniform Commercial Code (particularly Articles 3, 4, 5 and 9). These Comments, which appear after each section of the relevant statutes, contain comprehensive editorial analysis of the three statutes, written from the point of view of the drafter in the case of the U3C and the KCPA. The Comments, written for the Reviser of Statutes, are frequently relied upon by Kansas courts in construing the three statutes.

(7) PLI, *Warranties in the Sale of Business Equipment and Consumer Products*, 1980-1985.

- (8) *Regulation CC: Funds Availability and Check Collection* (1988) (with Barbara Clark).
- (9) *PLI, Letters of Credit and Banker's Acceptances*.
- (10) *Truth In Savings: Legal Analysis and Compliance Strategies* (1992) (with Barbara Clark and Mark Hargrave).
- (11) *Compliance Guide to Payment Systems* (with Mark Hargrave and Barbara Clark); this book, published by Lexis/Nexis, discusses all aspects of payment systems, including checks and electronic fund transfers). Chapter 7 of the book deals with remittance instruments.
- (12) *Compliance Guide to Payment Systems for Credit Unions* (with Mark Hargrave and Barbara Clark), published by Sheshunoff/A.S. Pratt.
- (13) *Check 21 Manual: A guide to Check Truncation Law and Electronic Payment Systems* (2004) (with Barbara Clark).
- (14) *Clarks' Guide to Electronic Check Collection* (2006) (with Barbara Clark).

PUBLICATIONS: LAW REVIEW ARTICLES

(A number of these articles have been cited by a variety of appellate courts, including the United States Supreme Court in Mitchell v. W.T. Grant Co., 416 U.S. 600, 629 (1974) (Justice Powell concurring)).

(1) *Sniadach, Fuentes and Beyond: The Creditor Meets the Constitution*, 59 Va. L. Rev. 355 (1973) (with J. Landers).

(2) *Preferences Under the Old and New Bankruptcy Act*, 12 Uniform Commercial Code Law Journal 154 (1979).

(3) *Suretyship in the Uniform Commercial Code*, 46 Tex. L. Rev. 453 (1968) (reprinted at 1 UCCLJ 303 (1969)).

(4) *State Control of Local Government in Kansas: Special Legislation and Home Rule*, 20 Kan. L. Rev. 631 (1972).

(5) *Default, Repossession, Foreclosure and Deficiency: A Journey to the Underworld and a Proposed Salvation*, 51 Ore. L. Rev. 302 (1972).

(6) *The FTC Holder Rule and UCC Article 2: The Law Is A Seamless Web*, 10 UCCLJ 119 (1977).

(7) *Oil and Gas Financing Under the Uniform Commercial Code*, 43 Denver L.J. 129 (1966).

(8) *The First Line of Defense in Warranty Suits: Failure to Give Notice of Breach*, 15 UCCLJ 105 (1982).

(9) *Bank Exercise of Setoff: Avoiding the Pitfalls*, 98 Banking Law Journal 196 (1981).

(10) *UCC Articles 9 and 10: Some Problems Solved and Some Problems Created*, 38 U. Colo. L. Rev. 99 (1965).

- (11) *The Agricultural Transaction: Livestock Financing*, 11 UCCLJ 95 (1978).
- (12) *The Agricultural Transaction: Equipment and Crop Financing*, 11 UCCLJ 15 (1978) (reprinted in 1 Ag. L.J. 172 (1979)).
- (13) *The Foreclosing Creditor under Article 9: Perilous Pitfalls Aplenty*, 8 UCCLJ 291 (1976).
- (14) *Beefing up Product Warranties: A New Dimension in Consumer Protection*, 23 Kan. L. Rev. 567 (1975) (with M. Davis; winner of Rice Prize for Scholarship).
- (15) *The Uniform Consumer Credit Code: Assessing Its Impact Upon One State and Plugging its Loopholes*, 18 Kan. L. Rev. 277 (1970).
- (16) *The Revolution in Consumer Credit Legislation*, 45 Denver L. J. 679 (1968).
- (17) *Lemon Aid for Kansas Consumers*, 46 Journal of the Kansas Bar Association 143 (1977).
- (18) *Wyatt Earp and the Winelist: Is a Restaurant an 'Open Saloon'?*, 47 J.K.B.A. 63 (1978).
- (19) *Interest Rates in Kansas: The Decline and Fall of Ezekiel*, 49 J.K.B.A. 81 (1980).
- (20) *The New Article 9 Amendments*, 44 J.K.B.A. 131 (1975).
- (21) Book Review, *Handbook of the Law Under the UCC*, by James W. White and R. Summers, 58 Cornell L.R. 1273 (1973).
- (22) Monthly Newsletter, *Clarks' Secured Transactions Monthly*, published by Lexis/Nexis and co-authored with Barbara Clark. This newsletter highlights developments in asset-based lending, both real estate and personal property.
- (23) Monthly Newsletter, *Clarks' Bank Deposits and Payments Monthly*, published by Lexis/Nexis and co-authored with Barbara Clark. This newsletter focuses on various aspects of payment systems, including bank deposits and collections.

(24) Survey, *Secured Transactions*, Business Lawyer, August, 1988, and August, 1989.

(25) *Scheduled Debt Payments as Preferences: Paradigm of the Plain Meaning Rule*, 1 Jour. of Bankr. Law and Practice 7 (1991).

**EXHIBIT B: EXPERT WITNESS ENGAGEMENTS**  
**OF BARKLEY CLARK IN THE LAST FOUR YEARS**

(1) *Interaudi Bank v. Harco Industries, Inc. and Bank of America, N.A.*, Docket No. BER-C-338-14 (N.J. Super. Ct 2015) (engaged as an expert, with written report, on behalf of Bank of America regarding bank's alleged violation of standard industry practice in late return of checks).

(2) *Chau v. Capital One, N.A.*, E.D.La. Case No 16-14400, Sect. E (2017) (engaged as expert, with written report, on behalf of Capital One N.A. in case challenging bank's imposition of an "all funds hold" on a customer's deposit account).

(3) *Hemphill Construction Co., Inc. v. Regions Bank*, Civil Action No. 3:15CV239-HTW-LRA (S.D. Miss. 2016)(engaged as expert, with written report, on behalf of Regions Bank in case involving "dual signature" requirement in a corporate checking account).

**EXHIBIT C**

Documents available for viewing and downloading at:

<https://kleinbard.sharefile.com/d-sb5e4038244947d2a>



**SUPREME COURT OF THE UNITED STATES**

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DELAWARE, *Plaintiff*,

*v.*

Nos. 220145 & 220146 (Consolidated)

ARKANSAS, *et al.*, *Defendants*

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September 24, 2018

**EXPERT REPORT OF CLAYTON P. GILLETTE**

I, Clayton P. Gillette, provide this Expert Report in order to assist the Court in its resolution of this matter.

1. I am currently the Max E. Greenberg Professor of Contract Law at New York University School of Law, where I have taught courses in commercial law (including payment systems), contracts, and state and local government law.

2. I have authored or co-authored numerous articles, texts, and newsletters, and have lectured in the area of payment systems on subjects including the use of checks and other negotiable instruments. The audiences for my publications and lectures have included academics, law students, practicing attorneys, and banking professionals.

3. Prior to joining the faculty of New York University School of Law in 2000, I was the Perre Bowen Professor of Law at the University of Virginia School of Law (1992-2000). From 1997 to 2000, I was also the John V. Ray Research Professor at the University of Virginia Law School, and from 1993 to 1996 I was the Caddell and Conwell Research Professor at the University of Virginia Law School. From 1978 until 1984, I was an Associate Professor of Law, and from 1984 until 1992 a Professor

of Law at the Boston University School of Law. From 1988 until 1992, I was the Harry Elwood Warren Scholar in Municipal Law at the Boston University School of Law. I served as Associate Dean of the Boston University School of Law from 1990-1992. I later served as Vice Dean of New York University School of Law from 2004 to 2007. From 1976 until 1978, I was associated with the New York City law firm of Cleary, Gottlieb, Steen & Hamilton, where a significant amount of my practice involved commercial and contract law and commercial litigation, including issues related to payments law and negotiable instruments.

4. I have provided expert testimony or consulting advice on matters of contract and commercial law, including payments issues, in arbitrations or litigation in Argentina, Australia, Austria, Canada, England, Germany, Israel, Jersey (Channel Islands), New Zealand, Sweden, and Singapore, as well as in the United States.

5. My curriculum vitae is attached hereto as Appendix A. My curriculum vitae contains a list of all the publications which I have authored within the previous ten years, as well as a list of all cases in which I have testified at trial or by deposition in the previous four years.

6. I have been retained in this matter by the States of Arkansas, California, Texas, and Wisconsin on behalf of the Defendant States (excluding Pennsylvania) to provide my opinion on various issues relating to the nature of certain products offered by MoneyGram. In particular, I have been asked to provide my opinion on the extent to which those products should be treated as falling within

the types of instruments governed by the Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. § 2501 *et seq.* (the "Federal Disposition Act"). I am being paid \$800 per hour for my work on this case.

7. In this Report, I will initially describe the characteristics of traveler's checks and money orders. I will explain how money orders and traveler's checks constitute prepaid items that are purchased to make payments to third parties and with respect to which sellers typically do not maintain information concerning the purchaser. I will then describe the products that are offered by MoneyGram and that are at issue in this litigation. I will indicate how, as a functional and contractual matter, those products raise the same recordkeeping issues concerning the residence of purchaser and place of purchase that Congress considered when it developed the escheatment rules of 12 U.S.C. § 2503. Finally, I will discuss potential meanings for the phrase "third party bank check" and whether any of those meanings encompass the relevant MoneyGram instruments.

8. In preparing this Report, I have reviewed: the pleadings filed in these consolidated cases; the deposition transcripts of Eva Yingst and Kate Petrick, and all the exhibits attached to those transcripts; the text of the Federal Disposition Act and Revised Code of Washington § 63.29.010, and the legislative history of those statutes; a memorandum sent from Treasury Services Group to various State Unclaimed Property Administrators, containing the Bates numbering ALF00006603-ALF00006608; and an email from Caroline Cross to Michael Rato dated October 12, 2015, containing the Bates numbering MG0002494-MG0002496.

## **I. Characteristics of Traveler's Checks and Money Orders as Instruments.**

9. An instrument generally falls within the scope of 12 U.S.C. § 2503 if it is a money order, traveler's check, or "other similar written instrument."<sup>1</sup> Therefore, as an initial matter, it is useful to understand the characteristics of a traveler's check and a money order to determine whether a particular instrument qualifies as one of those instruments, or is "similar" to those instruments.

10. A traveler's check is defined by both practice and the Uniform Commercial Code as an instrument that is payable on demand, is drawn on or payable at or through a bank, is designated by the term traveler's check or substantially similar term, and requires, as a condition of payment, a countersignature by the person whose specimen signature appears on the instrument. U.C.C. § 3-104(i). A traveler's check may be issued by a financial institution or a non-financial institution, and the issuer may or may not be the same party that sells it.<sup>2</sup> The seller typically acts as the agent of the issuer where the two are not the same. A purchaser of a traveler's check typically pays the face amount of the traveler's check, plus any fee, directly to the seller. If the seller is not the issuer who produces the traveler's check, the seller will remit the face amount of the traveler's check to the issuer. At the time of sale, the purchaser signs the traveler's check. When the purchaser uses the

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<sup>1</sup> The statute imposes additional requirements in subsections (1)-(3).

<sup>2</sup> Under the Uniform Commercial Code, an "issuer" is the "maker or drawer of an instrument," and "issue" consists of "the first delivery of an instrument by the maker or drawer . . . for the purpose of giving rights on the instrument to any person." U.C.C. §§ 3-105(a), (c). In the case of a money order or traveler's check, the seller of the item may be different from the issuer.

traveler's check to pay for an item or service or to deposit it in an account, the purchaser signs the traveler's check a second time. This allows the transferee of the traveler's check to compare the specimen signature with the second signature and receive assurances that the purchaser is the rightful holder of the traveler's check. The traveler's check is then processed through banking channels and is paid by the issuer or paying agent. Because the traveler's check has been prepaid by the purchaser, the purchaser who transfers the traveler's check to a payee typically is not aware of whether or when the traveler's check has been presented for payment. Similarly, issuers typically do not retain information about the residence of the purchaser of the traveler's check. The issuer, might, however, have information concerning the place of purchase of the traveler's check. The funds that have been paid by the purchaser remain with the issuer until the traveler's check is ultimately presented for payment or until the passage of a period of time which, under various state laws, is sufficient to require that these funds be turned over to the state government. The fact that the issuer who holds the funds represented by an abandoned traveler's check does not retain residence information concerning the purchaser, but may have information concerning the place of purchase, motivated Congress to use those factors when it sought to create an equitable distribution of the proceeds of abandoned traveler's checks through the Federal Disposition Act. *See* Disposition of Abandoned Money Orders and Traveler's Checks, Sen. Report No. 93-505 (November 15, 1973) (hereinafter S. Rep. No. 93-505).

11. A money order is a prepaid draft, or payment order, that the seller provides to a purchaser in a specified amount that is typically imprinted on the face of the instrument. A money order frequently serves as a substitute for a personal check from an individual's bank account. The term "money order" traditionally comprises related but different forms of payment. Some money orders, sometimes referred to as "personal money orders," are sold by banks or merchants. They consist of orders that are drawn by the issuer or the purchaser and bear a machine-impressed face amount. That type of money order may be a check (if it is drawn on a bank). See UCC § 3-104(f). In these cases, the money order essentially serves as a checking account on which one deposit has been made and one check (the money order itself) can be drawn. In the case of a personal money order, no bank signs the instrument at the time of its sale. Thus, any drawee bank has liability on the money order only when it has been accepted.

12. Other money orders, sometimes referred to as "bank money orders," are sold and issued by banks and are drawn and signed by the issuing bank. They may be drawn either on the issuing bank or on another bank. Thus, these money orders may also constitute cashier's checks (checks drawn by a bank on itself) or teller's checks (checks drawn by a bank on another bank). See U.C.C. § 3-104 cmt. 4; *Bank of Niles v. American State Bank*, 303 N.E.2d 186 (Ill. App. Ct. 1973).

13. Notwithstanding their differences, purchase and processing of bank and personal money orders is essentially similar. Like a traveler's check, a money order is typically issued to a purchaser who pays the face amount of the money order plus

any fee to the seller, whether that seller is a financial institution or not. The seller may or may not be the same as the issuer of the money order. Where the seller is not the same as the issuer, the seller will remit the face amount of the money order to the issuer. Because the money order has been prepaid by the purchaser, the purchaser who transfers the money order to a payee typically is not aware of whether or when the money order has been presented for payment. Similarly, sellers of money orders or holders of funds represented by abandoned money orders would not have information about the residence of the purchaser of the money order or about who owned it at any given point in time. Similarly, issuers would not have information about the payee of the money order or about who owned it at any given point in time. The issuer, might, however, have information concerning the place of purchase of the money order. As in the case of a traveler's check, the funds that have been paid by the purchaser remain with the issuer until the money order is ultimately presented for payment or until the passage of a period of time which, under various state laws, is sufficient to require that these funds be turned over to the state government. The fact that the issuer who holds the funds represented by an abandoned money order does not retain residence information concerning the purchaser, but may have information concerning the place of purchase, motivated Congress to use those factors when it sought to create an equitable distribution of the proceeds of abandoned money orders through the Federal Disposition Act. *See* Sen. Report No. 93-505.

## **II. Characteristics of MoneyGram Instruments.**

14. I understand that MoneyGram offers its customers four different products relevant to this litigation: Retail Money Orders and three products sold pursuant to its Official Check program. MoneyGram labels those Official Check products “Agent Check Money Orders,” “Agent Checks,” and “Teller’s Checks.”

15. I understand that the last three of these products are processed on the same MoneyGram platform, the Official Check platform. Dep. of Eva Yingst (“Yingst”) at 84; Yingst Ex. 13 at 29 (stating that Primelink Official Checks Operating Instructions apply to Agent Check Money Orders, Agent Checks, and Teller’s Checks, as well as to cashier’s checks, the last of which are not involved in this litigation).

### **A. MoneyGram Retail Money Orders.**

16. A MoneyGram Retail Money Order is issued through entities that contract with MoneyGram to sell money orders to purchasers. Those entities, which can be financial institutions or nonfinancial institutions (such as retailers), serve as agents for MoneyGram for the purpose of selling MoneyGram Retail Money Orders. The purchaser of the Retail Money Order pays the seller the face amount of the instrument, plus any fee. The Retail Money Order may also be subject to a service charge. The Retail Money Order states that it is both issued and drawn by MoneyGram and that it is “payable through” a bank. As may be the case with the traditional “personal money order” (see Paragraphs 11-13, *supra*) no bank signs the MoneyGram Retail Money Order at the time of its sale. At the time of sale, the selling agent prints the amount of the Retail Money Order using equipment and/or a form



provided by MoneyGram. The selling agent also remits the face amount of the Retail Money Order to MoneyGram. I understand that remittance occurs by the selling agent depositing the funds into its bank account and MoneyGram withdrawing the amount from the agent's bank account through an automated clearing house process. MoneyGram deposits funds remitted to it from the sale of its various instruments into a commingled fund. See Yingst at 54-56, 108-109, 115-116, 153, 363-364. The purchaser signs the Retail Money Order on purchase. The signature line indicates that the purchaser is signing "for drawer," so that the purchaser is serving as MoneyGram's agent for purposes of making MoneyGram an issuer, because an instrument must be signed by, or on behalf of a drawer, in order to become a negotiable instrument. See *Smith v. Farmers Union Mut. Ins. Co.*, 260 P.3d 163, 172 (Mont. 2011). The Retail Money Order also includes terms on the back that relate to service charges and the limited recourse that a holder of the instrument may have against MoneyGram. Typically, MoneyGram Retail Money Orders are not issued in amounts in excess of \$1,000. Yingst at 58-59. When a MoneyGram Retail Money Order is presented for payment to the "payable through" bank, that bank pays the face amount of the Retail Money Order; MoneyGram provides funds in the amount of the presented items to that bank from MoneyGram's commingled fund containing the proceeds of the sale of its instruments and in accordance with a contract between MoneyGram and the clearing bank. MoneyGram's forms include a serial number and a customer or agent ID that permits MoneyGram to track its Retail Money Orders and determine the location where the Retail Money Order was sold. Yingst at 57,

264-265. MoneyGram, however, does not have information about the specific purchaser. Yingst at 57.

**B. MoneyGram “Agent Check Money Orders.”**

17. A MoneyGram Agent Check Money Order is issued through financial institutions that contract with MoneyGram to sell these instruments. The selling bank is designated as “agent for MoneyGram,” and MoneyGram is designated as the drawer of the Agent Check Money Order. *See* Yingst Ex. 4 (ex. E); Yingst Ex. 8. The purchaser of the Agent Check Money Order pays the seller the face amount of the instrument, plus any fee. While the purchaser of a MoneyGram Retail Money Order may pay with cash, the purchaser of the Agent Check Money Order will often be a customer of the financial institution from which the instrument is purchased, so that the face amount of the instrument plus any fee may be debited from the purchaser’s account at that institution. MoneyGram Agent Check Money Orders may also be sold in face amounts greater than those available on MoneyGram Retail Money Orders.<sup>3</sup> The purchaser will sign the Agent Check Money Order on purchase. The signature line indicates that the purchaser is signing “for drawer,” so that the purchaser is serving as MoneyGram’s agent for purposes of making MoneyGram an issuer, because an instrument must be signed by, or on behalf of a drawer, in order to become a negotiable instrument. Neither the financial institution that sells the Agent Check Money Order nor the bank designated as drawee signs the Agent Check Money Order

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<sup>3</sup> I understand that MoneyGram’s cap on the value of Retail Money Orders is an internal requirement imposed by the company.

at the time of issuance. *See, e.g.*, Yingst Ex. 8. Thus, the Agent Check Money Order qualifies as a personal money order and may be so designated on its face.

18. An Agent Check Money Order states that it is drawn on a specific bank. In fact, however, I understand that the bank designated as the drawee is actually a clearing bank, rather than a bank that holds a pre-existing deposit for MoneyGram. Yingst at 97-98. When a MoneyGram Agent Check Money Order is presented for payment to the “drawee” bank, MoneyGram provides funds in the amount of the presented items to that bank in accordance with a contract between those two institutions. Yingst at 82-85, 117-118. Thus, the functions that the clearing banks and MoneyGram play with respect to the processing of Agent Check Money Orders are the same as the functions that it plays with respect to MoneyGram Agent Checks and Teller’s Checks, which are also issued through its Official Check platform. *See* Yingst Exs. 13, 16.

19. Agent Check Money Orders are issued through MoneyGram’s Official Check platform rather than through MoneyGram’s Retail Money Order program. Thus, the seller of a MoneyGram Agent Check Money Order is obligated to report to MoneyGram information concerning the instrument within a day of when it is sold. That information includes serial number, dollar amount, date of issuance, and account number or customer ID with MoneyGram, the last of which may indicate the location where the instrument was purchased. Yingst at 209-210, 267; Yingst Ex. 13 at 6. The required information does not include information about the specific purchaser.

**C. MoneyGram “Agent Checks.”**

20. A MoneyGram Agent Check is issued through financial institutions that contract with MoneyGram to sell these instruments. As in the case of Retail Money Orders, Agent Check Money Orders, and Teller’s Checks, the financial institution sells Agent Checks to its customers and may charge its customer a fee. The Agent Check form designates MoneyGram as the “drawer” and the financial institution as “agent for MoneyGram.” Because MoneyGram’s financial institution customer is only an agent on these instruments and is designated as such, that financial institution is not liable on an Agent Check. Another bank is designated as the “drawee.” As in the case of MoneyGram Agent Check Money Orders and Teller’s Checks, the bank that is designated as the “drawee” serves as a clearing bank. MoneyGram holds the funds that are sent to it by the selling financial institution until the item is presented for payment to the clearing bank. When a MoneyGram Agent Check is presented for payment to the “drawee” bank, MoneyGram provides funds in the amount of the presented items to that bank in accordance with a contract between those two institutions. Agent Checks are often used to pay obligations of the financial institution designated as agent. Yingst at 168-169. Funds represented by Agent Checks do not have next-day availability under the federal Expedited Funds Availability Act. *See* 12 U.S.C. § 4002(a)(2)(F). I understand that MoneyGram created this instrument to help its financial institution customers minimize their reserves under Federal Reserve Board Regulation D. Yingst Ex. 13 at 31.

21. MoneyGram Agent Checks are processed through MoneyGram's Official Check program systems. Thus, MoneyGram's customer is obligated to report to MoneyGram information concerning the instrument within a day of when it is sold. That information includes serial number, dollar amount, date of issuance, and account number or customer ID with MoneyGram, the last of which may indicate the location where the instrument was purchased. Yingst at 209-210, 267. The required information does not include information about the specific purchaser.

22. A MoneyGram customer who has elected to use both MoneyGram Agent Checks and Agent Check Money Orders may choose to treat an Agent Check as an Agent Check Money Order. See Yingst Ex.14 clause 3, Ex. 15 clause 3. That demonstrates that the two instruments do not have significant operational differences, though the instrument would have to bear the appropriate money order language to serve as an Agent Check Money Order. See Yingst at 249-251.

**D. MoneyGram "Teller's Checks."**

23. A MoneyGram Teller's Check is issued through financial institutions that contract with MoneyGram to sell these instruments. The Teller's Check form designates MoneyGram as the "issuer" and the selling financial institution as the "drawer." Another bank is designated as the "drawee." Teller's Checks are typically issued to customers of the selling financial institution that contracts with MoneyGram. When the financial institution sells the Teller's Check to its customer, it typically debits its customer's account and sends the amount of the Teller's Check to MoneyGram. As in the case of Retail Money Orders, Agent Check Money Orders,

and Agent Checks, the financial institution may charge its customer a fee for the Teller's Check. Alternatively, the financial institution may use a MoneyGram Teller's Check to pay its own obligations. Yingst at 139. As in the case of MoneyGram Agent Checks, the bank that is designated as the "drawee" serves as a clearing bank. MoneyGram holds the funds that are sent to it by the selling bank until the item is presented for payment to the clearing bank. Yingst at 156. When a MoneyGram Teller's Check is presented for payment to the "drawee" bank, MoneyGram provides funds in the amount of the presented items to that bank in accordance with a contract between those two institutions. Unlike the case of Agent Check Money Orders and Agent Checks, funds represented by Teller's Checks may have "next business day availability" under the federal Expedited Funds Availability Act. *See* 12 U.S.C. § 4002(a)(2)(F). The depositor of funds that have next-day availability has access to those funds, i.e., can withdraw them as a matter of right, on the first business day following the banking day of deposit. Types of deposits eligible for next-day availability include cash, United States Treasury checks, and cashier's checks and teller's checks where those instruments have been deposited in person into an account held by the payee of the check. Instruments that do not have next-day availability may not be available to the depositor for a longer period of time, generally extending up to five business days following the banking day of deposit. *See* 12 C.F.R. § 229.12.

24. MoneyGram Teller's Checks are processed through MoneyGram's Official Check program systems. Thus, MoneyGram's customer is obligated to report to MoneyGram information concerning the instrument within a day of when it is sold.

That information includes serial number, dollar amount, date of issuance, and account number or customer ID with MoneyGram, the last of which may indicate the location where the instrument was purchased. Yingst at 209-210, 267. The required information does not include information about the specific purchaser.

25. A MoneyGram customer who elects to use either MoneyGram Teller's Checks or Agent Checks typically makes the decision based on whether it prefers to have an item that has next-day availability rather than because of any operational or processing differences. Yingst at 255.

**III. For Purposes of 12 U.S.C. § 2503, MoneyGram Teller's Checks and Agent Checks Share the Relevant Characteristics of Money Orders and Traveler's Checks, as well as MoneyGram Retail Money Orders and Agent Check Money Orders.**

26. The provisions of 12 U.S.C. § 2503 apply to any "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." I understand that MoneyGram escheats Retail Money Orders to the states in which the Retail Money Orders were purchased pursuant to that statute. Likewise, MoneyGram escheats Agent Check Money Orders sold through its Official Check Program to the states in which the Agent Check Money Orders were purchased pursuant to that statute. In my opinion, the products that MoneyGram labels as Agent Checks and Teller's Checks sold through its Official Check program share the same relevant characteristics as Retail Money Orders and Agent Check Money Orders for the purposes of the Federal Disposition Act.

27. In determining whether MoneyGram Agent Checks and Teller's Checks share the same relevant characteristics as traveler's checks or money orders more generally, I consider the similarities between traveler's checks and money orders that make them subject to the statute. For example, different types of instruments may be similar with respect to the purposes for which they are used or the process of issuance, but not similar with respect to the amounts in which they are typically issued or with respect to the ability of the purchaser of the instrument to stop payment.

28. MoneyGram Agent Checks and Teller's Checks are issued through a similar process as traveler's checks and money orders. In each case, the purchaser obtains the instrument by prepaying the seller the amount in which the instrument is issued plus any fee. In turn, in each case if the seller of the instrument is different from the issuer (as is true for MoneyGram instruments and some traveler's checks and money orders), the seller remits the face amount of the instrument to the issuer and provides information concerning the sale to the issuer. That information includes the date of sale, the amount, the serial number of the instrument, and the seller identification, which may include location of sale information. It does not include customer information.

29. In addition, MoneyGram Agent Checks and Teller's Checks are similar to traveler's checks and money orders in that MoneyGram is unaware of the identity or specific address of the purchaser, just as the non-seller issuer of a traveler's check or money order would generally be unaware of the identity of the purchaser. *See*



Deposition of Kate Petrick (“Petrick”) at 208. The purchaser, in turn, is unaware of when or whether a traveler’s check, money order, or MoneyGram instrument is presented for payment; that is because the purchaser has prepaid for all such instruments and the account that that is debited when the instrument is presented for payment is not an account of the purchaser.

30. MoneyGram Agent Checks and Teller’s Checks are also similar to traveler’s checks and money orders in the sense that, like the latter products, they are typically used in place of a personal check. That may be because the purchaser is a person who does not have a personal checking account or because the payee of the check prefers the security of receiving an instrument on which a bank or well-known business association is liable.

31. Primarily, however, MoneyGram Agent Checks and Teller’s Checks are similar to traveler’s checks and money orders for purposes of 12 U.S.C. § 2503 because those MoneyGram instruments are “similar” in respect of the characteristics of instruments with which Congress was concerned when it enacted the Federal Disposition Act.

32. The allocation of funds represented by abandoned instruments under 12 U.S.C. § 2503 depends on the information on the holder’s books and records concerning the state in which the instrument was purchased. If the holder’s books and records reveal that information, funds representing abandoned instruments escheat to the state of purchase. Only if that information is not available on the books or records of the financial organization or business association that is the holder of

those proceeds is that entity entitled to escheat the funds represented by abandoned instruments to its state of incorporation.

33. Congress made the place of purchase the determining factor based on its findings that the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments, but that a substantial majority of such purchasers reside in the states where such instruments are purchased. 12 U.S.C. §§ 2501(1), (2). Congress further found and declared that the states wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several states, be entitled to the proceeds of such instruments in the event of abandonment, and that the failure to distribute the proceeds of such instruments to the states entitled thereto created a burden on interstate commerce. 12 U.S.C. §§ 2501(3), (4). Finally, Congress found that, because most purchasers reside in the state of purchase of such instruments, the cost of maintaining and retrieving addresses of purchasers of these instruments in order to achieve the proper equitable distribution of proceeds in the event of abandonment would constitute an additional burden on interstate commerce. 12 U.S.C. § 2501(5).

34. In light of these Congressional findings and purposes, the relevant characteristics of an instrument for purposes of 12 U.S.C. § 2503 involve not only similarities to money orders and traveler's checks in issuance or use, but also similarities with respect to whether sellers and holders of funds generated by the sale

of the instruments, as a matter of business practice, are likely to retain or report the addresses of the purchasers or any other information about the purchasers and thus are in a position to effect the equitable distribution of those proceeds that Congress desired. In addition, given Congress's presumption that the purchasers of money orders and traveler's checks are residents of the state in which the instrument is purchased, a "similar instrument" would also be likely to have been purchased in the purchaser's state of residence.

35. That is consistent with the legislative history of the Federal Disposition Act. The Report of the Senate Committee that analyzed and proposed the bill that became that Act contains a letter from Arthur Burns, then-Chair of the Federal Reserve Board. Chairman Burns recognized that the objective of the bill was to correct what he called the "obvious inequity" of allowing escheat of proceeds represented by money orders and traveler's checks to the debtor's corporate domicile in the event that the creditor's (purchaser's) address was unknown. The inequity arose in the case of money orders and traveler's checks because the holders of funds in those transactions typically did not record the address of the creditor (purchaser). Indeed, Chairman Burns recommended changing the initial bill from making escheat depend on the state of issuance to the state of purchase. He noted that, at least in the case of traveler's checks, the instruments were sold by banks locally although most of them were "issued" by a few organizations and banks. Thus, the equitable distribution of abandoned proceeds would be frustrated if the state of incorporation of the "issuing" entity, rather than the state of purchase, could receive the unclaimed

proceeds of traveler's checks. Chairman Burns's proposed amendment to the statutory language, therefore, was intended to ensure that escheat of prepaid instruments, the sale of which generated funds held until the instrument was presented for payment, should occur to the state of purchase, as long as the holder of the proceeds of the instrument had information about that location within its records.

36. MoneyGram Teller's Checks and Agent Checks are similar to traveler's checks and money orders in that each of these instruments is "purchased" by a remitter from a financial or business association rather than issued by a customer from the customer's personal checking account. As I have indicated above, as a matter of business practice, the contractual arrangements between MoneyGram and its customers who sell Agent Checks and Teller's Checks require the customers to report to MoneyGram information concerning those instruments within one day of their sale. As I have also noted above, the required information may allow MoneyGram to determine the location of purchase. But MoneyGram does not receive the address of the purchaser or any other information about the purchaser.

37. I understand that MoneyGram currently escheats funds represented by abandoned Agent Check Money Orders to the state of purchase. Because MoneyGram's contractual arrangements with its financial institution customers provide that Agent Check Money Orders are governed by the same operational rules that apply to Agent Checks and Teller's Checks, the same information is reported to MoneyGram with respect to each of these products. Moreover, each of these products is issued through the similar process of prepayment by purchasers in amounts

imprinted on the face of the instruments, and remission of those amounts to MoneyGram, which holds the funds in the same commingled investment account until the instruments are presented for payment or until escheat to the state is required. The fact that MoneyGram has sufficient information to escheat funds represented by abandoned Agent Check Money Orders to the state of purchase suggests that it has similar information and capacity with respect to its Agent Checks and Teller's Checks. Thus, MoneyGram Agent Checks and Teller's Checks share the same relevant characteristics as its Agent Check Money Orders for purposes of 12 U.S.C. § 2503.

38. Indeed, I understand that, although MoneyGram currently escheats funds represented by abandoned Agent Check Money Orders to the state of purchase, it escheats funds represented by abandoned Agent Checks to the State of Delaware. As I have noted above, MoneyGram Agent Check Money Orders are interchangeable with MoneyGram Agent Checks at the election of the selling bank if that bank has contracted with MoneyGram to sell both instruments. The primary distinctions between these instruments—which, again, similarly consist of prepaid instruments for which MoneyGram holds the funds generated by purchase—involves the designation as a “money order” on the form where the institution prefers to use an Agent Check Money Order. There does not appear to be any difference at all between the two with respect to the capacity of MoneyGram to detect the location at which the instrument was purchased. Nor does there appear to be any material difference in the function of these instruments from a perspective of their use for payments or from

their use as negotiable instruments. The interchangeability of Agent Check Money Orders and Agent Checks thus also indicates that the two are “similar” for purposes of 12 U.S.C. § 2503.

39. In addition, given the presumption that Congress created based on its findings that money orders and traveler’s checks were purchased in the purchaser’s state of residence, I note that MoneyGram has stated that funds used to purchase one of its Teller’s Checks will tend to be taken from the purchaser’s bank account. *See Yingst* at 138. It is a reasonable assumption that the purchaser of a MoneyGram Teller’s Check maintains its bank account from which the funds for the instrument will be drawn in the purchaser’s state of residence. I conclude, therefore, that the Congressional presumption is equally appropriate for MoneyGram Teller’s Checks.

40. MoneyGram has also stated that financial institutions typically issue MoneyGram Agent Check Money Orders only to their own customers and that payment for MoneyGram Agent Check Money Orders sold by a financial institution will tend to be made from the purchaser’s account at the financial institution. *See Yingst* at 90, 119. Again, it is a reasonable assumption that the purchaser of a MoneyGram Agent Check Money Order maintains its bank account from which the funds for the instrument will be drawn in the purchaser’s state of residence. I conclude, therefore, that the Congressional presumption is equally appropriate for MoneyGram Agent Check Money Orders.

41. Moreover, as I have noted above, MoneyGram Agent Checks are interchangeable with MoneyGram Agent Check Money Orders. *See supra*

Paragraphs 22, 38; Yingst at 238-239, 251, 254-255. I assume, therefore, that financial institutions also typically issue MoneyGram Agent Checks only to their own customers and that payment for MoneyGram Agent Checks sold by a financial institution will tend to be made from the purchaser's account at the financial institution. Again, it is a reasonable assumption that the purchaser of a MoneyGram Agent Check maintains its bank account from which the funds for the instrument will be drawn in the purchaser's state of residence. I conclude, therefore, that the Congressional presumption is equally appropriate for MoneyGram Agent Checks.

42. Thus, consistent with Congress's findings that states wherein the purchasers of money orders and traveler's checks reside were entitled to the proceeds of those abandoned instruments, and that the states of purchase were likely to be the states of purchaser residence, I conclude that instruments about which MoneyGram obtains and retains the records of purchase as a matter of business practice share the same relevant characteristics as traveler's checks and money orders for the purposes of the Federal Disposition Act. In addition, given the place of purchase information that MoneyGram receives as a result of its contractual arrangements and business practices, in my opinion MoneyGram Agent Checks and Teller's Checks share the same relevant characteristics as traveler's checks and money orders for the purposes of the Federal Disposition Act.

43. MoneyGram Teller's Checks are dissimilar from its Agent Checks in that a bank is designated as the drawer on the former, while MoneyGram is designated as the drawer on the latter. Teller's Checks also vary from Agent Checks

in that the former are subject to Regulation D of the Federal Reserve Board, while the latter are not. Finally, as I have noted above, Teller's Checks are different from Agent Checks and Agent Check Money Orders in that only Teller's Checks are subject to next-day availability. But, in my opinion, none of these distinctions implicate whether, or the way in which, information concerning the purchase is conveyed to MoneyGram. For example, while next-day availability may cause purchasers or payees of Teller's Checks to favor them over Agent Checks, next-day availability is not an important distinction for purposes of the Federal Disposition Act. Next-day availability affects only the timing of the use of funds by a depositor, not the information concerning the purchaser or the place of purchase on which Congress focused. Indeed, the Federal Disposition Act was enacted prior to the Expedited Funds Availability Act, so next-day availability could not have been a factor on which Congress was defining "similar written instrument[s]" under the Federal Disposition Act.

44. In addition, consistent with Congress's findings regarding the typical case with respect to the sellers or issuers of traveler's checks and money orders, MoneyGram does not collect information on the residence of purchasers of its Retail Money Orders, Agent Check Money Orders, Agent Checks, or Teller's Checks. Indeed, obtaining that information with respect to MoneyGram instruments would require MoneyGram or its financial institution customer to incur the very costs of maintaining and retrieving addresses of purchasers that Congress indicated it did not want issuers or sellers of traveler's checks to incur. As Congress stated in 12



U.S.C. § 2501, it incorporated the presumption that place of purchase was the place of the purchaser's residence because a requirement of recording and maintaining the purchaser's residence would impose costs that burden interstate commerce.

**IV. MoneyGram Teller's Checks and Agent Checks are not "Third Party Bank Checks" for Purposes of the Federal Disposition Act.**

45. The requirements of 12 U.S.C. § 2503 do not apply to a "third party bank check." The term "third party bank check" is not defined in the statute. In my opinion, the term has no clear meaning and is not widely used in the law or practice of payment systems. There are a few potential meanings that I describe below. However, none of those potential meanings of the term apply to MoneyGram Agent Checks or Teller's Checks given those instruments' characteristics.

46. The legislative history of the Federal Disposition Act, which is quite sparse, does not provide significant guidance on the meaning of the term "third party bank check." The original version of the bill that became 12 U.S.C. § 2503 did not contain the exception for "third party bank checks." The Report of the Senate Committee that reviewed the bill added the relevant language. It apparently did so because the General Counsel of the Treasury issued a letter of November 1, 1973 in which he contended that

The introductory language of section 2 could be interpreted to cover third party payment bank checks since it refers to a "money order, traveler's check, or similar written instrument on which a bank or financial organization or business association is directly liable." It is recommended that this ambiguity be cured by defining these terms to exclude third party payment bank checks.

S. Rep. No. 93-505 at 5.

47. The letter from the General Counsel did not further indicate what he meant by “third party payment bank checks” or why it was problematic to include them within the bill that became 12 U.S.C. § 2503. Nor did the Report of the Senate Committee elaborate on the language in the letter. The Report of the Senate Committee noted only that it had “adopted the technical suggestions of the Department of the Treasury.” S. Rep. No. 93-505 at 6. It is noteworthy, moreover, that whatever the General Counsel of the Treasury meant when he proposed to exclude a “third party payment bank check” from the Federal Disposition Act, the language inserted into the statute was, in fact, different, i.e., “third party bank check.”

48. I am aware of only one judicial decision that has construed the term “third party bank check.” That case, *U.S. v. Thwaites Place Associates*, 548 F. Supp. 94 (S.D.N.Y. 1982), involved the auction of foreclosed property by the United States Marshal. The terms of the auction required the successful bidder to pay by cash or certified check made payable to U.S. Treasury or the U.S. Marshal. A bidder sought to pay with two “bank checks” that were payable to another person and that the bidder desired to have indorsed to the U.S. Treasury or the U.S. Marshal. Consistent with business usage, the court equated “bank check” with a check “issued by a bank.” 584 F. Supp. at 97. Throughout the opinion, the court refers interchangeably to the bank checks at issue as “third party checks,” “a doubly indorsed check,” and “third party bank checks.” Thus, the court used the term “third party bank check” to mean

a check drawn that the original payee transfers to another payee and that happens to be a bank check.

49. In my opinion, the use of the term “third party bank check” in the *Thwaites Place Associates* case to mean a bank check (a check issued by a bank and drawn on a bank) that has been indorsed by the original payee to a new indorsee is the most natural reading of “third party bank check.” The phrase “third party check” is a common term that refers to a check that has been indorsed by the original payee and transferred to a third party. This terminology was used at the time of the enactment of the Federal Disposition Act. *See, e.g., Von Gohren v. Pacific Nat. Bank of Washington*, 505 P.2d 467 (Wash. Ct. App. 1973).

50. A “bank check” is commonly understood to mean a check that is both drawn on a bank and by a bank. If the drawer and drawee are the same bank, the bank check is a cashier’s check. If the drawer and the drawee are different banks, then the bank check is a teller’s check.

51. The term “bank check” has also been used more generally to mean any check drawn on a bank, including checks drawn on personal or business checking accounts. *See, e.g., JOHN EDSON BRADY, THE LAW OF BANK CHECKS 1-6* (2d ed. 1926).

52. Indeed, the edition of Brady’s treatise on *The Law of Bank Checks* (a leading treatise on payment systems since its first edition in 1916) that was current at the time that the Federal Disposition Act was enacted specifically noted that “the term ‘bank check’ as used in this volume is, unless the context specifies otherwise, interchangeable with the term ‘check’ and does not necessarily denote a direct bank

obligation, such as a cashier's check, certified check, or bank draft.” HENRY J. BAILEY, THE LAW OF BANK CHECKS 1 n.1 (4th ed. 1969). It is plausible that the author retained this usage because the treatise he was editing had wide acceptance and retaining the existing title may have had value, even if the term “bank check” to refer to any check drawn on a bank had become redundant. But the footnote would have been unnecessary unless the term “bank check” would otherwise have been understood to refer only to checks on which a bank was directly liable.

53. Because a “third party check” was commonly understood in the 1970s to refer to a check indorsed by the payee to another person, and a “bank check” was commonly understood to refer to a check drawn by and on a bank, in the absence of a clear alternative definition, it is natural to conclude that a third party bank check is a check drawn by and on a bank, but that the original payee has indorsed to another person.

54. It is plausible that “third party bank check” as used in 12 U.S.C. § 2503 means a personal check, that is, any personal draft drawn on a bank. While, as I have noted above, that construction may entail some redundancy, it is an apt description of a personal check in that all checks have three parties, a drawer, a payee, and a drawee, and Congress may have been attempting to distinguish between drafts drawn on banks and drafts (such as documentary drafts, which may be drafts that a seller of commodities draws on a buyer) not drawn on banks. Congress might, for example, have wanted to exempt from otherwise applicable escheatment rules

personal checks that the drawer had issued but that had not been presented for payment.<sup>4</sup>

55. Alternatively, the term “third party bank check” could mean any check indorsed by the original payee to a new indorsee, i.e., any check indorsed over to a “third party,” regardless of whether it was a bank check.

56. In my opinion, other sources provide very little information about the meaning that Congress may intended when it used the term “third party bank check.”

57. A statute of the State of Washington contains the language “third party bank check” and provides a definition of that term. *See* Wash. Rev. Code 63.29.010(17). That provision defines a “third party bank check” as “any instrument drawn against a customer’s account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.” To my knowledge, there have been no cases construing the statutory definition since its enactment in 1983.

58. In my opinion, the Washington statutory definition of “third party bank check” provides little assistance in construing the same term under 12 U.S.C. § 2503. Not only does the statute post-date the enactment of 12 U.S.C. § 2503, but the Washington definition is confusing, if not self-contradictory. The Washington definition appears to apply when a relevant banking organization is a drawee,

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<sup>4</sup> While this construction may be thought to be unlikely since the statute refers to instruments that have been “purchased,” and one does not think of personal checks as being purchased, it is worthwhile to recall that the earlier version of the bill that became the Federal Disposition Act used the term “issued” rather than “purchased.” It is plausible that when Congress added the exception for “third party bank checks” and also substituted “purchased” for “issued,” it failed to consider the anomaly created by the simultaneous changes.

because it applies when the relevant instrument is “drawn against” a customer’s account with such an organization. But it also applies only when the financial organization is only “secondarily liable” on the instrument. That language, which dates from 1983, appears to incorporate the provisions of Article 3 of the Uniform Commercial Code that were in effect prior to promulgation of the revision of Article 3 in 1990. The pre-revision version, in effect in Washington in 1983, defined a “secondary party” as “a drawer or indorser.” *See* Pre-Revision U.C.C. § 3-102(1)(d) (1972). Those parties were deemed to be “secondarily liable” because a draft, such as a check, is supposed to be paid by the drawee, not by the drawer or indorser. Only on dishonor of the draft by the drawee is there a right against the drawer or indorser. *See id.* §§ 3-413, 3-414. However, the drawee itself is not “secondarily liable.” Indeed, the drawee is not liable on an instrument at all until it “accepts” the instrument. *Id.* §§ 3-409(1), 3-410. At that point the drawee becomes primarily liable on the instrument. In other words, a bank acting solely as drawee has either primary liability or no liability; it cannot be secondarily liable.

