

**SUPREME COURT OF THE UNITED STATES**

---

DELAWARE, *Plaintiff*,

v.

Nos. 220145 & 220146 (Consolidated)

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

---

**SUPPLEMENTAL DECLARATION OF JOHN DAVID TALIAFERRO**

I, John David Taliaferro, hereby declare as follows under penalty of perjury pursuant to 28 U.S.C. § 1746.

1. I am an attorney with Loeb & Loeb LLP, counsel for the State of Delaware (“Delaware”), Plaintiff.

2. I have personal knowledge of the matters set forth herein, and respectfully submit this Declaration in support of Delaware’s Motion for Summary Judgment and submit the documents referenced below for the Court’s consideration.

3. Attached hereto as Exhibit DD are supplemental excerpts from the sworn deposition testimony of Eva Yingst, which took place on May 23, 2018.

4. Attached hereto as Exhibit EE are supplemental excerpts from the sworn deposition testimony of Clayton P. Gillette, which took place on November 28, 2018.

5. Attached hereto as Exhibit FF is Gillette Exhibit 149, used in the deposition of Clayton P. Gillette.

6. Attached hereto as Exhibit GG is Gillette Exhibit 150, used in the deposition of Clayton P. Gillette.

7. Attached hereto as Exhibit HH are supplemental excerpts from the sworn deposition testimony of Barkley Clark, which took place on October 16, 2018.

8. Attached hereto as Exhibit II are excerpts from the sworn deposition testimony of Alex Kauffman, which took place on June 21, 2018.

9. Attached hereto as Exhibit JJ is Kauffman Exhibit 95, used in the deposition of Alex Kauffman.

10. Attached hereto as Exhibit KK is the Prefatory Note of the 2016 Revised Uniform Unclaimed Property Act.

11. Attached hereto as Exhibit LL is are excerpts from 8A Uniform Laws Ann. (1983)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 8, 2019

/s/ John David Taliaferro  
John David Taliaferro

# Exhibit DD

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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  
(877) 370-3377 / fax (917) 591-5672  
deps@golkow.com

1       \$1,000 on a MoneyGram money order. Do  
2       you recall that discussion?

3               A.     Yes.

4               Q.     Did you -- in preparing for  
5       this deposition today, did you talk to  
6       anyone at MoneyGram about the reason for  
7       that \$1,000 limit?

8               A.     No.

9               Q.     So you don't know as you sit  
10      here today whether there might be a legal  
11      restriction that caused MoneyGram to  
12      choose that \$1,000 limit?

13              A.     I am not aware of a legal  
14      restriction, but I don't -- I don't know  
15      of one.

16              Q.     You mentioned earlier that  
17      you thought or you believed that  
18      MoneyGram began offering official check  
19      services in 1979. Did I recall that  
20      testimony correctly?

21              A.     Yes.

22              Q.     Do you know when, and I  
23      guess this would be TECI, do you know  
24      when TECI started offering money order

1 just said on Page 23, I think.

2 MR. TALIAFERRO: I apologize  
3 if I said that. The second full  
4 paragraph on the top of Page 3.

5 MR. RATO: "We also derive"?

6 MR. TALIAFERRO: Correct,  
7 "We also derive."

8 THE WITNESS: Okay.

9 BY MR. TALIAFERRO:

10 Q. Do you have that sentence  
11 and paragraph in front of you?

12 A. Yes.

13 Q. The second from the last  
14 sentence in that paragraph says,  
15 "Consumers use our money orders to make  
16 bill payments in lieu of cash or personal  
17 checks."

18 Do you see that?

19 A. Yes.

20 Q. Is that your understanding  
21 of the purpose for which consumers use  
22 MoneyGram money orders?

23 A. That's my understanding that  
24 paying bills and obligations is the most

1 prominent reason why they use money  
2 orders, why consumers use money orders.

3 Q. And the last sentence in  
4 that paragraph says, "Official checks are  
5 used by consumers where a payer requires  
6 a check drawn on a bank and by financial  
7 institutions to pay their own  
8 obligations."

9 Do you see that?

10 A. Yes.

11 Q. Is that your understanding  
12 of how official checks are used?

13 A. Yes.

14 Q. Now, if you could turn just  
15 two more pages over to Page 5. And I  
16 promise we won't get into the Venezuelan  
17 derivative of hedging or anything like  
18 that. We'll keep it simple.

19 Under the paragraph labeled  
20 "Money Orders," there is a statement  
21 there that says, "Money orders generally  
22 remain outstanding for fewer than 10  
23 days."

24 Do you see that sentence or

1 higher than the money order fee?

2 A. Typically.

3 Q. Okay. And then do you know  
4 whether the selling financial institution  
5 passes that fee along to the person who  
6 actually purchases the official check?

7 A. Most financial institutions  
8 do charge a fee for an official check. I  
9 am aware that they sometimes waive those  
10 based on their relationship with the  
11 client, the customer, but however, yes,  
12 they are recouping that fee through their  
13 charging structure, yes.

14 Q. Okay. I do have -- can you  
15 pull Exhibit 8, please? Okay. So this  
16 is an example of an agent check money  
17 order, correct?

18 A. Yes.

19 Q. Okay. And you were asked  
20 some questions about the service charge  
21 language?

22 A. Yes.

23 Q. Who charges the service  
24 charge? Well, actually, let me ask an

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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.)

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Direct dial: (973) 425-8661  
mrato@mdmc-law.com

August 14, 2018

**Via First-Class Mail & E-Mail**

Lorena E. Ahumada  
Kleinbard LLC  
One Liberty Place, 46th Floor  
1650 Market Street  
Philadelphia, PA 19103

**RE: *State of Delaware v. State of Arkansas, et al.***  
**Supreme Court of the United States, Docket Nos. 22O145 & 22O146**

Dear Counsel:

As you know, this Firm represents MoneyGram Payment Systems, Inc. (“MoneyGram”) in the above-referenced matter. Enclosed please find a copy of the Acknowledgment and Errata Sheet for the Deposition of Eva Yingst on May 23, 2018.

Please do not hesitate to contact me if you have any comments or questions.

Very truly yours,

**MCÉLROY, DEUTSCH, MULVANEY & CARPENTER, LLP**



Michael Rato

Enclosure

cc: J.D. Taliaferro, Esq. – Counsel for the State of Delaware (via First-Class Mail)  
Todd L. Disher, Esq. – Counsel for the State of Texas (via First-Class Mail)  
Craig Rust, Esq. – Counsel for the State of California (via First-Class Mail)  
Keith O’Korn, Esq. – Counsel for the State of Ohio (via First-Class Mail)  
Cory Feinberg, Esq. – Counsel for MoneyGram (via e-mail)

**ACKNOWLEDGMENT OF DEPONENT**

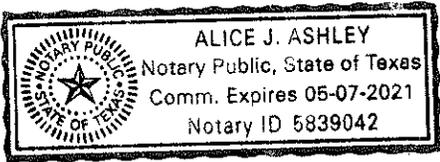
I, Eva Yingst, do hereby certify that I have read the Certified Copy of my May 23, 2018 deposition, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections and changes in form or substance noted in the attached errata sheet.

Dated: August 13, 2018

  
Eva Yingst

Subscribed and sworn to before me this  
13 day of August, 2018

  
Notary Public



**ERRATA SHEET**

**NAME OF CASE:** Delaware v. Arkansas, et al.  
Supreme Court of the United States

**DEPOSITION:** Eva Yingst, May 23, 2018

| PAGE | LINE  | FROM   | TO  | REASON              |
|------|-------|--|---|---------------------|
| 22   | 13    | basing   | facing  | Transcription error |
| 39   | 19    | turn and turn  | turn on and turn off  | Transcription error |
| 42   | 21    | nonelectronic  | electronic  | Transcription error |
| 46   | 15    | contractural   | contractual   | Typographical error |
| 51   | 23    | contracturally   | contractually   | Typographical error |
| 70   | 22    | area bank  | clearing bank   | Transcription error |
| 84   | 5     | coached  | couched   | Transcription error |
| 100  | 12    | contractural   | contractual   | Typographical error |
| 100  | 17    | contracturally   | contractually   | Typographical error |
| 137  | 5     | contracturally   | contractually   | Typographical error |
| 140  | 7-9   | that money is coming out when this item is coming into variance before this item | that money is coming out when this item is issued           | Clarification       |
| 155  | 13-15 | the drawer on a teller's check is the drawer to the financial institution        | the drawer on a teller's check is the financial institution | Transcription error |
| 159  | 1     | contractural   | contractual   | Typographical error |
| 173  | 6     | working file   | reconciled  | Transcription error |
| 223  | 1     | contractural   | contractual   | Typographical error |
| 275  | 14    | Contracturally   | Contractually   | Typographical error |
| 281  | 21    | application  | obligation  | Transcription error |
| 298  | 4     | contracturally   | contractually   | Typographical error |
| 299  | 14    | contracturally   | contractually   | Typographical error |
| 348  | 15    | No, it does not  | No, I was not   | Transcription error |
| 370  | 17    | FCC  | SEC   | Transcription error |



