

No. 22O145 & 22O146, Original (Consolidated)

---

**IN THE  
SUPREME COURT OF THE UNITED STATES**

---

DELAWARE,  
*Plaintiff,*

v.

PENNSYLVANIA AND WISCONSIN,  
*Defendants.*

\*\*\*\*\*

ARKANSAS, ET AL.,  
*Plaintiffs,*

v.

DELAWARE,  
*Defendants.*

---

**COMMENTS OF THE COMMONWEALTH OF PENNSYLVANIA  
IN RESPONSE TO THE ORDER OF OCTOBER 31, 2022**

---

Matthew H. Haverstick, Esq.  
Mark E. Seiberling, Esq.  
Joshua J. Voss, Esq.  
Lorena E. Ahumada, Esq.  
KLEINBARD LLC  
Three Logan Square  
1717 Arch Street, 5<sup>th</sup> Floor  
Philadelphia, PA 19103  
Phone: (215) 568-2000  
Fax: (215) 568-0140  
Eml: mhaverstick@kleinbard.com  
mseiberling@kleinbard.com  
jvoss@kleinbard.com  
lahumada@kleinbard.com

Christopher B. Craig, Esq.  
Jennifer Langan, Esq.  
PENNSYLVANIA TREASURY  
OFFICE OF CHIEF COUNSEL  
127 Finance Building  
Harrisburg, PA 17120  
Phone: (717) 787-2740  
Eml: ccraig@patreasury.gov  
jlangan@patreasury.gov

*Attorneys for Pennsylvania*

**TABLE OF CONTENTS**

I. MONEYGRAM TELLER’S CHECKS ARE NOT A “THIRD PARTY BANK CHECK.” ..... 2

II. THE CLAUSE MODIFIES ONLY THE IMMEDIATELY PRECEDING WORDS. .... 4

III. CONCLUSION ..... 5

## TABLE OF AUTHORITIES

### **Cases**

<i>Lockhart v. U.S.</i> , 577 U.S. 347 (2016).....	5
<i>Texas v. New Jersey</i> , 379 U.S. 674 (1965).....	3

### **Statutes**

12 U.S.C. § 2501 .....	1
12 U.S.C. § 2503 .....	5

### **Other Authorities**

<i>Brady on Bank Checks</i> (current through Jan. 2015).....	2, 3
Senate Report No. 93-505 (Nov. 15, 1973).....	3, 4
William Strunk Jr. and E.B. White, <i>The Elements of Style</i> (4 <sup>th</sup> ed. 2000) .....	5

The parenthetical clause “other than a third party bank check” (hereafter, “the Clause”) means an ordinary check. Further, the Clause modifies only “other similar instrument.”

Pennsylvania submits three initial points to assist in the interpretation of the FDA. *First*, Delaware’s insistence (at 3 and 21) that each state can enact its own record-keeping statute ignores the stated purpose of the FDA, wherein Congress expressly rejected this idea by declaring such requirements to be a costly and burdensome imposition on interstate commerce. *See* 12 U.S.C. § 2501(5); *see also* § 2501(4).<sup>1</sup> *Second*, Delaware’s insistence (at 3) that “neither” the MoneyGram Teller’s Checks nor Agent Checks are “low-dollar” instruments is inaccurate. Of the 151,022 MoneyGram instruments purchased in Pennsylvania and sent to Delaware at issue when this case began in 2016, **148,035** were \$500 or less and **149,571** were \$1000 or less. *See* PA Counterclaim ¶ 86 (discussing spreadsheet supplied to DE). *Third*, the assertion (at 26) that the Hunt Commission report discussed teller’s checks is wrong: the phrase “teller’s check” is

---

<sup>1</sup> Contradicting its own argument, Delaware acknowledges Congress’ intent to avoid 50 individual state recording laws. *See* Delaware at 19.

conspicuously absent from Delaware's quoted passage.

**I. MONEYGRAM TELLER'S CHECKS ARE NOT A "THIRD PARTY BANK CHECK."**

MoneyGram Teller's Checks are not a "third party bank check" because they are not an ordinary check. The phrase "bank check" means an ordinary check for a variety of reasons set forth below. Separate and apart from these reasons, Delaware's expert testified that *none* of the MoneyGram Official Checks were third party bank checks.

To explain, as set forth in Pennsylvania's Bench Memorandum (docket # 36), a plain reading of the text of the Clause reveals the phrase "bank check" means just an ordinary check drawn on a bank, and the phrase "third party" refers to the bank's relationship in the transaction. *See id.* at 4-10. "Bank check" is not a legal term of art. Indeed, a leading treatise in the arena of financial instruments expressly states: "[t]he term 'bank check' as used in this work is, unless the context specifies otherwise, interchangeable with the word 'check.' Bank check does not necessarily describe a direct bank obligation, such as a certified check, cashier's check, bank draft or teller's check." *Brady on Bank Checks*, ¶ 1.01 n.1 (current through Jan. 2015). Congress seemingly adopted the same usage. Further, the "third party" phrase

likewise finds meaning in *Brady on Bank Checks*, wherein the “General Characteristics of Checks” are explained as follows: “A check is essentially a *three-party* instrument when it is originally issued.” See *id.* at ¶ 1.11. Altogether, a “third party bank check” refers to a check drawn on a bank where the bank is secondarily liable. This definition is consistent with modern use and the statutory definition adopted by Washington just after the FDA’s enactment. See Bench Memo. at 6-9.