59. Revised Article 3 eliminated the language of secondary liability. Nevertheless, it retained the concepts inherent in that language. Drawees do not have liability until they accept an item, and drawers have liability only when the drawee dishonors the instrument. *See* U.C.C. § 3-408, 3-414. Thus, the scenario described in the Washington statute, i.e., that there is a banking organization that 1) is the drawee (because the relevant instrument must be “drawn against a customer’s account with” the banking organization), and 2) is “only secondarily liable” will not

actually occur. As a result, the definition in the Washington statute of a “third party bank check” as an instrument drawn on a financial institution on which that institution is only secondarily liable does not make sense and cannot be assumed to reflect what Congress meant when it used the term in a statute a decade earlier.

60. It is, of course, possible that a banking organization could be a drawer as well and thus have secondary liability even though it is also a drawee. That would be the case if the banking organization issues a cashier’s check drawn on itself. But that case seems to be outside the scope of the Washington statute. That statute defines a “third party bank check” in terms of an instrument that is 1) drawn on a banking organization, where 2) that banking organization is “only” secondarily liable. In the case of a cashier’s check, the issuing bank is generally liable for the amount of the instrument according to its terms when issued. It would not be “only” secondarily liable. *See* U.C.C. § 3-412. As a result, I admit to confusion concerning the meaning and scope of the Washington definition of “third party bank check” and do not find it useful for purposes of construing 12 U.S.C. § 2503. I have reviewed the legislative history of the Washington statute and have not found anything therein that affects my analysis.

61. I understand that Delaware has previously argued that the most natural reading of the term “third party bank check,” i.e., a check that is a bank check and that has been indorsed by the payee to a new indorsee, is not the definition that should apply to 12 U.S.C. § 2503. That is because, according to Delaware, the objective of that statute is to allocate the escheatment of funds in a manner that takes

into account the information that is likely available to the holder of the funds concerning the escheated instrument. Delaware contends that the holder would not have information about whether a check, bank check or otherwise, has been transferred by the original payee. The holder would only obtain that information once the check was presented for payment, at which time the check is no longer unclaimed. Thus, Delaware contends that reading the term “third party bank check” in accordance with what, in my opinion, is its most natural reading, would be inconsistent with the statute’s purpose.

62. I am not persuaded by Delaware’s argument, primarily because, as I have indicated above, there is no alternative obvious or rational interpretation. Moreover, I reiterate that the language of 12 U.S.C. § 2503 varies from language in the letter that the Senate Committee purported to be implementing, i.e., “third party payment bank check,” a term for which I have found no allusion or interpretation in any judicial decision or legislation. Thus, it is plausible that Congress was, in fact, simply misguided in its use of language in the statute and/or was unclear about its own intentions.

63. I understand that Delaware has also contended that “third party bank check” means a teller’s check. In my opinion, this is incorrect. If what Congress meant by excluding a “third party bank check” was to exclude a teller’s check from the reach of 12 U.S.C. § 2503, one would think that Congress would have used a more specific and familiar term to accomplish that purpose. Both the term “teller’s check” and “bank draft” were commonly understood in 1973 to mean a draft drawn by one



financial institution on another institution. *See, e.g., Perry v. West*, 266 A.2d 849 (N.H. 1970) (stating that a “bank draft” is a draft drawn by one bank upon its deposits at another bank); *Manhattan Imported Cars, Inc. v. Dime Sav. Bank of New York*, 355 N.Y.S.2d 356 (N.Y. App. Term 1st Dept. 1972); *Levin v. Union National Bank of Westminster*, 168 A.2d 889 (Md. 1961); HENRY J. BAILEY, *THE LAW OF BANK CHECKS* 34, 405-406 (4th ed. 1969).

64. Moreover, there would be little reason for Congress to have excluded teller’s checks from 12 U.S.C. § 2503. Because banks can be issuers or holders of funds who are liable for escheatment on traveler’s checks or money orders, which clearly are included in 12 U.S.C. § 2503, it would make little sense to exclude other instruments, such as teller’s checks, solely on the grounds that banks are liable on them.

65. As I have noted above, the Congressional purpose of the Federal Disposition Act is set forth in 12 U.S.C. § 2501. That provision indicates that the purpose of the Act was to create an equitable allocation of the abandoned proceeds of instruments such as traveler’s checks and money orders, taking into account 1) that the books and records of banking and financial organizations and business associations that issue and sell those instruments typically do not show the last known addresses of purchasers of such instruments, and 2) a presumption that a substantial majority of purchasers of such instruments reside in the states where such instruments are purchased.

66. I have noted above that the purpose of the Federal Disposition Act is relevant to determining what are the relevant characteristics of an instrument that would subject it to 12 U.S.C. § 2503. In my opinion, those characteristics are also relevant to resolve the ambiguity in the definition of a “third party bank check” that is excluded from the escheatment provisions of the statute. That is, the term “third party bank check” does not make sense to the extent that it excludes from 12 U.S.C. § 2503 escheatment rules instruments for which the holders of abandoned funds maintain “place of purchase” information in their records as a matter of business practice. That is because those are the very types of instruments for which Congress desired to make this legislation applicable to ensure equitable distribution of abandoned proceeds.

**A. MoneyGram Instruments Designated as Agent Checks Are Not Third Party Bank Checks, Even Accepting Delaware’s Previously Articulated Definition of the Term.**

67. Even if “third party bank check” did mean a teller’s check, the instruments issued by MoneyGram do not necessarily qualify as teller’s checks. Delaware defines a teller’s check as a check that is “drawn by a bank (i) on another bank, or (ii) payable at or through a bank.” *See* E-mail from Caroline Cross to Michael Rato (Oct. 12, 2015, MG0002494-MG0002496). That is also the definition of a teller’s check in the Uniform Commercial Code. *See* UCC § 3-104(h).

68. In my opinion, MoneyGram Agent Checks are not bank checks at all and certainly are not teller’s checks (which are a type of bank check, as described above). Therefore, they cannot be “third party bank checks” for purposes of 12 U.S.C. § 2503.

I reach that conclusion because Agent Checks denominate MoneyGram as the “drawer” of the check, and MoneyGram is not a bank. On some specimens, the preprinted specimens designate the party in the upper left hand corner, typically reserved for the name of the drawer, as “agent,” presumably as agent for MoneyGram. Thus, these checks do not even nominally designate a bank as a drawer. As MoneyGram’s contract with its financial institution customers states, “Financial Institution is not a party to Agent Checks even though its name may appear on the Agent Checks.” Yingst Ex. 15 clause 3. Again, in my opinion, at the time that the Federal Disposition Act was enacted, the common understanding of a bank check was that it was a check drawn by a bank on a bank.

69. Where a MoneyGram Agent Check designates the selling bank as an “agent,” that agent bank bears no drawer liability on the check, even if the designated agent is a bank. That is because the agent bank purports to be signing in a representative capacity as agent and the check shows unambiguously that it is made on behalf of MoneyGram, the principal, who is identified on the instrument. In such a situation, UCC § 3-402(b)(1) provides that the agent bears no liability on the instrument. *See also* Yingst at 164-166. Thus, the true drawer of the Agent Check, both nominally and functionally, is MoneyGram. Because Agent Checks are not drawn by a bank at all, they represent the clearest examples of instruments created by MoneyGram that do not qualify as teller’s checks or bank checks because they indicate clearly that the drawer is not a bank.

**B. MoneyGram Instruments Designated as Teller's Checks Are Not Third Party Bank Checks, Even Accepting Delaware's Previously Articulated Definition of the Term.**

70. Instruments designated by MoneyGram as a "Teller's Check" also should not be considered as "third party bank checks" for purposes of 12 U.S.C. § 2503, even assuming for the sake of argument that teller's checks were for some reason excluded from the statute as "third party bank checks." MoneyGram Teller's Checks designate a bank as a drawee, designate a bank as a drawer, and designate MoneyGram as the "issuer." *See, e.g.*, Yingst Ex. 6. Under the Uniform Commercial Code, however, an "issuer" is also a drawer of a check. There is no difference between the two terms for purposes of a check. *See* UCC § 3-105(c) ("Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument."). As a consequence, there are two drawers on MoneyGram Teller's Checks, one of which is a bank and one of which is not a bank.

71. I have not discovered any cases that deal with the issue of whether a check that has two drawers, one of which is a bank and one of which is not, can qualify as a bank check or as a teller's check. In my opinion, it should not be so considered at least with respect to Teller's Checks that are drawn by MoneyGram.

72. I reach that conclusion because as a functional matter, the nominal drawer bank with respect to such instruments serves solely as an agent for MoneyGram. Indeed, the contract between MoneyGram and its financial institution customers recites that "MoneyGram hereby appoints Financial Institution as its limited agent and authorized delegate for the sole purpose of using and selling the

Products as set forth in this Agreement; and Financial Institution hereby accepts this appointment.” Yingst Ex. 15 clause 5. The “Products” under that agreement include any Agent Checks, Agent Check Money Orders, cashier’s checks and Teller’s Checks that the financial institution has elected to have provided by MoneyGram. Yingst Ex. 15 clause 2.

73. In addition, examination of the functional manner in which MoneyGram “Teller’s Checks” operate indicates that the nominal “drawer” bank is acting as an agent of MoneyGram rather than in the traditional role of a bank drawer. Traditionally, the bank designated as the “drawer” of a teller’s check maintains an account with the drawee bank, and that account is debited when the drawee pays a check drawn from the account of the drawer. Alternatively, a teller’s check may be drawn on a nonbank, but be payable at or through a bank. In the latter case, that bank typically collects the amount of the teller’s check from the drawer bank.

74. MoneyGram Teller’s Checks work very differently. The selling institution that is denominated as the “drawer” on the Teller’s Check sends to MoneyGram the funds that are received in return for the Teller’s Check. When the payee on the Teller’s Check deposits it into the payee’s account, the depositary bank forwards the check to the bank denominated as the drawee on the check. That bank, however, does not debit an account of the bank denominated as the drawer on the instrument. Instead, the nominal drawee is MoneyGram’s clearing bank, which pays the item. MoneyGram provides funds in the amount of the presented items to the clearing bank in accordance with a contract between those two institutions. Thus,

once the nominal “drawer” issues the instrument, it plays no role whatsoever in the check collection, payment, or escheatment process.

75. This agency relationship is made clear in the contracts between MoneyGram and the financial institutions that sell its Teller’s Checks. Under those contracts, a financial institution that sells a MoneyGram Teller’s Check holds the funds received in exchange for those items in trust for MoneyGram until it sends the funds to MoneyGram. *See* Yingst Ex. 15 clause 7(A). Unlike the typical case of a teller’s check, therefore, the funds received by the seller of a MoneyGram Teller’s Check do not become general funds of the financial institution that sells the instrument.

76. In addition, under its contract with its financial institution customers, MoneyGram, not the financial institution, maintains copies of both sides of a check that has been presented for payment. Yingst Ex. 15 clause 18. MoneyGram, not the financial institution, is responsible for unclaimed property related to MoneyGram instruments other than cashier’s checks. Yingst Ex. 15 clause 19. The financial institution agrees broadly to follow “all of MoneyGram’s reasonable instructions relating to this agreement,” and MoneyGram “may change the instructions from time to time.” Yingst Ex. 15 clause 31 (A).

77. The effect of those provisions is to transform the nominal drawer on a MoneyGram Teller’s Check into an agent of MoneyGram that essentially plays no role other than to sell checks on behalf of MoneyGram and send the proceeds to MoneyGram. Thus, as a functional matter, MoneyGram Teller’s Checks operate

identically to MoneyGram instruments denominated as Agent Checks and Agent Check Money Orders. The relationships between MoneyGram and its financial institution customers are governed by the same contractual provisions with respect to both Agent Checks and Teller's Checks. In both cases, a customer of the seller of the instrument purchases the instrument from the seller bank, not from MoneyGram. In both cases, the seller remits the proceeds of the sale to MoneyGram and conveys to MoneyGram the information relevant to its purchase. Prior to the time that the funds are transferred to MoneyGram the seller of both instruments holds those funds in trust for MoneyGram. In both cases, the seller of the instrument has no further responsibilities towards the instrument once it has been sold and the proceeds have been remitted to MoneyGram.

78. As I have noted above, MoneyGram Agent Checks cannot be considered to be bank checks or teller's checks, even if the latter qualify for the exclusion in 12 U.S.C. § 2503. In my opinion, the same conclusion should apply to MoneyGram Teller's Checks in which the nominal drawer is the functional equivalent of the designated agent financial institution on a MoneyGram Agent Check.

79. The fact that a bank is the nominal drawer on a MoneyGram Teller's Check may have significance in some settings. For example, I understand that funds represented by a MoneyGram instrument designated as a "Teller's Check" may have next-day availability under Regulation CC of the Federal Reserve Board, while funds represented by a MoneyGram instrument designated as an "Agent Check" may not. Additionally, a bank that is the nominal drawee of a Teller's Check may have to

account for the item under Federal Reserve Board Regulation D. I offer no opinion on those issues. But in my opinion, the fact that a bank is nominally designated as drawer on an instrument drawn on another bank and designated as a teller's check does not necessarily mean that the check qualifies as a "third party bank check" for purposes of 12 U.S.C. § 2503, even if other teller's checks qualify for that term. That is because the purpose of 12 U.S.C. § 2503 is to ensure equitable allocation of the funds attributable to abandoned items in accordance with information about the state of purchase. If, as an operational matter, that information is not held by the seller of the teller's check who is designated as the nominal drawer, but is held by MoneyGram, then excluding the instrument from the allocation rules of 12 U.S.C. § 2503—notwithstanding MoneyGram's possession of the relevant purchase information—defeats the objectives for which Congress enacted the Federal Disposition Act.

80. Nor do MoneyGram Teller's Checks operate like traditional teller's checks from the drawee's perspective. The nominal drawee serves solely as a clearing bank for obligations assumed by MoneyGram. Nor does the nominal drawee of the MoneyGram instrument, the clearing bank, pay a MoneyGram instrument by debiting a nominal drawer's account. *See* Yingst at 53-55. Instead, the clearing bank pays the Federal Reserve or a presenting bank for the item and MoneyGram separately provides funds relating to payment of the Teller's Checks directly to the clearing bank. Yingst at 279. Indeed, in documents generated by MoneyGram to explain its role in Teller's Check and Agent Check transactions to employees and



potential bank customers, MoneyGram holds itself out as the “drawee” on such items and refers to the clearing bank only parenthetically. *See* Yingst Ex. 16; Yingst at 231-233. In other words, although MoneyGram Teller’s Checks offered under its official program nominally designate a financial institution drawer and drawee, as a functional matter MoneyGram plays both those roles.



Dated: September 24, 2018

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Clayton P. Gillette

# Appendix A

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Major Publications

*Books*

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Expert Witness, *Methanex Chile v. Petrobras Argentina* (issues of New York contract law in arbitration) 2014-15.

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Expert Witness, *Lehman Brothers Finance AG (in liquidation) v Aktiebolaget Svensk Exportkredit* (issues of New York contract law in Swedish litigation) 2011-14.

Expert Witness, *Wells Fargo Bank, N.A. v. Fifth Third Bank* (interpreting participation agreement to determine responsibilities and liabilities of Lead and Participant) 2013-14.

American Law Institute, Restatement (3d) The Law of Consumer Contracts, Adviser, 2012-



present.

- Expert Witness, *Estate of Mertens v. Heirs of Hellman* (issues of New York contract law in Austrian arbitration) 2013-14.
- Expert Witness and Consultant, *Rincon EV Realty LLC v. CP III Rincon Towers, Inc.*, (issues of New York contract law and negotiable instrument law) 2012.
- Expert Witness, *Jaffe, Insolvency Administrator v. Micron Technology, Inc.* (issues of New York contract law in German insolvency proceeding) 2011.
- Expert Witness, *Transpacific Pty, Ltd. v. Prudential Retirement Insurance and Annuity Company and Ors* (issues of New York contract law in Australian litigation) 2011.
- Expert Witness, *International Finance Corporation v. Compania de Concesiones de Infraestructura S.A.* (issues of New York contract law in international litigation) 2010.
- Expert Witness, *Schnitzer Steel Industries, Inc. v. Sujana Metal Products Ltd.* (issues of New York contract law in international commercial arbitration) 2010.
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- Expert Witness, *American Stone Inc. v. Merrill Lynch, Pierce Fenner & Smith, Inc.*, FINRA Arbitration (issues of New York law regarding fraudulent checks and unauthorized wire transfers) 2009.
- Consultant, *Friedman v. 24 Hour Fitness* (issues regarding electronic payments and credit card payments for monthly gym memberships) 2008.
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- Expert Witness, *Holy Cross High School v. Lemme, Lemme, Sovereign Bank* (fraudulently indorsed and deposited checks) 2007.
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Expert Witness, *United Capital Corporation v. Bender* (affidavit testimony; issues of New York contract law in Jersey, Channel Islands litigation) 2006-2007.

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Consultant, *Textron Financial Corp. and Land Finance Company* (negotiability by contract, special indorsements) 2003.

Consultant, Independence Plaza Tenants Association (testimony before New York City Council concerning validity of conversion protection bill) 2003.

Consultant and Expert Witness, *Bank of Oklahoma v. Safeway Inc.* (expert report with respect to liability on altered check) 2002-2003.

Consultant, State of Connecticut with regard to contracts between Enron Corporation and Connecticut Resource Recovery Authority, 2002-2003.

Consultant, City of Spokane, Litigation involving River Park Square Development, 2001-2003.

Consultant, Digital Commerce Committee, 2001-2002 (representation in NCCUSL hearings on

UCITA).

Expert Witness, *Enfield Family Dental v. Webster Bank*, (affidavit testimony; check fraud) 2001.

Expert Witness, *Gerling Global International Reinsurance Co. v. Fairfax Financial Holdings, Ltd.* (affidavit testimony; Canadian contracts dispute concerning New York law) 2001.

Consultant and Expert Witness *United Exchange Co., Ltd. v. Republic National Bank of New York* (affidavit testimony; Jordanian case involving New York law on check fraud) 2001.

Consultant, *City of Spokane v. Walker Parking Consultants/Engineers*, (obligations under municipal contracts) 2001-02.

Consultant, House of Blues, Los Angeles, California, (scope of municipal authority to enact ordinance under municipal charter) 2001.

Consultant, Latham & Watkins, Los Angeles, California, (validity of local “living wage” ordinance) 2000-01.

Speaker, Section on State and Local Government, Association of American Law Schools, 2000.

Expert Witness, *County of Orange, California v. McGraw-Hill, Inc.* (deposition testimony) 1998-99.

Consultant and Expert Witness (trial testimony), *Washington Electric Cooperative, Inc. v. MMWEC* (contract validity) 1997-98.

Chair, Section on State and Local Government, Association of American Law Schools, 1996-97.

Consultant and Expert Witness, *North Orange County Community College District v. LeBoeuf, Lamb, Greene & MacRae* (role of bond counsel) 1997-98.

Consultant, Lynch & Lynch, South Easton, MA, *South Shore Bank v. Prestige Imports* (check fraud) 1995-96.

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Speaker on State Law Developments, National Association of Bond Lawyers, Bond Attorneys Workshop, 1992-97, 2000-2004.

National Association of Bond Lawyers, Special Committee on Securities Law and Disclosure, 1993-94.

Reporter, ABA-TIPS Task Force on Initiatives and Referenda, 1991-1993.

Consultant, Administrative Conference of the United States, Federal Agency Valuations of Human Life, 1987-88.

Consultant and Expert Witness (deposition testimony), *In re New York City Housing Development Corporation Bond Redemption Litigation*, 1988.

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Consultant and Expert Witness, *Chemical Bank v. WPPSS* and related federal securities litigation, (deposition testimony) 1982-85; 1988.

Member, ABA Subcommittee on Municipal Securities, Project on Role of Counsel in State and Local Government Securities, 1984-86.

Consultant, Plaintiffs' Management Committee, *In re "Agent Orange" Products Liability Litigation*, 1983-87.

Consultant, City of Boston, 1981.

Panelist, Practising Law Institute Seminars on Municipal Finance Law, 1980-92.

SUPREME COURT OF THE UNITED STATES

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DELAWARE, *Plaintiff*,

v.

Nos. 220145 & 220146 (Consolidated)

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

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October 24, 2018

REBUTTAL EXPERT REPORT OF CLAYTON P. GILLETTE

I, Clayton P. Gillette, provide this Rebuttal Report under Federal Rule of Civil Procedure 26(a)(2)(D)(ii) to assist the Court in its resolution of this matter and to respond to some of the contentions made in the Expert Report of Ronald Mann dated September 19, 2018 (the “Mann Report”).

1. Professor Mann’s first stated opinion is that “[n]either a bank nor MoneyGram is directly liable,” within the meaning of 12 U.S.C. § 2503, “on the MoneyGram official checks or MoneyGram money orders” evaluated in his report. (Mann Rep. ¶ 19(a).) This conclusion is based on his contention that the term “directly liable” as used in that statute is derived from the liability scheme for parties to negotiable instruments under Articles 3 and 4 of the Uniform Commercial Code (the “UCC”). (*See, e.g.*, Mann Rep. ¶¶ 22-28.) I disagree with that assumption. Professor Mann offers no support for his argument that “direct liability” is defined by, or has any particular meaning within, the UCC’s liability scheme. Indeed, the

term “directly liable” is not found with respect to the liability of drawers, indorsers, or drawees on instruments anywhere in Article 3 or in the Official Comments thereto.<sup>1</sup> Because the term “directly liability” is not utilized or defined in the relevant portions of the text of the UCC or applicable case law, and because equating the term with “unconditional liability” is inconsistent with the stated objectives of Federal Disposition Act,<sup>2</sup> I disagree with Professor Mann’s conclusions that flow from what I view as this erroneous assumption.

2. Professor Mann notes that liability for parties on most check and check-like instruments under the UCC is conditional. Drawers are generally not liable on instruments until the instruments have been dishonored; drawees are generally not liable on instruments until the drawees have accepted them. The one exception involves a cashier’s check, which Professor Mann notes imposes unconditional liability on the drawer/drawee on issuance. I do not dispute Professor Mann’s statement of these basic principles of the liabilities of parties to instruments.

3. The UCC’s liability scheme for parties to instruments, however, is not (and was not at the time of the enactment of the Federal Disposition Act) predicated on anything commonly called “direct liability” or “indirect liability.” Nor were those terms used in the UCC to indicate conditional or unconditional liability. Instead, the

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<sup>1</sup> Official Comment 4 to § 3-605 to the UCC uses the term “directly liable” in the context of guarantor liability, which is a completely distinct concept from the issue of liability on instruments on which Professor Mann bases his opinion.

<sup>2</sup> As I did in my initial report, I use the term “Federal Disposition Act” to refer to the Disposition of Abandoned Money Orders and Traveler’s Checks Act, 12 U.S.C. § 2501, *et seq.*

principle of indirect liability described by Professor Mann was expressed by calling drawers “secondary parties,” based on the understanding that they were liable only if the drawee dishonored an instrument. Pre-Revision U.C.C. § 3-102(1)(d) (1972) (defining “secondary party” as a drawer or indorser). Although the term “primarily liable” was not used with respect to drawees within the definitions of the UCC, both commentators and courts used the term to refer to the liability of those who were liable on issuance, such as issuers of cashier’s checks, or drawees that had accepted checks and thus satisfied any condition to liability on the instrument. With rare exceptions, courts and commentators did not use the phrase “direct liability” as a synonym for “primary liability” in that context.<sup>3</sup> When courts and commentators did use the term “direct liability” with respect to check-like instruments during the period when the Federal Disposition Act was being considered, they were addressing issues other than the liability of drawers, indorsers, or drawees on the instrument. For example, courts sometimes used the phrase “direct liability” when addressing whether a depository or collecting bank that transferred a check bearing a forged

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<sup>3</sup> I am aware of occasional, though infrequent, uses of the term “directly liable” in the manner used by Professor Mann. For example, in *Ward v. Federal Kemper Insurance Comany*, 489 A.2d 91 (Md. Ct. Spec. App. 1985), the court noted: “When the drawer draws a check on the drawee and delivers the check to the payee, the check ordinarily is regarded as only a conditional payment of the underlying obligation. . . . Until those conditions are met, no one is directly liable on the check itself. . . .” *Id.* at 95. I have also found pre-UCC cases that refer to certification of a check as a process that renders the certifying bank “directly liable” to the holder. *See, e.g., Gray v. First Nat’l Bank of Birmingham*, 80 So. 2d 528, 530 (Ala. 1955); *Dawson v. Nat’l Bank of Greenville*, 144 S.E. 833 (N.C. 1928). Because these cases constitute rare, if not unique, uses of the terms as used by Professor Mann or are not UCC cases at all, they do not affect my conclusion that the term “directly liable” lacks any specific or well-understood meaning within the UCC liability scheme.

indorsement was “directly liable” to the drawer. *See, e.g., Allied Concord Fin. Corp. v. Bank of America*, 80 Cal. Rptr. 622 (Cal. Ct. App. 1969); HENRY J. BAILEY, THE LAW OF BANK CHECKS 201 n.90 (4th ed. 1969). Other cases using the term involved the issue of whether a depository or collecting bank could become “directly liable” to a payee where the bank acted in bad faith. *See, e.g., Knesz v. Central Jersey Bank & Tr. Co.*, 477 A.2d 806 (N.J. 1984). Those issues involve liability under theories such as conversion for payment of a check under improper circumstances rather than the liability that a party to a check bears by virtue of its role on the check itself.

4. In contrast to the absence of the term “direct liability,” during the period when the Federal Disposition Act was enacted, courts and commentators consistently referred to the liability of drawees who had accepted checks, so that any condition to liability had been satisfied, and to issuers of cashier’s checks as being “primarily liable.” *See, e.g.,* HENRY J. BAILEY, THE LAW OF BANK CHECKS 218 (4th ed. 1969) (“A person primarily liable is one who by the terms of the instrument is absolutely required to pay it; that is, the maker of a note or the acceptor of a draft or bill of exchange. A bank certifying a check becomes primarily liable and presentment is not necessary to charge the bank.”); *Tepper By and Through Michelson v. Citizens Fed. Sav. & Loan Ass’n*, 448 So.2d 1138, 1140 (Fla. Dist. Ct. App. 1984) (“The act of accepting the instrument renders the drawee primarily liable as an acceptor. . . . A cashier’s check is a check on which the issuing bank acts as both the drawer and the drawee. Its own act of issuance renders the bank a drawee who has accepted the draft; thus the issuing bank becomes primarily liable as an acceptor.”) (citing J. White and



R. Summers, *Uniform Commercial Code* § 17-5 (2d ed. 1980)); *Society Nat'l Bank of Cleveland v. Capital Nat'l Bank*, 281 N.E.2d 563 (Ohio Ct. App. 1972) ("In issuing the cashier's checks, [issuing bank], rather than [remitter], became primarily liable on them."); *Santos v. First Nat'l State Bank of New Jersey*, 451 A.2d 401 (N.J. Super. Ct. App. Div. 1982) ("Timely presentment for payment is necessary to charge parties who are secondarily liable on an instrument. *N.J.S.A.* 12A:3-501. . . . However, presentment is not required to charge parties primarily liable, such as the maker of a note, acceptor of a draft, or a bank that certifies a check. . . . 3 *Anderson, Uniform Commercial Code* (2 ed. 1971)"); see also *Hackett v. Broadway Nat'l Bank*, 570 S.W.2d 184 (Tex. Civ. App. 1978) (dishonor of check satisfied conditions to drawer liability and thus rendered drawer "primarily liable").<sup>4</sup>

5. As I have noted above, courts and commentators who discussed the UCC at the time of the enactment of the Federal Disposition Act referred to parties to checks whose liability was subject to the satisfaction of conditions were referred to as "secondarily liable," not as parties with "indirect liability." See, e.g., HENRY J. BAILEY, *THE LAW OF BANK CHECKS* 218 (4th ed. 1969) ("On the other hand, the Code declares that, unless excused, presentment is necessary to charge secondary parties to an instrument such as the drawer and any indorser of a check."); *Tepper By and Through*

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<sup>4</sup> Some courts erroneously described the drawer as "primarily liable." See, e.g., *Shotts v. Pardi*, 483 S.W.2d 879, 881 (Tex. Civ. App. 1972) ("A drawer of a check is primarily liable. An indorser is secondarily liable."). Nevertheless, the important point is that even those courts used language of "primary" and "secondary" liability to describe the liability of parties on checks. They did not use the language of "direct" or "indirect" liability.

*Michelson*, 448 So.2d at 1140 (“The drawer, on the other hand, is only secondarily liable on the instrument, in that there are conditions precedent to liability. W. Hawkland, *Commercial Paper* 52 (2d ed. 1979).”).

6. When Article 3 of the UCC was revised in 1990, the terminology of “secondary” liability to define the responsibility of parties to the check was eliminated. But as with the prior version, revised Article 3 did not define (or otherwise refer to) the conditional or unconditional liability of parties to instruments as “direct” or “indirect.” Instead, Official Comment 4 to revised § 3-414 was changed to state: “The liability of the drawer of an unaccepted draft is treated as a primary liability. Under former Section 3-102(1)(d) the term ‘secondary liability’ was used to refer to a drawer or indorser. The quoted term is not used in revised Article 3.”

7. Professor Mann, however, equates unconditional liability under the UCC with the phrase “directly liable” as it is used in 12 U.S.C. § 2503. Similarly, he implies that those parties to instruments who have only conditional liability as set forth above must have “indirect liability,” and thus are outside the scope of 12 U.S.C. § 2503. For the reasons set forth above, it is my opinion that Professor Mann’s attempt to equate these terms is not supported by the UCC.

8. It is not surprising that Congress did not use either the terms or concepts of party liability under the UCC when it drafted 12 U.S.C. § 2503. The plain language of 12 U.S.C. § 2501 reveals that Congress was interested in the entirely different issue of equitably reporting and remitting the proceeds of certain unclaimed instruments. *See* 12 U.S.C. § 2501(3) (“[T]he States wherein the purchasers of money

orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment.""). Whether parties to instruments bear conditional or unconditional liability for payment of those instruments under the UCC is irrelevant to that objective. And stated above in Paragraph 3, the UCC does not equate direct liability with unconditional liability in any event.

9. There are additional reasons to reject the contention that Congress's use of the term "direct liability" in 12 U.S.C. § 2503 was derived from the UCC's liability scheme for parties to negotiable instruments. First, Professor Mann agrees that MoneyGram retail money orders and MoneyGram agent check money orders have no party who is "directly liable" as he uses the term. *See* Mann Report at ¶¶ 19(a), 38. Yet a money order was the quintessential instrument identified by Congress to exemplify the kind of instruments that it wanted covered by 12 U.S.C. § 2503. Thus, under Professor Mann's definition of the term "directly liable," Congress, according to Professor Mann, included only other instruments on which there was unconditional "direct," liability, even though Congress's primary example of a covered instrument did not possess that characteristic.

10. Second, given the clear and uncontroversial rationale of the Federal Disposition Act of ensuring equitable distribution of the proceeds from unclaimed property where 1) a holder's records allow identification of the location of purchase, and 2) it is appropriate to presume that the location of purchase is the location of the purchaser's residence, Professor Mann offers no explanation as to why Congress

would have applied the statute to cashier's checks, but not to teller's checks or other MoneyGram instruments as to which relevant records similarly exist and the Congressional presumption is similarly appropriate.

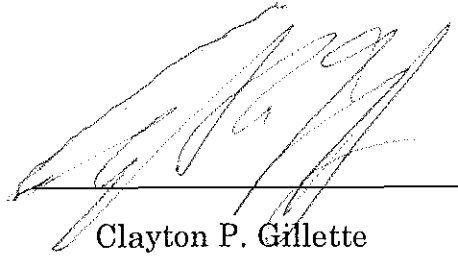
11. Professor Mann provides only one example—a cashier's check—of an instrument on which a party is “directly liable” under his definition of the term. (Mann Rep. ¶¶ 20, 28.) But if a cashier's check were the only instrument subject to the statute other than money orders and traveler's checks, then the statute would have been drafted quite differently. In the first instance, it would have been sufficient to say that covered instruments were “a money order, traveler's check, or a draft drawn by the drawer on itself.” There would have been no need to speak in terms of an “other similar written instrument (other than a third party bank check) . . . .” In the second instance, since a cashier's check is necessarily drawn on a bank, there would have been no need to speak of an instrument “on which a banking or financial organization or a business association is directly liable.” A business association could not be “directly liable” on an instrument as Professor Mann has defined it, since only a cashier's check qualifies, and a “business association” could not be the issuer or drawee of a cashier's check. *See* U.C.C. § 3-104(g) (defining a “cashier's check” as “a draft to which the drawer and drawee are the same *bank* or branches of the same *bank*”) (emphasis added). Thus, it makes sense to assume that the addition of the term “business association” was intended to capture situations in which a business association was a party to an instrument in some other capacity, such as being the drawer of the instrument – even though that meant the business association would

only be conditionally liable. It would have been unnecessary to use term "business association" to capture the situation in which a business association was the issuer of a traveler's check. The phrase "traveler's check" itself would have accomplished that, since a significant majority of traveler's checks were issued by business associations at the time. *See Disposition of Abandoned Money Orders and Traveler's Checks*, Sen. Report No. 93-505 at 3 (November 15, 1973) ("[T]here are five organizations supplying (issuing) most of the output of the travelers' check industry . . . . The largest organization, American Express, accounts for about two-thirds of the industry total; two nonbanking subsidiaries of large bank holding companies each control almost 15 per cent of that total. . . .").

12. If one did believe that Congress intended the applicability of 12 U.S.C. § 2503 to turn on principles of party liability under the UCC, it would have been anomalous for Congress to have distinguished between cashier's checks and teller's checks. Although, as a technical matter, cashier's checks do carry unconditional liability and teller's checks do not, the ultimate liability of issuers of both those instruments is equivalent. That is, both issuers of both cashier's checks and teller's checks bear exceptional and identical consequences in the event that they are wrongfully dishonored by the issuer of the cashier's check or the drawer of a teller's check. *See U.C.C. § 3-411*. That is because these instruments are typically viewed as being supported by the credit of a bank and failure to pay each would undermine confidence in checks issued by banks. Given their fungible objectives in commerce

and identical treatment in this regard, there is no clear reason for Congress to have distinguished between them for unclaimed property purposes.

Dated: October 24, 2018



Clayton P. Gillette

1 SUPREME COURT OF THE UNITED STATES

2 Case Nos. 220145 & 220146 (Consolidated)

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3 VIDEOTAPE DEPOSITION OF: BARKLEY CLARK  
4 October 16, 2018

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5 DELAWARE,  
6 Plaintiff,  
7 v.  
8 ARKANSAS, et al,  
9 Defendants.

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10

11 PURSUANT TO NOTICE, the videotape  
12 deposition of BARKLEY CLARK was taken on behalf of the  
13 Plaintiff at 1050 17th Street, Suite 2400, Denver,  
14 Colorado 80265, on October 16, 2018 at 9:02 a.m.,  
before Tracy R. Stonehocker, Certified Realtime  
Reporter, Registered Professional Reporter and Notary  
Public within Colorado.

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1	MR. VOSS: Joshua Voss, also of the	09:03:33
2	Kleinbard firm, also on behalf of the Commonwealth of	09:03:36
3	Pennsylvania.	09:03:36

4	MS. LANGAN: Jennifer Langan, deputy	09:03:40
5	chief counsel for the Pennsylvania Treasury Department	09:03:42
6	for the Commonwealth of Pennsylvania.	09:03:45

7	MR. DISHER: Todd Disher for the State	09:03:47
8	of Texas.	09:03:48

9	MR. ROSENTHAL: And on the telephone?	09:03:51
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10	MR. RUST: Craig Rust from the	09:03:53
11	California Attorney General's office on behalf of the	09:03:55
12	State of California.	09:03:58

13	MR. O'KORN: Keith O'Korn on behalf of	09:04:01
14	the State of Ohio from the Ohio Attorney General's	09:04:02
15	office.	09:04:07

16	THE VIDEOGRAPHER: The court reporter	09:04:08
17	today is Tracy Stonehocker of Epiq DTI.	09:04:11

18	* * * *	
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19	BARKLEY CLARK,	
20	having been first duly sworn to state the whole truth,	
21	testified as follows:	

22	(Deponent's reply to oath: I do.)	
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23	EXAMINATION	09:04:25
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24	BY MR. ROSENTHAL:	09:04:26
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25	Q. Would the witness please state his name?	09:04:26
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1	A.	Barkley Clark.	09:04:30
2	Q.	And what is your business address?	09:04:31
3	A.	My business address is 1050 17th Street,	09:04:34
4		Denver, Colorado.	09:04:41
5	Q.	And who is your employer?	09:04:42
6	A.	My employer is Stinson Leonard Street.	09:04:45
7	Q.	And what's your occupation?	09:04:48
8	A.	I am a partner in a law firm.	09:04:51
9	Q.	I assume, sir, that you've been deposed	09:04:55
10		a number of times. Am I correct?	09:04:58
11	A.	I have been deposed.	09:05:00
12	Q.	Okay. I'm going to give you a shortened	09:05:01
13		version of the usual instructions, if you don't mind.	09:05:06
14		I'll remind you that a deposition is an opportunity	09:05:11
15		for me to ask you questions, and it gives you an	09:05:14
16		opportunity to answer my questions. If I ask a	09:05:19
17		question that you find confusing or vague or you	09:05:22
18		simply don't understand, please tell me that. Is that	09:05:26
19		okay?	09:05:31
20	A.	Yes, it is.	09:05:31
21	Q.	And if you have any problem with your	09:05:32
22		question, after you tell me you don't understand it, I	09:05:35
23		will try to provide you with a question that you do	09:05:39
24		understand. Okay?	09:05:42
25	A.	Okay.	09:05:43

1 question. If I don't, it's not because I'm trying to 09:07:10  
2 interrupt you, it's just because I assumed you had 09:07:16  
3 given a complete answer. I similarly ask you to wait 09:07:18  
4 until I've completed a question before you start your 09:07:25  
5 answer. Is that okay? 09:07:28

6 A. Yes. 09:07:30

7 Q. We'll take breaks periodically, but if 09:07:30  
8 at any point you, sir, want to take a break, just let 09:07:35  
9 me know and we'll try to get to a convenient stopping 09:07:39  
10 point. Is that okay? 09:07:44

11 A. Yes. 09:07:44

12 Q. Are you on any medication today or 09:07:45  
13 suffering from any condition that might affect your 09:07:54  
14 ability to give testimony? 09:07:58

15 A. No. 09:07:59

16 Q. I take it that there's no other reason 09:08:00  
17 your memory isn't appropriate to giving testimony? 09:08:06

18 A. No. 09:08:10

19 Q. Okay. I'm going to start by asking you 09:08:11  
20 some questions about your background. You've been in 09:08:21  
21 private practice during portions of your career, 09:08:25  
22 correct? 09:08:28

23 A. Correct. 09:08:28

24 Q. Could you tell me when during your 09:08:29  
25 career you were in private practice? 09:08:33

1 A. I was in private practice from 1965 09:08:35  
2 until 1969. And then I went into -- those were 09:08:41  
3 the -- and I was in private practice from 2000 or 2005 09:08:48  
4 until I think 2015 and -- well, kind of working 09:09:05  
5 backwards, I was -- I've been in private practice now 09:09:13  
6 since 19 -- let me try to reconstruct this. 09:09:16

7 I was in private practice from '65 09:09:34  
8 to -- to '69. Then I was in teaching from '69 to '85. 09:09:37  
9 And then I was in private practice from '85, really, 09:09:47  
10 on until now, even though I have done some teaching as 09:09:55  
11 an adjunct. 09:10:01

12 Q. During your period 1965 to '69, what 09:10:02  
13 firm were you at? 09:10:07

14 A. I was at the firm of Holmes, Robert and 09:10:08  
15 Owen here in Denver. 09:10:16

16 Q. And since 1985, what firm or firms were 09:10:17  
17 you at? 09:10:22

18 A. Well, the first firm was a firm called 09:10:22  
19 Shook, Hardy and Bacon and that was until, I think, 09:10:29  
20 2000 -- 1999, 2000. And then I was -- at another 09:10:39  
21 firm -- I started my work with Stinson in 2005, about. 09:10:47  
22 And I've been at Stinson ever since. 09:11:01

23 Q. During your time, sir, at private 09:11:03  
24 practice, did you ever represent a client in a matter 09:11:05  
25 involving escheat or unclaimed property? 09:11:09

1 A. No. 09:11:12

2 Q. And I take it, from what you've said, 09:11:12

3 during your time in private practice, you did not hold 09:11:23

4 yourself out as practicing in the areas of escheat or 09:11:26

5 unclaimed property? 09:11:31

6 A. No. 09:11:32

7 Q. You did not? 09:11:33

8 A. I did not. 09:11:34

9 Q. Okay. How would you describe the areas 09:11:34

10 of law in which you did practice during your periods 09:11:40

11 in private practice? 09:11:44

12 A. Banking law was the centerpiece, and 09:11:45

13 within that, the whole area covered by the Uniform 09:11:52

14 Commercial Code and that would include warrants under 09:12:01

15 Title 2 of the UCC and negotiable instruments under 09:12:04

16 Article 3. Bank deposits and collections under 09:12:09

17 Article 4. Some work in the area of letters of credit 09:12:15

18 under Article 5. And substantial work in the area of 09:12:19

19 secured transactions under Article 9. And my -- I was 09:12:25

20 working on a variety of matters doing some expert 09:12:38

21 witness engagement, but also counseling with bank 09:12:41

22 clients during that period of time. 09:12:46

23 Q. For simplicity purposes, would it be 09:12:48

24 appropriate for me to characterize your practice areas 09:12:54

25 as banking in commercial transactions, is that a -- 09:12:57

1 A. Yes. 09:13:01

2 Q. -- a fair statement? 09:13:02

3 A. That's a fair statement. 09:13:03

4 Q. Okay. Did you, during your practice, 09:13:04  
5 ever do significant portions -- strike that. 09:13:08

6 Did any portions of your private 09:13:14  
7 practice consist of areas outside of banking or 09:13:16  
8 commercial transactions? 09:13:21

9 A. Certain of the warranty projects that I 09:13:22  
10 had under Article 2 is basically contracts law for the 09:13:30  
11 sale of goods -- sales of goods. And so that was not, 09:13:35  
12 I don't think, commercial and banking. It didn't have 09:13:43  
13 anything to do with banking, but it did have to do 09:13:46  
14 with commercial law, the law of sales under Article 2 09:13:49  
15 of the UCC. 09:13:53

16 Q. Can you expand a little bit on what you 09:13:54  
17 did in connection with warranties as you've just 09:13:57  
18 described it warranty law? 09:14:02

19 A. Warranty law is codified in Article 2 of 09:14:04  
20 the Uniform Commercial Code, particularly the sale of 09:14:12  
21 goods, and what I did or have done in my practice over 09:14:15  
22 the years is sales contracts, working on sales 09:14:18  
23 contracts, heavy emphasis on warranty and warranty 09:14:24  
24 forms. I have written on the topic of warranties 09:14:30  
25 under the UCC and federal law, too, Magnuson-Moss 09:14:38

1 Warranty Act and remedies for breach of warranty and a 09:14:46  
2 lot of emphasis on drafting of contracts from a 09:14:51  
3 seller's point of view that limit liability, and 09:14:59  
4 conversely, from the buyer's point of view, strategies 09:15:05  
5 to eliminate the impact of that -- of those 09:15:10  
6 disclaimers. 09:15:14

7 Q. Okay. And just to round this out, other 09:15:14  
8 than your work -- your practice in banking, commercial 09:15:21  
9 transactions, warranties, sales contracts, is it fair 09:15:27  
10 to say that you did not practice in any other areas 09:15:32  
11 besides that? 09:15:35

12 MS. AHUMADA: Objection as to form. You 09:15:37  
13 can answer. 09:15:39

14 A. I did do some legal work for a county, 09:15:40  
15 Wyandotte County in Kansas, when it was in the process 09:15:47  
16 of consolidation and because I taught local government 09:15:51  
17 in law school, particularly at the University of 09:15:55  
18 Kansas law school, I did do some work in that area, 09:16:02  
19 and I was also a mayor of the city, so I got some 09:16:06  
20 municipal corporation's questions, which I tried to 09:16:13  
21 use in class when I could and -- and so that was 09:16:18  
22 another area that was outside of what I would call 09:16:25  
23 commercial law. 09:16:29

24 Q. (BY MR. ROSENTHAL) Okay. With that 09:16:30  
25 addition, have we now exhausted your areas in which 09:16:32

1 A. No, that's not a statute. No, I'm not 04:07:09  
 2 aware of any statute, no. 04:07:12

3 Q. Just so we're clear, you're not aware of 04:07:14  
 4 any statute other than this 1983 Washington statute 04:07:17  
 5 that uses the term "third-party bank check"? 04:07:22

6 A. That's correct. I'm not. 04:07:25

7 Q. Okay. 04:07:26

8 MR. ROSENTHAL: Why don't we take a 04:07:27  
 9 break? 04:07:28

10 THE DEPONENT: Sure. 04:07:29

11 THE VIDEOGRAPHER: Going off the record. 04:07:29  
 12 The time is 4:07 p.m. 04:07:31

13 (Recess taken, 4:07 p.m. to 4:17 p.m.) 04:07:35

14 THE VIDEOGRAPHER: We are back on the 04:16:23  
 15 record. The time is 4:17 p.m. 04:17:18

16 Q. (BY MR. ROSENTHAL) Mr. Clark, I'm now 04:17:23  
 17 going to direct your attention to the portion of your 04:17:40  
 18 report that starts on page 22. It talks about third- 04:17:48  
 19 party bank checks. Do you recall that portion? 04:17:56

20 A. Certainly do. 04:17:59

21 Q. Okay. Am I correct, sir, that it's your 04:18:00  
 22 opinion that if Congress in 1974 had intended that 04:18:06  
 23 third-party bank checks include teller's check, it 04:18:13  
 24 would likely have included the term "teller's check"? 04:18:16

25 A. That's my opinion, yes. 04:18:19

1 Q. Okay. And that's because teller's 04:18:20  
2 checks were well established at the time, correct? 04:18:23

3 A. They were and they all -- already had 04:18:26  
4 done that with respect to traveler's checks and money 04:18:30  
5 orders, so they certainly had the capability in the 04:18:33  
6 interest of using those more precise terms during the 04:18:38  
7 drafting process. 04:18:46

8 Q. And indeed, you mentioned this a little 04:18:46  
9 earlier, but you mentioned that in a report of the 04:18:52  
10 federal reserve board in September 1974, it had listed 04:18:56  
11 a category that was certified checks, teller's checks 04:19:03  
12 and other official checks, right? 04:19:09

13 A. Correct. 04:19:10

14 Q. And that totaled 9.6 billion dollars? 04:19:11

15 A. Something like that. 04:19:14

16 Q. I think I have it pretty close. It was 04:19:17  
17 something approaching 10 billion dollars, right? 04:19:19

18 A. Right. 04:19:23

19 Q. The reason you did that was that because 04:19:23  
20 of the large value of checks that were involved, that 04:19:26  
21 would likely have been something Congress would have 04:19:29  
22 been aware of given the volume of money involved, 04:19:32  
23 correct? 04:19:35

24 A. Well, yes, there -- well, it was always 04:19:35  
25 a category in the reports that the fed put out. 04:19:40



1 Q. But specifically the reason you 04:19:44  
2 mentioned that large amount is because you're trying 04:19:46  
3 to make the point that given the large amount 04:19:49  
4 involved, it's something that Congress would have had 04:19:52  
5 cognizance of at the time, am I -- 04:19:55

6 A. That's fair to say, yes. 04:19:59

7 Q. If you could just turn to page 22. I 04:20:00  
8 just have a -- if you look at the top of the page in 04:20:05  
9 the first full paragraph, you refer to the U.S. 04:20:15  
10 treasury department's own definition of third-party 04:20:19  
11 payment services. Do you see that? 04:20:23

12 A. Yes. 04:20:24

13 Q. Could you give me the source for that 04:20:25  
14 quote? 04:20:27

15 A. Yes. This quote -- and what it says is 04:20:28  
16 any mechanism whereby a depository institution 04:20:35  
17 transfers a depositor's funds to a third party upon a 04:20:39  
18 negotiable or a non-negotiable order -- 04:20:44

19 Q. What are you preceding from? 04:20:45

20 A. I'm reading from page 22 of my -- 04:20:47

21 Q. Okay. 04:20:50

22 A. Is that -- 04:20:52

23 Q. What I'm trying to get is just the 04:20:52  
24 source. I know -- 04:20:54

25 A. Oh, the source of it. Yes. It is a 04:20:55

1 A. No, word for word, it never did. 04:29:36

2 Q. Well, there's no mention of it in the 04:29:38

3 legislative history, is there? 04:29:41

4 A. Yes, there is. Because -- 04:29:42

5 Q. Of that report? 04:29:44

6 MS. AHUMADA: Objection, would you 04:29:46

7 please let him answer fully. 04:29:47

8 A. No. What there is is there was a term 04:29:49

9 of art, third party -- third party payment, which had 04:29:52

10 a connotation of checking accounts. Then that -- 04:30:01

11 then the treasury report sort of summed that up by 04:30:06

12 using the term "third-party payment services" and said 04:30:12

13 these are checking accounts. These are just standard 04:30:18

14 checking accounts where you're trying to transmit 04:30:20

15 money to the payee of a check, and that was what they 04:30:23

16 thought. That's why I feel that that linguistic 04:30:28

17 bridge, I like to call it, and the morphing of the 04:30:34

18 term is -- is good indication of a legislative history 04:30:40

19 of it, I think. 04:30:47

20 Q. (BY MR. ROSENTHAL) But that's all 04:30:48

21 circumstantial as far as you're concerned? 04:30:50

22 MS. AHUMADA: Objection, it's getting 04:30:52

23 argumentative and he's asked and he's answered. 04:30:53

24 MR. ROSENTHAL: I'll still ask the 04:30:55

25 question. 04:30:57

REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, TRACY R. STONEHOCKER, Certified Realtime Reporter, Registered Professional Reporter and Notary Public ID 19924009337, State of Colorado, do hereby certify that previous to the commencement of the examination, the said BARKLEY CLARK was duly sworn or affirmed by me to testify to the truth in relation to the matters in controversy between the parties hereto; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my signature this 22nd day of October, 2018.