Eva Yingst

# Exhibit EE

1 SUPREME COURT OF THE UNITED STATES

2

3 Nos. 220145 & 220146 (Consolidated)

4 -----x

5 DELAWARE,

6 Plaintiff,

7 -against-

8 ARKANSAS, et al.,

9 Defendants.

10 -----x

11

12

13 VIDEOTAPED DEPOSITION

14 OF

15 CLAYTON P. GILLETTE

16 New York, New York

17 Wednesday, November 28, 2018

18

19

20

21

22

23 Reported by

24 Roberta Caiola

25

1 correct? 14:35

2 MR. DISHER: Objection, the report 14:35  
3 speaks for itself. Objection, outside the 14:35  
4 scope of his opinions. 14:35

5 A. I'm not offering any opinion on what 14:35  
6 Congress meant. I think that was your question. 14:35  
7 I'm offering plausible definitions of what 14:36  
8 Congress could have meant. 14:36

9 Q. You've provided three plausible 14:36  
10 definitions of what Congress had meant. Does 14:36  
11 that list of three plausible definitions purport 14:36  
12 to be an exhaustive list of what Congress could 14:36  
13 have meant by third-party bank check? 14:36

14 A. No. 14:36

15 Q. Let's take a look at paragraph 61. In 14:36  
16 paragraph 61 of your report, you refer to a 14:37  
17 statement made by Delaware that, "The holder 14:37  
18 would not have information about whether a check, 14:37  
19 bank check or otherwise, had been transferred to 14:37  
20 the original payee. The holder would only obtain 14:37  
21 the information once the check was presented for 14:37  
22 payment, at which time the check is no longer 14:37  
23 unclaimed." 14:37

24 Do you understand the premise of that 14:37  
25 statement by David Greger? I just want to -- I 14:37

1 understand that you disagree with its 14:37  
2 implication, but I want to know if you understand 14:37  
3 his assertion that the holder, and I'm talking 14:37  
4 about the escheat use of the word holder here, 14:37  
5 would only obtain information about endorsement 14:37  
6 once the check was presented for payment? 14:38

7 A. I believe so. 14:38

8 Q. I understand that you reject the 14:38  
9 conclusion because it leads to the rejection of 14:38  
10 the most natural reading of the phrase. But do 14:38  
11 you have any reason to disagree with David 14:38  
12 Greger's analysis of when a holder of unclaimed 14:38  
13 property would learn that the check had been 14:38  
14 endorsed? 14:38

15 A. No. 14:38

16 Q. Let's take a look at paragraph 66. The 14:38  
17 third sentence begins, "That is, the term 14:39  
18 'third-party bank check'..." 14:39

19 Do you see that? 14:39

20 A. Yes. 14:39

21 Q. I'm not sure I understand your analysis 14:39  
22 here, so maybe you can help me out. This appears 14:39  
23 to say that whatever is captured by third-party 14:39  
24 bank check does not make sense, to the extent 14:39  
25 that it excludes from 2503 instruments for which 14:39

1 MR. DISHER: Objection, the report 15:29

2 speaks for itself. Objection, vague. 15:29

3 A. I think so. I think it states the 15:29

4 predicate for everything that follows. 15:29

5 Q. It states the predicate for the 15:29

6 analysis that follows in the rest of the report, 15:29

7 right? 15:29

8 A. I believe so. 15:29

9 Q. Now, I don't see -- I just want to make 15:29

10 sure I understand. I don't see in this report an 15:29

11 opinion about what you think the term directly 15:29

12 liable means in the Federal Disposition Act, is 15:29

13 that correct? 15:29

14 A. That is correct. 15:29

15 Q. So you express no opinion about what 15:29

16 the term directly liable means in the Federal 15:29

17 Disposition Act, correct? 15:29

18 A. In this report, I express no opinion 15:29

19 about what the term actually means. Again, I do 15:30

20 not purport to be an expert on the FDA, and I'm 15:30

21 not here to interpret it. 15:30

22 Q. Let's look at footnote 3 of your 15:30

23 report. How did you identify the cases 15:30

24 referenced in footnote 3 of your report? 15:30

25 A. I did a Westlaw search for the term 15:30

1 CERTIFICATE

2 STATE OF NEW YORK )

3 ) ss.

4 COUNTY OF NEW YORK )

5 I, Roberta Caiola, a Shorthand Reporter  
6 and Notary Public within and for the State of New  
7 York, do hereby certify:

8 That CLAYTON P. GILLETTE, the witness  
9 whose deposition is hereinbefore set forth, was  
10 duly sworn by me and that such deposition is a  
11 true record of the testimony given by such  
12 witness.

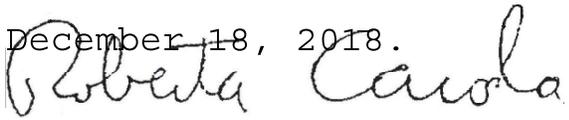
13 Before completion of the deposition, review  
14 of the transcript ( ) was ( ) was not  
15 requested;. If requested, any changes made by  
16 the deponent (and provided to the reporter)  
17 during the period allowed are appended hereto.

18 I further certify that I am not related  
19 to any of the parties to this action by blood or  
20 marriage and that I am in no way interested in  
21 the outcome of this matter.

22 In Witness Whereof, I have hereunto set  
23 my hand on this date, ~~December 18,~~ 2018.

24

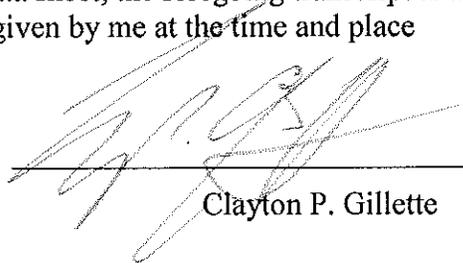
25

  
ROBERTA CAIOLA

DECLARATION

I hereby certify that having been first duly sworn to testify to the truth, I gave the above testimony.

I FURTHER CERTIFY that, except for the corrections and changes in form or substance noted on the attached errata sheet, the foregoing transcript is a true and correct transcript of the testimony given by me at the time and place specified hereinbefore.



---

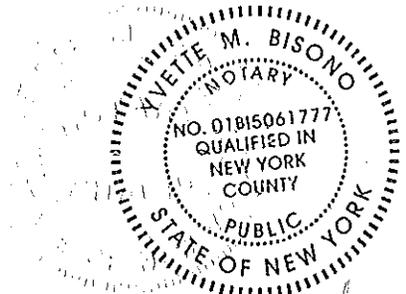
Clayton P. Gillette

Subscribed and sworn to before me  
this 15<sup>th</sup> day of January 2019



---

NOTARY PUBLIC



Exp 1/19/2019

ERRATA SHEET

NAME OF CASE: DELAWARE V. ARKANSAS

DATE OF DEPOSITION: Wednesday, November 28, 2018

NAME OF WITNESS: CLAYTON P. GILLETTE

| <u>PAGE</u> | <u>LINE</u> | <u>FROM</u>   | <u>TO</u>                               |
|-------------|-------------|---|---|
| 23          | 24          | "Govern to Form a"  | "Governance Reform and the"             |
| 38          | 17          | "the"   | "any"                                   |
| 46          | 19          | "with"  | "about"                                 |
| 84          | 24          | "of potential"  | "or potential"                          |
| 94          | 3           | "drawn"   | "drawn on"                              |
| 102         | 11          | "checks"  | "check"                                 |
| 126         | 6           | "payee"   | "drawee"                                |
| 137         | 3           | "purchase conveyed"   | "purchase is conveyed"                  |
| 143         | 20          | "parties possess"   | "parties who possess"                   |
| 162         | 17-18       | "it is – so is an"  | "if it is, it is an"                    |
| 184         | 21          | "with"  | omit "with"                             |
| 186         | 6-7         | "liability scheme of Article 3 of the UCC would be direct liability," | "liability of the drawee bank would be" |
| 190         | 20          | "Article 2"   | "the article"                           |
| 195         | 15          | "either"  | "neither"                               |
| 198         | 8           | "secure"  | "secured"                               |
| 207         | 24          | "endorsement is honorable"  | "indorser is not liable"                |

# Exhibit FF



---

# PAYMENT SYSTEMS AND CREDIT INSTRUMENTS

SECOND EDITION

*by*

CLAYTON P. GILLETTE

Max E. Greenberg Professor of Contract Law  
New York University School of Law

ROBERT E. SCOTT

Alfred McCormack Professor of Law  
Columbia University School of Law

ALAN SCHWARTZ

Sterling Professor of Law  
Yale Law School

FOUNDATION PRESS

2007

THOMSON

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TEXT IS PRINTED ON 10% POST  
CONSUMER RECYCLED PAPER



The *draft*, the second type of negotiable instrument, is a three-party instrument. It represents an order by one person (the *drawer*) directed at a second party (the *drawee*) directing the drawee to pay a third party (the *payee*). Section 3-104(e). Typically, this payment will be made out of funds that the drawer has previously deposited with the drawee. Drafts are commonly issued as payment for contemporaneous exchanges of goods. Most familiar, of course, is the check, a draft drawn on a bank and payable on demand. See § 3-104(f). Hence, the drawee will frequently be a *drawee bank* or *payor bank*. See § 4-105(3).