Next, it is noteworthy that when U.S. Treasury suggested Congress add the Clause, the then-pending bill did not speak in terms of *purchased* instruments, but in terms of *issued* instruments. See Pennsylvania’s Response to Objections, at 6-7 (docket # 118); see also Senate Report No. 93-505, at 3-4 (Nov. 15, 1973). The significance is ordinary checks were “issued” in 1974, and Treasury was concerned with Congress accidentally sweeping in such instruments because they were not of the type intended to be regulated. See Senate Report, at 5.<sup>2</sup> Thus, the “broad[ ]” language of the pending bill needed clarified, see

---

<sup>2</sup> The FDA only reversed *Pennsylvania v. New York*, not *Texas v. New Jersey*. See Senate Report, at 2, 5; see also Congressional Record, Proceedings and Debates of the 93d Congress, at S9750 (May 29, 1973). The unclaimed property at issue in *Texas v. New Jersey*, 379 U.S. 674 (1965), included uncashed checks issued by Sun Oil, including wage checks. See *id.* at 675 n.4.

Senate Report, at 5, since, for instance, it would have swept in uncashed payroll checks from a corporation because a “business association” would be directly liable on the “issued” instrument.

Finally, even if the proffered definition of the Clause is rejected, the Court should note that *none* of the experts in this case identified a MoneyGram Official Check that could be construed as a “third party bank check.” Indeed, Delaware’s expert testified precisely as follows:

Q. Did you study any MoneyGram instrument that could be a third-party bank check?

A. There is so much obscurity in the term third-party bank check, that I think it would be rash to answer that question in the negative. *What I would say is I didn’t study any products that strike me as fitting with any ordinary sense of what those terms should mean.*

Mann dep. at 155:18-25 (emphasis added). Specifically regarding the MoneyGram Teller’s Checks, he testified unequivocally: “I discuss in my report reasons why *I don’t it would be sensible to treat a teller’s check as a third-party bank check.*” Mann dep. at 148:18-20 (emphasis added). Thus, the Clause does not apply to Teller’s Checks.

## **II. THE CLAUSE MODIFIES ONLY THE IMMEDIATELY PRECEDING WORDS.**

The Clause is set forth in parentheses and immediately follows a list of items separated by commas, with the last item being “other

similar written instrument.” *See* 12 U.S.C. § 2503. A correct grammatical reading of the sentence shows the Clause as limiting only the immediately preceding item—“other similar written instrument.” *See* William Strunk Jr. and E.B. White, *The Elements of Style*, at 30 (4<sup>th</sup> ed. 2000) (“Modifiers should come, if possible, next to the word they modify.”). Such an interpretation is consistent with the “rule of the last antecedent,” which states that “a limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.” *Lockhart v. U.S.*, 577 U.S. 347, 351 (2016) (quotations removed). Accordingly, had Congress intended to apply the Clause to each of the listed instruments, the phrase would have been placed at the beginning of the sentence as follows: “**Other than a third party bank check**, where any sum is payable on a money order, traveler’s check, or other similar written instrument ....”

### III. CONCLUSION

Therefore, Pennsylvania respectfully requests that the Special Master retain the original meaning of “third party bank check” as set forth in the First Interim Report at page 79; that is, an ordinary check.



Respectfully submitted,

s/ Joshua J. Voss \_\_\_\_\_

Matthew H. Haverstick, Esq.  
Mark E. Seiberling, Esq.  
Joshua J. Voss, Esq.  
Lorena E. Ahumada, Esq.  
KLEINBARD LLC  
Three Logan Square  
1717 Arch Street, 5th Floor  
Philadelphia, PA 19103  
Phone: (215) 568-2000  
Fax: (215) 568-0140  
Eml: mhaverstick@kleinbard.com  
mseiberling@kleinbard.com  
jvoss@kleinbard.com  
lahumada@kleinbard.com

Christopher B. Craig, Esq.  
Jennifer Langan, Esq.  
PENNSYLVANIA TREASURY  
OFFICE OF CHIEF COUNSEL  
127 Finance Building  
Harrisburg, PA 17120  
Phone: (717) 787-2740  
Eml: ccraig@patreasury.gov  
jlangan@patreasury.gov

*Attorneys for Pennsylvania*

Dated: November 23, 2022

## CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2022, I served by email the foregoing document on all counsel listed in the Amended Service Lists of October 31, 2022.

s/ Joshua J. Voss  
Joshua J. Voss, Esq.  
KLEINBARD LLC  
Three Logan Square  
1717 Arch Street, 5th Floor  
Philadelphia, PA 19103  
Phone: (215) 568-2000  
Fax: (215) 568-0140  
Eml: [jvoss@kleinbard.com](mailto:jvoss@kleinbard.com)

*Attorneys for Pennsylvania*