My commission expires June 12, 2020.

- Reading and Signing was requested.
- Reading and Signing was waived.
- Reading and Signing was not required.

*Tracy Stonehocker*

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SUPREME COURT OF THE UNITED STATES

\* \* \* \* \*

DELAWARE,

Plaintiff

vs.

ARKANSAS, et al.,

Defendants

\*

\*

\* Case Nos.

\* 220145 & 220146

\* (Consolidated)

\*

\*

\* \* \* \* \*

DEPOSITION

OF

ALEX KAUFFMAN

June 21, 2018

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1 representing the witness.

2 ATTORNEY VOSS:

3 Joshua Voss of the Kleinbard firm

4 representing the Commonwealth of Pennsylvania.

5 ATTORNEY ROSENTHAL:

6 Steve Rosenthal of the firm of Loeb and

7 Loeb also representing the State Of Delaware.

8 ATTORNEY TALIAFERRO:

9 And on the telephone?

10 ATTORNEY DISHER:

11 Todd Disher with the Texas Attorney

12 General's Office.

13 ATTORNEY O'KORN:

14 Keith O'Korn with the Ohio Attorney

15 General's Office.

16 ATTORNEY TALIAFERRO:

17 And any other counsel on the telephone?

18 ---

19 EXAMINATION

20 ---

21 BY ATTORNEY TALIAFERRO:

22 Q. And Mr. Kauffman, could you state your name for  
23 the record?

24 A. It's Alex Kauffman.

25 Q. And who is your employer?

1 Q. One more thing I forgot to mention. The court  
2 reporter can't record the difference between uh-huh  
3 and uh-uh.

4 A. Okay.

5 Q. So it's important that you answer questions that  
6 are yes or no with a yes or no answer so the record is  
7 clear.

8 Mr. Kauffman, I've handed you a subpoena to  
9 testify at a deposition in a civil case.

10 ---

11 (Whereupon, Plaintiff Deposition Exhibit 70,  
12 Subpoena, was marked for identification.)

13 ---

14 BY ATTORNEY TALIAFERRO:

15 Q. Do you have that document in front of you?

16 A. I do.

17 Q. Have you ever seen it before?

18 A. Yes.

19 Q. Do you understand that you are here today as a  
20 corporate representative of Treasury Services Group?

21 A. Yes.

22 Q. Do you understand what that means?

23 A. Yes.

24 Q. And what does that mean?

25 A. That I'm legally representing the organization.

1 Q. And do you understand that your answers that you  
2 give today are answers of the organization itself?

3 A. Yes.

4 Q. Could you turn to the topics of deposition which  
5 is the second to last and last page of the --- of the  
6 paper? Do you understand from your counsel that she  
7 and I have reached an agreement not to ask you  
8 questions about topic number four today, which is  
9 communications with Defendant States regarding the  
10 unclaimed property examination of MoneyGram official  
11 checks?

12 A. Yes.

13 Q. And do you understand that Treasury Services  
14 Group would be asked at a later date to confirm the  
15 authenticity of certain documents sent from TGS to  
16 states or from states to TSG?

17 A. Yes.

18 Q. With the exception of topic number four, are you  
19 prepared to discuss all of the topics listed on the  
20 subpoena?

21 A. Yes.

22 Q. What did you do to prepare to testify regarding  
23 these topics?

24 A. I reviewed documents and discussed with my  
25 counsel.

1 Q. Okay.

2 Other than your counsel did you meet with anyone?

3 A. No.

4 Q. Did you confer with Mr. Osborn about any of the  
5 topics listed on the subpoena?

6 A. Yeah, we discussed it.

7 Q. Is there any topic listed on the subpoena that  
8 you're not prepared to discuss today putting to one  
9 side number four?

10 A. No.

11 Q. What is your job title at --- I'll withdraw the  
12 question.

13 If I use the term TSG just to make things a  
14 little easier today, you understand I'm referring to  
15 Treasury Services Group?

16 A. Yes.

17 Q. What is your job title at TSG?

18 A. I'm the president.

19 Q. And what are your responsibilities?

20 A. I oversee the staff and the day to day conduct of  
21 audits.

22 Q. And when did you join TSG?

23 A. We started in 2012.

24 Q. And what did you do before starting TSG?

25 A. I --- immediately prior I worked for USDA Rural



1 Development.

2 Q. And how long did you work for USDA?

3 A. I believe four years.

4 Q. That takes us back to about 2008. What did you  
5 do before that?

6 A. I worked in the Nebraska State Treasurer's  
7 Office.

8 Q. And what were your responsibilities in the  
9 Nebraska State Treasurer's Office?

10 A. I oversaw the Unclaimed Property Division.

11 Q. And how long did you have that job?

12 A. I had it for four years. And I should say that  
13 there was some overlap between USDA and Treasury  
14 Services Group.

15 Q. Are you a member of Treasury Services Group?

16 A. Yes.

17 Q. Who are the other members of Treasury Services  
18 Group?

19 A. Shane Osborn, the Ashcroft Group, and a couple  
20 individuals form the Ashcroft organization.

21 Q. What's the percentage membership stake of the  
22 Ashcroft Group and individuals from the Ashcroft Group  
23 or law firm combined?

24 A. I believe 28 percent.

25 Q. And is the balance held by you and Mr. Osborn?

1 A. That's right.

2 Q. What was your role in the examination of  
3 MoneyGram official checks that TSG performed on behalf  
4 of its client states?

5 A. I personally conducted the review and managed the  
6 audit.

7 Q. Were there any other individuals at TSG with  
8 responsibilities on the audit that --- excuse me.  
9 Strike that question.

10 Were there any other individuals at TSG that  
11 worked on the audit?

12 A. Yes.

13 Q. Who were they?

14 A. Pretty much most of the staff contributed in some  
15 form or another, either helping to contact the states  
16 or analyze data. It was a team effort.

17 Q. Other than you could you name one individual that  
18 had the second most responsibility for the  
19 examination?

20 A. Shane Osborn.

21 Q. And then after Mr. Osborn who would you say had  
22 the next amount of responsibility for the exam?

23 A. Our audit manager, Avalina Buikema.

24 COURT REPORTER:

25 Could you say the name again?

1 THE WITNESS:

2 Avalina, A-V-A-L-I-N-A, Buikema,

3 B-U-I-K-E-M-A.

4 BY ATTORNEY TALIAFERRO:

5 Q. Mr. Kauffman, I've just handed you three exhibits  
6 marked Exhibit 71, 72, and 73. And I'm going to ask  
7 you questions about each of them. But given their  
8 similarities I'm going to --- it'd be easier just to  
9 --- to do all three at once.

10 ---

11 (Whereupon, Plaintiff Deposition Exhibit 71,  
12 8/29/14 Letter to Mr. Holmes, was marked for  
13 identification.)

14 (Whereupon, Plaintiff Deposition Exhibit 72,  
15 8/1/14 Letter to Mr. Holmes, was marked for  
16 identification.)

17 (Whereupon, Plaintiff Deposition Exhibit 73,  
18 Letter from Mr. Angus, was marked for  
19 identification.)

20 ---

21 BY ATTORNEY TALIAFERRO:

22 Q. Exhibit 71 is a letter from Yaw Obeng of the Ohio  
23 Department of Commerce. Do you have that in front of  
24 you?

25 A. I do.

1 Q. Do you know who --- or who --- I don't know if  
2 that is a man or a woman. But do you know if that is  
3 a man or a woman?

4 A. It's a man.

5 Q. It's a man. Okay.

6 And who is Mr. Obeng?

7 A. He is the superintendent of the Unclaimed  
8 Property Program for the State of Ohio.

9 Q. Have you ever seen this letter before?

10 A. Yes.

11 Q. And what is this letter?

12 A. This is an audit authorization letter or  
13 initiation letter we sometimes call it which informs  
14 that a company, or as we call them a holder, that  
15 they're under audit.

16 Q. All right.

17 If you could look at the first sentence of the  
18 second paragraph, it reads the examination will be  
19 conducted by APEX, a division of Treasury Services  
20 Group, LLC parentheses contractor as an authorized  
21 representative of the state.

22 Who --- who is APEX?

23 A. APEX was a company that we acquired and held  
24 contracts for certain states through for a period of  
25 time.

1 Q. Is APEX still active?

2 A. No. All the contracts have subsequently been  
3 reassigned to TSG.

4 Q. Do you understand from this letter that Mr. Obeng  
5 is informing Alex Holmes of MoneyGram that Treasury  
6 Services Group is an authorized representative of the  
7 state?

8 A. Right. Correct.

9 Q. If you look at Exhibit 72 which is a letter from  
10 Brian Munley of the Pennsylvania Treasury to Mr.  
11 Holmes.

12 Have you seen this letter before?

13 A. Yes.

14 Q. If you could look at the first sentence of the  
15 second paragraph of that letter it says this letter  
16 shall constitute authority for TSG to identify,  
17 collect, and report all unclaimed property due and  
18 payable to Treasury.

19 Do you see that sentence?

20 A. Yes.

21 Q. And what do you understand Mr. Munley to be  
22 saying in that sentence?

23 A. That Treasury Services Group will conduct an  
24 audit and collect and deliver any identified reported  
25 property.

1 Q. And what --- the word specifically authority,  
2 what authority is Mr. Munley giving to TSG with that  
3 sentence?

4 A. The state statutory authority to appoint auditors  
5 to conduct examinations.

6 Q. If you could look at Exhibit 73, that's a letter  
7 from Matthew Angus from the Texas Comptroller of  
8 Public Accounts to Alex Holmes of MoneyGram.

9 Do you have that letter in front of you?

10 A. Yes.

11 Q. And if you could look at the first sentence of  
12 the second paragraph of that letter, it says the audit  
13 and examination will be conducted by Treasury Services  
14 Group as the state's authorized agent.

15 Do you have an understanding of what it means to  
16 be an agent of the state?

17 A. Yes.

18 Q. And what do you understand that to be?

19 A. That Treasury Services Group will act on the  
20 state's behalf to conduct an audit.

21 Q. One question about the Texas letter. There's ---  
22 there's no date on it. Do you have any understanding  
23 --- the --- the other two letters that I've shown you  
24 are dated August 1 and August 29th of 2014.

25 Do you have an understanding of when the Texas

1 letter would've been sent?

2 A. I don't recall. I'm sorry.

3 Q. Would it have been around the same time period,  
4 summer of 2014?

5 A. I would think so.

6 Q. Was --- let me ask this.

7 Was Texas an original client state in this

8 examination or an add-on client state in this  
9 examination?

10 A. I believe they were original.

11 Q. When conducting this examination, did TSG  
12 understand that its actions as an agent could bind its  
13 principles to states?

14 A. Yes.

15 Q. And that its actions could bind the states by  
16 words --- sorry. Strike that question.

17 That TSG could bind the states by words or  
18 actions?

19 ATTORNEY VOSS:

20 Objection.

21 ATTORNEY TALIAFERRO:

22 You can answer.

23 ATTORNEY DISHER:

24 Objection. Calls for legal conclusion.

25 COURT REPORTER:

1 Who --- who was that?

2 ATTORNEY TALIAFERRO:

3 Todd Disher.

4 COURT REPORTER:

5 Okay.

6 ATTORNEY O'KORN:

7 Same objection from Ohio.

8 THE WITNESS:

9 I'm not sure I understand the question.

10 BY ATTORNEY TALIAFERRO:

11 Q. Well I asked you if you under --- well, let me  
12 back up a minute.

13 Did you understand that Treasury Services Group  
14 was acting as an agent of its client states?

15 A. Yes.

16 Q. And what did you understand that to mean?

17 ATTORNEY DISHER:

18 Same objection.

19 ATTORNEY O'KORN:

20 Same objection.

21 ATTORNEY VOSS:

22 Join.

23 ATTORNEY TALIAFERRO:

24 You can answer.

25 THE WITNESS:



1 We have limited authority I believe to  
2 conduct an audit. We don't have the authority to  
3 represent the states in legal matters and our  
4 contracts require us to receive approval or, you know,  
5 advanced notice to the states of certain actions. So  
6 I'd say in a very limited capacity we act as an agent  
7 of the state.

8 BY ATTORNEY TALIAFERRO:

9 Q. Okay.

10 And within that capacity, understand the  
11 limitations that you've put, but within that capacity  
12 does TSG understand that the authority that is  
13 delegated to it by the states means that its actions  
14 are actions of the states?

15 ATTORNEY VOSS:

16 Objection.

17 ATTORNEY DISHER:

18 Objection. Calls ---

19 ATTORNEY O'KORN:

20 Objection.

21 ATTORNEY DISHER:

22 --- for legal conclusion.

23 ATTORNEY O'KORN:

24 Same objection from Ohio.

25 THE WITNESS:

1 I believe we were allowed and supposed  
2 to conduct an audit on the state's behalf.

3 BY ATTORNEY TALIAFERRO:

4 Q. In conducting that audit did you --- did Treasury  
5 Services Group believe that its conclusions were  
6 conclusions of its client states?

7 A. Limited to the scope of the audit. Yes.

8 Q. Now I --- I have additional state authorization  
9 letters which I --- I don't think would be any --- any  
10 interest to go through. But I'll just ask are you  
11 aware of any authorization letter in the summer of  
12 2014 that did not refer to TSG as the state's  
13 representative or agent?

14 A. I don't believe so.

15 Q. How did this examination start?

16 A. We were contacted by the State Of Arkansas who  
17 had, I understand, previously corresponded with  
18 MoneyGram about this issue. And they asked us to  
19 conduct a review to dig deeper into the issues and to  
20 try to quantify what the liability for this type of  
21 property might be.

22 Q. And so it's fair to say that the issue was first  
23 presented or came to the attention of TSG through the  
24 State of Arkansas?

25 A. Correct.

1 Q. And once Arkansas had asked TSG to do the  
2 examination how did other states become aware of the  
3 examination?

4 A. We invited all of our other client states to  
5 participate in the audit.

6 Q. At the time that the audit was initiated how many  
7 client states did TSG have?

8 A. I don't remember. I'm sorry.

9 Q. Did every client state that TSG had at the time  
10 join the examination?

11 A. I don't believe so.

12 Q. Do you --- can you recall any states that did not  
13 join the examination?

14 A. I can't off the top of my head.

15 Q. Did a majority of the states join the  
16 examination?

17 A. Yes.

18 Q. And is the August dates that we looked at on the  
19 authorization letter, is that consistent with your  
20 understanding of when the examination began?

21 A. Yes.

22 Q. How many face-to-face meetings did TSG have with  
23 MoneyGram during the course of the examination?

24 A. None.

25 Q. How many face-to-face meetings did TSG have with

1 Hopefully I don't really need the documents.

2 ---

3 EXAMINATION

4 ---

5 BY ATTORNEY VOSS:

6 Q. Do you recall as part of your analysis of the  
7 official checks escheated to Delaware if you did an  
8 analysis of how many of those checks were purchased in  
9 Delaware?

10 A. Yes. We did.

11 Q. Do you know what percentage of the total of those  
12 checks escheated to Delaware were purchased in  
13 Delaware?

14 A. I believe about one percent.

15 Q. One percent?

16 If I could direct you to 103, Exhibit 103, and  
17 specifically I want to send you to page ALF Bates  
18 1796. One, two, third paragraph down, first sentence.  
19 And it says less than one half of one percent of all  
20 official check properties escheated to the State of  
21 Delaware were actually purchased in Delaware.

22 Do you see that?

23 A. Yeah. I'm sorry.

24 Q. Do you think the percentage, after having looked  
25 at this document, was closer to one half of one

1 percent?

2 A. You're correct.

3 Q. Also, in this document although there's  
4 discussion about checks escheated to Minnesota.

5 Do you recall that?

6 A. Yes.

7 Q. And as part of your audit did you do an analysis  
8 of MoneyGram official checks escheated to Minnesota?

9 A. Yes.

10 Q. Did you subsequently make a demand on Minnesota  
11 for your respective client states?

12 A. Yes.

13 Q. What was the outcome of that demand?

14 A. Minnesota paid those state the amount that had  
15 been erroneously reported to Minnesota.

16 Q. Is it your understanding that the checks  
17 escheated to Minnesota were also travelers' checks and  
18 agent checks?

19 ATTORNEY TALIAFERRO:

20 Object to the form of the question.

21 ATTORNEY VOSS:

22 Yes. Let me correct --- that's a bad  
23 question.

24 BY ATTORNEY VOSS:

25 Q. Is it your understanding that the checks

1 escheated to Minnesota were teller's checks and agent  
2 checks?

3 A. Yes.

4 Q. And those are the same instruments that were  
5 escheated to Delaware?

6 A. Yes.

7 Q. With a different result?

8 A. Correct.

9 ATTORNEY VOSS:

10 No further questions.

11 ATTORNEY DISHER:

12 This is Todd Disher. I don't have any  
13 questions.

14 ATTORNEY O'KORN:

15 Yeah. This is Keith O'Korn. I --- I  
16 don't have any questions at this time either.

17 ATTORNEY TALIAFERRO:

18 Two Redirect questions.

19 ---

20 RE-EXAMINATION

21 ---

22 BY ATTORNEY TALIAFERRO:

23 Q. Mr. Kauffman, when Minnesota redistributed the  
24 money that MoneyGram had escheated to it did they pay  
25 interest on the amounts to the states that they ---

1 COMMONWEALTH OF PENNSYLVANIA )

2 COUNTY OF CAMBRIA )

3

4 CERTIFICATE

5 I, Cynthia Piro Simpson, a Notary Public in  
6 and for the Commonwealth of Pennsylvania, do hereby  
7 certify:

8 That the witness, Alex Kauffman, whose  
9 testimony appears in the foregoing deposition, was  
10 duly sworn by me on 6/21/18 and that the transcribed  
11 deposition of said witness is a true record of the  
12 testimony given by said witness;

13 That the proceeding is herein recorded fully  
14 and accurately;

15 That I am neither attorney nor counsel for,  
16 nor related to any of the parties to the action in  
17 which these depositions were taken, and further that I  
18 am not a relative of any attorney or counsel employed  
19 by the parties hereto, or financially interested in  
20 this action.

21 Dated the 9th day of July, 2018

22

23 Cynthia Piro Simpson

24

**DELAWARE vs ARKANSAS, ET AL.**  
**Ronald J. Mann on 11/09/2018**

1 SUPREME COURT OF THE UNITED STATES

2

3 Nos. 220145 & 220146 (Consolidated)

4 -----x

5 DELAWARE,

6 Plaintiff,

7 -against-

8

9 ARKANSAS, et al.,

10 Defendants.

11 -----x

12

13

14 VIDEOTAPED DEPOSITION OF

15 RONALD J. MANN

16 New York, New York

17 Friday, November 9, 2018

18

19

20

21 Reported by

22 Roberta Caiola

23

24

25



1 on behalf of the State of Ohio. An attorney  
2 for Ohio Claims Fund Division may call in,  
3 if she does I'll have her introduce herself.

4 MR. DISHER: Thank you.

5 BY MR. DISHER:

6 Q. Professor Mann, can you introduce  
7 yourself to the court, please?

8 A. I'm Ronald Mann, I'm from Columbia Law  
9 School.

10 Q. Professor Mann, you understand you're  
11 giving your deposition today?

12 A. I do.

13 Q. And the testimony you give today is  
14 under oath; do you understand that?

15 A. I do.

16 Q. And it carries with it the same pains  
17 and penalties of perjury as if you were  
18 testifying live in court today; do you understand  
19 that?

20 A. I do.

21 Q. All right. A few ground rules before  
22 we get going. I am going to do my best to not  
23 talk over any of your answers, and if you can do  
24 your best to not talk over any of my questions  
25 that would help our court reporter; is that fair?

1 on the MoneyGram official checks evaluated in  
2 this report, is that your opinion?

3 A. Yes.

4 Q. Then second, related to that, it is  
5 your opinion that neither a bank nor MoneyGram is  
6 directly liable on the MoneyGram money orders  
7 evaluated in this report, is that correct?

8 A. That's correct.

9 Q. And that's still your opinion today?

10 A. Yes.

11 Q. Second, your opinion is that official  
12 checks differ from money orders in the indirect  
13 liability of banks to pay, is that correct?

14 A. That is correct.

15 Q. And official checks differ from money  
16 orders and the terms and conditions that they  
17 bear on their face, is that fair?

18 A. That is correct.

19 Q. And that's still correct today?

20 A. Yes.

21 Q. Then lastly, it is your opinion that  
22 the statutory reference to third-party bank  
23 checks is obscure. Is that still your opinion  
24 today?

25 A. It is.

1 directly to the payee, that does not affect the  
2 UCC liability scheme as it relates to these  
3 instruments, does it?

4 A. It might affect some aspects of  
5 liability for causes of action like conversion,  
6 but it wouldn't affect any of the liabilities  
7 that I discuss in the report.

8 Q. Thank you. Let's talk about your  
9 background briefly. What do you do for a living  
10 now?

11 A. I'm a law professor at Columbia Law  
12 School, where I teach courses about various  
13 aspects of commercial law.

14 Q. How long have you been a law professor?

15 A. This is my 25th year.

16 Q. Have you ever taught a class about  
17 unclaimed property or escheatment?

18 A. I have not.

19 Q. Have you ever included topics in any of  
20 your classes about unclaimed property or  
21 escheatment?

22 A. I have not.

23 Q. Have you ever written any scholarly  
24 works about unclaimed property or escheatment?

25 A. I have not.

1 Q. Have you ever given any presentations  
2 about unclaimed property or escheatment?

3 A. I have not.

4 Q. Do you consider yourself an expert on  
5 the areas of unclaimed property and escheatment?

6 A. I do not.

7 Q. Now, if we look at your report on  
8 paragraph 7. If you see the last sentence of  
9 paragraph 7, you discuss ongoing interviews with  
10 industry participants, do you see that?

11 A. I do.

12 Q. Have you had any discussions with any  
13 industry participants about the issues in this  
14 case?

15 A. I have not.

16 Q. Have you had any discussions with  
17 industry participants about unclaimed property or  
18 escheatment practices?

19 A. I have not.

20 Q. Have you ever served as an expert  
21 witness in a case involving unclaimed property  
22 law or escheatment?

23 A. I have not.

24 Q. Have you ever been involved in a case  
25 related to a money transmitter?

1 favor of the party that I opposed. I don't think  
2 it's easy to say whether the final decision of  
3 the appellate court rejected my opinion or not.  
4 I rather think it didn't, but reasonable minds  
5 can differ about that.

6 Q. Okay. What about in terms of a court  
7 actually excluding your opinions, has that ever  
8 happened?

9 A. Probably not, but to answer it  
10 completely. I was in one trial where I was  
11 testifying, asked a question, and after a  
12 substantial amount of debate the judge decided  
13 that I should not be allowed to answer that  
14 question. It was not a case in which I had  
15 prepared a written report.

16 The judge determined the question was  
17 so close to the ultimate question of fact that I  
18 should not be allowed to answer it, and so I  
19 didn't answer it. But then the attorney asked a  
20 quite similar question to which I gave the same  
21 answer as I would have given to the previous  
22 question, and the judge admitted that answer.

23 Q. Have you ever offered any opinions as  
24 an expert witness related to this idea of direct  
25 liability, as you have defined it?

1 A. I have not.

2 Q. Have you ever authored any scholarly  
3 works that discuss this idea of direct liability,  
4 as you have defined it?

5 A. I have not.

6 Q. Have you ever taught any classes that  
7 may have covered the topic of direct liability,  
8 in the way that you have defined it?

9 A. Every time that I teach a class about  
10 payment systems I discuss cashier's checks and  
11 teller's checks, and the ways in which the  
12 parties on those instruments are liable, and how  
13 those liabilities resemble or differ from the  
14 liability on conventional checks.

15 Q. In those classes do you use the phrase  
16 direct liability?

17 A. I do not.

18 Q. I want to talk about the materials that  
19 you reviewed in order to prepare this report.  
20 Did you review, well first let me just ask you,  
21 are all of the materials that you reviewed -- let  
22 me say it a different way.

23 Are all of the materials that you  
24 relied on to form these opinions cited in this  
25 report?

1 affixed with the intent to accept liability, and  
2 arguably the reference to MoneyGram could be  
3 regarded as a signature.

4 Q. Okay. Does that mean that Elizabethton  
5 and MoneyGram have identical liability on this  
6 instrument?

7 A. It does not mean that.

8 Q. How is their liability different on  
9 this instrument?

10 A. Well, in the first instance, if  
11 MoneyGram has not signed the instrument then they  
12 can't have any liability on it. If the  
13 description of MoneyGram as the issuer is a  
14 signature, then MoneyGram would have liability as  
15 an issuer.

16 Q. And is the liability of an issuer on a  
17 draft the same as the liability of a drawer on a  
18 draft?

19 A. The liability of the issuer of a  
20 cashier's check would be the same as the  
21 liability of a drawer -- I'm sorry, let me  
22 rephrase.

23 The liability of the issuer of a  
24 teller's check would be the same as the liability  
25 of the drawer of the teller's check, but if both

1 parties are on the check their responsibility  
2 between themselves might differ.

3 Q. What would we look at to determine what  
4 the responsibilities are between a listed drawer  
5 and a list the issuer?

6 A. Well, first you have to determine  
7 whether the issuer in fact is liable as an  
8 issuer, which depends on whether the indication  
9 of MoneyGram in the lower left-hand corner counts  
10 as a signature. If both parties signed it then,  
11 as against anybody that was a person entitled to  
12 enforce the instrument, they would have identical  
13 liability.

14 If one or the other of them paid the  
15 instrument to a person -- I'm sorry, if one or  
16 the other of them, you know, paid a person  
17 entitled to enforce the instrument, then the  
18 person who paid it might be able to pursue the  
19 other person, arguing that the other person was  
20 primarily liable, and that the person that paid  
21 it was secondarily liable.

22 Q. What would determine between the two  
23 parties who had primary liability and who had  
24 secondary liability?

25 A. The relations involved in the issuance



1 of the instrument.

2 Q. Would that be governed by, for example,  
3 the contract between the two entities?

4 A. That would be relevant.

5 Q. So the contract between Elizabethton  
6 Federal and MoneyGram could determine who had  
7 primary and who had secondary liability as the  
8 drawer or issuer?

9 A. Yes.

10 Q. Let's look at the first page of 119.  
11 What is this instrument?

12 A. It is an image of a product issued by  
13 MoneyGram that's characterized on its face as a  
14 personal money order.

15 Q. How would you define this instrument  
16 under the UCC?

17 A. I would characterize it as a check.

18 Q. Why is that?

19 A. Because it's a draft and it's drawn on  
20 a bank.

21 Q. Does this meet the definition in the  
22 UCC of a cashier's check?

23 A. It does not.

24 Q. Does this meet the definition in the  
25 UCC of a teller's check?

1 Q. Okay.

2 A. I think in the context of demands for  
3 production people tend, and some law firms at  
4 least, to err on the side of producing everything  
5 that could possibly be relevant, even if it's  
6 arguably nonresponsive, and I would characterize  
7 some of the things on this list as nonresponsive,  
8 in the sense that I did not consider them in  
9 forming my opinion.

10 There are other things that are on this  
11 list that are similarly nonresponsive, such as  
12 versions of statutes that they don't know that I  
13 looked at because I didn't put them in my report,  
14 because I didn't find them of interest.

15 Q. One of those things that you reviewed,  
16 but didn't find anything of interest, was various  
17 versions of the Uniform Unclaimed Property Act?

18 A. Yes.

19 Q. Let's look at a few more documents and  
20 they may answer some of these questions. I'm  
21 just going to walk through a couple of them.

22 (Exhibit 123, Document Bates stamped  
23 ALF00002365 through ALF00002387, marked for  
24 identification.)

25 Q. Here is Exhibit 123. I believe that

1 this is one of the documents on the list?

2 A. Yes. And I mention this in my report  
3 in paragraph 68.

4 Q. Where is it mentioned?

5 A. Paragraph 68.

6 Q. Got it. So you mention Exhibit 123 in  
7 the context of it putting forth the Delaware  
8 State escheater, referring to third-party bank  
9 checks as teller's checks, right?

10 A. Is there a question?

11 Q. Yes. You only cited to Exhibit 123 as  
12 the source for this idea that Delaware's putting  
13 forth, which is that a third-party bank check may  
14 mean teller's checks?

15 A. That's the only context in which I  
16 mention this letter, yes.

17 Q. Is that the only context in which this  
18 played any role in you developing your opinions  
19 reflected in your report?

20 A. Yes.

21 (Exhibit 124, Telegraph Agency Handbook  
22 January 1962, marked for identification.)

23 Q. Let me show you Exhibit 124. Have you  
24 seen this document before?

25 A. I don't think so.

1 A. Yes.

2 Q. In 19 sub A you say MoneyGram is not  
3 directly liable on MoneyGram money orders  
4 evaluated in this report, right?

5 A. With respect to the ones that I had  
6 seen, that's correct.

7 Q. You say that a bank is not directly  
8 liable on MoneyGram money orders evaluated in  
9 this report, is that correct?

10 A. That's correct.

11 Q. Do you know whether Western Union is  
12 directly liable on Western Union money orders?

13 MS. MOSELEY: Objection, scope.

14 A. Based on the instruments that you just  
15 handed to me, I can say that Western Union's  
16 liability on its money orders is no more direct  
17 than the liability of MoneyGram on its money  
18 orders.

19 Q. Okay. Do you know whether a bank is  
20 directly liable on Western Union money orders?

21 MS. MOSELEY: Same objection.

22 A. And I would have the same answer.

23 Q. In paragraph 20 you say, "I understand  
24 the retail money orders and agent check money  
25 orders to be money orders within the language of

1 the statute." Did I read that right?

2 A. Yes.

3 Q. Is that your opinion?

4 A. I was told by counsel for Delaware, the  
5 people at Loeb & Loeb, that those two products  
6 were being treated as money orders, and they  
7 weren't a matter of dispute in this litigation.  
8 So I'm reporting that I understand that what  
9 counsel told me is correct.

10 Q. Do you have any reason to dispute that?

11 A. I do not.

12 Q. Have you done any analysis of agent  
13 check money orders or retail money orders that  
14 would make you of the opinion that they are not  
15 subject to the statute?

16 MS. MOSELEY: Objection scope.

17 A. I have no reason to think that they  
18 should not be subject to the statute. I simply  
19 wrote that in the report because they told me  
20 that it was true.

21 Q. All right. But you have no reason to  
22 dispute that they should not be subject --

23 A. If I had reason to dispute it I  
24 wouldn't have put it in the report.

25 Q. Let me just finish my question first,

1 if you could.

2 You have no reason to dispute that  
3 retail money orders and agent check money orders  
4 are subject to the statute?

5 MS. MOSELEY: Objection; asked and  
6 answered.

7 A. I have no reason to dispute that.

8 Q. And if you had reason to dispute that,  
9 I think you just said you would not have put that  
10 in your report?

11 A. If I had a reason to dispute it I would  
12 have explained in the report that they had told  
13 me this, but that I doubted it was true.

14 Q. Okay, thanks. In your opinion, what  
15 does the phrase direct, well, let me use the  
16 specific phrase of the statute.

17 In your opinion, what does it mean for  
18 an entity to be directly liable on an instrument?

19 A. I think that the most natural meaning  
20 of references to parties being directly liable on  
21 an instrument is to describe liability that is  
22 categorical and unqualified, and depends only on  
23 the presentation of the instrument.

24 Q. What is your source for that opinion?

25 A. A variety of things, most of which are

1 mentioned in the report. The primary one being  
2 that the scheme of liability in Uniform  
3 Commercial Code for instruments involves some  
4 types of liability that depend solely on seeking  
5 payment, and other types of liability that depend  
6 on a variety of external circumstances, such as  
7 the instrument previously being dishonored by the  
8 party on which it's drawn.

9 And the ones where the liability is  
10 categorical and unqualified strike me as more  
11 direct than the ones in which liability depends  
12 on, among other things, the instrument previously  
13 being dishonored by the party in which its drawn.

14 Q. Okay. Does the phrase directly liable  
15 for direct liability exist in the UCC?

16 A. It does not appear in Article 3 of the  
17 UCC.

18 Q. Is that true for all of the prior  
19 versions of Article 3 as well?

20 A. As far as I am aware.

21 Q. How can we tell if a party is directly  
22 liable on an instrument, as you have defined  
23 direct liability?

24 A. If you take the references to entities  
25 being directly liable to have the meaning I

1 mentioned a moment ago, you would look to the  
2 provisions of Article 3 that define the liability  
3 of parties on an instrument, and you would look  
4 through them to find the types of liability that  
5 don't depend on dishonored, or some other prior  
6 act. And I do that in my report.

7 Q. Okay. Now, in your report you give,  
8 let me find it here, okay. In paragraph 28 you  
9 say "To put those rules in context."

10 Those rules you're referring to there  
11 are the UCC rules that you just mentioned, is  
12 that right?

13 A. That is correct.

14 Q. So, "To put those rules in context  
15 there is one common banking product on which a  
16 banking organization is directly liable, a  
17 cashier's checks." Did I read that right?

18 A. You did.

19 Q. That's still your opinion?

20 A. That is my opinion.

21 Q. So other than a cashier's check, what  
22 other types of instruments carry with them direct  
23 liability?

24 A. Any type of instrument on which an  
25 acceptor has undertaken liability.



1 Q. Explain that a little bit for me?

2 A. A certified check.

3 Q. A certified check, okay. Anything  
4 else?

5 A. Well, a variety of other things.  
6 Anything in which a draft has been accepted by  
7 the drawee, a bill of exchange, a banker's  
8 acceptance.

9 Q. What do you mean by banker's  
10 acceptance?

11 A. That's the type of negotiable  
12 instrument that's created in a transaction called  
13 a banker's acceptance transaction.

14 Q. Okay. I have so far cashier's checks,  
15 which are listed in your report, certified  
16 checks. Why does a certified check carry with it  
17 direct liability?

18 A. Because the contract with the acceptor  
19 under 3409 is to pay the instrument when it's  
20 presented.

21 Q. When you say the contract under 3409,  
22 who is that contract between?

23 A. The provisions of part 4 of UCC Article  
24 3 create liability based on signatures on an  
25 instrument, which ordinarily is referred to as

1 contract liability. The person that signs in the  
2 capacity of an acceptor has accepted the  
3 liability described in UCC section 3409, and that  
4 liability is to pay the instrument.

5 Q. What does it mean to be an acceptor?

6 A. Generally speaking, acceptance is a  
7 signed agreement of a drawee to pay a draft.

8 Q. Signed agreement of a drawee to pay a  
9 draft?

10 A. Yes.

11 Q. What does that agreement typically look  
12 like?

13 A. It looks like a signature.

14 Q. On the face of the draft?

15 A. On the face of the draft, yes, or on an  
16 instrument attached to the draft.

17 Q. Does it have to be either on the draft  
18 or on an instrument attached to the draft?

19 A. I think I said document attached to the  
20 draft. It has to be a part of the draft. So it  
21 can be on the face of the draft or on an allonge  
22 attached to the draft.

23 Q. It can't be an extraneous contract that  
24 exists somewhere else?

25 A. That is correct.

1 Q. Then you mentioned a draft accepted by  
2 a drawee, that's after the instrument has been  
3 presented and the drawee has then accepted it?

4 A. It isn't necessary that it had been  
5 presented, I think. I think it's necessary that  
6 the drawee sign it and agreed to pay it.

7 Q. In that context does the drawee need to  
8 be a bank?

9 A. It does not.

10 Q. Then you said a banker's acceptance?

11 A. Yes.

12 Q. What is that?

13 A. It's a time draft that is accepted by a  
14 bank. It is commonly used to finance the sale of  
15 good transactions in international commerce.

16 Q. So cashier's checks, certified checks,  
17 draft accepted by drawee and banker's acceptance,  
18 we have those four examples of an instrument that  
19 carries with it direct liability. Can you think  
20 of any others?

21 A. A bill of exchange.

22 Q. What is a bill of exchange?

23 A. We discussed that already in the  
24 report. It's a draft that's drawn on a business,  
25 and if the business accepts the draft then they

1 would have direct liability on it. It would be  
2 used as a way to finance the sale of goods, so  
3 that the person agreeing to make payment would  
4 have an opportunity to sell the goods, before  
5 they would be obligated to pay on the draft.

6 Q. Anything else?

7 A. Those are the examples that occur to  
8 me.

9 Q. In order for an instrument to carry  
10 with it direct liability, it sounds like certain  
11 things have to be apparent from the face of the  
12 instrument, or something that is attached to the  
13 instrument, is that fair?

14 MS. MOSELEY: Objection.

15 A. Under the UCC there can be no liability  
16 on an instrument without a signature, and  
17 different types of signatures carry with them  
18 different types of liability. So the types of  
19 signatures that carry with them the liability  
20 that I'm characterizing as direct would carry  
21 that type of liability, and other types of  
22 signatures would carry different types of  
23 liability, and absence of a signature would carry  
24 with it no liability of the instrument.

25 Q. Those signatures have to be on the face

1 of the document?

2 A. They don't have to be on its face, they  
3 could be on the front, they could be on the bank,  
4 or they could be on an allonge that becomes part  
5 of the draft.

6 Q. Got it. A cashier's checks carries  
7 direct liability, but a teller's check does not  
8 carry direct liability, is that right, as you've  
9 defined the term?

10 A. If you're using direct liability in the  
11 way in which I have suggested, a teller's check  
12 is not an instrument on which any party is  
13 directly liable for.

14 Q. What about a money order?

15 A. The money orders examined in this  
16 report are not instruments on which any party is  
17 directly liable.

18 Q. I should have asked you this a long  
19 time ago. Do you have a definition of money  
20 order?

21 A. The UCC doesn't use money order as a  
22 way to define liability instruments. It refers  
23 to money order generally as a term that is used  
24 in business commerce to describe products, and  
25 then it leaves it to the actual nature of the

1 instrument, for us to decide what the rules are  
2 of the UCC and what type of instrument could be  
3 in the UCC.

4 Which leaves open the possibility that  
5 an instrument could be marketed and sold as a  
6 money order, and be any of a variety of types of  
7 instruments for purposes of the Uniform  
8 Commercial Code.

9 Q. What are some of the types of  
10 instruments that could be marketed and sold as a  
11 money order?

12 A. Well, a money order could, without a  
13 great deal of difficulty, be either a regular  
14 conventional check, that is neither a cashier's  
15 check nor a teller's check. It could relatively  
16 easily be a teller's check or it could simply be  
17 a draft.