More specific forms of drafts have evolved to meet contemporary commercial needs. *Cashier's checks* are drafts drawn by a bank on itself. Section 3-104(g). A "teller's check" is also drawn by a bank, but is drawn on another bank or payable at or through a bank. Usually, a teller's check is drawn by a savings bank or savings and loan association on a commercial bank with which it maintains a checking account. It may also be referred to as an "official check." Section 3-104(h). A "traveler's check" is drawn on or payable at or through a bank, is payable on demand, is specifically designated as a "traveler's check," and requires, as a condition of payment, a countersignature by a person who has previously signed the instrument. Section 3-104(i). A "share draft" is drawn on the drawer's account at a credit union and thus has many of the qualities of a check drawn on a bank. Similarly, a negotiable order or withdrawal is drawn on the drawer's account at a savings institution. Credit unions and savings institutions constitute "banks," § 4-105(1), so that these instruments constitute Article 3 "checks." A "personal money order" is an instrument drawn on either the issuer or on another drawee with which the issuer maintains an account. A personal money order may be thought of as a "one-deposit, one-check" checking account. Typically, the purchaser of the personal money order, called the *remitter*, will give the issuer an amount of money (equal to the amount of the personal money order plus a service fee), in return for which the issuer will issue the personal money order to the payee designated by the remitter. Section 3-103(a)(11). A final type of instrument with which Article 3 is concerned is the "certificate of deposit." This instrument acknowledges that a sum of money has been received by the bank and contains a promise by the bank to repay the sum at a particular time. Of course, the certificate of deposit must also satisfy the other criteria of negotiability. See, e.g., *Skiles v. Security State Bank*, 494 N.W.2d 355 (Neb.App.1992)(certificate of deposit not an instrument where not payable to order or bearer, not made payable for a sum certain, and not payable at a definite time). A certificate of deposit is a note of the bank. Section 3-104(j).

The rights of one who is in possession of a negotiable instrument depend on his or her status. A mere transferee of an instrument acquires only the rights in the instrument possessed by his transferor. Section 3-203(b). Thus, many of the most important characteristics of negotiability, such as the ability to avoid the *nemo dat* principle, will not apply to a mere transferee. One to whom an instrument is transferred through a *negotiation*, however, becomes a *holder* of the instrument and may acquire greater

Could the bank have avoided liability by providing in its contract with depositors that "all stop payment orders must be in writing on forms supplied by the bank."? See §§ 4-403(b); 4-103(a); 1-102(3) Cf. § 2-302.

**3. Who Can Issue a Stop Payment Order?** Assume that John and Mary are married and have a joint checking account at First Bank. John writes a check for \$2000 to purchase gym equipment that Mary believes is an expenditure they cannot afford to make. Can Mary stop payment on the check written by John? Section 4-403 provides explicitly that "any person authorized to draw on the account" may issue a valid stop payment order. In addition, if the instrument requires more than one signature, any one of the required signatories may issue a valid stop payment order. § 4-403(a). Assume, however, that John and Mary have separate bank accounts and that John draws his check to her order. If Mary indorses the check to the seller of the gym equipment and subsequently changes her mind about the purchase, may she stop payment on the check? Since she is not a person authorized to draw on the account, she has no right to stop payment of checks from the account.

**4. Other Priority Contests in Customer's Account.** The § 4-303 rules that govern the timing of a stop payment notice establish priority between contestants (the customer and the holder of the instrument) to funds in the customer's account. These same rules apply with equal force to other priority contests. For instance, the drawee bank itself may want to set off a debt that its customer owes against funds that it holds for the customer, while the holder of an instrument issued by the customer may seek the same funds. Alternatively, a third-party creditor who has obtained a judgment against the customer may, by giving notice of the judgment to the bank, seek to prevent the release of funds to the payee of a check drawn by the customer on the same account. In each of these cases, § 4-303 provides that the notice, knowledge, legal process, or setoff (as well as the stop payment order) comes too late to affect the bank's duty to pay an item from the customer's account if the bank has already accepted or certified the item, paid the item in cash, settled for the item without having a right to revoke, or become accountable for the item under § 4-302, or if the bank's cutoff hour has expired. In the case of the customer's bankruptcy, the Bankruptcy Code provides that a bank may continue to transfer the customer's funds to others as long as it has neither actual notice nor actual knowledge of the commencement of the customer's bankruptcy. 11 U.S.C. § 542(c). A bank, however, cannot set off a debt owed to it even without notice or knowledge of bankruptcy. See 11 U.S.C. § 362(a)(7).

## B. STOPPING PAYMENT OF CERTIFIED, CASHIER'S, AND TELLER'S CHECKS

### State ex rel. Chan Siew Lai v. Powell

536 S.W.2d 14 (Mo.1976).

■ HENLEY, JUDGE.

This is an original proceeding in which relator seeks to prohibit respondent from maintaining a temporary injunction enjoining a bank from paying its cashier's check held by relator.

contract with  
ing on forms  
Cf. § 2-302.

at John and  
Bank. John  
ry believes is  
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"any person  
yment order.  
e, any one of  
. § 4-403(a).  
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The injunction suit out of which this proceeding arose was filed April 22, 1975, in the circuit court of Greene county by Nathaniel Gunn, doing business as Cameo-Nixa (hereinafter Gunn) against the Empire Bank of Springfield (hereinafter the Bank). The allegations of the petition are, in substance, that Kin Tak Hong, also known as Chao Kin Tak (hereinafter Kin Tak), a broker of Hong Kong, represented to Gunn, that he (Kin Tak) had a contract with others (unidentified in the record) whereby they agreed to purchase 60,000 metric tons of urea, a fertilizer, and pay therefor \$400.00 per metric ton, for delivery at an Indonesian port within one year; that relying upon these representations, he (Gunn) entered into a contract with Kin Tak in December, 1974, in which he agreed to sell and deliver, upon receipt and acceptance of a valid commercial letter of credit, and Kin Tak agreed to buy upon the above stated terms and conditions not less than 60,000 metric tons of urea. In connection with this agreement, Gunn and Kin Tak also entered into a supplemental contract in which it was agreed that Gunn would pay to Kin Tak certain "partial payments to be credited to the total amount [of commissions] to be earned by \* \* \* Kin Tak" as broker. The petition further alleges (1) that 10,000 metric tons of urea was thereafter sold, paid for and delivered in accordance with the contract and on April 17, 1975, pursuant to the supplemental contract, Gunn purchased from the Bank and it issued its cashier's check for \$150,000.00 payable to the order of Kin Tak, the latter having represented to him that the balance of the 60,000 tons of urea would be purchased and paid for as provided in the contract; (2) that at the time of this representation Kin Tak knew, and had known since March 1975, that the contract of purchase had been cancelled by his customers and that he would not perform the balance of his contract with Gunn; (3) that after Gunn learned that the contract for purchase of urea had been cancelled by Kin Tak's customers he (Gunn) notified the Bank to stop payment on the check which, in the meantime, had been delivered to its payee by Gunn; (4) that by reason of the cancellation of the contract and this fraud practiced upon him by Kin Tak, he (Gunn) will suffer great loss and irreparable damages unless the Bank is enjoined from paying the cashier's check; (5) that Gunn has no adequate remedy at law, because "all potential defendants are nonresidents of [this country] and because of—the tremendous expense, delay and difficulty in the institution of [suits in] courts wherein the laws may not be the law under which these parties contracted". In its answer, the Bank admitted issuance of the cashier's check for \$150,000.00 payable to the order of Kin Tak, stated it had no knowledge regarding other allegations of the petition, and asked the court to make such order as the law required.

Shortly after respondent had issued a temporary injunction, the relator herein, Chan Siew Lai, intervened in the injunction suit and filed pleadings (a motion to dismiss and a petition) claiming, inter alia: (1) that he is the holder of the check and entitled to receive payment of the amount thereof;

(2) that Gunn is without standing to sue to enjoin payment because not a party to the contract (evidenced by the check) between the Bank and the payee or the latter's assignee; (3) that the court is without jurisdiction to enjoin payment by the Bank under § 400.4-303, R.S.Mo.1969; (4) that the petition fails to state facts showing loss or irreparable injury would be suffered by Gunn if payment is not enjoined, or to show that Gunn is without an adequate remedy at law; (5) that the petition should be dismissed and the temporary injunction dissolved.

There was no response by Gunn or the Bank to these allegations of intervenor-relator's petition.

After presentation by intervenor (relator here) of his motion to dismiss the petition and dissolve the injunction, respondent announced that he would maintain the temporary injunction unless prohibited from doing so. Thereafter, relator sought and this court issued its provisional rule in prohibition. We now determine that the provisional rule should be made absolute.

Relator relies primarily on § 400.4-303, contending that under that section of the Uniform Commercial Code and in light of allegations that the fraud practiced was not upon the Bank but upon Gunn, respondent is without authority to terminate or suspend by injunction the Bank's duty to pay its cashier's check, and that in maintaining the injunction respondent is acting in excess of his jurisdiction. That section of the Code provides, in pertinent part, as follows:

Any . . . stop-order received by [or] legal process served upon . . . a payor bank, whether or not effective under other rules of law to terminate [or] suspend . . . the bank's . . . duty to pay an item . . . comes too late to so terminate [or] suspend . . . such . . . duty if the . . . stop-order or legal process is received or served . . . after the bank has done any of the following:

(a) accepted or certified the item; . . .

"Accepted," as used in § 400.4-303(1)(a) [§ 4-303(a)(1)] means "acceptance" as that word is defined in § 400.3-410(1) [§ 3-409(a)]: "Acceptance is the drawee's signed engagement to honor the draft as presented."

A cashier's check, unlike an ordinary check, is a check drawn by a bank on itself and is accepted by the mere act of its issuance. *State of Pennsylvania v. Curtiss National Bank, etc.*, 427 F.2d 395, 398-399 [7 UCC Rep. 1015, 1019] (5th Cir.1970). It is sometimes, as here, purchased by a party from a bank for issuance payable to the order of another as payee. Thus, when issued, it becomes the primary obligation of the bank (rather than the purchaser) to pay it from its own assets upon demand, and the purchaser has no authority to countermand a cashier's check because of fraud allegedly practiced on the purchaser by the payee. Sections 400.3-413(1) [§ 3-412], 400.3-410(1) [§ 3-409(a)], and 400.4-303(1)(a) [§ 4-303(a)(1)]; *State of Pennsylvania v. Curtiss National Bank, etc.*, supra, at

398-399; Meador v. Ranchmart State Bank, 213 Kan. 372, 517 P.2d 123, 127-128 [13 UCC Rep. 1085, 1091] (1973).

The nature and usage of cashier's checks in the commercial world is such that public policy does not favor a rule that would permit stopping payment of them. It is aptly stated in *National Newark & Essex Bank v. Giordano*, 111 N.J.Super. 347, 268 A.2d 327 [7 UCC Rep. 1153, 1155] (1970):

A cashier's check circulates in the commercial world as the equivalent of cash \* \* \*. People accept a cashier's check as a substitute for cash because the bank stands behind it, rather than an individual. In effect, the bank becomes a guarantor of the value of the check and pledges its resources to the payment of the amount represented upon presentation. To allow the bank to stop payment on such an instrument would be inconsistent with the representation it makes in issuing the check. Such a rule would undermine the public confidence in the bank and its checks and thereby deprive the cashier's check of the essential incident which makes it useful. People would no longer be willing to accept it as a substitute for cash if they could not be sure that there would be no difficulty in converting it into cash.

The stop order given by Gunn and the legal process issued in connection with the injunction suit were received by and served upon the Bank after it had issued the cashier's check and came too late to terminate or suspend the Bank's obligation to honor and pay it. Furthermore, the fraud allegedly practiced on Gunn by Kin Tak, if true, afforded him no standing or authority to countermand the Bank's obligation to pay its check on demand; his remedy is by action against Kin Tak.

Gunn's petition alleges facts which show not only that he has no claim for injunctive relief against the Bank, but also that none can be stated by amendment. Hence, in maintaining the temporary injunction respondent would be acting in excess of his jurisdiction, for which prohibition will lie. *State ex rel. Stifel, Nicolaus & Co. v. Clymer et al.*, Judges, 522 S.W.2d 793, 798 (Mo.banc 1975), and cases there cited.

The provisional rule is made absolute.

■ SEILER, C.J., and MORGAN, HOLMAN, BADGETT and FINCH, JJ., concur.

### **Godat v. Mercantile Bank of Northwest County**

884 S.W.2d 1 (Mo.Ct.App. 1994).

■ SMITH, JUDGE.

Plaintiff, David Godat, appeals the action of the trial court granting judgment notwithstanding the verdict in favor of defendant, Mercantile Bank of Northwest County (Mercantile). The jury had returned a verdict for plaintiff in the amount of \$200,000. The trial court also conditionally

granted defendant's motion for new trial on the basis that the verdict was against the weight of the evidence. We affirm.

In this case we review the facts and the inferences to be drawn therefrom in the light most favorable to the verdict and the party who prevailed before the jury. *Stark v. American Bakeries Co.*, 647 S.W.2d 119 (Mo.banc 1983). We set forth the facts within that framework.

Kevin Hasty was a stockbroker with whom Godat transacted business for many years. In the late 1970's Godat invested approximately \$70,000 with Hasty. Some of the investments made by Hasty were profitable but many purportedly made were fictitious. Hasty represented to Godat that the investments were profitable and in fact Godat received from Hasty payments of approximately \$280,000. At trial Hasty testified that after early 1982 he no longer had any of Godat's money; however he continued to represent to Godat that Godat's investment balance was in excess of \$500,000. Hasty furnished documents showing such investment balances and Godat may have paid taxes on the "profits" from these investments.

Early in 1985 Hasty discussed an investment opportunity with Godat. Godat agreed that he would transfer \$200,000 from his investment "account" with Hasty to this new investment. To accomplish this Hasty was to obtain a cashier's check in that amount payable to Godat. On January 12, 1985, Hasty opened an account with Mercantile in the name of Colonial Investors. On January 25, he deposited into that account a check for \$221,545 drawn on United Missouri Bank. Contrary to bank policy, the Mercantile teller did not place a hold order on the account. On January 29, Hasty purchased a \$200,000 cashier's check from Mercantile payable to Godat. Hasty paid for this cashier's check with a check drawn to cash on the Colonial Investors Mercantile account.

The cashier's check was delivered to Godat that morning. He endorsed it and gave it to a courier service for delivery to Mark Twain Bank. Later that morning United Missouri Bank informed Mercantile it was dishonoring the check Hasty had deposited in the Colonial Investors Mercantile account. Mercantile contacted Godat by phone to advise him that Hasty had insufficient funds to cover his purchase of the cashier's check. Godat called Hasty, who then confessed his misdeeds in an effort to obtain the cashier's check back. Mercantile, which had learned that the check was to be deposited at Mark Twain Bank, notified Mark Twain of its intent to dishonor the cashier's check.

Godat brought this action against Mercantile to recover the face amount of the dishonored cashier's check. The jury returned a verdict in favor of Godat for \$200,000. The trial court granted Mercantile's motion for judgment notwithstanding the verdict on the basis that Godat was not a holder in due course because he had not given value for the check, and was therefore subject to any viable defenses of Mercantile. Those, of course, included fraud and theft by Hasty in obtaining the check through his check kiting actions. The trial court alternatively granted Mercantile a new trial because the verdict was against the weight of the evidence.

Godat appealed. His sole point relied on was that the trial court erred in granting defendant's motion for judgment notwithstanding the verdict. No challenge was made to the court's conditional grant of Mercantile's motion for new trial. Division III of this court reversed the grant of judgment notwithstanding the verdict holding that plaintiff was a holder in due course. It also, sua sponte, reversed the grant of the motion for new trial on the basis that plaintiff was entitled to a directed verdict as a matter of law. Mercantile's motion for rehearing en banc was granted.

Commercial paper is a critical aspect of the operation of the capitalistic economy in this and other nations. The utilization, issuance, honoring and dishonoring of such documents is the means by which commerce is transacted. Rules concerning commercial paper, uniformly accepted and uniformly applied, have been in place going back to the law merchant of England from which many of our present rules found their origin. Following the previously codified Uniform Sales Act and Uniform Negotiable Instruments Law, the states of this country adopted the Uniform Commercial Code to regulate and codify the use of commercial paper as well as other aspects of commercial enterprise. Missouri has adopted that Code. The transaction here involved occurred in 1985. In 1992 the Uniform Commercial Code was substantially amended in Missouri. We must in this case apply the law as it existed in 1985, although it does not appear that the result would be altered by application of the present Code. Statutory references are to the Code as it existed in 1985.