18 Q. Now, you distinguished between draft  
19 and checks and draft and teller's checks. What  
20 is a draft?

21 A. A draft of a UCC is an instrument that  
22 includes an order. I think that answer might not  
23 be particularly illuminating. So what I would  
24 say is that a check is a draft that is drawn on a  
25 bank. So you had something that functioned much

1 like a check, but it wasn't drawn on a bank, then  
2 it wouldn't be a check.

3 For example, if you had a money order  
4 that was payable through a bank, but was drawn on  
5 an entity that was not a bank, such as MoneyGram,  
6 well then because it's not drawn on a bank it  
7 wouldn't be a check, it would be a draft.

8 Q. So a check is a subset of draft?

9 A. That is correct.

10 Q. And then a teller's check is a subset  
11 of check?

12 A. That is correct.

13 Q. Are you aware of the phrase directly  
14 liable or direct liability being used in a way  
15 other than the way you have used it in your  
16 report?

17 A. I think that the phrase is not used in  
18 the Uniform Commercial Code in this context at  
19 all and, insofar as I'm aware, not anywhere else  
20 in the Uniform Commercial Code. I think that you  
21 can find it used in other contexts in a variety  
22 of ways. I'm not aware of anybody interpreting  
23 the phrase in section 2503 in any particular way  
24 at all.

25 Q. You said you can find it used in other

1           A.       Because the only person that would have  
2 signed it would have been the drawer, and the  
3 liability of the drawer would depend on the  
4 instrument being dishonored by the drawee.

5           Q.       Now if you flip the page to MG2397.  
6 Does this instrument carry with it direct  
7 liability, as you have defined the phrase in your  
8 report?

9           A.       It does not.

10          Q.       Why not?

11          A.       Because the only party that will have  
12 signed it is going to have been the drawer.  
13 Also, at least potentially, because of the  
14 possibility that the conditions on the back of it  
15 will cause it not to be a negotiable instrument.

16          Q.       Okay. Even if those conditions were  
17 gone, this still would not be an instrument that  
18 carried with it direct liability, as you have  
19 defined the phrase, is that correct?

20          A.       That is correct.

21          Q.       Do you have Exhibit 125?

22          A.       I do.

23          Q.       In your opinion, does Exhibit 125 carry  
24 with it direct liability, as you have defined the  
25 phrase in your report? Take as long as you need.



1           A.       I would rather think not, but I can't  
2   be sure.

3           Q.       So what makes you think that it  
4   doesn't?

5           A.       Because of the likelihood that the  
6   countersignature is signed by the person that is  
7   the remitter of the money order.

8           Q.       Why would that mean that it does not  
9   carry with it direct liability?

10          A.       Because that would be a signature of  
11   the remitter.  If the countersignature is the  
12   signature from somebody at Chase Manhattan Bank,  
13   which seems unlikely, then you might regard that  
14   as an acceptance of this money order at the point  
15   that it's issued, but I think that's unlikely.

16          Q.       Why do you think that's unlikely?

17          A.       Because I expect that this is issued at  
18   a counter of a retail facility operated by  
19   Western Union.

20          Q.       If that was true, there wouldn't be  
21   somebody from Chase Manhattan Bank there to sign  
22   this; is that what you're saying?

23          A.       That is correct.

24          Q.       What else would you need to know to be  
25   sure whether this was a direct liability

1 instrument, as you have defined the phrase?

2 A. That's all I would need to know.

3 Q. Now, if you look at Exhibit 126,  
4 please. Do you know whether this is an  
5 instrument that carries with it direct liability,  
6 as you have defined the phrase?

7 A. I do not.

8 Q. What else would you need to know in  
9 order to make that determination?

10 A. It's at least, let me rephrase. It's  
11 likely that the drawer of this instrument is  
12 American Express Company, and that the signature  
13 at the bottom right-hand corner is a signature of  
14 Howard A. Smith, Treasurer of American Express  
15 Company.

16 If this is a draft that is drawn on  
17 American Express Company, then American Express  
18 Company, as both the drawer and the drawee of the  
19 draft, might be directly liable on it.

20 Q. But you don't know if American Express  
21 Company is the drawee of this draft?

22 A. I don't. I've never seen an instrument  
23 quite like this before. I think it's  
24 interesting.

25 Q. What would you need to do to determine

1 whether American Express Company is the drawee on  
2 this draft?

3 A. I'm not sure. I've never seen an  
4 instrument like this.

5 Q. Okay. If you go to Exhibit 127,  
6 please. Do you know whether this instrument  
7 carries with it direct liability, as you have  
8 defined the phrase in your report?

9 A. If I properly understand this document,  
10 it is not an instrument at all. It's an order  
11 form that a person would fill out at a Western  
12 Union facility, with the expectation that at some  
13 other Western Union facility Western Union would  
14 issue a money order, which would be an instrument  
15 on which Western Union would have no direct  
16 liability.

17 Q. Understood. Thank you. Exhibit 128.  
18 It looks like the top portion of the second page  
19 is the order or the -- what would you describe  
20 that as, do you know what that is?

21 A. I would describe this as a form that a  
22 customer would fill out at a Western Union  
23 facility, in the expectation that Western Union  
24 would respond to this form by issuing a money  
25 order at a different facility.

1 Q. Do you think that that money order that  
2 is issued at a different facility is reflected on  
3 the bottom half of this?

4 A. I do.

5 Q. So is this instrument on the bottom  
6 half an instrument that carries with it direct  
7 liability, as you have defined the phrase?

8 A. It is not.

9 Q. Why not?

10 A. Because the entities that have signed  
11 it are Western Union representatives, and they  
12 have signed it as drawer.

13 Q. Are you familiar with traveler's  
14 checks?

15 A. I think the question is vague. I know  
16 a fair amount about traveler's checks more than  
17 most of my students.

18 Q. Do traveler's checks carry with them  
19 direct liability, as you have defined the phrase?

20 A. It depends on the way in which they are  
21 structured and issued.

22 Q. What does it depend on?

23 A. If the entities that issued them are  
24 the same as the entities in which they are drawn,  
25 well then they well might carry direct liability.

1 Q. But if the entities are different then  
2 they don't?

3 A. It's my understanding that in the  
4 current environment, for example, an American  
5 Express traveler's check is issued by a company  
6 that is different from the bank on which it's  
7 drawn, and so I don't think that any entity would  
8 have direct liability on that check.

9 It's possible, as indicated by the  
10 instrument you showed me earlier, that in an  
11 earlier period American Express traveler's checks  
12 might have been both issued and drawn on an  
13 American Express Company, or some bank under  
14 common control of American Express Company, and  
15 if that were true then that entity might have  
16 direct liability on a traveler's check.

17 Q. You have seen examples of traveler's  
18 checks that do not carry with them direct  
19 liability, as you have used the phrase?

20 A. I have.

21 Q. Have you seen examples of traveler's  
22 checks that do carry direct liability, as you  
23 have used the phrase?

24 A. I'm not sure.

25 Q. You don't know?

1           A.       An instrument is a term that's defined  
2     in UCC Article 3.  It has a quite specific,  
3     narrow and technical definition that I wouldn't  
4     undertake to precisely replicate without looking  
5     at the statute, but it's quite narrow.

6           Q.       Fair enough.  Is there a difference  
7     between an instrument and a written instrument?

8           A.       The Uniform Commercial Code in  
9     different articles uses instrument in a variety  
10    of contexts.  So instrument has a different  
11    meaning in UCC Article 9 than it does in UCC  
12    Article 3.  For purposes of UCC Article 3, all  
13    instruments must be in writing.

14          Q.       How about this, do you know what a  
15    negotiable draft is?

16          A.       I do.

17          Q.       What is it?

18          A.       A negotiable draft is a type of  
19    instrument that is a draft, as opposed to a note.

20          Q.       If I could direct you to 119, and all  
21    the exemplars that are in the exhibit.  Are these  
22    all negotiable drafts?

23          A.       The items on 2394 and 2395 and 2396 are  
24    negotiable drafts.  The item on 2397 might or  
25    might not be a negotiable draft, depending on

1 what you think about the conditions on the back.  
2 The items on 2399 and 2400 are not negotiable  
3 drafts.

4 Q. How about this, and I apologize, I  
5 didn't appreciate these, 2399 and 2400. My next  
6 question is directed again at 2394, 2395, 2396  
7 and 2397 through 2398, which is the back of it.  
8 Are those all written instruments?

9 A. They are images of written instruments.  
10 2397 is an image of a document that would be an  
11 instrument, if the conditions on the back don't  
12 undermine its ability to qualify as an instrument  
13 for purposes of the UCC.

14 Q. Have you formed an opinion on what is a  
15 similar written instrument?

16 A. I have not formed an opinion on the  
17 meaning of similar written instrument in section  
18 2503. I have formed an opinion that I explained  
19 to the court about ways in which certain classes  
20 of instruments are similar and dissimilar to  
21 others.

22 Q. What similarities do money orders and  
23 traveler's checks have?

24 A. They're both instruments, they're both  
25 drafts, they're both products that people could

1 buy to use to pay other people.

2 Q. Can you think of anything else?

3 A. It's a very vague question. They're  
4 both printed on a piece of paper, they both have  
5 microlines at the bottom, at least in modern  
6 commerce.

7 Q. Are they typically paid through the  
8 Interbank Clearing System?

9 A. Money orders are typically paid through  
10 the Interbank Clearing System. Traveler's  
11 checks, it's less clear to me precisely how those  
12 are paid, to the extent that they are, or at  
13 least at some points in time drawn on entities  
14 that aren't banks.

15 Q. What other instruments bear the  
16 similarities of being instruments, drafts that  
17 you could buy to pay other people?

18 A. Pretty much any instrument that is an  
19 instrument could satisfy those conditions. I  
20 don't understand what you're getting at.

21 Q. I'm just trying to find out what other  
22 items have those similarities?

23 A. Well, any other instrument can be used  
24 for any of those purposes by the nature of  
25 negotiable instruments. I'm not sure what it is



1 that you're trying to get me to say.

2 Q. How about a, back to my example, a  
3 standard checking account check that a business  
4 writes, is that similar to traveler's checks and  
5 money orders?

6 MS. MOSELEY: Objection, scope.

7 A. It's similar in some ways and  
8 dissimilar in others. It's similar in that it's  
9 a draft drawn on a bank, that money orders are  
10 often drawn on banks. It's dissimilar in the  
11 sense that the person that's writing it and  
12 issuing it is transmitting it directly to  
13 somebody to which they intend to make a payment.

14 Q. How about this, do you know what are  
15 instruments for the transmission of money?

16 A. That's not a term that I have ever  
17 used. It's possible to use instruments to  
18 transmit money, it has been done. Instruments  
19 have been used to transmit money in many  
20 contexts, but that is something in which you can  
21 use an instrument.

22 Q. Back to Exhibit 119, 2394, 2395, 2396  
23 and 2397 through 98. Are those instruments for  
24 the transmission of money?

25 A. They could be used to transmit money,

1 subject to the qualification that the one on  
2 pages 2397 and 2398 at least arguably is not an  
3 instrument at all.

4 Q. Okay. Let's set that one aside and  
5 I'll ask my question. 2394, is that an  
6 instrument for the transmission of money?

7 A. 2394 is an instrument that can be used  
8 for the transmission of money, but it can be used  
9 for other purposes as well.

10 Q. The same question for 2395, is that an  
11 instrument for the transmission of money?

12 A. That is an instrument that can be used  
13 for the transmission of money, but it can be used  
14 for other purposes as well.

15 Q. The same question for 2396, is that an  
16 instrument that can be used for the transmission  
17 of money?

18 A. That is an instrument that can be used  
19 for the transmission of money, but it can be used  
20 for other purposes as well.

21 Q. Earlier Mr. Disher had asked you if  
22 direct liability was a phrase used in the UCC,  
23 and you said it's not in Article 3.

24 The same question. Is direct liability  
25 a phrase used in UCC Article 4?

1 Q. So let's take direct liability out of  
2 it for a minute. Is this item at 2394 similar to  
3 a money order?

4 Is it a similar written instrument to a  
5 money order or a traveler's checks?

6 A. I would say, without expressing an  
7 opinion on what the statute means, I would say  
8 yes, this is similar to money order.

9 Q. Is this a third-party bank check, as  
10 you've defined in your report what a third-party  
11 bank check could be?

12 A. I don't think it's fair to describe my  
13 report as defining what a third-party bank check  
14 would be. I think it's fair to describe my  
15 report as similar to a lot of things that a  
16 third-party bank check is not. This is not  
17 fairly regarded as a third-party bank check.

18 Q. Do you believe the item at 2394 is  
19 subject to dishonor?

20 A. Yes. I believe the item at 2394 could  
21 be dishonored.

22 Q. Let's go to the next one at 2395. Is  
23 this a money order?

24 A. I do not believe that this is a money  
25 order.

1 money order, principally the acceptance by a bank  
2 of indirect liability to pay the instrument.

3 Q. Is 2395 an instrument?

4 A. 2395 is an image of an instrument.

5 Q. Is it a draft?

6 A. It is a draft.

7 Q. Could it be used to pay other people?

8 A. It could be used to pay other people.

9 It also could be used for the transmission of  
10 funds as well.

11 Q. Let's flip to 2396. What is this for  
12 purposes of the UCC, what category do you think  
13 this fits, 2396?

14 A. I would characterize that, for purposes  
15 of the Uniform Commercial Code, as a check that  
16 is a teller's check.

17 Q. How about for purposes of Reg CC, any  
18 idea what that would be technically under Reg CC?

19 A. I think it would be a teller's check,  
20 subject to the low-risk rules in Regulation CC.

21 Q. Why do you believe that it's a teller's  
22 check?

23 A. Because it's drawn on a bank that's  
24 different from the bank that has drawn it.

25 Q. Is the item at 2396 a money order?

1           A.       I do not think the item at 2396 is a  
2 money order.

3           Q.       Does the item at 2396 fit your  
4 description of what could be a third-party bank  
5 check?

6           A.       I don't think so.

7           Q.       Again, we're going to disassociate  
8 directly liable. Is this item at 2396 a similar  
9 written instrument to money orders and traveler's  
10 checks?

11                   MS. MOSELEY: Objection.

12           A.       For purposes of the opinion I gave in  
13 part 4(b) of the report, I discuss reasons why  
14 you might regard teller's checks as not being  
15 similar to money orders and traveler's checks.

16           Q.       Is the item at 2396 an instrument?

17           A.       Yes.

18           Q.       Is the item at 2396 a draft?

19           A.       Yes.

20           Q.       Is the item at 2396 an item that could  
21 be used to pay other people?

22           A.       Yes.

23           Q.       I had endeavored to not introduce  
24 anymore instruments, but I think there's one  
25 that's more plainly labeled as an agent check. I

1 Q. How would you do that?

2 A. Well, you would take off where it says  
3 agent check, you would complete where agent for  
4 MoneyGram is, the name of some institution, and  
5 you would write money order at the top of it.

6 Q. I will forgo the rest of my questions,  
7 because this one seems a bad example.

8 On what type of instrument is a banking  
9 organization directly liable?

10 A. The most common type of instrument in  
11 which a banking organization is directly liable  
12 is a cashier's check. The next common instrument  
13 in which a banking organization is directly  
14 liable would be a certified check or a banker's  
15 acceptance. There are still more certified  
16 checks than there are banker's acceptances.

17 Q. How about this. On what type of  
18 instrument would a business association be  
19 directly liable?

20 For purposes of this question, I'm  
21 using business association the way it's used in  
22 section 2 of the FDA.

23 A. A bill of exchange.

24 Q. Anything else?

25 A. Not that immediately comes to mind.

1 Q. What's a bill of exchange?

2 A. A bill of exchange is what you just  
3 asked about. It's a type of draft on which the  
4 drawee is a business, as opposed to a bank,  
5 that's been accepted by the business on which  
6 it's drawn.

7 Q. Any of the exemplars that you looked at  
8 of the MoneyGram products, retail money orders or  
9 official checks, are any of those a bill of  
10 exchange?

11 A. No.

12 Q. How about these Western Union  
13 instruments we looked at, for example, at  
14 Exhibit 125, is that a bill of exchange?

15 A. None of the exemplars that have been  
16 introduced as exhibits in this deposition are  
17 bills of exchange.

18 Q. Did you study any MoneyGram instrument  
19 that could be a third-party bank check?

20 A. There is so much obscurity in the term  
21 third-party bank check, that I think it would be  
22 rash to answer that question in the negative.  
23 What I would say is I didn't study any products  
24 that strike me as fitting with any ordinary sense  
25 of what those terms should mean.

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CERTIFICATE

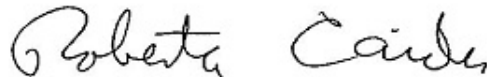
STATE OF NEW YORK )  
 ) ss.  
COUNTY OF NEW YORK )

I, Roberta Caiola, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That RONALD J. MANN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand on this date, November 11, 2018.



ROBERTA CAIOLA



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SUPREME COURT OF THE UNITED STATES

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DELAWARE,

Plaintiff,

vs.

ARKANSAS, et al.,

Defendants.

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CONFIDENTIAL

Deposition of

KATE PETRICK

As a corporate designee

Pursuant to Rule 30(b)(6) for the

Deposition of MoneyGram Payment Systems, Inc.

Tuesday, June 5, 2018

10:00 a.m.

Reporter:

Barbara J. Carey

Registered Professional Reporter

GOLKOW LITIGATION SERVICES

877.370.3377 ph | 917.591.5672 fax

Deps@golkow.com

1 Q. Okay. Great. Ms. Petrick, did you graduate  
2 from college?

3 A. I never finished college.

4 Q. Okay. Where did you go to college?

5 A. I went to the University of Minnesota.

6 Q. And what did you study there?

7 A. General classes, to begin with.

8 Q. And how many years did you go to school there?

9 A. About a year and a half.

10 MR. RATO: Could you just keep your  
11 voice up a little bit, because there's also people on the  
12 phone.

13 THE WITNESS: Yes, okay.

14 BY MS. AHUMADA:

15 Q. Do you have any credentials; any licensing  
16 credentials, for example?

17 A. No.

18 Q. Okay. Where are you currently employed?

19 A. MoneyGram Payment Systems, Inc.

20 Q. And how long have you been there?

21 A. 32 years.

22 Q. And what is your current position there?

23 A. Manager of government affairs.

24 Q. Okay. And what do you do as a manager of

1 government affairs?

2 A. My team and I do the unclaimed property  
3 reporting and all the things that go along with it as  
4 due diligence, and I also review legislation relating to  
5 unclaimed property.

6 Q. And you said you had a team.

7 How many people are on your team?

8 A. Two.

9 Q. And how long have you been in that position?

10 A. I have been doing the unclaimed property for  
11 at least 30 years.

12 Q. And did you serve as the manager of government  
13 affairs through that 30-year period?

14 A. No.

15 Q. Okay. What was your title before that  
16 position?

17 A. Well, it started as legal admin -- excuse me,  
18 legal administrative assistant. It went to -- I'm trying  
19 to think here, legal -- legal specialist, senior legal  
20 specialist, senior government affairs specialist, and then  
21 to manager of government affairs.

22 Q. Okay. Did you receive any training with  
23 regard to unclaimed property and the shipment of unclaimed  
24 property?

1 Q. Okay. I'm going to mark this exhibit as  
2 Petrick 37.

3 (Whereupon, Exhibit 37 was marked.)

4 BY MS. AHUMADA:

5 Q. Ms. Petrick, I've placed in front of you a  
6 document that the court reporter has labeled Petrick 37.

7 Do you see that; it's marked Petrick 37?

8 A. I just 37.

9 (Reporter clarification.)

10 BY MS. AHUMADA:

11 Q. I'll refer it as Petrick 37 for the record.

12 A. Okay.

13 Q. And that will be placed on there by the court  
14 reporter.

15 What's been placed in front of you is a Notice  
16 of Deposition of Defendant, the Commonwealth of  
17 Pennsylvania Pursuant to Federal Rule of Civil Procedure.

18 Do you see that title?

19 A. Yes.

20 Q. Have you seen this document before?

21 A. Yes.

22 Q. When did you see it?

23 A. Yesterday.

24 Q. Okay. And who showed it to you?

1 A. Mike Rato.

2 Q. Okay. And it's my understanding that you're  
3 here today as a corporate representative of MoneyGram  
4 Payment Systems, Inc.; is that correct?

5 A. Yes.

6 Q. And that you are here to cover certain topics  
7 that are listed on this Notice of Deposition; is that  
8 correct?

9 A. Yes.

10 Q. Okay. And from my understanding, you're here  
11 to provide testimony on behalf of MoneyGram with regard  
12 to, if you scroll through, Number 3, 4 --

13 MR. RATO: Why don't we take them one at  
14 a time if you're going to have her say yes. Go one at a  
15 time.

16 BY MS. AHUMADA:

17 Q. Okay. So Number 3, are you here to give  
18 testimony?

19 A. Yes.

20 Q. Okay. Number 4; same question?

21 A. Yes.

22 Q. Number 11?

23 A. Yes.

24 Q. And Number 12?

1 A. Yes.

2 Q. Are there any other topics on this form that  
3 you are here to provide testimony on?

4 A. No.

5 Q. Okay. Did you prepare for today's deposition?

6 A. Yes.

7 Q. How did you prepare?

8 A. I met with Mike Rato and Cory Feinberg.

9 Q. And when did you meet with them?

10 A. Yesterday afternoon.

11 Q. And for how long did you meet?

12 A. A couple hours.

13 Q. Two, three?

14 A. Two. Yeah, two.

15 Q. Is that the only preparation you've had for  
16 today's deposition?

17 A. Yes.

18 Q. Okay. Have you met with counsel for Delaware  
19 to prepare for today's deposition?

20 A. No.

21 Q. Okay. Did you review any documents to prepare  
22 for today?

23 A. Yes.

24 Q. And what documents did you review?

1 Q. Okay. What does that entail?

2 A. It entails gathering the appropriate checks to  
3 be escheated based on the abandonment period. We then put  
4 together a report. Usually, there's a paper form that  
5 needs to be filled out with information about the company  
6 and the types of property we are escheating. It is taking  
7 the data that we receive, put it into some sort of form,  
8 whether paper, electronic, and putting that all together,  
9 coming up with a total amount, and requesting that money  
10 from our AP department, and then filing with the state.

11 Q. Okay. Let's start with the last thing you  
12 said.

13 What's the AP department?

14 A. Accounts payable.

15 Q. Okay. And you said you filed a report to the  
16 state.

17 And what state do you refer to?

18 A. It depends on the product.

19 Q. What does that mean?

20 A. It means there's the types of items that we  
21 have, money orders, official checks based on the rules.  
22 Money orders are escheated to the state where they're  
23 sold. So money orders, we'd get them in the state order,  
24 and we put the data together and file them with the

1 applicable state.

2           For the official checks, those are -- we file  
3 them with the -- our state of incorporation because we do  
4 not have any owner information, the owner's unknown, and  
5 so we file those with Delaware, our state of  
6 incorporation.

7           We have other types of property, such as  
8 accounts payable checks, payroll checks. Those, based on  
9 the payee and their address, that they would escheat to  
10 that -- that state.

11           Q.   And we'll review some documents to go over  
12 that process a little bit more in detail.

13           A.   Uh-huh.

14           Q.   This is a little sort of table setting. I'll  
15 ask you to put a pin on some of that. All right.

16                   Does your team -- and I think you said it's a  
17 team of three, with yourself -- are you the only three  
18 that are working on this process, this filing escheatment  
19 report process?

20           A.   Yes.

21           Q.   Do you consult with any other departments to  
22 put together your reports?

23           A.   Yes, we get reports from different  
24 departments.



1 Q. Okay. Do you agree with me that those are  
2 official check products of MoneyGram?

3 MR. RATO: Object to form. You can  
4 answer.

5 MR. TALIAFERRO: Join.

6 A. I can tell you that the only one I have -- the  
7 financial institution money order, I'm not sure which -- I  
8 don't know if that's an official check, but the others I  
9 believe are.

10 BY MS. AHUMADA:

11 Q. Okay. Let's go through these one at a time.

12 For the teller's check, where does MoneyGram  
13 escheat a teller's check that's been abandoned?

14 A. Delaware, our state of incorporation.

15 Q. Next one. How about a cashier's check; what's  
16 the escheatment process with regard to cashier's check?

17 A. That is not MoneyGram's check; it is the  
18 financial institution's check, and we do not escheat  
19 those.

20 Q. Next item, agent check.

21 Do you see that?

22 A. Yes.

23 Q. Where are agent checks escheated to?

24 A. Delaware, our state of incorporation.

1 Q. Next, agent check money order.

2 Do you know where those are escheated to?

3 A. They are escheated to the state where they  
4 were sold.

5 Q. Do you know where financial institution money  
6 orders are escheated to?

7 A. They would be escheated to the state where  
8 they were sold.

9 Q. And earlier, we talked about something called  
10 a "retail money order."

11 Do you recall that?

12 A. Yes, they --

13 Q. And where are -- sorry. And actually, you  
14 know what? I tripped on your answer, and I apologize.

15 MR. RATO: No, just let her finish the  
16 question. Go ahead.

17 BY MS. AHUMADA:

18 Q. So with regard to the retail money order,  
19 where are these escheated to?

20 A. The state that they were sold.

21 Q. With -- I'm sorry, with the exception of  
22 cashier's check, is it your department that does and  
23 handles the escheatment process with regard to the other  
24 instruments that are listed on here?

1 A. Yes.

2 Q. Okay. If you go down to the last block on  
3 that same page, it says, "Escheatment."

4 Do you see that?

5 A. Yes.

6 Q. And the last sentence under the second column,  
7 it says, "For MoneyGram escheatable -- escheated items --"  
8 excuse me "-- MoneyGram handles all reclamation  
9 activities."

10 What does that mean?

11 A. This means that if we have escheated a check,  
12 any -- any type of property and the consumer comes forward  
13 for their money, we will pay the consumer and go back to  
14 the state that was -- that received -- that it was  
15 escheated to and request our money back.

16 Q. Okay. If we go to the third column under that  
17 same escheatment section, it says -- and I will purport to  
18 you that "FI" stands for "financial institution."

19 Do you know that to be true?

20 A. Yes.

21 Q. Okay. So, "Financial institution escheats all  
22 items. Any reclamation or escheated items need to be  
23 handled between the financial institution and the  
24 appropriate state."

1 that right?

2 A. Yes.

3 Q. Okay. Turn to the next page, which is MG2303,  
4 and towards the bottom of the page, it says, "Agent Check  
5 Money Order (Product 17) Question and Answers."

6 Do you see that?

7 A. Yes.

8 Q. So Product 17 is your agent check money  
9 orders; is that right?

10 A. Yes.

11 Q. Okay. And here, it says, under the first  
12 bullet, that MoneyGram is the holder of an agent check  
13 money order; is that right?

14 MR. RATO: Objection to the form to the  
15 extent it calls for a legal conclusion, but you can  
16 answer.

17 A. Yes.

18 BY MS. AHUMADA:

19 Q. Has someone relayed that information to you  
20 besides seeing it here on this document, that MoneyGram is  
21 the holder of an agent check money order?

22 A. Yes, I was trained before money orders, where  
23 they were to be escheated.

24 Q. Okay. With regard to the agent check money

1 orders, how does MoneyGram know what state the -- the  
2 instrument is purchased in?

3 A. I don't know the specifics, but I'm sure the  
4 system knows where they are sold.

5 Q. Okay. Would that same system know where a  
6 teller's check is sold, for example?

7 A. I don't know for sure, but I believe so.

8 Q. How about with an agent check; would that  
9 system also have the information of where it was sold?

10 A. I believe so.

11 Q. Okay. Does your office get that kind of  
12 information?

13 A. What do you mean?

14 Q. So when you get information that, let's say,  
15 an agent check has been abandoned, do you get any  
16 information of where it was sold, any kind of reporting  
17 that relates to that kind of information?

18 A. For reporting purposes, no.

19 Q. What do you get; what kind of information?

20 A. We get the serial number of the check, the  
21 amount, and the date it was sold.

22 Q. And that's for an agent check?

23 A. Yes.

24 Q. How about for a teller's check?

1 A. The same.

2 Q. How about for an agent check money order; what  
3 information do you get?

4 A. We get the -- the same information, the serial  
5 number, where it was sold. I'm sorry, yes, we do get  
6 where it was sold. I'm getting a little confused here.  
7 State, serial number, amount, date, and service charge.

8 Q. Okay. You also get the information of where  
9 that agent check money order is sold; correct?

10 A. Yes, so we know which state to report it to.

11 Q. Could you get that same information for a  
12 teller's check, for example; where it was sold?

13 A. Yes.

14 Q. Do you -- do you have that information in  
15 front of you as you're going through the escheatment  
16 process for that instrument?

17 A. No.

18 Q. Okay. Why not?

19 MR. RATO: Object to form. You can  
20 answer.

21 A. Because we escheat them to Delaware, we  
22 know -- they just go to Delaware.

23 BY MS. AHUMADA:

24 Q. Go to the next page, which is MG2305.

1 confidential. I don't anticipate that's a problem.

2 (Whereupon, Exhibits 42 and 43 were marked.)

3 BY MS. AHUMADA:

4 Q. The documents that have been placed in front  
5 of you have been marked by the court reporter as  
6 Petrick 42, and that document is Bates Labeled MG23 -- I'm  
7 sorry, 2833, and it goes until MG2836.

8 Do you see that?

9 A. Yep.

10 Q. The second document placed in front of you has  
11 been marked Petrick 43 and has been -- it's been Bates  
12 Labeled MG2837 and it goes to 2840.

13 Let's start with the one that the been marked  
14 42.

15 Are you familiar with this document?

16 A. Yes, I have seen this before.

17 Q. Okay. Now, if you could look to 43 -- and I  
18 just want to clarify in terms of documents --

19 MR. RATO: Yeah, let me -- I can put  
20 something on the record.

21 MS. AHUMADA: Yes, please.

22 MR. RATO: We've been going this way.

23 MS. AHUMADA: Yes.

24 MR. RATO: When we received the original

1 file and processed it, on Petrick 43, I believe the  
2 January 11, 2018 date on that memo is the date it was  
3 processed. There was an automatic data field. So the  
4 witness is familiar with it if you want to figure out the  
5 providence of the document and the date. That date, I  
6 can -- I believe that it was when we processed the  
7 document, that that date was put on there.

8 MS. AHUMADA: And that was my only  
9 confusion; that they're identical in every way, except  
10 one.

11 THE WITNESS: Yes.

12 BY MS. AHUMADA:

13 Q. So we'll put aside 43 and just go to 42.

14 A. Okay.

15 Q. Okay. You see, at the top there, it's dated  
16 August 2005.

17 Do you know if that's when the document was  
18 created?

19 A. I believe so.

20 Q. Okay. And what -- tell us, what is this  
21 document?

22 MR. RATO: We're on 42, now?

23 MS. AHUMADA: Yes, 42. 43 was just for  
24 understanding why we had a document that was labeled 2018.



1           A.    This is a document that shows the changes that  
2   were being made to the teller's check unclaimed property  
3   reporting.

4   BY MS. AHUMADA:

5           Q.    Okay.  And it says here that it's information  
6   for sales group.

7                    Do you see that?

8           A.    Yeah.

9           Q.    Would that be for MoneyGram's sales group?

10          A.    I believe so.

11          Q.    Okay.  Now, if you go to the first line, it  
12   says under, "What," and the second sentence it says,  
13   "TECI."

14                    Do you see that?

15          A.    Yes.

16          Q.    Do you know what TECI is?

17          A.    Yes, Travelers Express Company, Inc.

18          Q.    And what is that?

19          A.    That was the initial company.  That was the  
20   company that acquired MoneyGram, and MoneyGram is the  
21   survivor.

22          Q.    Okay.  And so, do you know, what had  
23   transpired that led to this document being created?

24          A.    It was a change in how a teller's check was to

1 be reported as unclaimed property.

2 Q. Okay. And what was the change?

3 A. The change was to report the teller's check to  
4 Delaware, our state of incorporation, where previously, we  
5 had escheated the teller's check to the state in which it  
6 was sold or the financial institution's incorporation  
7 state, if we knew it.

8 Q. And were you part of that decision-making  
9 process?

10 A. No.

11 Q. Do you know who was?

12 A. Lawyers and outside lawyers.

13 Q. Okay. Were you consulted in any which with  
14 regard to this process, this decision?

15 A. Not consulted, no.

16 Q. Were you in any meetings with regard -- with  
17 regard to this change?

18 MR. RATO: Before or after the change,  
19 just to clarify?

20 BY MS. AHUMADA:

21 Q. To lead to the change, excuse me?

22 A. I don't recall.

23 Q. Okay. And then, did you receive any training  
24 with regard to what was change in policy?

1 A. Training? What do you mean by "training"?

2 Q. Training; any new education, any new  
3 information from MoneyGram? Training.

4 A. No.

5 Q. So how did you get information from  
6 MoneyGram -- oh, let me start over.

7 Did you get information from MoneyGram that  
8 there was this change in policy?

9 A. Yes.

10 Q. How did you receive that information?

11 A. From our lawyers.

12 Q. Okay. And besides the lawyers, were there any  
13 other discussions with MoneyGram personnel with regard to  
14 this new process change for you?

15 A. For the unclaimed property?

16 Q. Uh-huh.

17 A. I'm not aware of any.

18 Q. Okay. And how did it affect your day-to-day  
19 operations, if at all?

20 A. We just needed to change where we were going  
21 to escheat the teller's check.

22 Q. Did your systems have to be updated in any  
23 way?

24 A. They did -- they did need to make some system

1 changes so that we would now be reporting to Delaware, our  
2 state of incorporation, versus the other way.

3 Q. Okay. And what kind of changes were made to  
4 your system?

5 A. I don't know exactly how they did it;  
6 programmers. I don't know.

7 Q. Do you know if MoneyGram had any  
8 communications with the State of Delaware with regard to  
9 this new change in process?

10 A. I don't recall any.

11 Q. Were you made aware of any at the time?

12 A. None that I know of.

13 Q. Would you have been made aware of any  
14 communications with the State of Delaware?

15 MR. RATO: Object to form. You can  
16 answer.

17 A. Perhaps. I don't know. To let me know that  
18 we were going to make that change, that's what I was told  
19 about it.

20 BY MS. AHUMADA:

21 Q. And by whom?

22 A. The lawyers.

23 Q. For who?

24 A. MoneyGram. MoneyGram's lawyers.

1 A. For Delaware, specifically?

2 Q. No, any state. Does anyone provide that  
3 training to you?

4 A. Just the training we talked about earlier,  
5 going to UPP, Unclaimed Property Professionals  
6 Organization, and knowledge. I mean, I was trained way  
7 back, you know, in 1980, 1990s, and just we have -- we  
8 also have -- Mike provides us with some surveys that we  
9 refer to.

10 Q. And what are the surveys?

11 A. It's just the state laws.

12 Q. Okay. Do you, yourself, review individual  
13 state laws with regard to escheatment?

14 A. We do.

15 Q. As part of your duties?

16 A. We do.

17 Q. Okay. Do you get training on individual state  
18 laws from MoneyGram?

19 A. Not -- no, not training.

20 (Whereupon, Exhibit 47 was marked.)

21 BY MS. AHUMADA:

22 Q. So what's been placed in front of you has been  
23 marked as Petrick 47. It is a document that we received  
24 in production from MoneyGram, and it is Bates

1 Labeled MG4887, and it's an Excel spreadsheet, excuse me,  
2 that is titled, "FinalCK152017.XLXX."

3 That's -- I just know that that's the title of  
4 it.

5 A. Yes.

6 Q. But do you see the document that's in front of  
7 you?

8 A. Yes.

9 Q. Are you familiar with what's being reported on  
10 this document?

11 A. Yes.

12 Q. Okay. And what is that?

13 A. This is the -- you said 2017; right?

14 Q. Yes.

15 A. These are the items that were escheated to  
16 Delaware. Let me look at the dates first. I need to --  
17 so this was as of December 31, 2017 and reported in March  
18 this year.

19 Q. Okay.

20 MR. RATO: Well, could I clarify for the  
21 record?

22 THE WITNESS: Sure.

23 MR. RATO: If it was stuff that was  
24 reported this year, I don't know that it would have been

1 reported to Delaware. It may have been turned over to the  
2 Southern District of New York.

3 THE WITNESS: I'm sorry, I forgot that.  
4 I forgot.

5 BY MS. AHUMADA:

6 Q. Thanks. So did you -- did you put together  
7 this report?

8 A. I did not.

9 Q. Do you know who did?

10 A. We got this information from our IT  
11 department.

12 Q. Okay. And for what purpose?

13 A. This information was requested from us.

14 Q. By whom?

15 A. I don't recall.

16 Q. If I say TSG, does that ring any bells?

17 MR. RATO: Can I -- well, I can just  
18 make a statement for the record. The 2017 report was  
19 created, I guess you want to call it, at the request of a  
20 Special Master. That's a slightly different situation.

21 So 2017, this would have been a report to  
22 record what was being remitted with the stipulation, I  
23 believe, of all the parties that was being turned over to  
24 the Special Master. So this one is a little bit

1 psuedo-generous. But the ones prior to that will all have  
2 a similar providence.

3 BY MS. AHUMADA:

4 Q. Do you recall putting together this similar  
5 type of information for purposes of an audit performed by  
6 TSG?

7 A. Yes.

8 Q. Okay. And do you recall what years that you  
9 did that for?

10 A. I recall putting it together in 2014/'15. It  
11 was around December/January 2014.

12 Q. No, but what data were you collecting? From  
13 what years; do you recall?

14 A. We went back -- do you mean like the  
15 years that were -- we went from -- boy, we went back to  
16 2000, and it was in 2014. So I can't remember if you gave  
17 them the 2014 or if that was later, only because, at the  
18 timing that we gave them the data, we may not have had it.  
19 So we went from at least 2013 -- 2000 to 2013.

20 Q. Okay. So in production, we have received  
21 these reports, CK15, from 2006 through this 2017; okay?

22 MR. RATO: Well, okay. What would --  
23 can I ask her a question?

24 MS. AHUMADA: Well, I'd hate to belabor



1 it. Would you just stipulate that these are authenticated  
2 documents and not make us go through --

3 MR. RATO: Of what was given to TSG?

4 MS. AHUMADA: Of what was given to TSG?

5 MR. TALIAFERRO: Yeah, what are we  
6 stipulating to?

7 MS. AHUMADA: That these are  
8 authenticated documents. That's literally all I wanted to  
9 do.

10 MR. TALIAFERRO: That's Mike's -- we  
11 wouldn't object.

12 MR. RATO: We can put together a  
13 stipulation.

14 MS. MOSELEY: I think we're all  
15 negotiating. We can just add it in.

16 MR. TALIAFERRO: We're not trying to  
17 roadblock this document, just wanted to make sure what it  
18 is and who received it.

19 MS. AHUMADA: Right.

20 BY MS. AHUMADA:

21 Q. So we'll just go through the 2017 because  
22 that's the only one I have printed out as opposed to all  
23 of them. So let's just go line-by-line so we can  
24 understand what things are.

1                   So under the "Financial Institution Name,"  
2 those are your clients; is that correct?

3                   A.    Yes.

4                   Q.    Okay.  What's the customer?  What's that  
5 column information?

6                   A.    There are two different numbers that are  
7 assigned to the financial institutions; one is the parent,  
8 and if they have branches, they would be customer numbers.

9                   Q.    Okay.  So we covered parent, as well.

10                   So these are unique identifiers for the  
11 specific financial institution; is that right?

12                   A.    Yes, yes.

13                   Q.    Okay.  And under "Product," what does that  
14 mean?

15                   A.    That tells you the type of check it is.  This  
16 is a 15, so that is an agent check.

17                   Q.    Okay.  And we talked about that earlier.

18                   And the 16, what would that be?

19                   A.    That is the teller's check.

20                   Q.    And then the next column says "Use."

21                   What is being conveyed there?

22                   A.    This is another field in that system that I'm  
23 not really, really familiar with.  It's -- this may be the  
24 use for -- where it said expense on that other check, the

1 one we looked at here, the 46, Exhibit 46.

2 Q. Okay. And -- but what does that mean, "Use"?

3 A. I don't know.

4 Q. Okay. The next column, it says, "Item Serial  
5 Number."

6 What does that mean?

7 A. That's the check number.

8 Q. And when you say "check number," do you mean  
9 the instrument that's being escheated?

10 A. Yes.

11 Q. Okay. And then, the "Last Transaction Date,"  
12 what's that?

13 A. That is the -- typically, it's the -- not  
14 typically -- it is the date of the check. Excuse me,  
15 "Last Transaction Date" is the date of the check.

16 Q. So that's the date that it was purchased?

17 A. Yes.

18 Q. Okay. Could it be anything else?

19 A. I don't know.

20 Q. All right. Under "Amount"?

21 A. That's the amount of the check.

22 Q. Okay. And the next line says, "Financial  
23 Institution Address." I assume that's the address of your  
24 customer?

1 A. Right. Yes.

2 Q. Okay. What about under "Address 2"; is that  
3 just continuation of the address?

4 A. Yes.

5 Q. Okay. Any other information that you gleaned  
6 that's not represented on this chart from these individual  
7 financial institution customers?

8 A. I don't know.

9 Q. So is this it? Is this it that you get with  
10 regard to, let's say, Product 15, all the information that  
11 you get from, let's say, the first one, Bremer Bank  
12 National Association?

13 Would this be the bulk of the information that  
14 you're getting on the escheatable item?

15 A. I don't know if it's everything. I don't know  
16 if there's more fields in the official check system.

17 MR. RATO: You want to -- based on her  
18 question, you might want to repeat the question.

19 A. Can you repeat the question, please? Is there  
20 another item? I mean, I guess I'm not sure.

21 MR. RATO: The question was, is it  
22 all that you get as opposed -- are you asking her, what  
23 is in the official check system, or what is it that she  
24 gets?

1           A.    Yes.

2   BY MR. DISHER:

3           Q.    Okay.  And so, then when the selling financial  
4   institution has to report that unclaimed cashier's check,  
5   does the money get transferred back to the financial  
6   institution?

7           A.    It would be, yes.

8           Q.    Okay.  But that doesn't happen in the context  
9   of an agent check money order, an agent check or teller's  
10  check?

11          A.    No.

12          Q.    The money always stays with MoneyGram, and  
13  MoneyGram is the one that sends it to the state?

14          A.    Correct.

15          Q.    All right.  So now, let's go to retail money  
16  orders.

17                    What is the process for reporting unclaimed  
18  retail money orders?

19          A.    Okay.  We also have an automated type  
20  reporting system in the money order system.  We go into  
21  that -- we call it the -- it's the subsystem of the money  
22  order system, the unclaimed property piece.  We go in  
23  there and key in a date that we want the report to run,  
24  and it will generate a paper file, and then we have to

1 request a job to run to get the electronic file, which  
2 again, we would either burn to a CD or upload to the  
3 state's website.

4 Q. Okay. I just want to make sure I have it  
5 right.

6 So you have a system in your department that  
7 puts in a date and gets the reportable unclaimed money  
8 orders as of that date?

9 A. Correct.

10 Q. And then the system gives you a printout?

11 A. Right.

12 Q. And then you take the printout and generate a  
13 report?

14 A. No, we just have that, basically, for our  
15 files. I mean, this is a very old system, so it used to  
16 be paper all the time was being sent so we would have the  
17 paper. But we just put that in our files, and then we  
18 request the electronic job to run, and then it would  
19 produce the file that we can send to the state.

20 Q. Understood. So the money order system,  
21 itself, produces the file that MoneyGram can then send to  
22 the states?

23 A. Yes.

24 Q. All right. Retail money orders are sold by

1 gas stations and convenience stores, but as well as banks;  
2 right?

3 A. Yes.

4 Q. Now, what role does the selling entity have in  
5 reporting unclaimed retail money orders?

6 A. Nothing.

7 MR. RATO: Objection to the form.

8 Can we just clarify, when you -- when you say  
9 "selling entity," do you mean the agent? I mean, because  
10 retail money order could be MoneyGram, and I just --

11 MR. DISHER: Sure. Yeah, thank you.

12 Let's clarify that, then.

13 BY MR. DISHER:

14 Q. So what role does the selling agent play in  
15 the reporting of unclaimed retail money orders?

16 A. Nothing.

17 Q. All right. Okay. Retail money orders are  
18 reported to the state of purchase?

19 A. Correct.

20 Q. And agent check money orders are reported to  
21 the state of purchase?

22 A. Correct.

23 Q. So how was the decision made to report  
24 unclaimed agent check money orders to the state of

1 purchase?

2 A. It was -- it was provided to me. The  
3 information was provided to me within the lawyers that  
4 made that decision.

5 Q. Okay. You don't have anything additional to  
6 add about why that decision was made or how that decision  
7 was made?

8 A. No.

9 Q. All right. Unclaimed agent checks are  
10 reported to the state of MoneyGram's incorporation;  
11 right?

12 A. Which one? Agent -- agent check money orders?

13 Q. No, just -- yeah, let me repeat the question.

14 Unclaimed agent checks are reported to the  
15 state of incorporation from MoneyGram?

16 A. Correct.

17 Q. How was the decision made to report unclaimed  
18 agent checks to the state of incorporation? How was that  
19 decision made?

20 MR. RATO: Objection to the form; asked  
21 and answered. You can answer.

22 A. It was the attorneys and outside counsel.  
23 They -- they went that way, and then they let us know how  
24 to report them.



1 BY MR. DISHER:

2 Q. Okay. And you don't have any additional  
3 information to add on how that decision was made?

4 A. No.

5 Q. Okay. Same question with teller's checks; how  
6 was the decision made to report unclaimed teller's checks  
7 to the state of incorporation?

8 MR. RATO: Same objection. You can  
9 answer.

10 A. Same answer; our attorneys and outside counsel  
11 reviewed all that and then told us how to report them.

12 BY MR. DISHER:

13 Q. Okay. Did you play a role in any of those  
14 decisions?

15 A. No. I mean, they may have talked to me, but I  
16 was not part of the decision-making. They might have just  
17 asked me how things work, like you've asked me, and that's  
18 how they -- you know, they just asked a few questions.  
19 That's all.

20 Q. Okay. All right. Let me ask a more pointed  
21 question:

22 Do you know why MoneyGram treats unclaimed  
23 agent checks different from how it treats unclaimed agent  
24 check money orders?

1 MR. RATO: I would caution the witness  
2 not to -- not to disclose any information that came from  
3 counsel, but to the extent that you have a personal  
4 understanding, you can answer.

5 A. I don't know.

6 BY MR. DISHER:

7 Q. Okay.

8 A. I don't recall.

9 Q. Let me ask the same question for teller's  
10 checks:

11 Do you know why MoneyGram sends unclaimed  
12 teller's checks to the state of incorporation but sends  
13 unclaimed agent check money orders to the state of  
14 purchase?

15 MR. RATO: And again, to the extent that  
16 you know why they are sent differently, you can answer  
17 that question. I would just instruct you not to -- not to  
18 disclose any communications you had with counsel about the  
19 rationale for that. But if you -- if you independently  
20 know the reason why it is done that way, you can certainly  
21 answer that question.

22 A. I'm not sure how to respond to that question.

23 MR. RATO: If -- if you have an  
24 understanding of some characteristic of any of these

1 items, why they're escheated a certain way that is  
2 independent from something you have been told by counsel,  
3 you can answer that question. Anything you were told by  
4 counsel for the rationale, I would instruct you not to  
5 answer as Attorney-Client Privilege.

6 A. So you want to know the difference between the  
7 two, how to -- well, the teller's check was the financial  
8 institution and MoneyGram responsible, and MoneyGram  
9 contractually took the responsibility of doing the  
10 escheatment.

11 Agent check, my understanding is that it's a  
12 MoneyGram check and, therefore, since we don't have names  
13 and addresses, we report them to the state of  
14 incorporation.

15 BY MR. DISHER:

16 Q. Okay. And I just want to be real specific  
17 about my question here because there's a bunch of  
18 different type of products.

19 And so, I'm talking about the difference  
20 between how MoneyGram reports unclaimed teller's checks  
21 versus how it reports unclaimed agent check money orders.

22 A. Okay.

23 Q. Do you have an understanding about the  
24 rationale behind why MoneyGram treats those two products

1 differently for unclaimed property reporting purposes?

2           A.    Agent check money order is a money order, and  
3 my understanding is that it's -- it is escheated to the  
4 state of sale -- or of purchase where the teller is --  
5 what I said previously.

6           Q.    All right. Now, you said agent check money  
7 orders is a money order.

8                    What do you mean by that?

9           A.    It's not a check. It's a money order.

10          Q.    Okay. And why is it -- let's break those  
11 things down.

12                    Why is an agent check money order not a check?

13          A.    I don't know.

14          Q.    Why is an agent check money order a money  
15 order?

16          A.    I don't know.

17          Q.    Okay. Now, pursuant to Mr. Rato's  
18 instructions, let me ask you this initial question:

19                    Have you had discussions with MoneyGram  
20 lawyers about the rationale for why these different types  
21 of official checks are reported to different states?

22          A.    Yes, in that -- not the rationale, but they  
23 would tell me what -- you know, how they are to be  
24 reported.

1 Q. Okay. But the rationale wasn't then conveyed  
2 to you?

3 A. It may have been. I don't recall.

4 Q. Sure. Do you know what a clearing bank is?

5 A. Vaguely.

6 Q. Okay. What is your vague knowledge of what a  
7 clearing bank is?

8 MR. RATO: Just object to outside the  
9 scope of the witness' designated testimony, but you can  
10 certainly answer in your personal capacity.

11 A. Okay. I believe that's where checks go  
12 through to clear.

13 BY MR. DISHER:

14 Q. All right. So for any of the -- let's try a  
15 different way first.

16 For any of the unclaimed MoneyGram official  
17 check products, does the clearing bank play any role in  
18 reporting those unclaimed funds to the various states?

19 A. I do not believe so.

20 Q. Okay. All right. And you may have answered  
21 this, but I'm going to ask it again because I don't think  
22 I heard the answer.

23 So we were talking about products codes. Each  
24 official check product has a different type of products

1 code; right?

2 A. Yes.

3 Q. Who assigns that product code to each

4 individual product that gets sold?

5 MR. RATO: Objection to form. Can you

6 just clarify?

7 MR. DISHER: Okay.

8 MR. RATO: Meaning, if I may -- and I'm

9 not trying to -- are you saying who came up with teller's

10 checks is a 14, or who decided that this item that was

11 sold is a 14?

12 MR. DISHER: Right; the latter.

13 BY MR. DISHER:

14 Q. So a selling financial institution sells a

15 MoneyGram official check. Who decides what MoneyGram code

16 gets associated with that official check?

17 A. I don't know how the official check system

18 works. I believe, though, it comes from the official

19 check system.

20 Q. Okay. Your department, the governmental

21 affairs department, does not play any role in deciding

22 which official check code will be associated with a given

23 individual official check?

24 A. No.

1 Q. And then, the retail money orders. It says,  
2 "State Requirements Maintenance File."

3 What is that?

4 A. That's -- that's the name of the system.

5 Q. Okay.

6 A. That's where we go into -- to put in that date  
7 to run the reporting.

8 Q. Okay. The system we talked about earlier?

9 A. Yes.

10 Q. All right. Okay. Now, if you go to the very  
11 next page, it should be the beginning of the definition,  
12 the first one is business association. The last sentence  
13 says, "MoneyGram is defined as a business association for  
14 unclaimed property reporting."

15 Do you have any reason to disagree with that?

16 A. No.

17 Q. You agree with that?

18 A. I agree with that.

19 Q. Okay. If you go to the next page where it has  
20 a definition for "Holder," you see the second sentence  
21 says, "MoneyGram is the holder of outstanding money  
22 orders, money transfers, gift certificates, payroll money  
23 orders, official checks, money transfer checks, bill  
24 payment checks, vendor checks, and payroll checks."

1 name, obviously, that comes after the word "from"?

2 A. Yes.

3 Q. And is that your e-mail address at

4 MoneyGram.com?

5 A. Yes.

6 Q. So -- and I realize we've got pages 2 going on

7 to page 3.

8 So flipping back to page 3 with regards to the

9 paragraph under Point Number 2, you sent this e-mail with

10 this paragraph to Mr. Wood in Arkansas?

11 A. Yes.

12 Q. So let me -- let's stay on the paragraph below

13 Bullet Point Number 2. I want -- I'm going to read the

14 second sentence:

15 "MoneyGram is responsible for escheating all

16 other official checks because MoneyGram is the issuer."

17 Do you see that sentence?

18 A. Under 2?

19 Q. Yes. So it's under 2 and it's the second

20 sentence in that paragraph.

21 A. Yep.

22 Q. Do you see that sentence?

23 A. Yes.

24 Q. When -- when you say in that sentence, "other



1 official checks," what do you mean? Which of the four  
2 product groups that we talked about today were you  
3 referring to?

4 A. I was referring to the teller, agent, check,  
5 and agent check money order.

6 Q. So let me make sure I -- teller checks, agent  
7 checks, and agent check money orders?

8 A. (Witness nodding head.)

9 Q. I'm going to hand you what I'm going to mark  
10 as Petrick 54.

11 (Whereupon, Exhibit 54 was marked.)

12 MR. O'KORN: Off the record for just a  
13 second.

14 (Discussion off the record.)

15 BY MR. O'KORN:

16 Q. I'm actually going to have you -- I'm going to  
17 have you refer to Exhibit 50 that Mr. Disher handed you  
18 initially.

19 So Ms. Petrick, I'm referring you here to  
20 Exhibit 50, and in particular, MG -- MG4673.

21 Do you see that?

22 A. Are you talking about this, here?

23 Q. Yes, this particular page.

24 A. Yes.

1                   What entity would be reporting unclaimed  
2 retail money orders?

3                   A.    MoneyGram Payment Systems, Inc.

4                   Q.    What entity would be reporting any items under  
5 CK15?

6                   A.    MoneyGram Payment Systems, Inc.

7                   Q.    And what entity would be reporting to states  
8 any items under CK77?

9                   A.    If it shows up that way, it would be --  
10 MoneyGram Payment Systems, Inc. is the -- that is the  
11 entity that we file under for everything.

12                  Q.    So it's your testimony that MoneyGram  
13 International doesn't report any of these particular  
14 unclaimed items we talked about with these codes to any  
15 states?

16                  A.    They do not.   Not MoneyGram International.

17                  Q.    And I'm going to stay on page 1 of Petrick  
18 Exhibit 55, so -- yes, thank you.

19                               MR. RATO:   I just have a question  
20 about --

21                               MR. O'KORN:   Yes.

22                               MR. RATO:   So page 1 is Bates labeled  
23 5199; page 2 is labeled 5250?

24                               MR. O'KORN:   I think I had 5260.

1 version, but I don't believe it's being in effect yet, so  
2 we've just gone along with the NAUPA 2 version since it  
3 went into effect a number of years ago.

4 BY MR. TALIAFERRO:

5 Q. Does UPPO offer any training on the NAUPA  
6 standard electronic file format?

7 MR. RATO: UPPO is U-P-P-O.

8 A. They may, but that's not something I probably  
9 would go to, one of the classes I would attend.

10 BY MR. TALIAFERRO:

11 Q. Could you turn to the property record section,  
12 which begins on the bottom of page 6 of the document? And  
13 I'll first ask -- let me ask this:

14 When MoneyGram files money orders, retail  
15 money orders in its annual reports, does it include in  
16 that filing with the state the place of purchase?

17 MR. DISHER: Objection to the form.

18 MR. RATO: Objection.

19 MS. AHUMADA: Join.

20 A. Yes.

21 BY MR. TALIAFERRO:

22 Q. And do you know where that is listed in the  
23 NAUPA form?

24 A. Yes.

1 MR. RATO: Can we just clarify, you're  
2 talking about official checks right now?

3 MR. TALIAFERRO: No, the question is  
4 about money orders.

5 MR. RATO: Okay. I'm sorry.

6 A. It's in there. I just -- I'm trying to see  
7 where it is. Number 14 on the Field 14, property owner  
8 state.

9 BY MR. TALIAFERRO:

10 Q. So that is a field, and the description says  
11 to enter the owner's last known address; is that correct?

12 A. It does say that, yes.

13 Q. Okay. And is it -- I believe your previous  
14 testimony was that retail money orders are owner address  
15 unknown?

16 A. Yes.

17 Q. Do you put the place of purchase in that  
18 state, Field 14?

19 A. Yes.

20 Q. Okay. Do you know if you were -- do you know  
21 why you do that?

22 A. To identify the state where it was sold, and  
23 that's going to the appropriate state.

24 Q. All right. Same question for agent check

1 money orders:

2 Do you put the place of purchase in Field 14?

3 A. I believe so.

4 Q. Same question for official check teller's

5 checks:

6 Do you put the place of purchase in Field 14?

7 A. Agent checks?

8 Q. Yes.

9 MS. AHUMADA: Objection; form.

10 A. I do not believe so. I just can't recall

11 right now if we put in Delaware or --

12 BY MR. TALIAFERRO:

13 Q. Well, let's take a look at -- we're going to

14 come back to Petrick 65, but let's take a look at

15 Petrick 48. If you turn to the second page, these are the

16 fields that Delaware has in its system from -- from

17 MoneyGram.

18 And do you see that Address 1, Address 2, city

19 and zip code are all blank?

20 A. Yes.

21 Q. Does that help you answer the question of

22 whether MoneyGram populates that field with the state of

23 purchase?

24 MR. DISHER: Objection; form.

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CERTIFICATE

I, Barbara J. Carey, a Registered Professional Reporter and Notary Public for Anoka County, Minnesota hereby certify that I reported the Deposition of Kate Petrick, on the 5th day of June, 2018, in Minneapolis, Minnesota, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed under my direction and is a true record of the testimony of the witness;

That I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition by the witness was not waived;

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of June, 2018.

\_\_\_\_\_  
Barbara J. Carey  
Registered Professional Reporter  
Notary Public

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SUPREME COURT OF THE UNITED STATES

- - -

DELAWARE, : NOS. 220145 &  
 : 220146  
Plaintiff, : (Consolidated)  
 :  
vs. :  
 :  
ARKANSAS, et al., :  
 :  
Defendants. :

- - -

Philadelphia, Pennsylvania  
May 23, 2018

CONFIDENTIAL

Videotaped deposition of EVA  
YINGST, taken pursuant to notice at the  
law offices of Kleinbard, LLC, One  
Liberty Place, 46th Floor, 1650 Market  
Street, Philadelphia, Pennsylvania, on  
the above date, beginning at 10:11 a.m.,  
before Jared E. Bittner, RPR-CSR, Notary  
Public.

- - -

GOLKOW LITIGATION SERVICES  
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1 Delaware.

2 MR. FEINBERG: Cory  
3 Feinberg, I'm associate general  
4 counsel at MoneyGram.

5 MR. RATO: Michael Rato with  
6 McElroy, Deustch, Mulvaney &  
7 Carpenter for MoneyGram.

8 MR. O'KORN: Keith O'Korn,  
9 Ohio Attorney General's Office.

10 MR. HAVERSTICK: Matt  
11 Haverstick, Commonwealth of  
12 Pennsylvania.

13 MS. MOSELEY: Tiff Moseley,  
14 State of Delaware.

15 MR. MUNLEY: Brian Munley,  
16 Pennsylvania Treasury.

17 MS. AHUMADA: Thank you.

18 BY MS. AHUMADA:

19 Q. Ms. Yingst, I'll just very  
20 quickly cover some background information  
21 from you. Do you have a college degree?

22 A. Yes.

23 Q. And where did you go to  
24 school?



1           A.     Undergraduate Bloomsburg  
2     University.

3           **Q.     When did you -- what degree**  
4     **did you get?**

5           A.     Accounting and business  
6     administration, Bachelor of Science.

7           **Q.     Do you have any other**  
8     **advanced degrees?**

9           A.     I have my master's degree,  
10    my MBA from West Chester University.

11          **Q.     And when did you get that**  
12    **degree?**

13          A.     Around 2003.

14          **Q.     Okay.   And where are you**  
15    **currently employed?**

16          A.     MoneyGram.

17          **Q.     And how long have you been**  
18    **employed at MoneyGram?**

19          A.     17 and a half years.

20          **Q.     Okay.   And what is your**  
21    **current title at MoneyGram?**

22          A.     Head of product and  
23    solutions.

24          **Q.     And how long have you had**

1     **that title?**

2             A.     A year and a half.

3             **Q.     Okay.  And what are your job**  
4     **responsibilities and duties as head of**  
5     **product and solutions?**

6             A.     I am the primary product  
7     owner of the financial paper products  
8     which includes our official check and  
9     money order programs.  I also am  
10    responsible for a team of people that  
11    manage some of those relationships in the  
12    United States.

13            **Q.     And what was your title**  
14    **before head of product and solutions at**  
15    **MoneyGram?**

16            A.     Director of product and  
17    solutions.

18                    MS. AHUMADA:  I am going to  
19    mark this exhibit as Yingst-1.  We  
20    have so many people in the room.  
21    We'll just give them a minute for  
22    everyone to get a copy.

23                    (Yingst-1, Notice of  
24    Deposition of Defendant, The

1 Commonwealth of Pennsylvania, was  
2 marked for identification.)

3 BY MS. AHUMADA:

4 Q. Okay. What's been marked as  
5 Yingst-1 that's placed in front of you is  
6 a Notice of Deposition to MoneyGram. And  
7 it's my understanding that you are here  
8 today as a corporate representative of  
9 MoneyGram Payment Systems, Inc.; is that  
10 correct?

11 A. Yes.

12 Q. Okay. And is that your  
13 employer, MoneyGram Payment Systems,  
14 Inc.?

15 A. Yes.

16 Q. Okay. So today when I refer  
17 to MoneyGram I will refer -- I will be  
18 referring to MoneyGram Payment Systems,  
19 Inc. And if I use the word "you" on  
20 occasion, as a corporate designee again  
21 as you I will mean MoneyGram.

22 A. Understood.

23 Q. Okay. If you could look at  
24 this Yingst-1, it's been explained to us

1 today that you are here to cover not all  
2 of the topics that have been listed in  
3 the Notice of Deposition. So I'm going  
4 to go through those with you, the ones  
5 that you're here on today, and if you  
6 could just confirm if that's the case and  
7 I'll just group them.

8 So Topics 1 and 2?

9 A. Yes.

10 Q. Okay. Topics 5 through 10;  
11 is that correct?

12 A. Yes.

13 Q. And then 13 through 14; is  
14 that right?

15 A. Yes.

16 Q. And Topic Number 17 and 18?

17 A. Yes.

18 Q. Okay, great. Did you  
19 prepare for today's deposition?

20 A. Yes.

21 Q. Okay. And how did you  
22 prepare?

23 A. Reviewing some of the  
24 documents that had been provided.

1           A.     I'm also not -- I don't know  
2     the answer to that question.

3           **Q.     Okay.  If I said it was the**  
4     **second largest money transfer company, do**  
5     **you know that to be true or not?**

6           A.     I believe that's probably  
7     true.

8           **Q.     Okay.  Who are MoneyGram's**  
9     **customers?**

10          A.     So MoneyGram's customers are  
11     both institutions such as banks and  
12     credit unions.  We also have consumers  
13     who do business with us from the money  
14     transfer perspective, so I think it  
15     depends on the product.

16          **Q.     Okay.  So for the**  
17     **institutions and you said banks and**  
18     **credit unions, what services does**  
19     **MoneyGram offer those customers?**

20          A.     Official check processing as  
21     well as money orders.  We also offer  
22     money transfer to those institutions.

23          **Q.     And what does money transfer**  
24     **mean to you?**

1           A.     I don't believe that is true  
2     now.

3           **Q.     Do you know who is?**

4           A.     Western Union, I believe.

5           **Q.     Okay. On the last bullet**  
6 **point it says product lines. Let's go**  
7 **through these. Tell me, what is global**  
8 **funds transfer person to person payment?**

9           A.     That would be as referenced  
10    previously the money transfer business.

11          **Q.     Okay. And the next bullet,**  
12 **bill payment services, what does that**  
13 **mean?**

14          A.     Bill payment services are  
15    where a consumer can present cash at one  
16    of our agent locations to pay any biller  
17    who is on our list. So they provide  
18    their account number and it goes through  
19    the same process as our money transfer,  
20    but the money goes to a particular  
21    biller.

22          **Q.     The next bullet is money**  
23 **orders. What is that product?**

24          A.     Money orders are a

1 particular kind of instrument that are  
2 sold by our agents including some  
3 financial institutions to a consumer for  
4 use in making payments, and it's like a  
5 draft or a check basically.

6 **Q. And the next bullet is an**  
7 **official check processing service. What**  
8 **does that mean, official check processing**  
9 **services?**

10 A. One of our services is that  
11 a financial institution, meaning a bank  
12 or a credit union, can elect to use  
13 MoneyGram to provide a realm of services  
14 around their official check program  
15 including providing inventory,  
16 reconciliation, back office processing,  
17 exception research handling, et cetera,  
18 so it's an outsourcing of parts of their  
19 official check program.

20 **Q. When we went over the money**  
21 **order, you had stated that you,**  
22 **MoneyGram, has agents. Do those same**  
23 **agents also offer official check**  
24 **processing services?**

1           A.     Only financial institutions  
2     can do official check -- can offer  
3     official check processing services.

4           **Q.     Okay.  So who are the agents**  
5     **that are not financial institutions?**

6           A.     Retail agents, convenience  
7     stores, Walmart, CVS, mom and pop stores,  
8     a whole realm of nonfinancial institution  
9     businesses that offer the sale of money  
10    transfer and/or money order.

11          **Q.     If you could go to the next**  
12    **page which is MG 392.  On the top line**  
13    **there it's -- the heading is outsourcing**  
14    **payment services.  And if you could**  
15    **describe for us what is meant by,**  
16    **"Financial institutions continue to seek**  
17    **revenue generation and cost saving**  
18    **opportunities through outsourcing."**

19          A.     That -- the primary premise  
20    of why an institution would outsource to  
21    MoneyGram is that they -- some of the  
22    work that we do they no longer have to  
23    do, so they gain efficiency.  They can  
24    use their resources more efficiently and



1 they also can both save money and perhaps  
2 generate some additional revenue through  
3 the way that our pricing structure is  
4 with that program.

5 **Q. Okay. And how long have you**  
6 **offered that product?**

7 MR. TALIAFERRO: Object to  
8 the form.

9 MR. RATO: Object to the  
10 form.

11 THE WITNESS: Do -- are you  
12 referencing official checks?

13 BY MS. AHUMADA:

14 **Q. Yes, the outsourcing**  
15 **services.**

16 A. Okay. Since around 1979.

17 **Q. And since that time has**  
18 **MoneyGram offered the same products as**  
19 **part of its outsourcing?**

20 MR. TALIAFERRO: Object to  
21 the form of the question.

22 MS. AHUMADA: Do you  
23 understand my question?

24 THE WITNESS: Could you

1 rephrase it, please?

2 BY MS. AHUMADA:

3 Q. Sure. So you indicated that  
4 MoneyGram provides certain outsourcing  
5 services to banks and money -- excuse me,  
6 credit unions. Okay. So what -- and you  
7 went over the different kinds of  
8 outsourcing. From its inception of  
9 providing that outsourcing service,  
10 have -- has MoneyGram provided the same  
11 product lines for -- that has been  
12 outsourced to your clients?

13 A. Yes.

14 Q. Okay.

15 A. There are -- there have been  
16 some other smaller product lines in the  
17 interim that don't exist anymore and  
18 don't have anything to do with these  
19 official check or money order products.

20 Q. Okay.

21 A. But those have been primary  
22 since the beginning.

23 Q. Okay. If you could turn to  
24 Page MG 394. Well, it's been Bates

1 labeled that. Okay. Again, the top of  
2 the page is a title, a header, that says  
3 "Outsourcing Official Checks Value  
4 Proposition." Do you see that?

5 A. Yes.

6 Q. Okay. On the second, there  
7 is a chart here. On the second line item  
8 it says "Systems Utilized and Processing  
9 Services." Do you see that?

10 A. Yes.

11 Q. And it says, and if you go  
12 across, it says, "All performed by MGI  
13 and clearing banks integrated systems and  
14 process." What does that mean?

15 A. It essentially means that  
16 the -- once the check is issued by the  
17 financial institution, we do -- we  
18 maintain all of the back office systems  
19 related to everything, related to  
20 reconciliation, related to imaging and  
21 retention of copies, related to the  
22 clearing process with the clearing banks,  
23 related to records retention and sources.  
24 So we -- basically what that is

1   referencing is that we maintain all of  
2   those systems. The institution does not  
3   need to do that.

4           **Q.    And again this is for,**  
5   **excuse me, your official check service;**  
6   **is that right?**

7           A.    Yes.

8           **Q.    Okay. And so what is a**  
9   **clearing bank?**

10          A.    A clearing bank is a bank  
11   that MoneyGram has a relationship with  
12   for the purpose of receiving those  
13   clearing -- those checks as they clear.  
14   So we have a relationship with the bank  
15   and we receive those check clearing files  
16   on a daily basis, and those are the items  
17   that have been issued by our official  
18   check clients, customers.

19          **Q.    Are who are MoneyGram's**  
20   **clearing banks?**

21          A.    We have several different  
22   relationships. [REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

6 I think that's all of them.

7 Q. Okay. And how does  
8 MoneyGram determine which of these banks  
9 it will use as a clearing bank for a  
10 given instrument?

11 A. Each financial institution  
12 clears all of their items through one  
13 relationship, so it's not an instrument  
14 by instrument decision. It is a  
15 relationship by relationship decision and  
16 primarily MoneyGram is leveraging the  
17 vendor, the relationship to the clearing  
18 bank that in many cases offers us the  
19 best price. So it is an economic  
20 decision more than any other decision on  
21 our part.

22 Q. Okay. And I think maybe I  
23 misunderstood if you can clarify. So  
24 your financial institution clients, is

1 that okay if I use that terminology? Do  
2 you understand what I mean?

3 A. Yes.

4 Q. Okay.

5 A. Yes.

6 Q. So they are the ones that  
7 are having the direct relationship with  
8 the clearing bank or is that MoneyGram  
9 that has the relationship?

10 A. MoneyGram has the  
11 relationship with the clearing bank.

12 Q. Okay. Are there any  
13 communications between your financial  
14 institution clients and the clearing  
15 banks?

16 A. No.

17 MR. RATO: Objection to the  
18 form.

19 MR. TALIAFERRO: Join.

20 THE WITNESS: No.

21 BY MS. AHUMADA:

22 Q. Okay. If you go to the  
23 third item down it says "Multiple Payment  
24 Types." First, what does a payment type

1     **mean?**

2             A.     I believe that in the  
3     context of this slide it means that  
4     within the official check program we can  
5     support different types of checks,  
6     different types of payments.

7             **Q.     Okay. When you say the**  
8     **"context of this slide," could you**  
9     **explain what you mean by that?**

10            A.     I just mean that because  
11    this slide is referencing official  
12    checks, I believe based on the  
13    information here that multiple payment  
14    types means multiple types of checks.

15            **Q.     Okay. And if you go across**  
16    **that same line, it says here, "Flexible**  
17    **Payment Options. MoneyGram supports**  
18    **teller, agent, cashier's, money orders."**  
19    **Are those all official checks?**

20            A.     They are all processed on  
21    our official check platform, yes.

22            **Q.     And we'll cover each of**  
23    **those individually, but just so we're**  
24    **understanding probably for space reasons,**

1 Q. Okay. And which type of  
2 checks is that?

3 A. That would be for teller's  
4 checks, agent checks and also money  
5 orders.

6 Q. And so the list that we  
7 previously looked at there was also a  
8 cashier's check. So is that not a  
9 product that MoneyGram is filing  
10 escheatment products for?

11 A. It is not.

12 Q. And the last bullet there,  
13 it says "Reimbursements from the state on  
14 presented items after escheatment." What  
15 is meant by that?

16 A. If we have handled the  
17 escheatment process and that item comes  
18 in to clear, the physical item comes in,  
19 we will pay that item and then handle the  
20 reclamation process to go back and get  
21 that money back.

22 Q. Okay. One of the products  
23 we had covered on the last page that we  
24 had looked at was money orders. I'd like



1 to switch and start reviewing some of  
2 those. Just generally if you could  
3 describe a money order, and I think you  
4 may have done that, but just to retable  
5 set for me I'd appreciate it.

6 A. A money order is a specific  
7 document that has language on the back of  
8 it. It's got purchaser payee document --  
9 purchaser payee language on the back,  
10 some service charge language. It is a --  
11 issued by an agent of MoneyGram, so it  
12 says agent for MoneyGram on the face of  
13 it. It is payable through one of our  
14 clearing banks. It is a document or an  
15 item that a consumer purchases at one of  
16 our agent locations and uses for specific  
17 payment purposes, whatever their need is.

18 Q. Okay. So again it's a paper  
19 instrument, right?

20 A. It is a paper instrument.

21 Q. Are there any nonelectronic  
22 money orders?

23 A. No.

24 Q. Okay. You said that there

1 was a payer listed. What -- who would be  
2 a payer?

3 A. I said payer. Well, payee.

4 Q. Well, that's another  
5 question I have.

6 A. I'm not sure if I used the  
7 word payer or not.

8 Q. Okay.

9 A. That was an error.

10 Q. Okay. All right. Payee,  
11 then what's a payee?

12 A. So a money order is  
13 typically received in blank and then the  
14 purchaser would fill in the payee on that  
15 item.

16 Q. Okay. So if there is a  
17 monetary obligation, the payee is the  
18 ultimate end user or end recipient of  
19 that money order; is that right?

20 A. That's normally how it  
21 works. The payee is filled in and the  
22 money order is given to the payee and  
23 then they will deposit or process that  
24 item.

1           **Q.     Okay.  And who is deemed the**  
2   **issuer of a money order?**

3                   MR. RATO:  Object to the  
4                   form.

5                   MR. TALIAFERRO:  Objection;  
6                   calls for a legal conclusion.

7                   THE WITNESS:  I believe that  
8                   the issuer of a money order is  
9                   MoneyGram.

10  BY MS. AHUMADA:

11           **Q.     Okay.  And is there a drawer**  
12   **on a MoneyGram money order?**

13                   A.     Yes.  I believe that's also  
14                   MoneyGram.

15           **Q.     Okay.  Is the purchaser of**  
16   **the product, the customer, are they**  
17   **deemed an agent in any way of MoneyGram?**

18                   MR. RATO:  Object to the  
19                   form to the extent it calls for a  
20                   legal conclusion.  You can answer.

21                   THE WITNESS:  The customer  
22                   is not an agent for MoneyGram.

23  BY MS. AHUMADA:

24           **Q.     Okay.  Do you classify money**

1 orders as a remittance instrument?

2 A. I'm not sure what that term  
3 "remittance instrument" means.

4 Q. Okay. That's fine. Did  
5 MoneyGram create this product?

6 A. I don't know.

7 Q. I think you covered this,  
8 but just generally where would someone go  
9 to purchase a money order?

10 A. They would typically go to a  
11 MoneyGram agent location which could be a  
12 retail store, it could be a convenience  
13 store, it could be a financial  
14 institution, any of our agents that sell  
15 money orders.

16 Q. Okay. And how would  
17 someone, a consumer, know that they could  
18 purchase a MoneyGram money order through  
19 your agents?

20 A. There are a number of ways.  
21 There is often signage. There is often  
22 signage at the agent locations that says  
23 "MoneyGram" on it. There is also a  
24 locator online that enables them to find

1 a location.

2 Q. Do you market these money  
3 order products to any specific type of  
4 consumer?

5 A. No.

6 Q. In terms of your agents, do  
7 you do any specific marketing to cull  
8 agents?

9 A. To?

10 Q. To choose your agents. And  
11 I assume that's a customer relationship  
12 for you as well and you used the term  
13 "agent," right? Do you also consider  
14 your agents a customer of MoneyGram?

15 A. There is a contractual  
16 agent customer relationship, yes.

17 Q. And do you do any marketing  
18 to specifically target new agents?

19 A. Our marketing is primarily  
20 consumer facing for the money transfer  
21 business.

22 Q. And when you say "consumer  
23 facing," what do you mean?

24 A. Meaning that the marketing

1 that MoneyGram performs is related to the  
2 messaging as directed to consumers who  
3 might use our services, not necessarily  
4 to prospective agents.

5 **Q. What are the marketing**  
6 **strategies you use to, excuse me, to**  
7 **encourage individuals to use money**  
8 **orders?**

9 A. There is not a lot of direct  
10 money order related marketing. There is  
11 sometimes messaging on money transfer  
12 related marketing that would have a money  
13 order bullet on it, but there is not a  
14 lot of money order marketing that I can  
15 point to directly. It's not our primary  
16 product. Money transfer is MoneyGram's  
17 primary product, so it isn't -- there  
18 isn't a marketing strategy around  
19 promoting money orders specifically.

20 **Q. Okay. In terms of using a**  
21 **money order, what benefits does MoneyGram**  
22 **tout for the use of a money order?**

23 MR. RATO: Object to the  
24 form.

1 MR. TALIAFERRO: Object to  
2 the form of the question.

3 THE WITNESS: There are --  
4 benefits are it's an easy vehicle  
5 to obtain. They don't have to  
6 have a bank account. They are  
7 accepted pretty much universally.  
8 There is a receipt provided so you  
9 have some evidence of your  
10 purchase. Those are some of the  
11 key benefits to the consumer.

12 BY MS. AHUMADA:

13 Q. I'm sorry. Did you say it  
14 was safe, it is a safe product?

15 A. I think at times the word  
16 "safe" has been used in our money order.  
17 It is a safe payment mechanism. I didn't  
18 just say that.

19 Q. Okay.

20 A. But at times --

21 Q. I'm sorry. I --

22 A. At times that word has been  
23 used.

24 Q. Okay. And you said it's a

1 product to use in lieu of a personal  
2 checking account; is that right?

3 A. Yes.

4 Q. Okay. And why in  
5 MoneyGram's estimation would a consumer  
6 use a money order as opposed to a  
7 personal checking account?

8 A. There is a segment of the  
9 population that doesn't use or want to  
10 use, some maybe cannot, some they don't  
11 want to, but they don't have or don't  
12 want to use a personal checking account  
13 to make payments, so they have a  
14 regular -- many have a regular habit of  
15 using money orders to pay their bills  
16 instead of checks.

17 Q. Okay. How would a customer  
18 purchase a money order? Just go through  
19 that process.

20 A. They would walk into an  
21 agent location that sells money orders.  
22 They would pay for that instrument with  
23 cash. The agent would basically print  
24 the money order, collect the cash plus



1 whatever their fee was on top of the face  
2 amount of the money order, and they would  
3 hand them the physical document.

4 **Q. Okay. When you say that**  
5 **they pay for the instrument, so are they**  
6 **paying for the denomination of the money**  
7 **order?**

8 A. They are paying for the face  
9 of the money order plus a fee. So if I  
10 could provide an example, if I walk in  
11 and I want to buy a \$10.00 money order, I  
12 would say I want to buy a \$10.00 money  
13 order. They would create that money  
14 order. They would collect the \$10.00  
15 from me along with whatever fee the agent  
16 has determined they are charging for that  
17 service, and I would pay them that money  
18 in cash, and then they would hand me the  
19 money order.

20 **Q. Okay. Do you consider the**  
21 **money order then in that example, the**  
22 **\$10.00 money order cash equivalent?**

23 MR. RATO: Object to the  
24 form to the extent it calls for a

1 legal conclusion. You can answer.

2 THE WITNESS: There -- there  
3 has been the term "as good as  
4 cash" used. There is a perception  
5 in the market that because you  
6 paid for that instrument with cash  
7 that it is similar to cash.

8 BY MS. AHUMADA:

9 Q. Okay. So going back to the  
10 example of that \$10.00 money order, is  
11 that \$10.00 then guaranteed in any way by  
12 MoneyGram?

13 A. No.

14 Q. So that customer, again they  
15 go to pay a bill as you said as a use.  
16 What assurances are there that there is  
17 \$10.00 to back it up?

18 MR. TALIAFERRO: Object to  
19 the form of the question.

20 THE WITNESS: We know that  
21 the agent has collected the money  
22 and the agent has -- they owe us  
23 that money. So we contractually  
24 know that we have the money to

1 back up that payment as MoneyGram.  
2 We would definitely upon clearing  
3 of that item, we would pay that  
4 item, and the payment would be a,  
5 you know, an accepted good funds  
6 payment, not good funds, but an  
7 accepted payment on our side.

8 When I say there is no  
9 guarantee, there are things that  
10 can happen within the check  
11 clearing system that might cause  
12 that money order to be returned by  
13 MoneyGram at the time that it  
14 comes in for payment.

15 BY MS. AHUMADA:

16 **Q. And what are some examples**  
17 **of causing a return of a money order?**

18 A. There are situations where  
19 we're presented the same money order  
20 multiple times, so they're fraud,  
21 counterfeit. There could be alterations  
22 to that money order, so if somebody  
23 altered the amount we might return that  
24 item. If for some reason we knew that

1 that money order was stolen and we had a  
2 flag on it, we might return that item.  
3 If the item -- I already said duplicate  
4 payment. That's another. So if somebody  
5 deposited a mobile deposit on that item  
6 and then walked in to somewhere else and  
7 deposited that, that would be a duplicate  
8 and we would return one of those.

9 **Q. And if you could just**  
10 **describe that process, again going back**  
11 **to the scenario of the \$10.00 money**  
12 **order. So the customer pays the \$10.00**  
13 **to your agent; is that right?**

14 A. Yes.

15 **Q. What does the agent in turn**  
16 **do, if anything, with that \$10.00?**

17 A. The agent deposits those  
18 funds into their bank account and  
19 MoneyGram withdraws that money via ACH  
20 from their bank account as the remittance  
21 for those payments that they've sold.

22 **Q. And what is ACH?**

23 A. I don't know exactly what  
24 that term refers to. Automated clearing

1 house, I believe.

2 Q. Okay.

3 A. And it is a type of  
4 transaction between institutions.

5 Q. So once the funds have gone  
6 from your agent's bank account to  
7 MoneyGram, is that -- at that point does  
8 it go into a MoneyGram account?

9 A. Yes.

10 Q. Bank account?

11 A. Yes.

12 Q. Okay. And again, make sure  
13 I understand this, the clearing banks  
14 that we discussed, would it go into those  
15 banks?

16 A. No.

17 Q. Okay. So where is this --  
18 so the MoneyGram account that you're  
19 referring to for that \$10.00, for  
20 example, where is that account held?

21 A. MoneyGram manages a  
22 portfolio of accounts and investments  
23 related to the outstanding money orders  
24 and other paper items, so I -- I can't

1 tell you specifically where that money  
2 is, but it is managed within a portfolio  
3 of funds that our treasury department  
4 manages.

5 Q. And are they kept in, for  
6 example, a trust account?

7 A. Not to my knowledge, no.

8 Q. Is it an interest bearing  
9 account?

10 A. Some of them are interest  
11 bearing and some of them are basically  
12 cash accounts.

13 Q. So earlier we went through  
14 the clearing banks that you use, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

19 Q. So none of those banks would  
20 hold that \$10.00, for example, that we  
21 had used?

22 A. MoneyGram may have some  
23 deposits at some of those institutions as  
24 part of that clearing relationship.

1 They're not tied to specific items.  
2 They're just part of the overall  
3 portfolio that we maintain, and they may  
4 or they may not have deposits at those  
5 institutions.

6 **Q. Okay. When a customer**  
7 **purchases a money order, do they get any**  
8 **documentation back besides that physical**  
9 **paper instrument that you described?**

10 A. They receive the physical  
11 instrument and attached to that is a  
12 receipt that they then can tear off and  
13 keep. There are some agents that also  
14 would provide a transaction receipt of  
15 their own saying you purchased a money  
16 order and here is your receipt for that  
17 \$10.00 plus the fee that we added to it.  
18 That's not in every situation.

19 **Q. Does MoneyGram track that**  
20 **specific money order after it's**  
21 **purchased?**

22 A. Yes.

23 **Q. And how does it do that?**

24 A. Money orders, our money

1 orders are primarily sold using MoneyGram  
2 equipment. So the physical printer that  
3 prints the money order is something we  
4 have provided to that agent location and  
5 there is a point of sale that they are  
6 using to process that transaction. And  
7 those -- that -- that hardware process is  
8 then sending MoneyGram information about  
9 what happened with every one of those  
10 items.

11 **Q. Does the instrument have,**  
12 **for example, like a routing number?**

13 A. There is a serial number and  
14 a routing number that is part of that  
15 instrument and then we are also receiving  
16 the amount of that instrument.

17 **Q. Does MoneyGram track any**  
18 **personal identifying information on the**  
19 **customer that purchased that instrument?**

20 A. We do not require any  
21 information nor do we receive any  
22 information. In a case where a  
23 consumer -- where an agent is aware that  
24 a consumer purchases more than \$3,000 in



1 money orders in one day, then there is an  
2 information gathering requirement in the  
3 form of a log, and the agent is required  
4 to retain that information.

5 **Q. And do you know how long the**  
6 **agent is required to retain that**  
7 **information?**

8 A. I believe it's a five-year  
9 retention period.

10 **Q. Are -- does MoneyGram**  
11 **require its agents to get, for example,**  
12 **identification from the purchaser?**

13 A. Only in situations where  
14 they're purchasing more than \$3,000 in  
15 one day.

16 **Q. Actually that's a question I**  
17 **had. Is there a limit on an individual**  
18 **money order transaction amount?**

19 A. There are several kinds of  
20 limits, so there is a document limit.  
21 Some of our agents are set at --  
22 typically that's no more than \$1,000, and  
23 there could be agents set at 500, 900,  
24 1,000. Typically the document itself,

1 the individual money order, is not issued  
2 for more than \$1,000. There is not a  
3 limit to somebody coming in and buying  
4 \$4,000 worth of money orders. They would  
5 just receive multiple money orders  
6 totaling that amount. And then there are  
7 some agent limits that are set on our --  
8 our systems to prevent an agent from  
9 selling more than we want them to sell --

10 Q. Okay.

11 A. -- in a day.

12 Q. Can a customer cancel a  
13 money order?

14 A. No.

15 Q. Can they return a money  
16 order?

17 A. The customer can request a  
18 refund for a money order that they  
19 purchased by basically filling out some  
20 information and a form and going through  
21 a process where we're confirming that  
22 that money order has not already been  
23 cashed or paid. So there is a process  
24 for them to receive their funds back.

1           Q.     So for the scenario where a  
2     customer is able to get their money back,  
3     somebody filled out your form and you  
4     determined that they can get a refund,  
5     where do those funds come from?

6           A.     The processing for that work  
7     is happening in our operations area and  
8     those funds are coming basically from a  
9     general ledger account of some sort. I  
10    don't know specifically what account, but  
11    it's part of the money that MoneyGram is  
12    holding for that item.

13          Q.     Okay. Does MoneyGram get  
14    notice when the money order is actually  
15    cashed?

16          A.     Not until the item is coming  
17    in through the clearing bank process.

18          Q.     Okay. And how about the  
19    customer who purchased that money order,  
20    will they know when the recipient, we  
21    said the payee, cashes that instrument?

22          A.     They could know if they --  
23    there is a way for them to find out the  
24    status through calling MoneyGram and

1 obtaining that information. The  
2 consumer, the purchaser, would have to  
3 proactively seek out that information.

4 Q. And how would a consumer  
5 know to do that?

6 A. There -- on the receipt  
7 there is information about how to call  
8 MoneyGram and/or our website information  
9 is on the physical receipt that the  
10 consumer retains.

11 Q. And so you said it's on the  
12 consumer to make that phone call and  
13 inquiry; is that right?

14 A. Yes.

15 Q. They don't get an automatic  
16 result in some way that the funds have  
17 been cashed?

18 A. No.

19 MR. RATO: Object to the  
20 form.

21 BY MS. AHUMADA:

22 Q. Do you believe that -- does  
23 this -- does this make that instrument  
24 susceptible to abandonment? Do you know?

1 MR. RATO: Object to the  
2 form.

3 MR. TALIAFERRO: Object to  
4 the form.

5 THE WITNESS: Could you  
6 rephrase the question, please?

7 BY MS. AHUMADA:

8 Q. So if the consumer is not  
9 getting affirmatively a notice that the  
10 money has been cashed, is it possible  
11 then that it could go stretches of time  
12 when there is no transaction on the other  
13 end and the payee hasn't cashed it; is  
14 that right?

15 A. Yes, that can happen.

16 Q. Okay. Do you believe that  
17 makes it more so likely to be abandoned  
18 then say, for example, a personal check?

19 MR. RATO: Object to the  
20 form.

21 MR. TALIAFERRO: Object to  
22 the form of the question, outside  
23 the notice topics of deposition.

24 BY MS. AHUMADA:

1 Q. You can answer.

2 A. I don't know that it makes  
3 it more susceptible than a check. I  
4 think the risk is there either way.

5 Q. Okay. Do you know, are you  
6 familiar with Reg CC?

7 A. Yes, somewhat.

8 Q. Do you know if money orders  
9 are next day available funds under Reg  
10 CC?

11 MR. RATO: Object to the  
12 form to the extent it calls for a  
13 legal conclusion. You can answer.

14 THE WITNESS: No.

15 BY MS. AHUMADA:

16 Q. They are not, okay. We --  
17 you had discussed the limits on the  
18 actual instrument of the money order as  
19 \$1,000 or less. Is that something that  
20 MoneyGram determines or is it a legal  
21 requirement that it be kept under that  
22 amount?