Much of Godat's argument before us, consistent with his trial position, is premised upon the proposition that cashier's checks differ from other negotiable instruments and that protection of their use in commerce requires that they be impervious to dishonor. Some discussion is therefore warranted of the nature and legal status of cashier's checks. A cashier's check unlike an ordinary check is a check drawn by a bank on itself. The bank is both drawer and drawee. Acceptance of a draft (which includes checks) is the drawee's signed engagement to honor the draft as presented. Sec. 400.3-410 [§ 3-409(a)]. A cashier's check is accepted by the issuing bank by the mere act of its issuance. *State ex rel. Chan Siew Lai v. Powell*, 536 S.W.2d 14 (Mo.banc 1976). In *Chan Siew Lai* the court dealt with a situation in which the remitter requested that the bank dishonor its cashier's check because of fraud practiced upon the remitter. The court held that because issuance of the check was acceptance by the issuing bank the provisions of Sec. 400.4-303, dealing with stop-orders, came into play and the bank could not after issuance stop payment. The court stated: "The nature and usage of cashier's checks in the commercial world is such that public policy does not favor a rule that would permit stopping payment of them."

In *Environmental Quality Research, Inc. v. The Boatmen's National Bank of St. Louis*, 775 S.W.2d 199 (Mo.App.1989) this court was faced with a case in which an action was brought by a cashier's check holder against the bank issuing the check for dishonoring it and his own bank for debiting his account after the check was dishonored. The plaintiff subsequently

dismissed his action against the issuing bank. Our court was confronted with the issue of whether, in view of the ruling in *Chan Siew Lai*, supra, an issuing bank could dishonor its own cashier's check. In a scholarly opinion by Judge Simon this court concluded that under very limited circumstances a bank could do so. The court distinguished *Chan Siew Lai* on the basis that when a bank issues a cashier's check the check becomes the primary obligation of the bank and the purchaser has no authority to countermand a cashier's check because of fraud allegedly practiced on the purchaser by the payee. Sec. 400.4-303 becomes applicable in that circumstance. We held, however, that statutory provision is for the purpose of settling the relative priorities of conflicting claims to a customer's account and not for the purpose of cutting off a bank's right to assert its own defenses against an instrument issued by it. The section prohibits the purchaser of the cashier's check from stopping payment on it because it is not the purchaser's check; it does not preclude the bank from dishonoring its own check. In making such holding we relied heavily upon *Farmers and Merchants State Bank v. Western Bank*, 841 F.2d 1433 (9th Cir.1987). In *Environmental Quality Research* we also quoted and adopted the following language from *Rezapolvi v. First National Bank of Maryland*, 296 Md. 1, 459 A.2d 183 (1983) [6]:

"Despite the language in some opinions suggesting that a bank may never dishonor its cashier's check, courts have recognized that a bank may do so under very limited conditions. These are where the holder has dealt with the bank in connection with the transaction or is *not a holder in due course, and where the cashier's check was obtained by fraud upon the bank* or under certain circumstances, where there was no consideration given to the bank for the instrument." (Emphasis supplied).

We held that the action of plaintiff's bank in surcharging plaintiff's account for the amount of the dishonored cashier's check did not give rise to a cause of action against that bank. It is clear from *Environmental Quality Research* that in Missouri a bank may under limited conditions dishonor its cashier's check.

There can be no question that the cashier's check was obtained by the fraud of Hasty. We then turn to whether the defendant may assert that defense against Godat. Sec. 400.3-306 provides that "Unless he has the rights of a holder in due course any person takes the instrument subject to . . . (b) all defenses of any party which would be available in an action on a simple contract; . . ." Sec. 400.3-305 provides that "To the extent that a holder is a holder in due course he takes the instrument free from . . . (2) all defenses of any party to the instrument with whom the holder has not dealt except [a group of special defenses none of which are applicable here]." These two sections make clear that if plaintiff is a holder in due course he takes the instrument free from the defenses of fraud or stealing, and as to him the bank may not dishonor the instrument.

[The court then concluded (soundly?) that Godat was not a holder in due course because Hasty had depleted his account and thus Godat delivered the cashier's check without receiving any value in return.]

\* \* \*

Judgment affirmed.

[The dissenting opinion of Judge Karohl is omitted.]

#### NOTES

1. **Questions on Chan Siew Lai and Godat.** The principal cases demonstrate the varied circumstances in which the issuer of a cashier's check or bank check may wish to dishonor the instrument. In *Chan Siew Lai*, plaintiff sought to stop his cashier's check because plaintiff had a defense against the payee. In *Godat*, however, the issuing bank had a reason of its own not to make payment. The court says that the bank violated its own internal policies in not placing a hold on the deposit that was relied on to support the cashier's check. If the bank was in a position to prevent the check from being issued until it was certain that there were sufficient funds in the remitter's account, should the bank be precluded from dishonoring the instrument in order to induce it to take advantage of its capacity to prevent the fraud?

Should it have been relevant in *Chan Siew Lai* whether the holder had given value for the instrument or could satisfy any of the other requirements for holder in due course status? The failure of the court to make this inquiry has led one commentator to describe the case as "the height of the 'unstoppable' cashier's check." See Brian J. Davis, *The Future of Cashier's Checks Under Revised Article 3 of the Uniform Commercial Code*, 27 Wake Forest L. Rev. 613, 628 (1992).

2. **When (if Ever) May the Issuing Bank Refuse to Pay a Cashier's Check?** Courts and commentators have long been divided on the issue of whether a bank is always required to honor its cashier's checks. In *Arline v. Omnibank*, 894 S.W.2d 76 (Tex.Ct.App.1995), the court summarized the judicial positions:

The majority of courts have adopted a "cash equivalent" test and have concluded that a bank may not assert its own defenses to payment of one of its cashier's checks. Compare *Hotel Riviera, Inc. v. First Nat'l Bank & Trust Co.*, 768 F.2d 1201, 1203-04 (10th Cir.1985); *Swiss Credit Bank v. Virginia National Bank-Fairfax*, 538 F.2d 587, 588 (4th Cir.1976); *Munson v. American National Bank & Trust Co.*, 484 F.2d 620, 623-24 (7th Cir.1973); *First Fin. L.S.L.A. v. First Am. Bank & Trust Co.*, 489 So.2d 388, 391 (La.App.), writ denied, 492 So.2d 1217 (La.1986); *National Newark & Essex Bank v. Giordano*, 268 A.2d 327 (N.J.Super.1970); *Stringfellow v. First American National Bank*, 878 S.W.2d 940, 944 (Tenn.1994).

Other courts, however, have concluded that on very limited occasions, banks may dishonor their own cashier's checks. See *International Furniture Distributors, Inc. v. First Georgia Bank*, 294 S.E.2d 732, 733 (Ga.App.1982) (holding that where remitter paid for cashier's check with a personal check upon which a stop payment order had already been issued, the bank could assert the defense of failure of consider-

ation and dishonor its cashier's check); *Rezapolvi v. First National Bank of Maryland*, 459 A.2d 183, 189 (Md.1983)(agreeing with cases holding that a bank may dishonor its cashier's check where the holder is not a holder in due course and the check was obtained by fraud or under other circumstances where no consideration was given for the check); *State Bank of Brooten v. American National Bank of Little Falls*, 266 N.W.2d 496, 499 (Minn.1978)(adopting rule that a bank may refuse payment on its own cashier's check if it is not in the hands of a holder in due course); *Environmental Quality Research, Inc. v. Boatmen's National Bank of St. Louis*, 775 S.W.2d 199, 204 (Mo.Ct.App. 1989, app. denied)(holding that a bank may assert its own defenses to payment of a cashier's check). See *Warren Finance, Inc. v. Barnett Bank of Jacksonville*, 552 So.2d 194 (Fla.1989) for a thorough discussion of the split of authority regarding whether a bank may assert its own defenses when dishonoring its cashier's check.

Some order may be brought to the area by considering the different claims and defenses that an issuing bank may use to avoid payment. As a technical matter, a customer may not stop a cashier's check in the same fashion that he or she may stop regular checks. The reason is that § 4-403(a) authorizes a customer to "stop payment of any item drawn on the customer's account." A cashier's check, however, is not drawn on the customer's account; it is an independent obligation of the issuing bank. See § 3-412. Hence, the issuer of a cashier's check makes the same contract as the maker of a note payable on demand.

This analysis, however, would not preclude a bank that issues a teller's check, i.e., a draft drawn on a bank by another bank, from stopping payment, since the bank requesting issuance is a customer of the drawee bank. See § 3-104(h). As a result, many courts have held that a teller's check is subject to stop payment orders. See, e.g., *Meritor Savings v. Duke*, 1993 WL 946108 (Va. Cir. Ct.1993); *Fur Funtastic, Ltd. v. Kearns*, 430 N.Y.S.2d 27 (N.Y.City Civ.Ct.1980). Nevertheless, from the perspective of "cash equivalence," the public appears to be as accepting of teller's checks as of cashier's checks. See *Guaranty Fed. Sav. & Loan v. Horseshoe Operating*, 748 S.W.2d 519, (Tex.App.—Dallas 1988), rev'd on other grounds, 793 S.W.2d 652 (Tex.1990). Thus, it is unclear that there should be a distinction in the legal treatment of the two.