23 MR. RATO: Object to form to  
24 the extent it calls for a legal

1 conclusion. You can answer.

2 THE WITNESS: To the best of  
3 my knowledge it's a MoneyGram  
4 determination. There is no legal  
5 restrictions on that.

6 BY MS. AHUMADA:

7 Q. Do you know why MoneyGram  
8 makes the determination that \$1,000 limit  
9 is the maximum amount?

10 A. I believe it's a combination  
11 of industry standard as well as risk  
12 management that it's just to keep those  
13 amounts lower.

14 (Yingst-3, Two Copies of  
15 Photographs Bates PA\_0000349 and  
16 PA\_0000350, was marked for  
17 identification.)

18 BY MS. AHUMADA:

19 Q. Okay. All right. Ms.  
20 Yingst, I'm handing to you a document  
21 that I've marked Yingst-3. Ms. Yingst,  
22 are you familiar with this document?

23 A. Yes.

24 Q. And I should rephrase that.

1 I'm sorry. This is a picture of a  
2 document, a copy of a document, right?

3 A. Yes.

4 Q. And are you familiar with  
5 what's being depicted in this two-page  
6 document?

7 A. Yes.

8 Q. Okay. What's being  
9 depicted --

10 MR. RATO: Could I just note  
11 something? The -- the money order  
12 document that's on the second page  
13 has somebody's name, and so we  
14 would just ask that if it's going  
15 to be filed with the court that  
16 the person's name be redacted.  
17 You can put name or something, but  
18 just that the person's identity  
19 not be.

20 MS. AHUMADA: Noted. Thank  
21 you.

22 MR. RATO: Thanks.

23 THE WITNESS: Could you  
24 repeat the question?



[REDACTED]

2 a clearing bank for MoneyGram?

3 A. Yes.

4 Q. Okay. I thought we had  
5 said, or you had said, that your money  
6 orders don't go through your clearing  
7 banks.

8 A. No, they do go through our  
9 clearing banks.

10 Q. Okay. I guess I  
11 misunderstood. So let's say this money  
12 order that I have in front of you was for  
13 \$15.00. Who is holding that \$15.00? [REDACTED]

[REDACTED]

15 MR. RATO: Object to the  
16 form.

17 THE WITNESS: It's  
18 MoneyGram.

19 BY MS. AHUMADA:

20 Q. It's MoneyGram?

21 A. It's MoneyGram.

22 Q. Okay. [REDACTED]

[REDACTED]

24 A. The physical item, once this

1 item is purchased and negotiated, they  
2 send it to the utility company. The  
3 utility company deposits it. It will  
4 physically come into MoneyGram through a  
5 [REDACTED] routing and transit number  
6 under the clearing bank relationship that  
7 we have with [REDACTED], and we will  
8 then pay [REDACTED] for those items and  
9 we will have obtained that \$15.00 from  
10 the agent through them after they sell  
11 that money order.

12 Q. Okay. I understand. So  
13 you're reimbursing [REDACTED] for let's  
14 say \$15.00, but they've paid on the  
15 obligation; is that right?

16 A. When -- yes. We collect --  
17 when we get our clearing files and we see  
18 how much is coming in each day, we are  
19 paying [REDACTED] for those items, so  
20 yes.

21 Q. Okay. The next bit of  
22 information is a little bit to the right.  
23 It says "Issuer/Drawer" and then it says  
24 "MoneyGram Payment Systems, Inc." Does

1 A. No.

2 Q. Okay. If you'll notice on  
3 the first paragraph there, it says she is  
4 head of global supply chain for MoneyGram  
5 International. And the same question  
6 I've asked you previously, does she work  
7 for a different entity than you?

8 A. We work for the same entity.

9 Q. Okay. Do you use the term  
10 MoneyGram International as well?

11 A. It -- I typically just use  
12 the term "MoneyGram" to be really honest.

13 Q. So today when we're talking  
14 about MoneyGram, we're talking about that  
15 as well, right?

16 A. Yes.

17 Q. Yes. If I could have you  
18 turn, please, to MG 2688 which is the  
19 third I think page or so. And again  
20 we're focusing on -- I'm sorry. I called  
21 out the wrong number. I apologize. It's  
22 MG 2690. I apologize for that error in  
23 Bates numbering.

24 Okay. Would you agree with

1 me that this is a document that's titled  
2 "Money Order"?

3 A. Yes.

4 Q. And that the image that we  
5 have here is different than the image we  
6 previously reviewed; is that right?

7 A. Yes.

8 Q. Okay. Are you familiar with  
9 this instrument that's being depicted  
10 here?

11 A. Yes.

12 Q. Okay. What is it?

13 A. This is also a money order.  
14 It is a money order that -- it is a  
15 different type of inventory than the one  
16 that we previously reviewed. This is a  
17 money order that wouldn't only be printed  
18 by one of our financial institution money  
19 order agents, not by a retailer or  
20 nonfinancial institution, but it is a  
21 money order just like the other  
22 instrument in a different form.

23 Q. Okay. And why would your  
24 I'll call them financial institution

1 clients use this instrument or this  
2 inventory using your term than the  
3 different one that's being used by your  
4 agents?

5 A. They may have a desire to  
6 print these money orders from their  
7 teller system on their own printers  
8 instead of using MoneyGram printing  
9 equipment. So we provide them with  
10 additional options from an inventory  
11 perspective to meet their printing  
12 requirements or their printing needs.

13 Q. Okay. And like we did with  
14 the others, let's just go through it. On  
15 the top right-hand side it says "Money  
16 order" and then underneath that there is  
17 a number. Is that the serial number?

18 A. Yes.

19 Q. And then below it says "Void  
20 over 1,000," and that's because of the  
21 maximum limit we just talked about?

22 A. Yes.

23 Q. Okay. Can your financial  
24 institutions choose to have a limit

1     **that's higher than that?**

2             A.     Not on the -- not if they  
3     are an agent using our retail money order  
4     program, they cannot.

5             Q.     Okay. You coached that in  
6     some language I'm not sure I fully  
7     understand. So when can they use a money  
8     order for a large amount or if at all?

9             A.     If they are using an agent  
10    check money order that is coming through  
11    the official check platform instead of  
12    the money order platform at MoneyGram,  
13    they can issue that agent check money  
14    order for really any denomination.

15            Q.     Okay. And why would one  
16    instrument have a higher amount,  
17    denomination amount, than the other?

18            A.     The \$1,000 is primarily a  
19    restriction of our retail money order  
20    program which this item that you're  
21    looking at is part of. However, if they  
22    are using the agent check money order  
23    that's available through the official  
24    check program, we allow them to use

1 higher dollar amounts. It's just a  
2 platform specific requirement. It's not  
3 based on any particular difference  
4 between the two products. It's just how  
5 we manage the products.

6 **Q. Okay. So here you said this**  
7 **is a retail money order program, what we**  
8 **have in front of you, but you also stated**  
9 **that this is a sample of something we use**  
10 **by a financial institution, and I'm not**  
11 **sure I understand what that means.**

12 **A.** When I reference the retail  
13 money order program, I am referencing  
14 the -- MoneyGram's money order product  
15 program systems processes which could  
16 include retailers or financial  
17 institutions that are issuing those money  
18 orders through that system, that are  
19 being managed through that system. An  
20 agent check money order is the same  
21 product, but it's on our official check  
22 platform.

23 **Q. Okay.**

24 **A.** All right.

1           **Q.     And they're both in a sense**  
2 **money orders, just different platforms**  
3 **that you're using?**

4           A.     They are.

5           **Q.     Okay.**

6                   MR. TALIAFERRO: Object;  
7 mischaracterizes testimony.

8                   MS. AHUMADA: Well, she  
9 agreed to it. So did I --

10                   THE WITNESS: They are -- to  
11 clarify, they are both money  
12 orders. They have the same  
13 language on the back of them and  
14 the same terminology on the front  
15 of them.

16                   MS. AHUMADA: Thank you.

17 BY MS. AHUMADA:

18           **Q.     If I could please have you**  
19 **turn now to on the title it says Exhibit**  
20 **B, but it's Page MG 2692. It looks like**  
21 **this is the same product as we just**  
22 **previously looked at; is that right?**

23           A.     Yes.

24           **Q.     Are there any differences?**



1           A.     No, the -- there are no  
2 differences in the product.

3           Q.     Okay. Now, if you'll note  
4 one, I have both of the pages up just so  
5 if you want to refer.

6           A.     Okay.

7           Q.     But one document has the  
8 words "International Money Order" on the  
9 upper right-hand corner. The other one  
10 has it in the lower left. Does that  
11 change the instrument in any way?

12          A.     No.

13          Q.     Okay. And this one that  
14 we're reviewing, this on 2692, is this  
15 also the retail money order program?

16          A.     Yes.

17          Q.     And because of the way that  
18 it appears, which is different than the  
19 very first MoneyGram we looked at, you  
20 know that this is a financial institution  
21 client?

22          A.     Yes.

23          Q.     Okay. If I could please  
24 have you refer to 2694. And this

1 **document, do you know what it is?**

2 A. So beginning with 2692 and  
3 2694 and 2695, this is a multipart  
4 document. So the primary money order is  
5 the front. That's 2692. 2694 is a, one  
6 of the multi-parts of that document, so  
7 it would be behind the money order, and  
8 2695 is the receipt. That would be the  
9 third part of the money order.

10 **Q. Okay. So 94, is that a**  
11 **separate piece of paper or is it the back**  
12 **side of what we just looked at?**

13 A. It's a separate piece of  
14 paper. 2693 is the back side.

15 MR. RATO: The back side of?

16 THE WITNESS: Of the primary  
17 money order 2692.

18 BY MS. AHUMADA:

19 **Q. And who if anyone keeps this**  
20 **copy?**

21 A. Normally the file copy is  
22 retained by the financial institution.

23 **Q. Okay. And you'll note that**  
24 **it says on the upper left-hand corner**

1 towards the center, it says "Notice to  
2 purchaser. This copy of your money order  
3 was given to you in error. Please return  
4 immediately to the place where you bought  
5 it. Thank you."

6 What is that note for?

7 A. That, I believe that is  
8 there in case the seller of the money  
9 order accidentally hands the file copy to  
10 the purchaser. The purchaser receipt is  
11 the next document.

12 Q. Okay.

13 A. And they would normally hand  
14 that to the purchaser, so that file copy  
15 is normally for retention and I think  
16 that is on there in case they actually  
17 hand it to the consumer, the purchaser.

18 Q. Okay. So when earlier we  
19 talked about the first example of a money  
20 order if you recall and we talked about  
21 some general characteristics of it, you  
22 explained that a person would go into an  
23 agent and purchase for whatever  
24 denomination they wanted their money

1 order. Would that hold true for this  
2 style that we've just been reviewing, the  
3 past two documents?

4 A. Yes.

5 Q. Okay. So the customer again  
6 would pay in some up front fashion cash?

7 A. When a financial institution  
8 is selling the money order they may be  
9 taking that money out of an account. In  
10 fact they are probably most often taking  
11 that money out of an account as opposed  
12 to handing cash over.

13 Q. Taking out of whose account?

14 A. The consumer's account at  
15 the institution.

16 Q. So the consumer of the  
17 product?

18 A. Yes. The purchaser  
19 typically has an account at the financial  
20 institution and the money is often coming  
21 out of their account to fund the money  
22 order.

23 Q. Okay. And then the same  
24 system, then the financial institution at

1 some point remits that money to  
2 MoneyGram; is that right?

3 A. Yes.

4 Q. Okay. And again we talked  
5 about how it's paid through and here it  
6 looks like is that [REDACTED]; is that  
7 right?

8 A. Yes.

9 Q. Same system that we  
10 discussed with the first money order?

11 A. Yes.

12 Q. Okay. So again the only  
13 difference we see here is that it's being  
14 used by a financial institution?

15 A. Yes.

16 Q. Okay. I want to ask you to  
17 please refer to page MG 2697. And would  
18 you agree with me that this is the form  
19 that we looked at initially, right?

20 A. Yes.

21 Q. So looking at this, do you  
22 know that this comes from one of your  
23 agents, retail agents?

24 A. What I -- what this document

1 tells me is that this item was sold  
2 through our equipment.

3 Q. Okay.

4 A. Not necessarily that it was  
5 a -- it could have been a financial  
6 institution using that equipment set up  
7 on that system or it could have been a  
8 retailer, but this was issued. This form  
9 is used in our equipment.

10 Q. Okay. And a financial  
11 institution can choose to use your  
12 equipment or their own printing; is that  
13 right?

14 A. Yes.

15 Q. Okay. But in essence it's  
16 the same document or same instrument that  
17 we looked at just previously to this, the  
18 copy that you said was by financial  
19 institutions to submit an order; is that  
20 right?

21 A. Yes.

22 Q. Okay. All right. I'll ask  
23 you to please refer to Page 2704. Are  
24 you familiar with this instrument?

1 A. Yes.

2 **Q. What is it?**

3 A. This is a sample of our  
4 agent check money order which is a money  
5 order that is processed through our  
6 official check platform or official check  
7 program systems.

8 **Q. Now, you've used that a**  
9 **couple times and let's clarify. What is**  
10 **your official check processing systems?**

11 A. At MoneyGram we have -- our  
12 money orders, our retail money order  
13 program is handled through one set of  
14 systems and processes and our official  
15 checks are managed through a different  
16 set of systems, technical systems and  
17 processes. So when I reference official  
18 check system or official check  
19 processing, I mean that the agent check  
20 money order is a product that is  
21 supported on the official check systems  
22 within the business as opposed to the  
23 money order systems.

24 **Q. Okay. So an agent check**

1 money order, would you agree with me that  
2 it's no different than the other money  
3 orders we looked at, it just has a  
4 different name?

5 MR. RATO: Object to the  
6 form.

7 MR. TALIAFERRO: Join.

8 THE WITNESS: There are some  
9 minor differences such as this  
10 dollar, the face amount not being  
11 limited, but the actual language  
12 that is on the back of the money  
13 order, the purchaser agreement,  
14 the service charge, all of that is  
15 the same as our money order, the  
16 money order that we reviewed  
17 previously.

18 BY MS. AHUMADA:

19 Q. Okay. So one difference you  
20 noted was the amount, the denomination  
21 amount. Is there any limit?

22 A. No.

23 Q. Okay. So if a customer --  
24 well, let me step back. One of your



1 retail agents, do they sell this product?

2 A. No. It has to be a  
3 financial institution.

4 Q. Okay. So the financial  
5 institution that is using this product,  
6 if they have a customer that has a need  
7 for a \$500.00 money order, can they use,  
8 the financial institution sell them this  
9 agent money check order?

10 A. If they are signed up to use  
11 this product, yes.

12 Q. Okay. And if that financial  
13 institution is signed up to use all of  
14 your products, can the financial  
15 institution make a determination if it's  
16 going to be the international money order  
17 we looked at previously or this agent  
18 check money order? Is that their  
19 decision?

20 A. They do not normally  
21 leverage both products. They have one or  
22 the other.

23 Q. Okay.

24 A. Or neither.

1 Q. Okay. Now, you'll look at  
2 the -- I'm sorry. If you could just take  
3 a look at the upper left-hand side. It  
4 says "Agent for MoneyGram." What does  
5 that mean?

6 A. The relationship that we  
7 have with the issuer of this item is that  
8 they are an agent of MoneyGram.

9 Q. Okay. But nothing is listed  
10 there. Do you -- let me just ask. Would  
11 there be more information usually? Is  
12 this a blank agent money check order?

13 A. Yes, this is. They would  
14 print their institution name in the,  
15 typically in the upper left-hand corner  
16 above that.

17 Q. Okay. If you look towards  
18 the bottom it says "Drawer MoneyGram  
19 Payment Systems, Inc."

20 Do you see that?

21 A. Yes.

22 Q. And previously we looked at  
23 there was language used, drawer and  
24 issuer. Is that the same terminology?

1           A.     I believe the drawer and the  
2 issuer are two different parties to the  
3 instrument.

4           Q.     Okay. Who is the issuer?

5           A.     MoneyGram is the issuer of  
6 this instrument. It's not on here, but  
7 we are.

8           Q.     Okay. And MoneyGram is also  
9 the drawer?

10          A.     Yes.

11          Q.     And it says here "Drawee."  
12 Do you see that?

13          A.     Yes.

14          Q.     [REDACTED]

15 [REDACTED] What does that mean, the  
16 drawee?

17          A.     The drawee is the clearing  
18 bank, so that is the bank that the item  
19 is drawn on and that is our clearing  
20 bank.

21          Q.     Okay. But in terms of the  
22 process that you described for us,  
23 previously you looked at, and I'm just  
24 calling it international money order in

1 order just so you can see the difference,  
2 but is it the same process in terms of  
3 what you described previously?

4 A. Yes, the clearing process,  
5 yes.

6 Q. Okay. Let's go to the next  
7 document which is 2707. It's actually I  
8 think the last page on that. Can you  
9 just tell us what this is?

10 A. This is the technical --  
11 this is the technical specification that  
12 we would provide to a financial  
13 institution who was going to print agent  
14 check money orders through their own  
15 print solution system printer. So this  
16 is the, what we would provide to them so  
17 that they know what has to be in the MICR  
18 line which is the line at the bottom  
19 where all of the numbers are and what  
20 other language has to be printed on the  
21 physical document. So this is the  
22 specification we would give them, say  
23 this is what your items need to look  
24 like.

1 Q. Okay. If you look down on  
2 the -- before you get to the series of  
3 numbers right above it, it says "Drawee,  
4 [REDACTED]." Is that  
5 another clearing bank?

6 A. That is one of our clearing  
7 banks.

8 Q. Okay. When a financial  
9 institution contracts with MoneyGram for  
10 these products, do they choose this  
11 drawee?

12 A. No.

13 Q. How -- does MoneyGram choose  
14 that drawee?

15 A. Yes.

16 Q. And how does MoneyGram make  
17 that decision of which of these banks  
18 it's going to make the drawee for the  
19 instrument?

20 A. Some of our clearing  
21 banks -- we would make that determination  
22 first by the products. So some of our  
23 clearing banks only clear official checks  
24 and some only clear money orders and then

1 some clear both. So we would choose that  
2 bank based on the product and then also  
3 based on the favorability of our pricing  
4 of our relationship with that clearing  
5 bank.

6 **Q. The clearing bank that**  
7 **clears both money order platform and the**  
8 **official check platform, what -- how does**  
9 **MoneyGram determine that those clearing**  
10 **banks can do both?**

11 A. It's through the  
12 contractual relationship that we have  
13 with them.

14 **Q. Can a bank choose to do**  
15 **both?**

16 A. If we negotiate that  
17 contractually and decide we want them to  
18 do both, yes.

19 **Q. Okay. Is there a benefit to**  
20 **having them do both?**

21 MR. RATO: Object to the  
22 form.

23 THE WITNESS: Not  
24 particularly.

1 BY MS. AHUMADA:

2 Q. Okay. You used this word  
3 several times and we've talked about the  
4 system, but the words "official check,"  
5 what does that mean to MoneyGram?

6 A. An official check is first a  
7 product category. We call it our  
8 official check product and then within  
9 that it is a negotiable instrument that  
10 is issued by our financial institution  
11 clients, and then under that umbrella  
12 there are as we discussed earlier  
13 different types of products under the  
14 official check umbrella.

15 MS. AHUMADA: I'll go  
16 through some of those. Okay.  
17 I've been asked to take a break.  
18 Is that okay?

19 THE WITNESS: All right.

20 MS. AHUMADA: Okay. We'll  
21 go off.

22 THE VIDEOGRAPHER: The time  
23 is 11:39 a.m. We're going off the  
24 record.

1 (Recess; 11:39 a.m.)

2 (Resumed; 11:59 a.m.)

3 THE VIDEOGRAPHER: The time  
4 is 11:59 a.m. This begins DVD  
5 Number 2. We are back on the  
6 record.

7 MS. AHUMADA: Okay. Ms.  
8 Yingst, I am marking this document  
9 at Yingst-5.

10 (Yingst-5, 09/14/12 Slide  
11 Packet Bates MG-000194 through  
12 MG-000208, was marked for  
13 identification.)

14 BY MS. AHUMADA:

15 Q. Put this in front of you.

16 Ms. Yingst, are you familiar with the  
17 this document?

18 A. Yes.

19 Q. It's -- tell me, what is it?

20 A. It is a document that at the  
21 time was used to have product discussions  
22 with prospective institutions that might  
23 become our customers.

24 Q. And earlier today we looked



1 at another document if you recall that  
2 also had a title of "Partnership  
3 Overview." Do you recall that document  
4 we looked at?

5 A. Yes.

6 Q. Was that document for an  
7 existing client?

8 A. I believe that one was for  
9 an existing client.

10 Q. Okay. I'll ask you to  
11 please turn to the second page which is  
12 MG 195. Would -- if you know, is this  
13 presentation a presentation that  
14 MoneyGram would hand a prospective client  
15 or person?

16 A. Typically, yes, but not  
17 always.

18 Q. Okay. And on this second  
19 page it says here an agenda.

20 A. Yes.

21 Q. Are you generally familiar  
22 with these agenda items?

23 A. Yes.

24 Q. On the fourth bullet point

1 down it says "The remittance marketplace  
2 alternative financial services." Do you  
3 know what's meant by that agenda item?

4 A. Alternative financial  
5 services when talking with financial  
6 institutions is referencing the kinds of  
7 services that consumers might seek out at  
8 alternative places, so not at a financial  
9 institution such as money transfer being  
10 the primary. A lot of financial  
11 institutions don't offer that person to  
12 person product, so this -- the reference  
13 here in the context of this deck is that  
14 we were going out and talking to that  
15 institution about how they might get  
16 involved in offering those alternative  
17 financial services, meaning  
18 nontraditional services that a financial  
19 institution would offer.

20 Q. Okay. When you say "this  
21 deck," I'm not familiar with that term.

22 A. Oh, slide deck,  
23 presentation.

24 Q. Okay. I'd ask if you can

1 please refer to page MG 197. Do you know  
2 what information is being relayed here on  
3 this page of the presentation?

4 A. Yes.

5 Q. And what is it?

6 A. So this is apparently a  
7 presentation that was made to an existing  
8 official check client about our other  
9 services meaning money transfer. So this  
10 information is information about their  
11 official check program with MoneyGram.

12 Q. Okay. If you look at the --  
13 underneath official check clients, and  
14 it's 2008, there is a dash and the first  
15 item there is "4,800 items issued per  
16 month." Do you see that?

17 A. Yes.

18 Q. What is an item?

19 A. A check, an official check.

20 Q. An official check, okay.

21 And does that mean MoneyGram official  
22 check?

23 A. Yes. This would only  
24 summarize data about their -- what they

1 are doing with us.

2 Q. Okay. So as of 2008. This  
3 is what you've tallied as the number of  
4 official checks that this institution has  
5 issued; is that right?

6 A. On average per month, yes.

7 Q. Okay. And then at the  
8 bottom there it says "7.1 million in  
9 balances." Whose balances is that?

10 A. Those -- so when an  
11 institution issues a check and that  
12 check -- the time between when that check  
13 is issued and when it comes in to clear  
14 to the clearing bank, we have those funds  
15 during that time and we -- we track on an  
16 institution level what their outstanding  
17 items are, so those balances represent  
18 the outstanding checks at any given time  
19 for their official check program.

20 Q. Balances that are held by  
21 MoneyGram?

22 A. Yes.

23 Q. Okay. For this specific  
24 institution?

1 A. Yes.

2 Q. Okay. So actually that is a  
3 good segue to a couple questions I had  
4 about some things we talked about a  
5 little bit earlier today. When, and I'm  
6 going to differentiate between what we  
7 talked about, the retail or international  
8 money order product line and then the  
9 official check product line. Okay?

10 A. Okay.

11 Q. So for the reconciliation  
12 process for the retail money order, if  
13 you could, just describe that for me.  
14 And I think you said, please clarify me  
15 if I'm wrong, that your agent who  
16 receives, and I'm going to use the \$10.00  
17 example again, receives the \$10.00 from  
18 the purchaser, that \$10.00 goes to the  
19 MoneyGram; is that right?

20 A. Yes.

21 Q. How long does MoneyGram hold  
22 those funds?

23 A. We hold those funds up until  
24 the item either comes in to clear, in

1 which case we're paying the clearing bank  
2 as we discussed earlier, or if that item  
3 never comes in to clear, we hold those  
4 funds until we remit them to the  
5 appropriate states as unclaimed property.

6 **Q. Okay. And where does**  
7 **MoneyGram hold those funds?**

8 A. In that aggregate investment  
9 portfolio that I discussed earlier, so we  
10 have a variety of accounts and  
11 investments that that money is held in.

12 **Q. Okay. And does that include**  
13 **financial institution accounts?**

14 MR. RATO: Object to the  
15 form. You can answer.

16 BY MS. AHUMADA:

17 **Q. Bank accounts?**

18 A. They could be bank accounts.  
19 They could be other types of instruments  
20 such as CDs.

21 **Q. Okay. Could they be like**  
22 **mutual funds?**

23 A. They could be.

24 **Q. Okay. And do you know the**

1 percentage of where you're holding that  
2 money?

3 A. I do not.

4 Q. Okay. Does someone at  
5 MoneyGram have that information?

6 A. Yes.

7 Q. Okay. Now, the clearing  
8 bank that we had talked about, again  
9 we're just on the retail money order  
10 side, that clearing bank that gets  
11 information that a \$10.00 money order has  
12 been cashed, do they go through any  
13 process to reconcile with MoneyGram or do  
14 they just pay it outright?

15 A. The clearing bank doesn't  
16 get any of that information. The  
17 clearing bank has -- the nature of the  
18 relationship that we have with the  
19 clearing bank is that we maintain the  
20 system of record of all of the items that  
21 have been issued and the current status  
22 of those items, whether they have been  
23 paid or not paid. The clearing bank  
24 merely allows us to use their route, one

1 of their routing and transit numbers to  
2 intercept these items. They don't get  
3 detail about the items. They don't --  
4 they don't have anything to do with that  
5 item, that particular item other than  
6 that item is technically clearing through  
7 the Federal Reserve on one of their  
8 routing and transit numbers.

9 Q. Okay. So if I walked in and  
10 purchased a 10 -- not a good example. If  
11 someone gave me that \$10.00 money order.

12 A. Okay.

13 Q. And I go to my bank and I  
14 give that to them, do I get \$10.00 in  
15 cash right then?

16 A. If you were the recipient of  
17 that money order, you could deposit that  
18 money order into an account that you  
19 have. You could take it to any kind of a  
20 check casher or anyone who cashes checks.  
21 Then you could try to cash it if they  
22 accepted that type of a payment, totally  
23 up to them what they cash and don't cash.  
24 But in -- yes, you would get the \$10.00



1 if you cashed it or deposited it and you  
2 the recipient would have those \$10.00.

3 Q. And when -- where do you do  
4 that reconciliation process to find out  
5 if it's a fraudulent money order, for  
6 example, or if I've gone and tried to  
7 cash this in several different places and  
8 got money already, where does that come  
9 into the process?

10 A. It's on the back end, so  
11 it's after the fact. Our system of  
12 record knows that these items have been  
13 sold and the particular dollar amounts of  
14 those items. When we receive the  
15 clearing files there is a process by  
16 which those clearing files are matched up  
17 against the outstand -- the system of  
18 record and if -- if there are exceptions  
19 then there is reporting that is generated  
20 and there is a whole operational team  
21 that would then make decisions as to what  
22 to do with those exceptions.

23 Q. So in the scenario where I  
24 go to a check cashing place and they cash

1 my \$10.00 money order and you later find  
2 out it's fraudulent, does MoneyGram  
3 collect its money back?

4 A. The check casher that  
5 deposited that item, if it does happen to  
6 be fraudulent and we return that item,  
7 then it's the check casher who ultimately  
8 is out that money if they can't find you  
9 to collect that money from you.

10 Q. Okay. And for, again, I'm  
11 the customer and I go buy that \$10.00  
12 money order, what information is being  
13 relayed from that agent where I bought  
14 that document from, the instrument from,  
15 to MoneyGram about me as the customer, if  
16 anything?

17 A. There isn't any information  
18 relayed from the agent to MoneyGram  
19 regarding the customer.

20 Q. Do you know -- you would  
21 know the state it was purchased in,  
22 right?

23 A. For that money order, yes.

24 Q. And other than that you have

1 no other information?

2 A. We know the dollar amount  
3 and the serial number obviously and who  
4 sold it, the state, but we don't have any  
5 other data or any other information.

6 Q. Do you require your agents  
7 to get any additional information or any  
8 customer information?

9 A. Can you clarify that we're  
10 talking about money orders?

11 Q. Yes. Again, we're still  
12 sticking in that retail money order  
13 world.

14 A. We don't require the agent  
15 to obtain any information about the  
16 purchaser, except in the situation where  
17 the purchaser is known to be purchasing  
18 more than \$3,000 of money orders in one  
19 day.

20 Q. Okay. Now, for the other  
21 platform, the official check platform, if  
22 we could go through, so I can understand  
23 again, these instruments are paid for in  
24 advance; is that right?

1           A.     They are paid for -- can you  
2 clarify that question, please?

3           Q.     So if I went in and bought,  
4 for example, we looked at the form, you  
5 said agent and we've done these agent  
6 check money orders is under your official  
7 check platform; is that correct?

8           A.     Yes.

9           Q.     So let's look at that  
10 document. If I went to go get one of  
11 those instruments from my bank, I'm  
12 expected to, and let's say I want it for  
13 \$1,500, I'm expected to have those monies  
14 come from my checking account I think you  
15 said or my account with the bank; is that  
16 right?

17          A.     Yes.

18          Q.     Or I can pay in cash I  
19 presume?

20          A.     Yes. They are paid for  
21 prior to them being issued, yes.

22          Q.     Okay. And those funds  
23 there, are they also being transmitted to  
24 MoneyGram from the financial institution?

1 A. Yes.

2 Q. Okay. And how long does  
3 MoneyGram hold on to that money?

4 A. Until the item either comes  
5 in to clear or until that item is --  
6 becomes unclaimed property.

7 Q. And for the same question  
8 that I asked earlier but for this  
9 product, where is MoneyGram holding that  
10 money?

11 A. The -- all of those  
12 outstanding funds are aggregated in that  
13 same investment portfolio and it could be  
14 in any part of that portfolio.

15 Q. Do you commingle for lack of  
16 a better word the money that you're  
17 holding for MoneyGram retail purchase  
18 versus an agent check money order, for  
19 example? Is it all kept within your  
20 investment portfolio that you just  
21 described?

22 MR. RATO: Object to the  
23 form; outside the topics in the  
24 notice. The witness can certainly

1 answer if she knows.

2 THE WITNESS: Yes, they  
3 are -- that part, that cash  
4 management of the funds that  
5 MoneyGram is managing is  
6 aggregated and comingled.

7 BY MS. AHUMADA:

8 Q. Okay. And the clearing bank  
9 that we had been discussing that also you  
10 said applies to these agent check money  
11 orders, for example that [REDACTED] that  
12 we looked at, what is the process there  
13 for when someone presents that agent  
14 check money order to be cashed? Who  
15 is -- where do those funds come from?

16 MR. ROSENTHAL: Objection.

17 I think you misspoke.

18 BY MS. AHUMADA:

19 Q. Do you understand my  
20 question?

21 A. I believe I do.

22 Q. Okay. Please answer it.

23 A. The -- it's the same  
24 process. So the item is issued or sold.

1 We hold that money until that item comes  
2 in to be paid through our clearing bank.  
3 If that -- somebody has that physical  
4 item and they go and deposit or cash that  
5 item, it then comes to us through that  
6 clearing process and we pay for it. We  
7 pay the clearing bank for it.

8 Q. Right. The clearing -- like  
9 you had just described with the retail  
10 money order side, that clearing bank's  
11 process is to simply allow you to use the  
12 routing number and their mechanism to be  
13 able to -- for me, the person that  
14 purchased that agent check money order,  
15 to cash it; is that right?

16 A. Yes. You wouldn't be  
17 cashing it at the clearing bank. You  
18 would be cashing it at your bank or a  
19 check casher or some other institution.

20 Q. So who does my bank turn to  
21 when I put the deposit in to get the  
22 funds?

23 A. That's through the Federal  
24 Reserve, the clearing process that exists

1 in the US. So the deposit, the bank, the  
2 first deposit, the depository institution  
3 then sends those items to be paid for and  
4 then they are sent to the clearing  
5 institution who then pays for them. So  
6 that is all settled through the Federal  
7 Reserve process.

8 **Q. And then when does MoneyGram**  
9 **settle with the institution, the clearing**  
10 **institution to pay?**

11 A. When we receive those files.

12 **Q. Okay. And receive those**  
13 **files from whom?**

14 A. In many cases we are  
15 receiving those clearing files directly  
16 from the Federal Reserve. We are allowed  
17 to go and pull those files down by the  
18 nature of our relationship with the  
19 clearing bank.

20 **Q. Okay. Is that something**  
21 **you've contracted with the clearing banks**  
22 **to do?**

23 A. Yes.

24 **Q. Okay. And for that**



1 instrument that I walked in at a  
2 financial institution, bought this agent  
3 check money order, gave my \$1,500 to get  
4 that back, what information is that  
5 financial institution getting about me,  
6 the customer who has purchased that?

7 MR. RATO: Object to the  
8 form. You can answer.

9 THE WITNESS: The -- when a  
10 financial institution is issuing  
11 an agent check money order, they  
12 are normally only issuing those to  
13 their own customers. And they are  
14 virtually always issuing them with  
15 a payee on them, so they know who  
16 purchased that item. They know  
17 that because they typically aren't  
18 offering those items to  
19 non-customers. So they aren't  
20 telling -- we don't require them  
21 to obtain any information, but  
22 they typically know their  
23 customer.

24 BY MS. AHUMADA:

1           **Q.**     **Right. So they would have**  
2     **information on their customer and I think**  
3     **you also said they have information, they**  
4     **meaning the financial institution, on the**  
5     **payee, so who the money is going to go**  
6     **towards; is that right?**

7                     MR. RATO: Object to the  
8                     form. You can answer.

9                     THE WITNESS: Generally,  
10                    yes.

11 BY MS. AHUMADA:

12           **Q.**     **And does MoneyGram receive**  
13     **that money from the financial**  
14     **institutions?**

15                    A.     No, we do not.

16           **Q.**     **Why not?**

17                    A.     I don't know the reason that  
18     we don't. We never have. We do not ask  
19     for that information or retain that  
20     information.

21           **Q.**     **Could you get that**  
22     **information if you sought it?**

23                    MR. RATO: Object to the  
24                    form.

1 MR. TALIAFERRO: Object to  
2 form of the question; outside the  
3 scope of the topics.

4 BY MS. AHUMADA:

5 Q. You can answer.

6 A. Not necessarily.

7 Q. And why not?

8 A. I suppose we could if we  
9 rearchitected the whole product and  
10 process to obtain that information.  
11 Today there is not a mechanism for us to  
12 receive nor retain that information.

13 Q. Okay. But you could create  
14 that infrastructure, right?

15 MR. RATO: Object to the  
16 form.

17 MR. TALIAFERRO: Join.

18 THE WITNESS: I suppose.

19 BY MS. AHUMADA:

20 Q. Okay. So let's look at the  
21 document that I have marked as Yingst-5  
22 again. If you go to the page that's MG  
23 198. And the second to the bottom from  
24 the bottom bullet point, it says

1 "MoneyGram products, paper based,  
2 official checks, money orders." What is  
3 meant by "paper based" and then "official  
4 checks, money orders"?

5 A. Our financial paper  
6 products, which really has to do with the  
7 negotiable instruments, our official  
8 checks and money orders, so that's just  
9 referencing the fact that it is a paper  
10 payment of sorts.

11 Q. Okay. Are they the only  
12 paper based instruments or products that  
13 MoneyGram services or deals with?

14 MR. RATO: Object to the  
15 form. You can answer.

16 THE WITNESS: Yes. Right  
17 now, yes.

18 BY MS. AHUMADA:

19 Q. Okay. And, I'm sorry, if  
20 you go to the front page, it looks like  
21 this document is dated September 14,  
22 2012. Do you see that?

23 A. Yes.

24 Q. Okay. At that time there is

1 some information here about MoneyGram at  
2 a glance as we see the title of the  
3 document, correct? And it says again,  
4 the second to bottom bullet point  
5 underneath the paper based product  
6 information, it says how many financial  
7 institutions are being served globally.  
8 Do you know if that number has increased  
9 since 2012?

10 A. I do not know for sure, no.

11 Q. Do you think it's decreased?

12 MR. RATO: Object to the  
13 form. You can answer.

14 THE WITNESS: Because that's  
15 listed as a global number, I don't  
16 know.

17 BY MS. AHUMADA:

18 Q. So that's a good issue,  
19 globally. So is this product, MoneyGram  
20 product we've been talking about, the  
21 paper product, that's a product that you  
22 deal not only in the United States but  
23 elsewhere; is that right?

24 A. These paper products are

1 only sold or contracted with institutions  
2 that are in the US and there are a couple  
3 of Canadian entities.

4 **Q. So globally just means US**  
5 **and Canada?**

6 A. I believe that that number  
7 is the number of global financial  
8 institution relationships that we have,  
9 however, that is -- that's not  
10 necessarily tied to the paper based. I'm  
11 not sure who created this, but that -- we  
12 probably had 7,000 or had 7,152 global  
13 financial institution relationships.  
14 They were not all using those paper based  
15 products at that time.

16 **Q. So whatever products would,**  
17 **for example, another global entity be**  
18 **using if they're not using these paper**  
19 **products?**

20 A. They're using money  
21 transfer. They are money transfer  
22 agents.

23 **Q. Okay. And underneath that**  
24 **it says "4,000 plus domestic." Do you**

1 know if that number has increased since  
2 2012?

3 A. That number has decreased  
4 since 2012.

5 Q. Do you know how many  
6 domestic financial institutions MoneyGram  
7 contracts with?

8 A. I can estimate that number.  
9 I don't know exactly what that number is.  
10 I believe that it's around 2,500 now.

11 Q. Is there a reason for the  
12 decrease?

13 A. Yes.

14 Q. And what is that?

15 A. There are -- institutions  
16 have left our programs and taken -- found  
17 other ways to handle their official check  
18 program. Some of it is due to merger and  
19 acquisition and some of it related to the  
20 financial institution relationships that  
21 we had might be because we have exited  
22 some unprofitable money order  
23 relationships, so there is several  
24 reasons why.

1           **Q.     Does MoneyGram continue,**  
2     **does it now currently market its official**  
3     **check platform to financial institutions?**

4           A.     Yes.

5           **Q.     So is MoneyGram, is its goal**  
6     **to increase the financial institutions**  
7     **that are using this product?**

8           A.     Yes.

9           **Q.     And how do you market that?**

10          A.     We, a lot of our marketing  
11     is really hands -- it's more being  
12     involved in the industry.  It's not  
13     marketing per se.  So the team goes to  
14     banking conferences and we get involved  
15     in state banking organizations and we  
16     have done a little bit of, you know,  
17     marketing in the form of, for instance,  
18     magazines, the credit union magazine ad,  
19     but most, a lot of the marketing is more  
20     just being involved in the industry and  
21     creating awareness.

22          **Q.     Okay.  Besides the credit**  
23     **union, the other financial institutions**  
24     **that you market to, do they fit a certain**



1 profile? For example, size, do you  
2 market to a certain size financial  
3 institution?

4 A. Our target client is -- I  
5 don't want to say the specific size, but  
6 it would be, you know, regional, super  
7 regional and smaller, not the -- not  
8 really the big, big banks.

9 MR. RATO: If I could just  
10 note something for the record just  
11 because we're getting into certain  
12 marketing things, we'd just ask  
13 that the transcript to the extent  
14 it's not already be designated  
15 marked confidential.

16 MS. AHUMADA: Absolutely.  
17 BY MS. AHUMADA:

18 Q. How about geographically, do  
19 you market this product line to certain  
20 regions?

21 A. No, we cover the whole  
22 United States.

23 Q. Okay. If you could turn to  
24 page MG 200. Are you familiar with this

1 I'll call it a chart?

2 A. Yes.

3 Q. Okay. And what is it?

4 A. This is a representation of  
5 obviously the life cycle of an official  
6 check and all the different things that  
7 happen and the process around official  
8 checks and it covers some of the  
9 different stages and the different key  
10 steps that happen with an official check.

11 Q. Okay. And when we came back  
12 from the break or maybe right before we  
13 left the break actually, you went over  
14 what official checks meant to you, right,  
15 and I think you said it's a product  
16 category and then you said it's  
17 negotiable instruments, correct? So this  
18 life cycle, are we talking about  
19 everything that you classify as an  
20 official check or is it something  
21 specific?

22 A. This is a -- this is  
23 intended to be a general representation  
24 of any kind of official check with the

1 exception as noted that escheatment is  
2 only limited to teller and agent type  
3 things.

4 Q. Okay. Let's sort of go  
5 through that. Full escheatments, that  
6 means MoneyGram escheats and then for  
7 teller checks and agent checks, is that  
8 what that means?

9 A. Yes.

10 Q. And I think you said this  
11 earlier, the cashier's check, that's  
12 different, right?

13 A. Yes.

14 Q. Okay. All right. So can  
15 you just go through that cycle and  
16 explain what each of these things mean?

17 A. Sure. Issuance is just the  
18 actual creation and issuance of the  
19 check. So they, within the institution,  
20 they issue that item meaning they create  
21 it and give it to their customer. As it  
22 says here, we -- part of what we provide  
23 to them as our service is that we provide  
24 the actual check, stock the inventory.

1                   The next piece of the  
2 process is that the institution is  
3 required to create an issue file of all  
4 of the items they have issued meaning  
5 serial number, dollar amount and their  
6 account number associated with it and  
7 they create that file and they transmit  
8 it to us. Typically that happens  
9 overnight or the next morning.

10                   The -- they also at that  
11 time it says fund here, fund really means  
12 the remittance of that money to  
13 MoneyGram, which again typically happens  
14 the next day after the item is issued.

15                   So we get a file of all the  
16 items and we get the money to cover those  
17 items from the financial institution  
18 clients. Then that item is somewhere  
19 cashed or negotiated by the payee. It  
20 then will come to us in the clearing --  
21 in the clearing process through our  
22 clearing bank.

23                   We then do the  
24 reconciliation of those items that come

1 in to clear against what we know to be  
2 valid and we then handle all of the  
3 exceptions, create some reporting for the  
4 financial institution clients. And then  
5 we, once that processing is all done for  
6 those items, we have the images of those  
7 items and we also provide -- so that's  
8 the archive bullet on here. We provide  
9 the servicing, the customer servicing to  
10 that financial institution and then  
11 obviously if items are not cleared and  
12 they reached that particular time frame  
13 we would handle the escheatment.

14 **Q. Okay. Let's go through some**  
15 **of these specific. Under the capture**  
16 **transmit fund cycle, it says here,**  
17 **"Capture issuance through a data**  
18 **processor." Who is the data processor?**

19 **A.** It's really dependent upon  
20 the financial institution client, how  
21 they capture that. Sometimes it is a  
22 check register file that comes out of  
23 their teller system. Sometimes it is a  
24 file they create in Excel. Sometimes it

1 is a file from their core data processor,  
2 but somewhere on the financial  
3 institution end they have to create some  
4 kind of list of the checks that were  
5 issued and tell us how they -- tell us  
6 what they were, so that's what capture  
7 and transmit.

8 Q. Is there a step missing  
9 here? Or maybe I'm just  
10 misunderstanding. Where does the step of  
11 the financial institution transmitting  
12 the money it collects for the instrument  
13 goes, and I think you said it goes to  
14 MoneyGram, where does that fall in the  
15 process?

16 A. That's what the word "fund,"  
17 the word "fund" is.

18 Q. Okay, okay. And that you  
19 said happens next day, overnight?

20 A. Next day.

21 Q. Okay. So under the archive,  
22 what specifically are you archiving?

23 A. That is related to the  
24 retention of the paid items, that images

1 of the paid items. So we call it our  
2 image archive.

3 Q. Okay.

4 A. So that really, it actually  
5 is seven years plus current now. It's  
6 not 15 anymore. It's what's legally  
7 required, seven years, but our archive is  
8 really referencing our retention of those  
9 images of the paid items.

10 Q. And so the actual image of,  
11 for example, an agent check money order?

12 A. Exactly.

13 Q. Okay. So on that document  
14 it would have, for example, payee  
15 information on the image?

16 A. On the image of the item,  
17 yes. There could be -- there would be a  
18 payee and there could be any other  
19 information that perhaps a purchaser  
20 wrote on that item, an account number or  
21 there could be information on there, yes.

22 Q. I think you -- okay. And I  
23 think you covered this, but I just want  
24 to ask you when it happened. It says

1 here it's archived for 15 years and you  
2 said it's changed to seven?