The force of these provisions is increased by § 3-411. That section makes the issuer of a cashier's check or teller's check and the acceptor of a certified check liable for compensation for expenses and loss of interest resulting from the nonpayment of the check. The bank will also be liable for consequential damages of which the bank had notice. The issuing bank is not liable if its failure to pay was predicated on its own claim or defense that the bank had reasonable grounds to believe were available against the person entitled to enforce the instrument or if payment is prohibited by law. In any case this provision means that even if a bank that issues a teller's check has the technical right to issue a stop payment order, it may be liable for exercising that right.

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**3. Customer Defenses to Cashier's Checks: Indemnity and Injunction.** Is there anything that the remitter of a cashier's check can do if it believes that the check should not be paid by the issuer because the remitter has a defense to payment? Suppose, for instance, that a remitter-buyer gives a payee-seller a cashier's check in payment for goods and later believes that he has a defense of breach of warranty. Two Code sections are arguably relevant to whether the customer's defenses against the payee can justify the issuing bank's refusal to pay. Section 3-602(a) provides that payment by any party to the holder discharges the paying party's obligation "even though payment is made with knowledge of a claim to the instrument under Section 3-306 by another person." Thus, without any additional contractual agreement, the issuing bank is not required to accede to the customer's request that the issuer not honor the check. No discharge occurs, according to § 3-602(b), however, if prior to payment the person seeking to prevent it obtains an injunction or similar process of a court or, in a case of an instrument other than a cashier's check, teller's check, or certified check, the party asserting a claim to the instrument indemnifies the payer against loss resulting from a refusal to pay. This provision suggests that the customer's recourse is to obtain a judicial order precluding the issuer from honoring the check. This possibility also seems to be subsumed within § 3-411(c), which immunizes a bank that fails to pay a certified or cashier's check or stops payment on a teller's check if payment is prohibited by law. Section 3-305(c) adds that a person with a claim to the instrument—but not with a defense or claim in recoupment—may join an action to enforce the obligation of a party to pay the instrument and personally assert his or her claim against the person seeking to enforce the instrument. Thus, the intervening party must have a property claim to the instrument itself, rather than just a contractual defense to its payment. Intervention, for instance, may be based on a right to rescind the negotiation to the holder under § 3-202. The bank, however, may not directly assert the rights of the third party, or *jus tertii*; furthermore, even compliance with § 3-305(c) will not protect the bank from liability under § 3-411 if the intervenor's claim is not upheld. See § 3-411, Official Comment 3.

The technical distinctions between cashier's checks and teller's checks are also less relevant where the issuing bank refuses to pay because its customer has defenses against the payee or other holder of the check. Under these conditions, the issuer of any instrument may not avoid payment to a holder in due course who would otherwise take free of defenses. Section 3-305(c) makes clear that an obligor on an instrument may not assert against the person entitled to enforce the instrument any defense, claim in recoupment, or claim to the instrument of another person. If the person who seeks to enforce the instrument does not have the rights of a holder in due course, the issuing bank may avoid payment if it can prove that the instrument has been lost or stolen. See also *Louis Falcigno Enterprises, Inc. v. Massachusetts Bank & Trust Co.*, 14 Mass.App.Ct. 92, 436 N.E.2d 993 (1982); *Travi Construction Corp. v. First Bristol County*

National Bank, 10 Mass.App.Ct. 32, 405 N.E.2d 666 (1980). Is this result consistent with the rationale of *Chan Siew Lai*?

4. **“Wrongful” Refusal to Pay a Cashier’s Check.** Section 3-411 governs the consequences of a wrongful refusal to pay a cashier’s check or certified check. What would constitute a “rightful” refusal? In *Associated Carriages, Inc. v. International Bank of Commerce*, 37 S.W.3d 69 (Tex. Ct. App. 2000), the court relied on § 3-411(c) for the proposition that refusal to cash a check is not wrongful if the bank “has a reasonable doubt [about] whether the person demanding payment is the person entitled to enforce the instrument.” The bank in that case had a policy of always refusing to cash checks made payable to corporations, based on the assumption that a reasonable doubt will always exist about whether a person demanding payment on behalf of a corporation is entitled to enforce the instrument. The court found this rationale sufficient to uphold a jury finding that the bank had not wrongfully refused to cash a cashier’s check. What if the bank doubted the authenticity of the check itself, but it turned out that the check actually was authentic?

5. **The Purposes of Cashier’s Checks.** The answers to the above questions may be clarified by a discussion of the purposes of cashier’s checks. Consider the risks that are borne by a payee-seller who takes an ordinary check. First, the drawer-buyer may have insufficient funds in his account; we call this the “payment risk.” Second, the drawer may stop payment because he changes his mind about the transaction or asserts a defense. The drawer remains liable on the instrument and underlying obligation if he merely changes his mind or if the defense is without merit; but in order to collect the payee must sue, and will be denied the use of the funds until he obtains a judgment. We call this the “transaction risk.” Because it is obvious that the drawer of an ordinary check may lack resources, we can state the underlying question in the following way: When a seller-payee requests payment by a cashier’s check, does he mean to shift to the buyer or issuing bank only the payment risk or both the payment and transaction risks? If the payment risk alone is meant to be shifted, the customer-buyer should be allowed, through some apt procedural device, to prevent payment if he has defenses to the underlying obligation. If, however, a cashier’s check is meant to shift both risks, the payee should be allowed to take free from any of the customer’s defenses. (A payee that insists on cash bears neither the payment nor the transaction risk, but costs are associated with cash transactions. For example, the cash may be stolen, or the drawer may prefer not to keep cash on hand, creating reluctance to deal with persons who insist on cash payments. A cashier’s check thus represents a compromise between cash and check payment.) Because a seller that takes cash bears neither the payment nor the transaction risk, courts that wish to shift both these risks away from the payee, as did the court in *Chan Siew Lai*, hold that cashier’s checks are in effect cash. This, however, is merely a conclusion; the issue is what the parties intended.

We put the question this way because courts and the Code should acknowledge the purposes for which the parties chose to use the instrument. If they do not, the parties will have to create another instrument or otherwise contract to achieve their aims. Both actions create costs that could be avoided were the law to follow the parties' risk allocation. Given this fact, does a cashier's check mean, more often than not, that the seller is to bear neither risk or that the seller is only free of the payment risk? Should the Code be amended to put at the parties' disposal another instrument that has the effect of shifting one or both of these risks away from the payee? The question as to whether cashier's checks can be stopped has been considered in both literature and cases. For representative articles on both sides of the issue, see Lary Lawrence, *Making Cashier's Checks and Other Bank Checks Cost-Effective: A Plea for Revision of Articles 3 and 4 of the Uniform Commercial Code*, 64 Minn.L.Rev. 275 (1980); Paul M. Shupack, *Cashier's Checks, Certified Checks, and True Cash Equivalence*, 6 Card.L.Rev. 467 (1985).

**6. Stopping Payment on Personal Money Orders.** Cashier's checks and similar instruments are sometimes used by poor consumers without checking accounts when they occasionally must pay by check. Consider the "personal money order" that banks often sell. This instrument is encoded with an amount (the purchase price less bank costs of the order) and the selling bank's name, but the date, the payee and the signature lines are left blank. Consumers fill out these personal money orders to pay obligations. If money orders may not be stopped, these consumers, it is said, will not have the same right to stop payment that middle class consumers have. Should there then be a general right to stop payment of cashier's checks or a special right to stop for consumers who use instruments such as money orders? In terms of our analysis of cashier's checks, one may ask whether payee sellers who deal with consumers who do not have checking accounts want to bear both the payment and the transaction risk. If not, should the law nevertheless allow consumers to stop money orders? May consumers be barred from stopping money orders only if they know of the poor strategic position an unstopable instrument puts them in?