3 A. Yes.

4 Q. And when did you make that  
5 change?

6 A. I believe we made that  
7 change last year.

8 Q. Okay. And why, why so?

9 A. We were keeping more than  
10 was legally required to keep, so we just  
11 decided to go with the legal requirement.

12 Q. Okay, done with that one.  
13 Just while we're --

14 MS. AHUMADA: We'll stop at  
15 one o'clock if that's okay.

16 MR. TALIAFERRO: Yes.

17 (Yingst-6, Photocopy Bates  
18 MG0002394, was marked for  
19 identification.)

20 BY MS. AHUMADA:

21 Q. Ms. Yingst, I've handed you  
22 a document that's been marked Yingst-6.  
23 Take a minute to review it. Next, just  
24 to again table set, if you go back to the



1 previous document which was marked I  
2 believe 5. You have it right in front of  
3 you. If you go to the -- actually it's  
4 in middle there, but it's MG 201. And  
5 you'll see the outsourcing official check  
6 value proposition chart that we  
7 previously looked at in another exhibit.  
8 And I had you review on the chart the  
9 third -- on the second column and the  
10 third line down. And we talked about the  
11 different MoneyGram, what you said were  
12 under the official check umbrella, and  
13 they were a teller check, agent check,  
14 cashier's check, money orders. Do you  
15 see that?

16 A. Yes.

17 Q. So now I want you to refer  
18 to Yingst-6. Okay. And do you know what  
19 this is, the image?

20 A. This appears to be a  
21 teller's check issued by one of our  
22 financial institution clients.

23 Q. Okay. First, what is a  
24 teller's check?

1 MR. RATO: Object to the  
2 form to the extent it calls for a  
3 legal conclusion. You can answer.

4 THE WITNESS: A teller's  
5 check is a type of official check  
6 that is issued by the financial  
7 institution. MoneyGram is the  
8 issuer of the item. They are the  
9 drawer of the item and it's  
10 basically a payment order that  
11 they have made either on their  
12 behalf or on behalf of their  
13 customer.

14 BY MS. AHUMADA:

15 Q. Go on the top there. It  
16 says Elizabethton Federal Savings Bank.  
17 Is that your customer?

18 A. Yes.

19 Q. Okay.

20 A. I don't know if they're  
21 still our customer, but yes.

22 Q. At the time that this was  
23 issued.

24 A. Okay.

1           **Q.     What does it mean that this**  
2 **Elizabethton is the drawer?**

3           A.     That is their defined role  
4 on the teller's check. They are the --  
5 contracturally on the teller's check they  
6 are the drawer of the item meaning they  
7 are ordering payment. I believe that  
8 from a nonlegal perspective, that's what  
9 I understand that to mean.

10          **Q.     All right. If you look here**  
11 **the value on here is \$5,000.**

12          A.     Yes.

13          **Q.     Do you see that? For these**  
14 **teller's checks, are there monetary**  
15 **limits on the amount?**

16          A.     No.

17          **Q.     And where does the \$5,000**  
18 **come from? Not a very good question, but**  
19 **this is a negotiable instrument, correct?**

20          A.     Yes.

21          **Q.     And it's for \$5,000, right?**

22          A.     Yes.

23          **Q.     So has someone paid \$5,000**  
24 **for this negotiable instrument or, for**

1     **example, I'm going to give you, or is**  
2     **this a checking account that's going to**  
3     **come out of my personal checking account**  
4     **at some point?**

5                   MR. RATO:   Object to form.

6                   You can answer it.

7                   THE WITNESS:   Official  
8                   checks, teller's checks could be  
9                   funded in a number of ways.  I  
10                   think that's the question that  
11                   you're asking.  The customer could  
12                   have needed this check to pay for  
13                   something, to buy a -- put a  
14                   deposit on a car or, you know,  
15                   money towards purchasing a home or  
16                   anything.  So if the customer has  
17                   come in to the institution and  
18                   needed an official check or a  
19                   teller's check, a good funds  
20                   check, they would take that money  
21                   out of the customer's account and  
22                   put it into the bank's account and  
23                   then ultimately send it to  
24                   MoneyGram.

1                   There are also situations  
2                   where the financial institution  
3                   would be using this check to pay  
4                   for their own -- their accounts  
5                   payable or to do mandatory  
6                   distributions from an IRA. So  
7                   there are multiple uses, so in  
8                   some cases that money is coming  
9                   out of the financial institution's  
10                  funds and in some cases it's  
11                  coming out of a customer account  
12                  depending on the need and the  
13                  nature of the payment.

14 BY MS. AHUMADA:

15                  **Q.       So in a situation where it's**  
16                  **a customer that's requesting this**  
17                  **teller's check and it's going to be a**  
18                  **\$5,000 amount, is that financial**  
19                  **institution which is your client, right?**

20                  A.       Yes.

21                  **Q.       The financial institution,**  
22                  **is that -- is it taking that money out**  
23                  **of -- let's say I choose to have it come**  
24                  **out of my checking account. Is that**

1 money coming out of my checking account  
2 when I, in order to receive this in hand  
3 or is it a promise I'm going to make that  
4 at some point when someone cashes this,  
5 then the money will be taken out of my  
6 account?

7 A. No, that money is coming out  
8 when this item is coming into variance  
9 before this item.

10 Q. Is there a fee associated  
11 with it, along with that?

12 A. Most institutions charge a  
13 fee for that, although they have the  
14 ability to waive that fee based on the  
15 relationship with the client or other  
16 situations.

17 Q. Okay. And similar to what  
18 we discussed with the other instruments,  
19 that \$5,000 that is being taken out of my  
20 checking account, where does it go?

21 A. So normally, and I would say  
22 that within each financial institution  
23 they would determine their flow of funds,  
24 but from my experience they would be

1 removing that money from your account,  
2 putting it into some kind of a holding  
3 account, not a consumer account, but a  
4 general ledger account of some sort at  
5 the institution, and it would stay in  
6 that account until the time the next day  
7 when they wire MoneyGram the money  
8 representing all of those checks, so  
9 typically going into some kind of a  
10 general ledger account.

11 Q. Okay. And like the money  
12 order that we had talked, the retail  
13 money order, the \$5,000 gets sent to  
14 MoneyGram next day or overnight?

15 A. Yes.

16 Q. But in the interim it's  
17 being held in some account of the bank?

18 A. Yes.

19 Q. Okay. And that's I assume  
20 similar to the money order where the  
21 agent is holding on to the money in some  
22 way --

23 A. Yes.

24 Q. -- for the money order,

1 right? And then the agent transmits that  
2 money to MoneyGram, right?

3 A. Yes.

4 Q. Okay. Does MoneyGram  
5 guarantee the \$5,000, this instrument,  
6 the \$5,000 that will be paid?

7 MR. RATO: Object to the  
8 form.

9 THE WITNESS: A teller's  
10 check is considered a good funds  
11 check. We don't provide a  
12 guarantee, although it's accepted  
13 as a good funds check. The  
14 institution is -- that's  
15 generating it is paying us for it,  
16 so of course we have the money,  
17 but I -- the term guarantee  
18 doesn't really come into play  
19 anywhere.

20 BY MS. AHUMADA:

21 Q. Okay. All right. Now, you  
22 used the term "good funds" representing  
23 the \$5,000 from the teller's check and I  
24 believe you used that same term when you



1 refer to a money order and the  
2 denomination of that money order that  
3 they are both good funds? What does that  
4 mean?

5 MR. TALIAFERRO: Object.

6 Objection; mischaracterizes part  
7 of her testimony.

8 BY MS. AHUMADA:

9 Q. You can answer.

10 A. A money order is not a good  
11 funds item. I believe that's what we  
12 said at that time. The -- when I use the  
13 term "good funds" I am referring to under  
14 uniform commercial code certain items are  
15 considered next day availability items,  
16 and so a teller's check is that type of  
17 an item. A money order is not.

18 Q. Okay. And I apologize for  
19 getting that wrong. Is the money, agent  
20 check money order, is that what you  
21 referred to as good funds? I know you  
22 had used that phrase. I'm just trying  
23 to --

24 MR. RATO: Object to form.

1 MR. TALIAFERRO: Object to  
2 the form of the question.

3 THE WITNESS: That is not.  
4 A money order of any kind is not a  
5 good funds item. It's not a next  
6 day availability item.

7 BY MS. AHUMADA:

8 Q. Okay. Now, why if I have a  
9 checking account with my bank, let's say  
10 this bank here, why would I get a  
11 teller's check and not just simply write  
12 a personal check?

13 MR. RATO: Object to form.  
14 You can answer.

15 THE WITNESS: There are  
16 scenarios where the payee or  
17 whatever you're using that check  
18 for doesn't want a personal check  
19 because it may not be represented  
20 by good funds. I can write bad  
21 checks all day long, but if it is  
22 a bank check then it is typically  
23 accepted as a funded check. So  
24 there are certain types of things

1           that, for instance, if you were  
2           going to a real estate closing,  
3           they would not want you to write a  
4           personal check or if you're  
5           purchasing a car they often don't  
6           want a personal check. Sometimes  
7           they do, sometimes they don't.  
8           There are situations where you  
9           need as a consumer, you need to  
10          pay for something with a good  
11          funds type of check.

12 BY MS. AHUMADA:

13           **Q.     Okay. Now, you said money**  
14           **orders don't have the next day**  
15           **availability and you said I was wrong on**  
16           **this, that it's not good funds, but is it**  
17           **the same principle that if I have a**  
18           **checking account and I have to pay a**  
19           **utility bill, for example, \$500.00, what**  
20           **would be the, and I think you covered**  
21           **this already, the benefit of using that**  
22           **\$500 money order to pay for that utility**  
23           **versus a personal checking account?**

24                   MR. RATO: Object to the

1 form.

2 MR. TALIAFERRO: Object to  
3 the form.

4 MS. AHUMADA: It's a very  
5 clumsy question and I take it out.  
6 Strike that.

7 BY MS. AHUMADA:

8 **Q. Is there similarities then**  
9 **for this, you know, what you're calling**  
10 **good funds under the regulations for a**  
11 **teller's check and the purpose of a**  
12 **consumer wanting that instrument, do you**  
13 **see comparisons with why someone would**  
14 **want to buy a money order?**

15 MR. TALIAFERRO: Object to  
16 the form of the question.

17 BY MS. AHUMADA:

18 **Q. You can answer.**

19 A. I think the decision to  
20 purchase a money order by a consumer is  
21 more based upon their banking habits or  
22 lack of banking habits. They either  
23 don't use banks or they don't want to use  
24 banks. They're more comfortable with a

1 different -- they have different flow of  
2 funds in their world and they make a  
3 decision to use a money order based on  
4 not necessarily having a bank account or  
5 not wanting to have a bank account.

6 I think the use of a teller  
7 check by a consumer is more a matter of,  
8 A, dollar value in many cases, and B,  
9 this is a bank consumer who has a need to  
10 have a bank check for some purpose rather  
11 than a money order which would not be a  
12 next day good funds type of item.

13 **Q. Does MoneyGram market its**  
14 **money orders as a -- as an instrument**  
15 **that will be accepted anywhere it's**  
16 **presented?**

17 A. Not necessarily because  
18 that's not always the case.

19 **Q. When is it not the case?**

20 A. There are check cashers who,  
21 for instance, may not cash MoneyGram  
22 money orders or may not cash money orders  
23 at all, so it's not a universally  
24 acceptable item in my opinion.

1           **Q.     Are there banking**  
2     **institutions or the same retail**  
3     **institution that you just described,**  
4     **these agents, that would refuse to also**  
5     **honor a teller's check?**

6           A.     Not -- not to my knowledge  
7     with the exception of the fact that a  
8     check casher may not cash a \$5,000 check  
9     because they don't have \$5,000 in their  
10    cash drawer. They don't want to pay out  
11    \$5,000, so they may have some desire not  
12    to cash it based on the cash flow of that  
13    transaction, but not necessarily based on  
14    the fact that it's a bank check, a  
15    teller's check.

16           **Q.     So in MoneyGram's position**  
17    **their money orders don't have the same, I**  
18    **can't even think of the right word, but**  
19    **gravitas as a teller's check. Is that**  
20    **sort of what you're saying?**

21           A.     I think an official bank  
22    check has a different level of  
23    acceptability than a money order does.

24           **Q.     Okay. And is that due to**

1     **any specific reason?**

2             A.     I think it's a common  
3     perception that a bank check is a more  
4     reliable instrument than a money order.

5             **Q.     Okay. Does MoneyGram market**  
6     **its money orders as a reliable**  
7     **instrument?**

8                     MR. TALIAFERRO:  Objection;  
9             asked and answered.

10                    MR. RATO:  Object to the  
11             form.  You can answer.

12                    THE WITNESS:  Yes.  I mean,  
13             it is, yes.

14     BY MS. AHUMADA:

15             **Q.     Okay. So is it your,**  
16     **MoneyGram's testimony that it markets it**  
17     **as such, but it's not?**

18                    MR. RATO:  Objection to  
19             form.

20                    MR. TALIAFERRO:  Objection;  
21             mischaracterizes testimony.

22                    THE WITNESS:  You used the  
23             word "reliable."  It is a reliable  
24             payment method.  It is not a

1           guaranteed payment method. It is  
2           not a next day availability  
3           payment method, so I would agree  
4           that we used the word "reliable."

5 BY MS. AHUMADA:

6           **Q.     Okay. For this image, if**  
7 **you go back to I think it's Yingst-6,**  
8 **like we did with the others on the middle**  
9 **of the page here it says "To the order**  
10 **of." What gets filled out there?**

11           A.     That would have been the  
12 payee of the item.

13           **Q.     Okay. And what information**  
14 **of the payee gets placed there? For**  
15 **example, is it solely the payee's name or**  
16 **institution name?**

17           A.     It likely -- it really  
18 depends on the institution and what they  
19 choose to print there.

20           **Q.     Okay.**

21           A.     They might print a payee.  
22 They might print a payee name and address  
23 depending on how they have their system  
24 set up and what they require.



1 Q. Okay. Is that something the  
2 financial institution decides itself what  
3 information to put there?

4 A. Yes.

5 Q. Okay. Now, below that  
6 you'll see that it says "Issued by" and  
7 it says "MoneyGram Payment Systems." Do  
8 you see that?

9 A. Okay.

10 Q. Okay. So it's drawn -- the  
11 drawer is the credit union here, it's a  
12 savings bank, but it's issued by  
13 MoneyGram; is that right?

14 A. Yes.

15 Q. And then the drawee is

16 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] And is that a clearing bank?

21 A. That is a clearing bank.

22 Q. Okay. And the numbers that  
23 are below that, is the first set of  
24 numbers a routing number?

1           A.     The first set of numbers is  
2     the serial number.  You'll see that  
3     matches what's up in the upper right-hand  
4     corner.

5           Q.     Okay.  Of the instrument?

6           A.     Yes, of the instrument.

7           Q.     And then the second sequence  
8     of numbers?

9           A.     The second sequence of  
10    numbers is the routing number.

11          Q.     Does that route to [REDACTED]  
[REDACTED] ?

13          A.     Yes.

14          Q.     Okay.  And then the second  
15    -- the third sequence of numbers?

16          A.     That is this institution's  
17    account with MoneyGram.

18          Q.     This is -- this --

19          A.     That's the account number on  
20    our system that represents [REDACTED]  
[REDACTED].

22          Q.     Okay.  All right.  And how  
23    long -- I think you said that the \$5,000  
24    would be transmitted from the savings

1 bank to MoneyGram. How long does  
2 MoneyGram hold on to that -- to those  
3 funds?

4 A. Until the item either clears  
5 or it reaches the time frame where it  
6 needs to be escheated.

7 Q. And does that also get, the  
8 \$5,000 and anything else you obtained  
9 from Elizabethton Federal for the  
10 official check platform, does that all go  
11 to that managed account that you  
12 described earlier of MoneyGram?

13 A. All of those outstandings,  
14 outstanding money representing checks are  
15 in that aggregate investment portfolio  
16 that we discussed.

17 Q. Okay. Does the bank get  
18 notice once the teller's check has been  
19 cashed?

20 A. They don't specifically get  
21 notice. They have access through our  
22 system that we give them access to where  
23 they can see the current status of any  
24 item at any time. They can see daily

1 totals of what has come in to clear.  
2 They can run reports if they wish of all  
3 the cleared items from today to see what  
4 came in. We don't specifically give them  
5 notice on each item, but their -- they  
6 have the ability to see when that item  
7 has cleared.

8 **Q. What about the financial**  
9 **institution's customer who has purchased**  
10 **and then paid this \$5,000, do they get**  
11 **notice of any form that it's been cashed?**

12 MR. RATO: Object to the  
13 form.

14 THE WITNESS: No.

15 BY MS. AHUMADA:

16 **Q. And why not?**

17 MR. RATO: Object to the  
18 form.

19 THE WITNESS: We don't have  
20 any kind of direct relationship,  
21 first of all, with that consumer,  
22 that client of the institution.  
23 And there is no mechanism for us  
24 to tell them when that item has

1           cleared. They can go to their --  
2           they could go to Elizabethton and  
3           ask for status of that item or ask  
4           for a copy of the paid item if  
5           they needed it.

6 BY MS. AHUMADA:

7           **Q.     What -- if you know, what**  
8           **are the differences between the teller's**  
9           **check that I'm looking at and the**  
10          **international/retail money order that we**  
11          **talked about at the beginning of the day?**

12          A.     Well, one of the key  
13          differences is that the drawer on a  
14          teller's check is the drawer to the  
15          financial institution and the drawer on  
16          the international money order is  
17          MoneyGram. Another difference would be  
18          that next day availability category,  
19          categorization of a teller's check versus  
20          not next day availability for the  
21          international money order. Those -- I  
22          mean, those are some. The dollar value  
23          that's allowed on those items is  
24          different as well. Those are some of the

1 differences.

2           **Q.     Okay.  How about**  
3 **similarities, can you describe to us some**  
4 **similarities?**

5           MR. TALIAFERRO:  Object to  
6           the extent it calls for a legal  
7           conclusion.

8           THE WITNESS:  Obviously the  
9           drawee on both of those items is  
10          one of our clearing banks and  
11          those items do go through the same  
12          back end processing, different  
13          systems, but we still do the  
14          reconciliation.  We still hold the  
15          funds until the item clears,  
16          however those are some of the  
17          similarities I think.

18  BY MS. AHUMADA:

19          **Q.     How about the fact that in**  
20 **each of those instances, the teller check**  
21 **and the money order that we talked about**  
22 **earlier in the day, that someone is**  
23 **paying up front for the instrument?  Is**  
24 **that a similarity?**

1           A.     Yes.

2           **Q.     Do you believe that both**  
3 **this teller check and the money order**  
4 **that we discussed earlier today both have**  
5 **susceptibility of abandonment because of**  
6 **the notice issues that we discussed?**

7                     MR. RATO: Object to the  
8                     form.

9                     MR. TALIAFERRO:  
10                    Mischaracterizes testimony.

11                    THE WITNESS: I think as I  
12                    answered earlier, any type of  
13                    check has the potential to be  
14                    abandoned. And I don't know that  
15                    there is substantial difference,  
16                    although I would suppose that a  
17                    higher dollar value item might be  
18                    less susceptible to abandonment  
19                    because of the value of it. Other  
20                    than that I think it's similar.

21 BY MS. AHUMADA:

22           **Q.     This customer which was**  
23 **yours at one time, we don't know if it**  
24 **still is, Elizabethton Federal, what**

1 interaction do they have with the,  
2 specific to these teller's checks, do  
3 they have with this clearing bank, [REDACTED]

[REDACTED] ?

6 A. They don't have a  
7 relationship with the clearing bank.

8 Q. At all?

9 A. No.

10 Q. Okay. Can they get  
11 information? Let me back up. You had  
12 described sort of a mechanism that you  
13 can go online or in your portal system  
14 and get information that this thing, this  
15 financial institution gets that  
16 information from MoneyGram. Can they do  
17 the same? Can [REDACTED] get  
18 bank information from this clearing bank  
19 about the status of a teller's check, for  
20 example?

21 A. No. The clearing bank  
22 doesn't have any of that information.  
23 They don't know anything about these  
24 items other than that we have a



1 contractual relationship to clear  
2 through them.

3 MS. AHUMADA: Okay. I think  
4 this is probably a good place to  
5 stop before we take a lunch.

6 THE VIDEOGRAPHER: The time  
7 is 12:56 p.m. We're going off the  
8 record.

9 (At 12:56 p.m. a luncheon  
10 recess was taken.)

11 - - -

12 (The deposition resumed at  
13 1:37 p.m.)

14 THE VIDEOGRAPHER: The time  
15 is 13:37 p.m. This begins DVD  
16 Number 3. We are back on the  
17 record.

18 (Yingst-7, Photocopy Bates  
19 PA\_0000351, was marked for  
20 identification.)

21 BY MS. AHUMADA:

22 Q. Ms. Yingst, I am putting in  
23 front of you a document that I have just  
24 marked Yingst-7. Take a look at that

1 document. And are you familiar with the  
2 image that's being -- that's on this  
3 piece of paper?

4 A. It appears to be an -- an  
5 example of an agent check.

6 Q. Okay. Have you seen this  
7 type of instrument before?

8 A. Yes.

9 Q. Let's go through it like  
10 we've done with the others. Now, you  
11 have just called this an agent check. If  
12 you look under sort of the center of the  
13 page right beneath the word "Void" it  
14 says "Expense check." Is this also  
15 called an expense check?

16 A. Yes. This particular one  
17 is, yes.

18 Q. Is expense check the same  
19 thing as an agent check or are they  
20 different in any way?

21 A. This is technically an agent  
22 check as we discussed in the prior  
23 conversations and the product under the  
24 official check world. This is an agent

1 check. The institution can call this  
2 check any number of things. So the  
3 expense check is what they are titling  
4 this check, but it is an agent check as  
5 described in our documentation.

6 **Q. Okay. Let's just sort of**  
7 **break that down a bit. Is agent check**  
8 **the same thing that we had previously**  
9 **been looking at, an agent check money**  
10 **order?**

11 A. They're -- to us they are  
12 two distinctly different product  
13 categories.

14 **Q. And how are they different?**

15 A. Well, so obviously one says  
16 money order on it. One includes agent  
17 check money order, includes all of the  
18 relevant legal language on the receipt in  
19 the back are related to purchaser's  
20 agreement and the money orders, service  
21 charges and things like that.

22 So one difference is that a  
23 money order is included, includes -- an  
24 agent check money order is inclusive of

1 all that language. I believe that the  
2 drawer, the drawer and the issuer are the  
3 same for those two instruments, but they  
4 are not necessarily used the same way.

5 **Q. Are there any other**  
6 **differences?**

7 A. There are some titling  
8 restrictions. For instance, you can't  
9 call an agent check money order a bank  
10 check or an official check. You can't  
11 call it an expense check. It has to be  
12 called a money order. That's one of the  
13 differences.

14 **Q. An agent check money order**  
15 **has to be called a money order?**

16 A. Yes, yes.

17 **Q. Previously when we talked**  
18 **about the two different programs you had,**  
19 **you called one as the money order program**  
20 **and then you had one that was the**  
21 **official check program, right? And under**  
22 **that official check program I believe you**  
23 **told me agent check money order falls**  
24 **under that sphere.**

1           A.     It is under that sphere in  
2     the sense that it is processed on our  
3     official check platform. It is still a  
4     money order, but due to the need of the  
5     financial institution, it's being handled  
6     on the official check platform.

7           Q.     Okay. With regard to just  
8     the agent check, and I will be very  
9     specific with the language, when I say  
10    agent check I mean that instrument and  
11    when I mean the other I will specifically  
12    say agent check money order.

13          A.     Okay.

14          Q.     With regard to the agent  
15    check, and I asked you for differences,  
16    you said they have different product  
17    categories. And what does that mean?

18          A.     In our system they are a  
19    different product. We call -- we have  
20    it -- there is a product number in our  
21    system and an agent check money order is  
22    different from an agent check. So it  
23    is -- it has some similar characteristics  
24    such as the issuer, the drawer, agent for

1 MoneyGram is on those items. An agent  
2 check would be used in a different, you  
3 know, a different manner by the financial  
4 institution. I think I answered your  
5 question.

6 Q. Okay. So in terms of the  
7 document that's in front of you that's  
8 been marked Yingst Number 7, this even  
9 though it says expense check, you,  
10 MoneyGram, characterizes it as an agent  
11 check?

12 A. Yes.

13 Q. Full stop, okay, agent  
14 check. What are the differences between  
15 an agent check and a teller's check?

16 A. So a teller check does not  
17 say agent for MoneyGram on it or, because  
18 a teller check is a MoneyGram instrument,  
19 however the financial institution is the  
20 drawer of that instrument, so they're the  
21 one that's ordering payment on that  
22 check, whereas an agent check is  
23 completely a MoneyGram item and we are  
24 the drawer and the issuer.

1 Q. On an agent check, full  
2 stop?

3 A. Agent check compared to a  
4 teller check which I believe is what you  
5 asked.

6 Q. Okay, thank you.

7 For the top here that's  
8 listed here, it says drawer MoneyGram and  
9 drawee is it looks like Bank of -- I  
10 can't make that out. Can you make that  
11 out under drawee?

12 A. [REDACTED]

[REDACTED]  
[REDACTED] that is one of our  
15 clearing banks.

16 Q. Okay, okay. And so you when  
17 I asked you for differences, I'm looking  
18 at what's been previously marked Exhibit  
19 Yingst-6. You used the words issued by  
20 MoneyGram and here it says drawer is  
21 MoneyGram. Tell me what the difference  
22 is of that.

23 MR. RATO: Object to the  
24 form to the extent it calls for a

1 legal conclusion. You can answer.

2 MR. TALIAFERRO: Join.

3 THE WITNESS: Well, a  
4 teller's check, by definition of  
5 our contract with the institution  
6 and the type of instrument that it  
7 is, the issuer of a teller's check  
8 is MoneyGram. However, the drawer  
9 is the institution. On the agent  
10 check the drawer is MoneyGram and  
11 they are issuing that check or  
12 draft as an -- I'm not sure about  
13 the legal distinction, but they  
14 are issuing it as an agent of  
15 MoneyGram.

16 BY MS. AHUMADA:

17 Q. Okay. All right. And is  
18 the, I can't make out what the agent is,  
19 but is this a financial institution?

20 A. It would be a financial  
21 institution, and I can't make it out  
22 either, but it would only be a financial  
23 institution.

24 Q. In the instance of a



1 **teller's check is Elizabethton Federal**  
2 **considered an agent of MoneyGram?**

3 A. No.

4 **Q. Why not?**

5 A. They are not issuing that  
6 item as an agent of MoneyGram, from I  
7 believe -- I believe the contracts are  
8 part of the discovery, but it's -- they  
9 are not an agent of MoneyGram. They're  
10 not defined as an agent of MoneyGram.  
11 They are issuing that check. They are  
12 the drawer of that check, people who are  
13 getting payment, and we are the issuer of  
14 the item, but they are not an agent.

15 **Q. Is that something that your**  
16 **financial institution client chooses,**  
17 **whether or not they want to fill, have**  
18 **that role as an agent of MoneyGram?**

19 A. No.

20 **Q. Who decides that?**

21 A. It's more a byproduct of  
22 which types of checks they are issuing.

23 **Q. Okay. Now, if you go back**  
24 **to Number 7, Yingst-7, there is, at the**

1 top there is a number and right

2 underneath there is a check amount.

3 A. Yes.

4 Q. And what would normally go  
5 there?

6 A. The right side of that check  
7 is where the amount of the item would be  
8 printed when this item was actually  
9 issued. This is a sample of blank stock.  
10 It hasn't been printed yet --

11 Q. Okay.

12 A. -- so the dollar amount  
13 would be there.

14 Q. And under where it says  
15 "Proof" and there is a line, it looks  
16 like a signature line; is that right?

17 A. Most likely, yes.

18 Q. Who would sign that?

19 A. The financial institution.

20 Q. Okay. And pay to the order  
21 of, is that for payee information?

22 A. Yes.

23 Q. So if I understand, is this  
24 an instance where the financial

1 institution is paying some sort of  
2 obligation and they would issue this  
3 expense check to do so?

4 A. Based on the titling of it,  
5 yes, that's what I would believe.

6 Q. Okay. So if a customer came  
7 in to whatever agent is denoted here and  
8 asks for an expense check, can they get  
9 that?

10 A. No, no.

11 Q. What about an agent check,  
12 can the customer go to its banking  
13 institution with whom you have a contract  
14 and ask for an agent check?

15 MR. TALIAFERRO: Object to  
16 the form of the question.

17 THE WITNESS: They're not --  
18 no, they're not coming in and  
19 asking for an agent check. When a  
20 customer comes in, they are asking  
21 for a bank check. It's up to the  
22 bank to determine what kind of  
23 check, whether they're issuing a  
24 cashier's check or whether they

1 hand them a teller's check and  
2 whether they would -- typically  
3 agent checks might be an item that  
4 they're offering, but it's  
5 definitely not a next day  
6 availability item, so they aren't  
7 often used to issue checks for  
8 customers.

9 BY MS. AHUMADA:

10 Q. If this had been made out  
11 for say \$10,000, does that financial  
12 institution pay MoneyGram that \$10,000 to  
13 get this written instrument?

14 MR. RATO: Object to the  
15 form. You can answer.

16 THE WITNESS: They would --  
17 yes, they would issue this check  
18 today and they would include that  
19 amount in the wire that they sent  
20 us the next day.

21 BY MS. AHUMADA:

22 Q. Okay. And here on the  
23 drawee, you said there is a bank that's  
24 noted here. And is that the clearing

1 bank?

2 A. Yes.

3 Q. And is that the same process  
4 we had described earlier today where the  
5 clearing bank provides the routing  
6 information and the mechanism for the  
7 payment of one of your instruments?

8 A. Yes.

9 Q. Okay. Would your financial  
10 institution client get notice that this  
11 check was cashed?

12 A. Not particularly. They  
13 would not get the notice. They would  
14 have the ability to see the status as  
15 previously described.

16 Q. Is an instrument like this a  
17 cash equivalent?

18 MR. RATO: Object to form.

19 You can answer.

20 THE WITNESS: An agent check  
21 is not a next day availability  
22 item.

23 BY MS. AHUMADA:

24 Q. Now, if this is a check that

1 the bank is writing for its own  
2 obligations, could you explain to me why  
3 a bank would use this mechanism or this  
4 instrument as opposed to from its own  
5 funds and write a check from its own  
6 funds?

7 MR. RATO: Object to form.

8 You can answer.

9 THE WITNESS: They are  
10 writing it with their own funds.  
11 I mean, their own funds are  
12 ultimately paying for this item.  
13 When an institution outsources  
14 their official checks to  
15 MoneyGram, they typically issue  
16 all checks that they are issuing,  
17 whether it is for a customer need  
18 or for their own payment need,  
19 they typically outsource all of  
20 their check processing, all of  
21 their official checks to  
22 MoneyGram. There are some  
23 exclusivity pages of the contract  
24 where if they're going to use us,

1 we want them to use us for  
2 everything. So they don't  
3 typically issue some checks  
4 through us and others on an  
5 inhouse account, an inhouse  
6 working file account.

7 (Yingst-8, Photocopy Bates  
8 MG0002394, was marked for  
9 identification.)

10 BY MS. AHUMADA:

11 Q. Okay. Ms. Yingst, I have  
12 handed you a document that I have just  
13 marked as Yingst-8.

14 A. Yes.

15 Q. Yingst-8. Are you familiar  
16 with the instrument that's copied here on  
17 this document?

18 A. Yes.

19 Q. Okay. Do you see the title  
20 of it says "Personal Money Order"?

21 A. Yes.

22 Q. It's the first time I have  
23 heard that term today. So what is a  
24 personal money order?

1           A.     So again to the previous  
2     conversation, this item appears to be an  
3     agent check money order based on the  
4     information that's on here.  As with  
5     other checks, there are certain titles  
6     that they can use for those items and in  
7     this case they've chosen to call this a  
8     personal money order.  They aren't  
9     required to have agent check money order  
10    specifically on there.  They can call  
11    that item a personal money order.  So  
12    they've chosen one of the -- a title that  
13    they are allowed to use and called this a  
14    personal money order.

15           Q.     Okay.  And if you look on  
16    the left-hand side, it says "Mercer  
17    Savings Bank" and underneath it says  
18    "Agent for MoneyGram."  Are the financial  
19    institutions that are using your agent  
20    check money orders, are they deemed, all  
21    deemed agents for MoneyGram?

22           A.     Yes.

23           Q.     Okay.  Like they were with  
24    the previous document we looked at with



1 just agent check period, right?

2 A. Yes.

3 Q. Okay. So tell me the  
4 differences between this personal money  
5 order/agent check money order and the  
6 money order that someone would purchase  
7 through one of your retail agents?

8 A. The primary difference  
9 between those is that an agent check,  
10 it's -- it's not a legal distinction on  
11 the item. So, one, this item would not  
12 have -- I see not valid over 1,000 on  
13 here, which is certainly a choice to put  
14 that on there, but on the agent check  
15 money order we don't have, necessarily  
16 have that dollar amount restriction.

17 The other key difference is  
18 that an agent check money order is  
19 issued, physically issued through the  
20 financial institution's platforms, their  
21 hardware, their printers, their systems.  
22 A retail money order or an international  
23 money order if we use that term is always  
24 issued through MoneyGram provided

1 hardware and point of sales.

2           So the -- one of the key  
3 reasons why an institution would issue an  
4 agent check money order versus an  
5 international money order is because they  
6 wish to do that. I think I said this  
7 before. They wish to do that through  
8 their own partner, their own process.

9           **Q. This financial institution**  
10 **in the case of what's in front of you,**  
11 **they chose to call it a personal money**  
12 **order and that's their choice?**

13           A. It's their choice within  
14 some parameters. There are some titles  
15 that they can use and some titles that  
16 they can't use and I believe there is a  
17 matrix of those titles that's been  
18 provided.

19           **Q. Okay. And the denomination**  
20 **amount being invalid for over \$1,000, who**  
21 **decided that?**

22           A. I'm not sure. They may have  
23 requested that that be on there.  
24 Sometimes they want that on there.

1           Q.     And that's the same amount  
2     that MoneyGram issues or has for its  
3     retail sales money orders; is that  
4     correct?

5           A.     Yes.

6           Q.     And under the drawee here,

7     [REDACTED]  
[REDACTED]. Is that the clearing  
9     bank?

10          A.     Yes. I see this item is  
11     from 2010. [REDACTED]

[REDACTED] They were a  
13     clearing bank at the time.

14          Q.     Okay. So this \$32.70, has a  
15     customer of the bank presumably paid the  
16     bank \$32.70?

17          A.     Yes.

18          Q.     For this instrument, excuse  
19     me.

20          A.     Yes.

21          Q.     And in turn as we said  
22     earlier today, that \$32.70 gets sent to  
23     MoneyGram next day or overnight?

24          A.     Yes.

1 Q. And it's the same process  
2 we've talked about earlier today that  
3 upon reconciliation from the clearing  
4 bank, \$32.70 leaves MoneyGram and goes to  
5 the clearing bank?

6 A. Yes.

7 Q. Now, under here it has  
8 listed pay to the order of. So that  
9 would be the payee information?

10 A. Yes.

11 Q. Underneath that it says  
12 remittor and an address. What's expected  
13 to be there?

14 A. I believe that remittor  
15 would have been the client who purchased  
16 the money order or the customer of the  
17 bank and their address, so that's their  
18 customer.

19 Q. Okay. And then if you look  
20 on the right-hand side it says here  
21 purchaser, signer for, and I can't make  
22 that out. So who is signing there?

23 A. The purchaser. The  
24 purchaser should be signing the money

1 order.

2 Q. How is that different from  
3 the remittor?

4 A. One is the signature and one  
5 is printed. I don't think it's intended  
6 to be --

7 Q. Okay.

8 A. -- duplicate.

9 Q. And address information is  
10 listed there as well; is that right?

11 A. Yes.

12 Q. And MoneyGram keeps an image  
13 of this, at least it did it for 15 years  
14 and then at some point changed it to  
15 seven years, kept an image; is that  
16 right?

17 A. Yes, only after the item  
18 clears. We have the images of the  
19 cleared items. We don't have that for  
20 the items that have been issued. We  
21 don't know.

22 Q. Okay.

23 A. Only after it clears.

24 (Yingst-9, Photocopy Bates

1 PA\_0000347, was marked for  
2 identification.)

3 BY MS. AHUMADA:

4 Q. Ms. Yingst, I am handing to  
5 you a document that's been labeled  
6 Yingst-9. It's a two-page document.  
7 Just take a quick look at it and let me  
8 know when you've reviewed it.

9 A. Okay.

10 Q. Have you seen this  
11 instrument before?

12 A. I haven't seen this  
13 particular item, but I've seen this type  
14 of instrument before, yes.

15 Q. Okay. And what is it?

16 A. This appears to be a  
17 teller's check issued by BancorpSouth who  
18 is one of our clients.

19 Q. Look at the top image there.  
20 It says "Official Check."

21 A. Yes.

22 Q. Why is it label "Official  
23 Check" if you're telling us it's a  
24 teller's check?

1           A.     Again, teller's check is the  
2     kind of product that they would have had  
3     on their contract with us, but an  
4     official check is an allowable title for  
5     that, so they have chosen to call this an  
6     official check.

7           **Q.     Okay.  And when you say**  
8     **"they," Bancorp?**

9           A.     The institution,  
10    BancorpSouth.

11          **Q.     And why would a bank choose**  
12    **to do that, to call this document an**  
13    **"Official Check"?**

14                   MR. RATO:  Object to the  
15                   form.  You can answer.

16                   THE WITNESS:  Again, they  
17                   have a number of choices about  
18                   what they may call it and it's  
19                   really their decision to call it  
20                   that probably based on maybe what  
21                   they called their checks prior to  
22                   coming to MoneyGram.  They wanted  
23                   to keep consistency.  It's also  
24                   possible that was the title they

1           deemed the most appropriate from  
2           an acceptability perspective.

3 BY MS. AHUMADA:

4           Q.     So what you have in front of  
5     you that they're marked "Official  
6     Checks," this is no different, in fact  
7     it's the same thing as a teller's check;  
8     is that right?

9           A.     Yes.

10          Q.     So everything we've gone  
11     over previously, the document we looked  
12     at and the teller's checks apply to  
13     what's here?

14          A.     Yes.

15          Q.     Is that right?

16          A.     Yes.

17          Q.     Okay. Does MoneyGram have  
18     an instrument that is separate and apart  
19     from a teller's check or anything other  
20     that we discussed today that is called an  
21     official check?

22                   MR. TALIAFERRO: Objection

23                   to the form of the question.

24                   MR. RATO: Join.



1 THE WITNESS: Official check  
2 is the overall product category.  
3 There is not an instrument that is  
4 legally defined in our contract as  
5 an official check. It would be  
6 one of the other -- one of the  
7 four that we've been discussing.

8 MS. AHUMADA: Okay. Sorry,  
9 wrong way.

10 (Yingst-10, Photocopy Bates  
11 MG0002396, was marked for  
12 identification.)

13 BY MS. AHUMADA:

14 Q. Ms. Yingst, I've put a  
15 document in front of you that I've  
16 labeled Yingst-10. Are you familiar with  
17 this instrument?

18 A. Again, I've not seen this  
19 particular check before, but it appears  
20 that -- it appears to be an agent check I  
21 think.

22 Q. And how do you know that?

23 A. Just if I could have one  
24 moment to look at it, please.

1           **Q.     Absolutely.**

2           A.     Well, I'm not sure where  
3     this example came from, but it appears to  
4     be the account number that is on this  
5     item, the 015 number at the bottom, is  
6     indicative of an agent check.  However it  
7     looks like the title "Official Check" is  
8     on there, so I'm not sure why that is.

9           **Q.     So an instrument that's**  
10    **titled official check, we saw one that**  
11    **was actually a teller's check, right?**  
12    **And this one, again titled "Official**  
13    **Check," in your estimation it's an agent**  
14    **check?**

15          A.     It appears to be an agent  
16    check.  There are a variety of titles and  
17    I don't have that list committed to  
18    memory that can be used on an -- on an  
19    agent check.

20          **Q.     Okay.**

21          A.     And I don't know if official  
22    check is one of those or not.

23          **Q.     If you look underneath the**  
24    **title of "Official Check" it says "Void**

1 after 90 days." I don't recall seeing  
2 that kind of language in the previous  
3 official check category that we reviewed.  
4 Is that -- who decides that?

5 A. If that is on a check it's  
6 typically at the request of the financial  
7 institution of the bank, in this case  
8 Independent Bank. Sometimes they wish to  
9 put that kind of language on there to  
10 promote faster clearing of items and not  
11 have them become dated.

12 Q. And the signer there, who  
13 would that be? Authorized -- I don't  
14 mean who actually signed it, but what's  
15 expected there?

16 A. It would be signed by  
17 somebody at the financial institution.

18 Q. A representative of the  
19 bank?

20 A. A representative of the  
21 bank, yes.

22 Q. And where would the  
23 information go for the person or the  
24 customer who purchased the official or

1 requested the official check?

2 A. Again, the bank would have  
3 that information. We don't have that  
4 information. Oh, you mean in terms of on  
5 here?

6 Q. Yes.

7 A. I don't know for sure.  
8 Sometimes they -- they want these items  
9 structured in a certain way because,  
10 again maybe they want it to look like  
11 their old one did before they outsourced.  
12 I believe that that would probably be the  
13 remittor without knowing that.

14 Q. And we have at the bottom  
15 there the drawer, MoneyGram, and the  
16 drawee, [REDACTED]. Again that's the  
17 clearing bank is the drawee; is that  
18 right?

19 A. Yes.

20 Q. So this, and I'm not sure if  
21 I understand your testimony, but are you  
22 testifying that this is an agent check?

23 A. Based on what I see here,  
24 this is an agent check.

1           **Q.     So this document that's an**  
2           **agent check is no different than the**  
3           **agent check we've previously reviewed?**

4           A.     Correct.

5           **Q.     Okay.**

6                     (Yingst-11, Three Pages  
7           Packet Slide titled MoneyGram  
8           Paper Products Overview, was  
9           marked for identification.)

10          BY MS. AHUMADA:

11           **Q.     I'm handing you a document**  
12           **that's been marked Yingst-11. Ms.**  
13           **Yingst, are you generally familiar with**  
14           **this document?**

15           A.     Yes.

16           **Q.     What is it?**

17           A.     I'm not 100 percent sure  
18           where this was used. However, it looks  
19           like a customer facing -- it seems like  
20           it's been taken out of another  
21           presentation, but it is a customer facing  
22           document describing the different types  
23           of paper products on Number 298. And  
24           then 299 further compares our agent check

1 money order against our, basically as  
2 used before, our international money  
3 order program.

4 Q. All right. So when you said  
5 "client facing," so what do you mean by  
6 that?

7 A. This most likely was used in  
8 a meeting with a financial institution  
9 client or prospect.

10 Q. If you could turn to the  
11 second page of that document which is at  
12 298. At the top of the chart you have  
13 four columns. Do you see that?

14 A. Yes.

15 Q. And that's cashier's checks,  
16 teller's checks, agent check money order  
17 and financial institution money order.  
18 Do you see that?

19 A. Yes.

20 Q. Which of these are the money  
21 order platform?

22 A. The last column, the  
23 financial institution money order column.

24 Q. And so the first three, is

1 that the official check platform?

2 A. Yes.

3 Q. Okay. Let's go through the  
4 document, the chart. And I won't belabor  
5 it by going line by line, but if you  
6 could go through it yourself and see if  
7 there is anything that we discussed today  
8 when we looked at the different  
9 instruments where there is a difference  
10 here between what's noted on the chart in  
11 terms of, for example, issue drawer.

12 Tell me if for cashier's check, is it the  
13 financial institution is the issuer and  
14 the financial institution is the drawer;  
15 is that correct?

16 A. That is correct.

17 Q. Okay. So if you could do  
18 that going across.

19 A. These are -- these all  
20 appear to be correct on the first line.

21 Q. Okay. And what about the  
22 escheatment line; is that correct?

23 A. Yes.

24 Q. Okay. And we did talk about

1 this, the next day availability and Reg  
2 CC, is that information correct?

3 A. Yes. Yes.

4 Q. Okay. Now, under that same  
5 Reg CC line, under agent money order it  
6 says whether it's next day availability  
7 of funds, it says "No," and then it says  
8 "No max amount"?

9 A. Correct.

10 Q. We just saw an agent check  
11 money order that had a maximum amount of  
12 \$1,000; is that right?

13 A. Yes.

14 Q. So why is that different?

15 MR. RATO: Objection to  
16 form; asked and answered, but go  
17 ahead.

18 MR. TALIAFERRO: Join.

19 THE WITNESS: We don't  
20 impose a maximum amount. So the  
21 one that they looked at, they  
22 chose to put a maximum amount on  
23 there.

24 BY MS. AHUMADA:



1 Q. Okay.

2 A. "They" meaning the financial  
3 institution.

4 Q. Under the last line, it  
5 says, "Check titled allowed." I think  
6 you alluded to this a bit ago. Let's  
7 look under cashier's check. So cashier's  
8 check, what can it also be called by  
9 MoneyGram?

10 A. So I would just like to  
11 state that there is a longer list. This  
12 is a sample. There is another document I  
13 believe that has a more detailed list of  
14 the allowable title.

15 Q. Okay.

16 A. So this is not  
17 comprehensive.

18 Q. All right.

19 A. But these are some of the  
20 most common titles.

21 Q. Okay.

22 A. That would be used for each  
23 of these items here.

24 Q. So you go through those for

1 cashier's checks, what are the sample  
2 allowed titles?

3 A. Cashier's check, official  
4 check, official bank check, treasurer's  
5 check, and there is some commonality in  
6 the teller check column as well. They  
7 cannot call a teller's check a cashier's  
8 check, for instance, that's not there.

9 Q. Okay. So let's just stick  
10 on the cashier's check line. How would  
11 one know if a cashier's check was titled  
12 an official check, how would someone know  
13 that it was in fact a cashier's check?

14 A. When you say "someone," who  
15 are you referencing?

16 Q. A third party that's looking  
17 at a document that on its face says  
18 "Official Check." How would that person  
19 know that what they have in their hand is  
20 a cashier's check?

21 A. They don't typically know.  
22 They see that check. They -- they're not  
23 making these distinctions. They're  
24 looking at it. If they deem it

1 acceptable as a bank check, they're going  
2 to accept it and assign next day  
3 availability to those funds. They aren't  
4 specifically necessarily knowing that it  
5 is a cashier's check or a teller's check.

6 Q. Okay. And what about your  
7 financial institutions, would they have  
8 the knowledge -- would they know if a  
9 cashier's check that's been labeled an  
10 official check is in fact a cashier's  
11 check?

12 A. Our financial institutions  
13 know which product they're issuing  
14 typically, so they would know that.

15 Q. And then MoneyGram, you did  
16 that here, but if you saw a document  
17 that's titled official check, are there  
18 characteristics of that check that would  
19 in turn help you to decipher what the  
20 actual instrument is; is that right?

21 A. Yes.

22 Q. Okay. Let's go to teller's  
23 check. What are the some of the sample  
24 listed allowed titles for that document?

1           A.     Official check, official  
2 bank check, teller's check, treasurer's  
3 check.

4           Q.     Okay. So again it can be  
5 labeled as an official check, right?

6           A.     Yes.

7           Q.     Okay. Under the agent check  
8 money orders, what are the sample listed  
9 allowed titles?

10          A.     As we saw, a personal money  
11 order, agent check money order or  
12 international money order.

13          Q.     Okay. So earlier we called  
14 international money order that retail  
15 money order, so was that incorrect on our  
16 part to be able to call it that?

17                   MR. TALIAFERRO: Object to  
18 the form of the question.

19                   MR. RATO: Join.

20                   THE WITNESS: We use the  
21 term international money order on  
22 our money orders. They also can  
23 use that international money order  
24 if they wish to make it similar to

1           what we're using on the retail  
2           money order platform.

3   BY MS. AHUMADA:

4           **Q.     I see, okay. And then for**  
5   **the money order platform, a financial**  
6   **institution money order, first, I don't**  
7   **think we've talked about what a financial**  
8   **institution money order is. What's that?**

9           A.     A financial institution  
10   money order is, that's somewhat of an  
11   internal term. It is just when a  
12   financial institution is issuing that  
13   retail money order. It's not a different  
14   type of item. It is just referred to  
15   within MoneyGram as a financial  
16   institution money order meaning that  
17   they're on the money order platform, not  
18   under the official check platform.

19           **Q.     Okay.**

20           A.     So it's the same thing as  
21   what Walmart would be selling.

22           **Q.     Okay. Now, earlier we**  
23   **talked about a doc -- an instrument**  
24   **called agent check money order and then**

1 one that was just simply agent check full  
2 stop. Why is that not listed as a paper  
3 product option on this chart?

4 A. I don't know why it's not on  
5 this particular chart. We haven't  
6 promoted it, that -- really promoted that  
7 as a product, so it's quite possible that  
8 we just didn't include it here because we  
9 didn't want to offer it.

10 Q. Okay. And if it had  
11 appeared on the chart it would -- would  
12 it be under the official check file that  
13 we had or product line that you  
14 discussed?

15 A. Yes, they are, and yes.

16 MS. AHUMADA: All right.  
17 This one is really big, all of  
18 them. They're all the same. Give  
19 me a few beats, yeah.

20 (Yingst-12, MoneyGram  
21 Product and Services Reference  
22 Guide Bates MG 002708-002829, was  
23 marked for identification.)

24 BY MS. AHUMADA:

1           **Q.     The document that I have**  
2 **placed in front of you I have marked as**  
3 **Yingst-12. Are you familiar with this**  
4 **document?**

5           A.     Yes.

6           **Q.     And what is it?**

7           A.     This is a, basically a  
8 comprehensive product and services guide  
9 that MoneyGram created for a variety of  
10 purposes, but it's intended to cover all  
11 of our products and services.

12           **Q.     Okay. So what are the**  
13 **variety of purposes that it was created**  
14 **for?**

15           A.     Well, I believe that the  
16 primary purpose of this document is for  
17 internal education, meaning if somebody  
18 is new to the company, they might be  
19 asked to give this a read so that they  
20 can become more familiar with all the  
21 parts of what we do. It's primarily an  
22 internal document as far as I'm aware.

23           **Q.     Okay. You said "primarily,"**  
24 **but is it also used for external**

1 purposes?

2 A. I'm not aware that it is.  
3 I'm not aware if it has been.

4 Q. If you could please turn to  
5 Page 4 of the document and it's MG 2711.  
6 Do you see the top there? It's  
7 describing financial paper products.

8 A. Yes.

9 Q. And under that it has your  
10 name?

11 A. Yes.

12 Q. Okay. And why is someone to  
13 contact you about that?

14 A. Well, again as an internal  
15 document the -- each section of this  
16 document for each separate kind of  
17 product it has an internal contact if  
18 somebody is looking at it and they have  
19 additional questions I'm the person they  
20 look up.

21 Q. Okay, good. If you look  
22 under "Money Order," next to money order  
23 and then introduction, if you could  
24 please read out loud for us those first



1     **two sentences.**

2             A.     "For consumers who do not  
3     have a checking account, check card or  
4     credit card, money orders are an ideal  
5     way for them to make consumer to consumer  
6     and consumer to business payments. As a  
7     long established paper payment instrument  
8     they are widely accepted and generally  
9     considered to be as good as cash.

10            **Q.     Okay. And do you agree with**  
11     **that statement?**

12            A.     I agree that they are  
13     generally considered to be as good as  
14     cash and that this is an accurate  
15     statement, yes.

16            **Q.     Okay.**

17                   MR. RATO: I'd also note for  
18                   the record that the phrase "as  
19                   good as cash" is in quotes in the  
20                   document.

21                   THE WITNESS: Yes.

22     BY MS. AHUMADA:

23            **Q.     Ms. Yingst, do you know why**  
24     **it's in quotes, "as good as cash"?**

1           A.     Well, obviously it's not  
2     cash, so I think that is probably why  
3     that qualification was made.

4           Q.     Okay.  If you turn to the  
5     second page or the next page.  I'm sorry,  
6     it's 5 and MG 2712.  And you'll agree  
7     with me that it's still under the money  
8     order umbrella there?

9           A.     Yes.

10          Q.     Okay.  If you could, target  
11     markets, do you see that?

12          A.     Yes.

13          Q.     Okay.  What does that mean,  
14     target markets?

15          A.     Those are potential users of  
16     this product.

17          Q.     Okay.

18          A.     Potential, yes.

19          Q.     All right.  And if you could  
20     read for me under the "Agent" heading the  
21     first and the last bullet point there?

22          A.     "Significant number of  
23     un-banked or under banked customers such  
24     as regular check cashers and financial

1 institutions who want to offer money  
2 orders to gain new customers."

3 Q. Okay. And then under the  
4 customer, and again we're looking at  
5 target markets; is that right?

6 A. Yes.

7 Q. Can you read -- I apologize.  
8 Can you read the two bullet points there  
9 under customer?

10 A. "Anyone without a checking  
11 account or other payment method who wants  
12 to replace cash with good funds payment  
13 or to other consumers or businesses, and  
14 customer looking for an alternative to  
15 electronic payments or a more trusted  
16 alternative payment to personal checks."

17 Q. Do you agree with those  
18 bullet points?

19 A. I agree that -- I mean, yes,  
20 those are people who use money orders.

21 Q. Okay. The first bullet  
22 point uses the phrase "good funds  
23 payment." Do you see that?

24 MR. RATO: Again, for the

1 record in quotes.

2 THE WITNESS: Yes.

3 BY MS. AHUMADA:

4 Q. What -- Ms. Yingst, what  
5 does the quotes mean to you? And "you" I  
6 mean MoneyGram.

7 A. There is a -- because these  
8 items are purchased with cash, they're  
9 often referred to as good funds as  
10 compared to a personal check.

11 Q. So there is a distinction  
12 then between this money order and a  
13 personal check. You see that in the  
14 second bullet point? There is a  
15 distinction being made between those two  
16 types of instruments?

17 A. I believe that there is  
18 often a perception that they are two  
19 different kinds of instruments, yes.

20 Q. Perception by whom?

21 A. Those who accept them as a  
22 means of payment.

23 Q. Does MoneyGram hold out that  
24 perception for its customers?

1 MR. RATO: Object to the  
2 form.

3 THE WITNESS: I'm not quite  
4 sure I understand what you mean  
5 when you say do we hold out that  
6 perception.

7 BY MS. AHUMADA:

8 Q. Do you -- does MoneyGram use  
9 that as a marketing, for example a  
10 marketing tool to differentiate why  
11 someone should use a money order as  
12 opposed to a personal check?

13 A. Not particularly, no. No.

14 Q. The next section there is  
15 PrimeLink official check. First, what's  
16 PrimeLink?

17 A. PrimeLink is just a name for  
18 our official check program that we have  
19 used, the product name.

20 Q. Okay. Is that -- when --  
21 how long has that product name been in  
22 use?

23 A. I'm not quite sure. Longer  
24 than 10 years.

1           Q.     Okay. I'll ask you to flip  
2 back to Page 4. Do you see that there is  
3 a -- in the middle of the page there is a  
4 section that says "Process" and it's  
5 steps 1 to 5. Are you generally familiar  
6 with what's being depicted there in steps  
7 1 to 5?

8           A.     Yes.

9           Q.     And what is that?

10          A.     That's what happens when a  
11 customer goes to an agent to purchase a  
12 money order. It also covers the  
13 processes that we've discussed related to  
14 payment for that money order and how that  
15 information gets reported to MoneyGram.

16          Q.     And what's the step 3 if you  
17 could read that for us?

18          A.     "Agent collects payment and  
19 prints money order."

20          Q.     Okay. If you go to the next  
21 page we were just at under PrimeLink. Do  
22 you see the process steps that are 1  
23 through 5 there?

24          A.     Yes.

1           **Q.     Okay.  Can you describe what**  
2   **that process is describing?**

3           A.     Again, I think it's  
4   describing what happens when a financial  
5   institution issues an official check.

6           **Q.     Okay.  And what's the step 3**  
7   **there?**

8           A.     "Payment to cover official  
9   check is taken from a customer's  
10  account."

11          **Q.     Okay.  Would you agree with**  
12 **me that that's similar to step 3 under**  
13 **the money order process?**

14                   MR. TALIAFERRO:  Objection.

15                   THE WITNESS:  Similar, yes,  
16                   although step three under official  
17                   check, the money is normally  
18                   coming from a customer account.  
19                   It's not in the form of cash.  
20                   That distinction isn't made on  
21                   that previous page.

22  BY MS. AHUMADA:

23          **Q.     But in both instances Step 3**  
24 **there is the prepayment of the**

1 instrument?

2 A. It's the collection of the  
3 money, yes.

4 Q. Okay. The following page  
5 which is MG 2713, and again, we're  
6 talking about the PrimeLink official  
7 check section, you see on it's halfway  
8 down the page it says "Customer  
9 Benefits." Can you read for us what's  
10 there?

11 A. "Must have payment method  
12 when vendors insist on good funds payment  
13 for certain transactions. Official  
14 checks are a less expensive solution for  
15 the customer than a bank wire."

16 Q. Does that still hold true  
17 for MoneyGram, this statement?

18 A. Yes.

19 (Yingst-13, MoneyGram  
20 PrimeLink Official Checks  
21 Operating Instructions Bates  
22 MG0002277 through MG0002313, was  
23 marked for identification.)

24 BY MS. AHUMADA:



1           Q.     Ms. Yingst, I'm handing you  
2     a document that I just marked Yingst-12.  
3     Oh, excuse me, 13. Are you familiar with  
4     this document?

5           A.     Yes.

6           Q.     What is it?

7           A.     This is a document that  
8     contains some additional detail around  
9     the official check program. It is  
10    provided to our official check clients,  
11    our financial institution clients.

12          Q.     Do you know if this  
13    operating instruction manual, can I call  
14    it that?

15          A.     Sure.

16          Q.     Is that still in operation  
17    today?

18          A.     Yes.

19          Q.     And you'll notice it says  
20    "PrimeLink official checks" at the top  
21    there. Tell me which official checks  
22    it's referring to.

23          A.     This would cover all  
24    categories of official checks.

1 Q. Okay. So if you go to this  
2 page, it's actually a couple pages down.  
3 It's MG 2282 and it talks about daily  
4 functions. At the top it says that. So  
5 if I understood you, this is a document  
6 that your customers would have and to  
7 know how to handle an official check and  
8 what the process is; is that correct?

9 A. Yes.

10 Q. Okay. So if you could read  
11 for us the first line of that, the first  
12 sentence of that issued check item  
13 reporting section.

14 A. "Each business day issuance  
15 information must be reported to MoneyGram  
16 for all checks/items issued the previous  
17 day."

18 Q. And what kind of information  
19 is issuant information -- issuance  
20 information?

21 A. Serial number, dollar  
22 amount, the date of issuance and their  
23 account number with MoneyGram.

24 Q. Do you also receive, does

1 MoneyGram also receive information of  
2 where the instrument was purchased?

3 A. We may. We may receive  
4 that. That account number may indicate  
5 where it was purchased, however that is  
6 not always the case.

7 Q. Do you require that  
8 information at any point?

9 A. No.

10 Q. Earlier we had talked about  
11 some escheatment issues and we looked at  
12 a chart. So for the purposes of  
13 escheatment, are you getting information  
14 on, for example, the purchasing state for  
15 escheatment purposes?

16 MR. RATO: Object. The  
17 witness is not the designated  
18 witness for escheatment topics,  
19 but certainly to the extent you  
20 know you can answer.

21 THE WITNESS: They are not  
22 sending us the state of issuance  
23 as part of their file that they  
24 send to us.

1 BY MS. AHUMADA:

2 Q. How does MoneyGram then  
3 collect that information if at all?

4 A. We -- there is an issuing  
5 account number associated with those  
6 checks, and in our system that issuing  
7 account number may indicate the state of  
8 issuance.

9 Q. Okay. And other information  
10 on here I think we've covered. I don't  
11 want to rehash. I'll do one just general  
12 question. So for an official check, we  
13 did this with the retail money order, can  
14 a customer that receives an official  
15 check, purchases an official check, can  
16 they cancel that official check?

17 A. The customer who is holding  
18 that check could go to their financial  
19 institution and say, I don't need this  
20 anymore or I would like to -- or I would  
21 like you to stop payment. Typically the  
22 stop payments are not placed on official  
23 checks. However, it's really up to that  
24 institution to make a determination based

1 on their conversation with their customer  
2 whether there are risks associated with  
3 refunding that item to them or putting a  
4 stop payment on it. It's their decision.

5 Q. What about, for example, if  
6 the instrument was lost, can the customer  
7 go back to the financial institution to  
8 get it reissued?

9 A. Yes.

10 Q. Okay. But they, let's say  
11 they provided it -- they remitted the  
12 instrument to, I don't know, a mortgage  
13 company and they can't put a stop payment  
14 on that unless there is some further  
15 communications with their financial  
16 institution.

17 A. I'm not sure I understood.  
18 The consumer can't put -- so for that  
19 instance with the mortgage company, they  
20 can't put a stop payment on it as they  
21 could maybe a personal check. What they  
22 could do is go in, go to their financial  
23 institution and say, I would like to put  
24 a stop payment on this item, and the

1 institution would make that  
2 determination. So they may ask them to  
3 sign an affidavit or an indemnification  
4 or that's really up to them to determine  
5 whether they want to give that customer  
6 that money back and have confidence that  
7 that item isn't going to result in a  
8 claim.

9 MS. AHUMADA: Trying to be  
10 efficient here; last two.

11 MR. RATO: Which is 14,  
12 which is 15?

13 MS. AHUMADA: So 14 -- I'll  
14 do this on the record. Just give  
15 me one second.

16 MR. RATO: Sure.

17 (Yingst-14, Financial  
18 Institution Agreement Bates  
19 MG0000011 through MG0000017, was  
20 marked for identification.)

21 (Yingst-15, MoneyGram  
22 Financial Institution Agreement  
23 for Official Checks, was marked  
24 for identification.)

1 BY MS. AHUMADA:

2 Q. Ms. Yingst, I am placing in  
3 front of you a document that I have  
4 titled -- excuse me -- I have labeled  
5 Yingst-15. And at the bottom it says  
6 09/2011, and I assume that's September  
7 2011. Tell me if it's not what that  
8 means.

9 A. Yes.

10 Q. Okay. The other document  
11 I'm going to place in front of you that  
12 we'll look at together is Yingst -- I  
13 switched them. Let's redo those. Sorry,  
14 I was doing so well there. So what's  
15 been labeled as Yingst-14 --

16 MR. RATO: I think you were  
17 right the first time.

18 MS. AHUMADA: I was. Oh, my  
19 God, it's a long day.

20 BY MS. AHUMADA:

21 Q. Yingst-14, it is a document.  
22 At the bottom it says "Travelers Company,  
23 Inc. 2002." Do you see that document?

24 A. Yes.

1 MR. DISHER: What's the  
2 Bates number on it?

3 MS. AHUMADA: And it is  
4 Bates labeled MG 11.

5 MR. DISHER: Thank you.

6 BY MS. AHUMADA:

7 Q. The second document I'm  
8 placing in front of you is Yingst-15. At  
9 the bottom it says September 2011 and  
10 it's Bates MG 76. Okay.

11 Ms. Yingst, are you  
12 generally familiar with these documents?

13 A. Yes.

14 Q. What are they?

15 A. They are both agreements  
16 that we use with our financial  
17 institutions.

18 Q. Okay. Let's start with the  
19 one that's been labeled Yingst-14. At  
20 the top there of the document it says  
21 "Travelers Express Company." And would  
22 you agree with me that that's the  
23 predecessor of MoneyGram Payment Systems,  
24 Inc.?



1 A. Yes.

2 Q. Okay. And financial  
3 institution, we've talked about that.  
4 That's your customer, correct?

5 A. Yes.

6 Q. All right. Under scope,  
7 what does it mean that there are checks  
8 under both the teller checks or Xs  
9 between teller checks and money orders?

10 A. This client would have been  
11 issuing teller's checks and they would  
12 also be issuing money orders under our  
13 retail money order program.

14 Q. Okay. So a financial  
15 institution has the option of which of  
16 these products they want to use; is that  
17 correct?

18 A. Yes.

19 Q. Okay. I think at one point  
20 you said if they use one of the products,  
21 they have to use all of it. Am I  
22 misunderstanding?

23 MR. TALIAFERRO: Object;  
24 mischaracterizes testimony.

1 MR. RATO: Join. Go ahead.

2 THE WITNESS: When I had  
3 made that statement I was  
4 referencing the exclusivity  
5 nature, the exclusive nature of  
6 our official check agreement,  
7 meaning that if they are  
8 committing to outsourcing their  
9 official checks to MoneyGram, we  
10 typically want them to outsource  
11 all of the checks they issue  
12 within the institution to  
13 MoneyGram, not that they have to  
14 use all the products.

15 BY MS. AHUMADA:

16 Q. Okay. Thank you. I  
17 understand. So under the definition  
18 section, do you see the first one that's  
19 for agent checks, can you read that for  
20 us?

21 A. Yes. "Checks drawn on TECI  
22 on its bank. Financial institution is  
23 not a party to agent checks even though  
24 its name may appear on the agent checks.

1 At financial institution's option, these  
2 may be used as money orders, but they are  
3 agent checks for the purposes of this  
4 agreement."

5 Q. Okay. Let's start with that  
6 second sentence, "Financial institution  
7 is not a party to the agent checks." So  
8 who are the parties to the agent checks?

9 A. MoneyGram is the issuer and  
10 the drawer and the drawee is MoneyGram's  
11 clearing bank.

12 Q. Okay. And it says on the  
13 last sentence, "At financial  
14 institution's option they may be used as  
15 a money order, but they are agent checks  
16 for purposes of this agreement." What  
17 does that mean?

18 A. In this agreement agent  
19 check money orders is not a defined term,  
20 so they are -- in this agreement they  
21 are -- whenever agent check is referenced  
22 in this agreement it could be referencing  
23 agent check money orders and agent  
24 checks. I think that's what that's

1 intended to mean.

2 Q. Okay. Then if you go to the  
3 definition for checks, listed on that is  
4 agent checks, cashier's checks and  
5 teller's checks; is that correct?

6 A. Yes.

7 Q. Are each of these official  
8 checks?

9 A. Yes.

10 Q. Okay. And here, though,  
11 it's saying agent checks and we just  
12 looked at that definition, but it could  
13 also be an agent check money order; is  
14 that right?

15 A. Yes.

16 Q. Okay. On the second page of  
17 the document, which is MG 12, for money  
18 orders it says, "Drafts drawn by TECI,"  
19 and again that's money order today?

20 MR. RATO: MoneyGram today.

21 MS. AHUMADA: MoneyGram.

22 Thank you.

23 MR. RATO: A year from now

24 would be --

1 MS. AHUMADA: Right.

2 BY MS. AHUMADA:

3 Q. It says, "Draft drawn by  
4 TECI only self-payable through a bank."  
5 What does that mean "through a bank"?

6 A. Payable through one of our  
7 clearing banks.

8 Q. Okay. And on the last two  
9 under the definition section, can you  
10 read for us what TECI item refers to?

11 A. Agent checks, teller's  
12 checks and money orders. And then it  
13 states, "Teller's checks are called TECI  
14 items even though the financial  
15 institution also is a drawer."

16 Q. And what's there in the  
17 parentheses? Can you explain what that  
18 means?

19 A. I believe that in our  
20 contract, as it states here, teller's  
21 checks are defined as a MoneyGram or  
22 Travelers Express Company, Incorporated  
23 item, even though the financial  
24 institution is also a party to that item

1 as we've discussed previously.

2 Q. Okay. Under 12, Section 12  
3 which is on MG 13, there is a section on  
4 remittance and I'll just -- under checks  
5 it says, "Financial institution will  
6 remit the face amount of checks issued,  
7 used and sold by wire transfer so that  
8 TECI has collected funds by 11:00 a.m.  
9 central the next business day. Such face  
10 amounts are deemed held in trust until  
11 remitted."

12 First, it says "remit," but  
13 it doesn't say to whom. Who does that  
14 get remit to?

15 A. They are remitting those  
16 funds to MoneyGram.

17 Q. Okay. And what does it mean  
18 on the last few words of that sentence,  
19 it says the amounts are deemed held in  
20 trust until remitted? What does that  
21 mean, "in trust"?

22 A. I believe that what that  
23 means is that because those checks have  
24 been issued and there is a period of time

1 official check, right?

2 A. Yes.

3 Q. And we talked about this  
4 earlier, right?

5 A. Yes.

6 Q. Okay, great. So what I want  
7 to really drill down on is, this is  
8 titled "Life Cycle of an Official Check."  
9 Are there any differences or distinctions  
10 between the life cycle of the four  
11 different types of official checks?

12 A. Other than the difference in  
13 the escheatment process related to  
14 cashiers versus the others, or who does  
15 it I would say, the life cycles, at this  
16 level it's the same.

17 Q. Okay. And the escheatment  
18 issue you're talking about is that  
19 cashier's checks are escheated by the  
20 financial institution that issued the  
21 cashier's check?

22 A. Yes.

23 Q. Or should I -- could I say  
24 sold the cashier's check?

1           Q.     The acceptability and, okay,  
2     I see what you're saying. The selling  
3     bank is not presenting either a teller's  
4     check or an agent check. That would be  
5     the person who purchased the teller's  
6     check or agent check, right?

7                     MR. RATO: Object to the  
8                     form.

9                     MR. TALIAFERRO: Join.

10                    THE WITNESS: Yes.

11                    MR. DISHER: All right,  
12                    great.

13     BY MR. DISHER:

14           Q.     All right. In terms of the  
15     financial institution that sells the  
16     official check products, no matter what  
17     type of product it is, MoneyGram handles  
18     all of the back office processing of  
19     that; is that right?

20                    A.     Yes.

21           Q.     Okay. And what does back  
22     officing -- excuse me. What does back  
23     office processing include?

24                    A.     It includes handling



1 items, and they are required to  
2 review a report every day that  
3 includes some exceptions that we  
4 need them to review and tell us  
5 whether those are valid checks or  
6 not.

7 BY MR. DISHER:

8 Q. Okay.

9 A. That is sometimes referred  
10 to as the positive pay report.

11 Q. All right. Anything else?

12 A. Those are their primary  
13 functions.

14 Q. Tell me a little bit more  
15 about the positive pay report. What  
16 exactly is that?

17 A. That is just a report that's  
18 generated every day of any items that  
19 come into -- in the clearing file that  
20 appear to be issued by that institution  
21 that they have not told us about. So it  
22 is a serial number that we know they have  
23 and they didn't tell us that they sold  
24 it. So it is a potential counterfeit

1 perhaps or maybe it's a valid item that  
2 they just didn't include on their issue  
3 file --

4 Q. Okay.

5 A. -- on the report.

6 Q. And the bank is required to  
7 do that every day?

8 A. Yes.

9 Q. Okay. And what does the  
10 bank do after it reviews the positive  
11 pay?

12 A. If there are items on there  
13 that are counterfeit or need to be  
14 returned, they have to tell us so we can  
15 do that by a specific deadline.

16 Q. All right. On the positive  
17 pay report, does that include all four  
18 types of MoneyGram official check  
19 products?

20 A. Yes.

21 Q. Okay.

22 A. If they are issuing,  
23 whichever types they are issuing.

24 Q. Got it, yes. Thank you.

1 All right. So the role of the selling  
2 financial institution is, one, tell us  
3 about the item sold, two, pay us for the  
4 items and, three, review the positive pay  
5 report? Did I say that right?

6 A. Yes. Those are their  
7 primary day-to-day roles.

8 Q. Any other roles they have?

9 A. They deal with their  
10 customer, so if there are, you know,  
11 after the fact issues or they have to do  
12 replacements, they want to look at --  
13 they have to do their own internal  
14 reconciliation of the activities.

15 So there are other  
16 activities that they perform related to  
17 the programs that they are -- those  
18 activities are also the same across  
19 all -- whichever type of checks they're  
20 issuing.

21 Q. All four official check  
22 product types?

23 A. Yes.

24 Q. All right. And these three

1 primary obligations, those are the same  
2 across all four official check product  
3 types?

4 A. Yes.

5 Q. All right. Now, if a  
6 financial institution sells retail money  
7 orders, what does that financial  
8 institution have to do in terms of those  
9 retail money orders that it has sold?

10 A. They have to -- we have to  
11 know that they sold them. That may be  
12 through the equipment that they have on  
13 hand or it might be through them sending  
14 us some kind of a file, but they have to  
15 report those items as sold to MoneyGram.  
16 They -- ultimately they pay us for those  
17 items. We may take the money out of  
18 their account versus a wire, but they pay  
19 us for those items, and those are the  
20 primary functions. There is not a  
21 positive pay process on the retail money  
22 order side.

23 Q. Okay. Anything else that  
24 the issuing financial institution has to

1 do for retail money orders?

2 A. Other than perhaps handling  
3 customer requests when they come in, no.

4 Q. All right.

5 A. No.

6 Q. Now, in terms of retail  
7 money orders, so they have to tell  
8 MoneyGram that they sold the -- let me  
9 back up. I want to talk about each of  
10 these individually. Okay?

11 A. Okay.

12 Q. So the first step is that  
13 they have to tell MoneyGram about the  
14 money orders that it has sold, right?

15 A. Yes.

16 Q. Okay. And so what  
17 information do they have to tell  
18 MoneyGram about the money orders that  
19 they sold?

20 A. Serial number, the dollar  
21 amount, the date. And there is an agent  
22 ID or a customer number that indicates  
23 who sold it.

24 Q. Okay. Anything else?

1 A. No.

2 Q. Just those four things.

3 It's serial number, the dollar amount,  
4 the date it was sold and the customer ID  
5 who sold it?

6 A. Yeah.

7 Q. All right.

8 A. Yes.

9 Q. What about the state in  
10 which it was sold?

11 A. The customer ID which is,  
12 it's really the agent ID, but the  
13 customer ID is going to be our way of  
14 knowing where it was sold.

15 Q. How so?

16 A. Because in our systems that  
17 customer ID is associated with a  
18 location.

19 Q. Each location has a unique  
20 location ID number?

21 A. Yes.

22 Q. All right. And then how  
23 does the agent pay MoneyGram for the  
24 retail money orders that it sells?

1           A.     In most cases MoneyGram is  
2     debiting the agent's account the next day  
3     for the items that they sold along with  
4     fees, any fees we're charging.

5           **Q.     You say normally debiting**  
6     **the agent account. How else could it be**  
7     **done?**

8           A.     There are some agents who  
9     wire money to MoneyGram for instance.

10          **Q.     All right. And where does**  
11     **MoneyGram get its fee in that process for**  
12     **retail money orders?**

13          A.     When MoneyGram charges the  
14     agent for the face, we also charge them  
15     at the same time for the fees.

16          **Q.     All right. Now, let's shift**  
17     **to MoneyGram official checks. So the**  
18     **first item is or the first obligation of**  
19     **the selling financial institution for**  
20     **MoneyGram official checks is tell**  
21     **MoneyGram about the items its sold,**  
22     **right?**

23          A.     Yes.

24          **Q.     Okay. And so what**

1 information does the selling financial  
2 institution have to tell MoneyGram about  
3 the MoneyGram official checks that it has  
4 sold?

5 A. Serial number, dollar  
6 amount, date and account number.

7 Q. Okay. Now, the account  
8 number, is that specific to each location  
9 in which MoneyGram official checks are  
10 sold?

11 A. Not always.

12 Q. Explain that to me.

13 A. There are some situations  
14 where that account number is assigned at  
15 every location or reported that way and  
16 there are other setups where they are  
17 reporting everything to us under one  
18 account number.

19 Q. Okay.

20 A. So we don't know  
21 specifically which location issued that  
22 item.

23 Q. So sometimes one account  
24 number may include multiple locations?



1 A. Yes.

2 **Q. Who makes that decision?**

3 A. That's normally part of how  
4 the -- it's determined during the setup  
5 process and determined during how the  
6 financial institution is going to manage  
7 their inventory, how they want to be set  
8 up and do they want to report everything  
9 together essentially in one location, are  
10 they going to do it separately, so it's  
11 often a byproduct of their systems or  
12 their system limitations.

13 **Q. Okay.**

14 A. But it's determined during  
15 the setup process.

16 **Q. Does MoneyGram have a  
17 preference whether one account location  
18 is going to be associated with each  
19 location or whether multiple locations  
20 would be included in one account number?**

21 A. We do not.

22 **Q. Is the decision made  
23 entirely by the selling financial  
24 institution?**

1           A.     Yes.

2           Q.     Do you have any idea about  
3     the breakdown in terms of percentages of  
4     account numbers that are associated with  
5     only one location versus account numbers  
6     that might be associated with multiple  
7     locations?

8           A.     I don't know.

9           Q.     Do you have any idea?

10          A.     I honestly don't have any  
11     idea.

12          Q.     All right. The second  
13     function that the selling financial  
14     institution undertakes is to pay  
15     MoneyGram for the items. How does the  
16     selling financial institution pay  
17     MoneyGram for the official check products  
18     that it sells?

19          A.     They wire us that money the  
20     next day. There may be a few exceptions  
21     where we are actually debiting their  
22     account. They're telling us what they  
23     sold and we're taking money, but in most  
24     cases it is a wire next day.

1 Q. And that's true for all four  
2 types of MoneyGram official check  
3 products?

4 A. Yes.

5 Q. All right. And I should  
6 have asked this earlier, but the first  
7 requirement of telling you about the  
8 product that they sold, those  
9 requirements are the same across all four  
10 MoneyGram official check products?

11 A. Yes.

12 Q. All right. How does  
13 MoneyGram get its fee for official checks  
14 sold by its clients?

15 A. There is a monthly billing  
16 process and we collect that fee via  
17 debiting an account at the institution.

18 Q. When you say "the  
19 institution," what do you mean by that?

20 A. They provide a bank account  
21 authorization, account number, routing  
22 number, and once a month we will charge  
23 that account for their fees.

24 Q. That's an account -- it's an

1 account held by the selling financing  
2 institution?

3 A. Yes.

4 Q. Typically at the selling  
5 financial institution?

6 A. Yes.

7 Q. Okay. And MoneyGram debits  
8 that account monthly for the fees  
9 associated with the official checks sold?

10 A. Yes.

11 Q. Does MoneyGram debit that  
12 account for the face dollar amount of the  
13 official checks sold?

14 A. No.

15 MR. TALIAFERRO: Objection;  
16 asked and answered.

17 THE WITNESS: No.

18 BY MR. DISHER:

19 Q. That money is physically  
20 wired?

21 A. Yes.

22 Q. But in some cases it may be  
23 debited? Did I hear that right?

24 A. Yes.

1 Q. All right. If a -- let's  
2 say I walked into a financial institution  
3 that was selling MoneyGram official check  
4 products and I wanted to purchase a  
5 teller's check, for example, and I don't  
6 have an account with the institution that  
7 I walk into. Does MoneyGram prohibit  
8 that institution from selling me an  
9 official check?

10 A. We do not prohibit you from  
11 doing that.

12 Q. Let me try to say it another  
13 way that's perhaps more clear. Does  
14 MoneyGram require its selling financial  
15 institutions to sell official check  
16 products to only the accountholders who  
17 have an account at that selling financial  
18 institution?

19 A. We do not stop them from  
20 selling it. I mean, we don't require  
21 that.

22 Q. Okay. Okay. So once an  
23 official check product is sold to an  
24 individual consumer and the money gets

1 transferred to MoneyGram, when does  
2 MoneyGram refuse to pay that obligation  
3 when it's presented?

4 A. The only time we would  
5 refuse the payment obligation would be if  
6 the issuing financial institution placed  
7 a stop on that item, or if the item was  
8 already presented, so if that item is not  
9 outstanding or there is a stop on it,  
10 then we would not pay it.

11 Q. Okay. When would a  
12 financial institution put a stop payment  
13 on a product that it sold?

14 A. There are probably several  
15 different scenarios. If their customer  
16 lost that item or it was destroyed, if  
17 for whatever reason they come in and say,  
18 I need to put a stop payment and for --  
19 and the institution agrees to it. So I  
20 would say it's something that happens  
21 between them and their consumer.

22 It's a risk to put a stop  
23 payment on an official check, so they  
24 would only want to do that if they felt

1 that there were going to be no negative  
2 ramifications or claims.

3 Q. Okay.

4 A. That is up to them.

5 Q. All right. So if the  
6 official check has already been satisfied  
7 or if the financial institution has put a  
8 stop payment on it, those are the only  
9 two situations in which MoneyGram would  
10 not satisfy an outstanding official  
11 check?

12 A. The only other I guess  
13 qualifier there is if that item happened  
14 to be a cashier's check and the issuer,  
15 the financial institution, had taken  
16 those funds back, maybe because they were  
17 replacing it or they were escheating it  
18 and that came into MoneyGram, we would  
19 return that item as well.

20 Q. All right. And that would  
21 only happen in the context of a cashier's  
22 check?

23 A. Yes.

24 Q. All right. If a financial

1 institution put a stop payment on an  
2 official check and it turns out they did  
3 so incorrectly, who is liable for the  
4 amount to satisfy that obligation?

5 MR. RATO: Objection to the  
6 form to the extent it calls for a  
7 legal conclusion. You can answer  
8 the question.

9 THE WITNESS: The financial  
10 institution.

11 BY MR. DISHER:

12 Q. Would they seek to recover  
13 that money from MoneyGram?

14 A. Contractually they are  
15 liable if they place a stop payment and  
16 there is a claim on those funds, so no.

17 Q. So if the financial  
18 institution has to pay a claim, they are  
19 not allowed to seek indemnification from  
20 MoneyGram for the money it already paid  
21 to MoneyGram?

22 MR. RATO: Object to the  
23 form.

24 THE WITNESS: Can you



1 rephrase the question?

2 MR. DISHER: Yeah, sure.

3 BY MR. DISHER:

4 Q. So if a financial  
5 institution places a stop payment but  
6 then it turns out that the stop payment  
7 was placed incorrectly so the financial  
8 institution has to pay the amount to  
9 satisfy that check, right, can that  
10 financial institution then turn to  
11 MoneyGram and say, we have paid you the  
12 amount to satisfy this obligation, you  
13 were holding it for us, so you need to  
14 pay us, the financial institution, that  
15 amount?

16 A. What typically happens is  
17 when they place a stop payment they take  
18 that money back. They don't leave it  
19 with us when they place a stop payment.

20 Q. Understood.

21 A. They will -- so if they have  
22 placed a stop and taken a refund on that  
23 item, they would have no basis to come to  
24 us to take that money, ask us for that

1 money.

2 If they placed the stop and  
3 left the money with us and they had a  
4 claim and needed to pay it, they could  
5 take a refund on that item, but if  
6 they've already done that we're not going  
7 to give it to them again.

8 Q. Great. I understand  
9 completely. Thank you for explaining  
10 that.

11 So there is a process for a  
12 selling financial institution to seek a  
13 refund from MoneyGram?

14 A. Yes.

15 Q. Okay. And other than the  
16 stop payment scenario, when else might  
17 that happen?

18 A. In the case of a cashier's  
19 check they would take a refund if they  
20 wanted that money back so that they could  
21 perform the unclaimed money process.

22 Q. Okay. Any other situation  
23 in which a selling financial institution  
24 could seek a refund from MoneyGram?

1 A. Not that comes to mind.

2 Q. Okay. And when a selling  
3 financial institution takes a refund, do  
4 they get refunded the fee charged by  
5 MoneyGram to issue the check in the first  
6 place?

7 A. No.

8 Q. All right. Now, I want to  
9 talk briefly about clearing banks.  
10 Earlier, and just to confirm I heard you  
11 right, both retail money orders and  
12 official checks are cleared through a  
13 clearing bank?

14 A. Yes.

15 Q. Okay. The funds sent to  
16 MoneyGram by either the institution that  
17 sold the retail money order or the  
18 institution that sold the official check,  
19 those -- all of those funds get put into  
20 the same investment type program that you  
21 were describing earlier?

22 A. Yes.

23 Q. All right. When the -- when  
24 a money order gets cleared through the

1 clearing bank, what role does the  
2 clearing bank play in that process?

3 A. They have very minimum role.  
4 They -- mostly they are paying the  
5 Federal Reserve for those items and we  
6 are paying them. That's their primary  
7 role.

8 Q. Okay.

9 A. We are performing everything  
10 else.

11 Q. All right. Now, when an  
12 official check goes through a clearing  
13 bank, what is the clearing bank's role in  
14 that transaction?

15 A. It's the same.

16 Q. All right. Why would a bank  
17 use MoneyGram's official check program to  
18 issue cashier's checks?

19 MR. RATO: Object to the  
20 form. You can answer.

21 THE WITNESS: To again  
22 leverage our back office functions  
23 so that they don't have to do all  
24 of that work.

1 BY MR. DISHER:

2 Q. Okay. Does the money --  
3 well, I think I've already asked you this  
4 because I asked you questions that  
5 applied to all four categories of  
6 official checks, but just to clarify,  
7 even in the cashier's check realm the  
8 money to satisfy that cashier's check is  
9 still transferred from the selling  
10 financial institution to MoneyGram?

11 A. Yes.

12 Q. Okay. And that money is  
13 also included in this conglomerate  
14 investment type activity fund that  
15 includes the other three types of  
16 proceeds from official checks?

17 A. Yes.

18 Q. As well as retail money?

19 A. Yes.

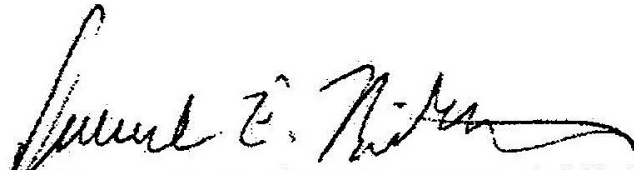
20 Q. All right. Just to clarify,  
21 when an official check is satisfied, that  
22 is when MoneyGram gets a copy of the  
23 picture of the official check?

24 A. Yes. That's part of the

1  
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## CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on May 23, 2018, and that this is a true and correct copy of same.



Jared E. Bittner, RPR-CSR(NJ)

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

**Supreme Court of the United States**

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DELAWARE, *PLAINTIFF,*

v.

DOCKET Nos. 22O145 & 22O146 (CONSOLIDATED)

ARKANSAS, ET AL., *DEFENDANTS.*

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**DECLARATION OF EVA YINGST**

Eva Yingst, pursuant to 28 U.S.C. § 1746 hereby declares:

1. I am the Head of Financial Paper Products/Banking Solutions for MoneyGram Payment Systems, Inc. ("MoneyGram"). I make this declaration from my own personal knowledge.

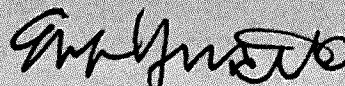
2. During my deposition in the above-captioned action, I described a "blank stock" with specific language on the back which only applies if the item is "designated on its face as a money order" that can be used for MoneyGram Agent Checks, Teller's Checks, and Agent Check Money Orders. See May 23, 2018 Deposition of Eva Yingst at p. 412-413.

3. Attached as Exhibit A hereto is a sample of a MoneyGram Agent Check printed on such stock.

4. Attached as Exhibit B hereto is a sample of a MoneyGram Teller's Check printed on such stock.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 20, 2019



Eva Yingst

# **Exhibit A**



**CADENCE**  
BANK

Official Check

Date: 08/28/12

1506273

AGENT FOR MONEYGRAM

BRANCH 6090

02-951  
620

REMITTER: CADENCE BANK

PAY **5.02**  
ONLY IN CTSCTS

\$5.02

**PAY** Five and 02/100ths Dollars

TO THE  
ORDER OF

MEMO:  
DRAWER: MONEYGRAM PAYMENT SYSTEMS, INC.  
P.O. BOX 9476 MINNEAPOLIS MN 55490  
DRAWEE: FIRST INTERSTATE BANK HELENA, MT.

*Maryt Brooke Bond*

⑆0001506273⑆ ⑆092005411⑆015001059290⑆

IF THIS INSTRUMENT IS DESIGNATED ON ITS FACE AS A MONEY ORDER THE FOLLOWING APPLIES:  
LIMITED RECOURSE:  
This Money Order will not be paid if it has been forged, altered or stolen, and recourse is only against the issuer. Other stated below if any other stated below is to be paid and identify whom they have selected to receive the proceeds.  
For information concerning this Money Order, contact MONEYGRAM PAYMENT SYSTEMS, INC.

PURCHASER'S AGREEMENT:  
You, the purchaser, agree to immediately complain this Money Order by filling in the report of the Money Order signed and dated on the back. The terms of this Money Order limit your right to file a claim with the issuer from you.

SERVICE CHARGE:  
This Money Order is not valid or cashed/processed for payment within one year (365 days) after the purchase date, unless you pay a non-refundable service charge stated below for processing by law. The amount of this service charge is one dollar (01.00) (twenty five cents (00.25) in CA) per return from the date of purchase not to exceed \$24 in total less in other non-refundable service charges the issuer may determine the amount of this service fee.

RESTRICTIONS ON USE:  
This Money Order is not valid for payment. It is intended use it to pay personal or business obligations.

## **Exhibit B**