Is a personal money order more like a teller's check, on which payment can be stopped by the drawer bank, or like a cashier's check? Note that Article 3 minimizes the distinction insofar as § 3-411 imposes liability on a bank for "wrongfully" stopping payment on a teller's check and § 3-305(c) prevents the bank from asserting third-party defenses (which may be read to make the issuance of a stop payment order at the request of a customer "wrongful" as against the holder). But there may be situations in which the distinction between these forms is important. Recall that in *Sequoyah State Bank v. Union National Bank of Little Rock*, 621 S.W.2d 683 (Ark.1981), page 137 supra, the court held that the bank could not avoid payment of a personal money order. Different results were reached in *First National Bank of Nocona v. Duncan Savings and Loan Ass'n*, 656 F.Supp. 358 (W.D.Okla.1987) and *J.G. Duggan v. State Bank of Antioch*, 133 Ill.Dec. 245 (Ill.App.Ct.1989). In the former case, the court explained its rationale as follows:

The Court rejects application of the cash equivalency rule to the money order in issue for several reasons. First, the Court is of the opinion that the analogy of bank drafts or teller's checks (which this instrument should more properly be termed) to cashier's checks employed by some courts to invoke the ready-made rule of cash equivalency ignores a very basic legal difference between the two instruments, that being that the drawer and drawee are one in the same on a cashier's check whereas bank drafts and teller's checks (and the money order in issue) are drawn by one bank upon another. Secondly, Plaintiff herein has offered no evidence of custom or usage of trade in the commercial community to treat instruments such as that before the Court as cash equivalents. But even if this Court were to take judicial notice of many cases and the opinions of at least several commentators, see e.g. Beane, *Rights of Drawers, Banks, and Holders in Bank Checks and Other Cash Equivalents*, 19 *Tulsa L.J.* 612, 645-55 (1984); Lawrence, *Making Cashier's Checks and Other Bank Checks Cost Effective: A Plea for Revision of Articles 3 and 4 of the Uniform Commercial Code*, 64 *Minn.L.Rev.* 275, 333-34 (1980), that bank drafts and teller's checks are treated as the equivalent of cash in commercial circles, this Court deems it improper to adopt such custom as a rule of law when it contravenes the clear import of applicable Uniform Commercial Code provisions. It may well be that the commercial world treats bank drafts, teller's checks and money orders such as that herein as cash equivalents, but if that is the case, the custom should evolve from the law and not the other way around. Such custom and usage of bank drafts, teller's checks and money orders like that involved herein may be logically and legally justified by recognition of the dearth of defenses available to the drawer but such custom or usage may neither be predicated upon nor mandate the legally unsupportable conclusion that such instruments are not subject to stop payment orders.

656 F.Supp. 358, at 363-364.

### C. THE CONSEQUENCES OF A BANK'S FAILURE TO STOP

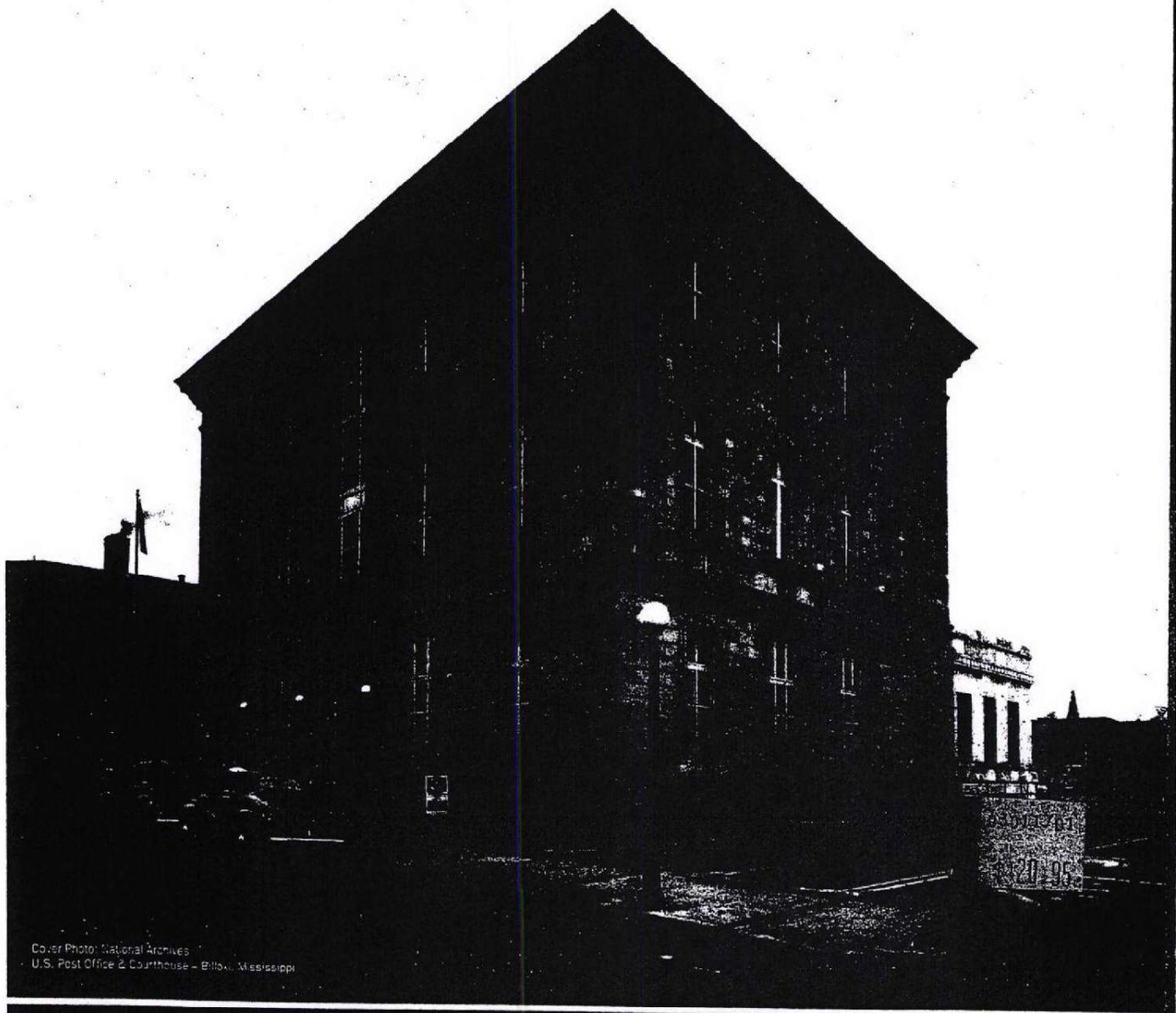
Section 4-403(a) states the right of the customer to stop payment of an item drawn on the customer's account in absolute terms. As long as the customer follows the procedures mandated by that provision, the bank has no discretion to ignore the customer's order. Nevertheless, banks may fail to honor a properly issued stop payment order, perhaps as a result of negligence or as a result of non-negligent failure of internal controls over the payment process. One might imagine, given the absolute nature of the customer's right to stop payment, that any such failure would create liability for the bank. On reflection, however, it is less clear that banks should necessarily bear liability. If the stop payment order was issued for good cause, then the bank might properly bear liability to its customer, but be authorized to recover the amount paid from the recipient of the funds. If the stop payment was not issued for good cause, so that the recipient of the funds could have recovered from the customer on its drawer's contract had

# Exhibit GG

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Payment Systems** by Clayton P. Gillette

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By

**CLAYTON P. GILLETTE**

Perre Bowen Professor of Law  
University of Virginia School of Law

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Published by



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## FORMS AND REQUIREMENTS OF NEGOTIABLE INSTRUMENTS

- a. **Interest and location for payment:** The above note assumes a zero percent interest rate per annum and does not specify a location for payment of the note. Most notes will include these provisions.
- b. **Certificate of deposit:** If the promisor is a bank and the promise to repay acknowledges receipt of money that is the source of the repayment, the writing constitutes a certificate of deposit. U.C.C. § 3-104(j).
2. **Draft:** A “*draft*,” unlike a note, is always a three-party instrument. One party, the *drawer*, has placed funds in the hands of (or has credit with) a second party, the *drawee*. Through use of the draft, the drawer instructs the drawee to pay some or all of the funds held on behalf of the drawer to the order of the third party, the *payee*. The draft used to be known under the name “bill of exchange.” The most common draft is the *check*, defined as a draft that is drawn on a bank and that is payable on demand, U.C.C. § 3-104(f). An instrument that meets all the other requirements of negotiability, but that is not made payable to bearer or to order, and that otherwise satisfies the definition of a check will still be considered a negotiable instrument and a check. U.C.C. § 3-104(c). In this way, transferees of instruments that appear to be checks, but that are made payable to an identified party rather than to the order of that party, are still able to attain the status of holders. Presumably, these parties would be surprised unfairly if they discovered that the writing in their possession was not a check.

|   |              |                   |
|---|--------------|-------------------|
| David Drawer<br>1313 Mockingbird La.<br>Brookline, MA |              | November 20 19 95 |
| Pay to the<br>Order of                                | Pamela Payee | \$ 75.00          |
| Seventy-five and 00/100                               |              | Dollars           |
| Drawee National Bank<br>Brookline, MA                 |              | /s/ David Drawer  |

3. **Special forms of instruments:**

- a. A “*teller’s check*” is a draft drawn by a savings bank or savings and loan association on or payable at a commercial bank with which the drawer maintains a checking account. It may also be referred to as an “official check.” U.C.C. § 3-104(h).

# Exhibit HH

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SUPREME COURT OF THE UNITED STATES

Case Nos. 220145 & 220146 (Consolidated)

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VIDEOTAPE DEPOSITION OF: BARKLEY CLARK  
October 16, 2018

---

DELAWARE,  
Plaintiff,  
v.  
ARKANSAS, et al,  
Defendants.

---

PURSUANT TO NOTICE, the videotape deposition of BARKLEY CLARK was taken on behalf of the Plaintiff at 1050 17th Street, Suite 2400, Denver, 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.

1 A. FDA. 04:34:29

2 Q. Oh. I'm sorry. You said that there 04:34:31  
3 were legislation commenting on the Hunt Commission 04:34:35  
4 report, you said that the committees were working on 04:34:39  
5 Hunt Commission reports? 04:34:42

6 A. Some committees were working on the Hunt 04:34:42  
7 Commission and other committees were working on 04:34:46  
8 the -- I mean, it's a remarkable coincidence that this 04:34:48  
9 was happening. 04:34:52

10 Q. What committee was working on the Hunt 04:34:52  
11 Commission report at the time? 04:34:54

12 A. Well, the Hunt Commission report -- I 04:34:55  
13 don't know if it was a specific committee. But it 04:34:59  
14 was -- there were -- there were reports about it from 04:35:03  
15 newspaper sources and from -- from the -- from the 04:35:07  
16 treasury report and the like. 04:35:11

17 Q. Isn't it in fact the case that in 1973 04:35:15  
18 and 1974, the senate banking committee did not give 04:35:19  
19 any consideration to the Hunt Commission report? 04:35:25

20 A. That is possible, sure. 04:35:28

21 Q. Okay. Isn't it in fact the case that 04:35:30  
22 the Hunt Commission report was not considered by the 04:35:33  
23 senate banking committee until 1979 at which time it 04:35:37  
24 was part of the legislative process, which resulted in 04:35:43  
25 1980 enactment of the depository institutions 04:35:49

1 deregulation act? 04:35:53

2 A. That sounds fair. 04:35:55

3 Q. Okay. And just to be clear, the first 04:35:57

4 time Congress enacted any of the Hunt Commission 04:36:01

5 recommendations was in 1980 as part of the Depository 04:36:06

6 Institutions Deregulation Act, is that accurate? 04:36:14

7 A. I'm -- I'm assuming that it is the way 04:36:15

8 you describe it, yes. I mean, there was a major piece 04:36:18

9 of legislation. 04:36:20

10 MS. AHUMADA: Barkley -- 04:36:21

11 Q. (BY MR. ROSENTHAL) You're aware that -- 04:36:23

12 you were aware that there was a major piece of banking 04:36:24

13 legislation in 1980, correct? 04:36:27

14 A. Correct. 04:36:29

15 Q. Okay. 04:36:29

16 MS. AHUMADA: Can we instruct Barkley 04:36:32

17 not to assume and speculate for you? 04:36:33

18 MR. ROSENTHAL: You can instruct him 04:36:36

19 however I want. 04:36:38

20 Q. (BY MR. ROSENTHAL) But what I'm trying 04:36:39

21 to get at is, is he aware of any other banking 04:36:40

22 legislation dealing with checks that was considered by 04:36:49

23 the Senate banking committee in the Congress that met 04:36:53

24 in 1973 and '74, and I think your testimony is you're 04:36:58

25 not aware of any? 04:37:02

1 A. That's right. 04:37:03

2 Q. Okay. Were there any senators who were 04:37:03

3 members of the Hunt Commission? 04:37:10

4 A. No. It was primarily corporate leaders. 04:37:11

5 Q. Okay. On the bottom of page 28, you say 04:37:16

6 yet, "The same operational issues apply to money 04:37:25

7 orders." Do you see that? Where the selling agent 04:37:29

8 has no way of comparing records with the drawee bank 04:37:33

9 because of bifurcated recordkeeping? 04:37:36

10 A. Yes. 04:37:39

11 Q. Okay. What is your basis of expertise 04:37:39

12 on money order operational issues? 04:37:44

13 A. Just the -- the information I got during 04:37:46

14 my work on the -- toward the report. 04:37:53

15 Q. Okay. So basically, the declarations 04:37:56

16 and deposition testimony of MoneyGram; is that fair to 04:38:01

17 say? 04:38:06

18 A. That would be part of it, yes. 04:38:06

19 Q. What other part would there have been? 04:38:08

20 A. Well, that would be fair. 04:38:10

21 Q. Okay. On page 29, at the beginning of 04:38:11

22 the second full paragraph, you say, "As a matter of 04:38:40

23 banking industry practice and understanding, the term 04:38:45

24 third-party bank check also means twice endorsed 04:38:50

25 checks." Do you see that? 04:38:54



1 A. I don't understand that. 04:47:09

2 Q. (BY MR. ROSENTHAL) Well, I think -- I 04:47:11

3 think you've answered this, but let me just be clear. 04:47:13

4 You said you had seen an earlier version of the bench 04:47:15

5 memo during the time you were preparing the expert 04:47:18

6 report, did I understand you correctly? 04:47:24

7 MS. AHUMADA: Objection. 04:47:26

8 Characterizing -- mischaracterizing his testimony. 04:47:27

9 MR. ROSENTHAL: I'm trying to get -- 04:47:31

10 A. I don't recall exactly when I saw the 04:47:32

11 bench memo. But there's no -- I did look at it and 04:47:34

12 deal with it then in doing the -- doing the report. 04:47:43

13 Q. (BY MR. ROSENTHAL) Would it be fair to 04:47:48

14 say that the opinions you expressed concerning the 04:47:50

15 Hunt Commission in your expert report originated in 04:47:55

16 this bench memo? 04:48:00

17 A. Yes, that's correct. Except the 04:48:02

18 treasury provision. The Schmults memo was not in 04:48:04

19 that -- in that bench memo. 04:48:10

20 Q. Okay. 04:48:15

21 MR. ROSENTHAL: Okay. I am leaving open 04:48:20

22 the deposition simply because we have not seen those 04:48:29

23 publicly available documents in the other cases. I 04:48:36

24 have to say I doubt that that will require reopening 04:48:40

25 of the deposition, but we've asked all the questions I 04:48:44

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*

# Exhibit II

1 SUPREME COURT OF THE UNITED STATES  
2 \* \* \* \* \*  
3 \*  
4 DELAWARE, \*  
5 Plaintiff \* Case Nos.  
6 vs. \* 220145 & 220146  
7 ARKANSAS, et al., \* (Consolidated)  
8 Defendants \*  
9 \*  
10 \* \* \* \* \*  
11  
12 DEPOSITION  
13 OF  
14 ALEX KAUFFMAN  
15 June 21, 2018  
16  
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22  
23 Any reproduction of this transcript  
24 is prohibited without authorization  
25 by the certifying agency.

1 THE WITNESS:

2 Yes.

3 BY ATTORNEY TALIAFERRO:

4 Q. And then this is part of the fourth bullet point  
5 but there's an additional sentence that says are there  
6 other important distinctions between the two. Would  
7 other distinctions between MoneyGram official checks  
8 and money orders be a factor that would assist TSG in  
9 its analysis of whether MoneyGram official checks were  
10 similar to money orders?

11 ATTORNEY VOSS:

12 Same objection.

13 THE WITNESS:

14 Yes.

15 BY ATTORNEY TALIAFERRO:

16 Q. And when you ask about standard language in  
17 bullet point one, what were you referring to there?

18 A. We were just trying to figure out what these  
19 items look like and what language is conveyed to the  
20 purchaser.

21 Q. And were you referring there to standard language  
22 that appears on a money order?

23 A. I believe we were asking about official checks.

24 Q. If there was standard language that appeared on a  
25 money order that did not appear on an official check

1 would that affect your analysis?

2 A. Our role in this process was to --- a  
3 determination had been made already by the State Of  
4 Arkansas. Our role was kind of to gather the  
5 information to do some research that we could present  
6 to the rest of the states. And so we weren't trying  
7 to draw a particular legal conclusion, just to gather  
8 the data that we're asking for here.

9 Q. Okay.

10 And what was the determination that had been made  
11 by the State of Arkansas?

12 A. That MoneyGram had been improperly reporting  
13 these checks to the State of Delaware rather than the  
14 states in which they were purchased.

15 Q. And do you know what factors the State of  
16 Arkansas considered in making that determination?

17 A. No, I don't.

18 Q. And would the determination made by the State of  
19 Arkansas be limited to the State of Arkansas or would  
20 it extend to your other client states?

21 A. I ---.

22 ATTORNEY DISHER:

23 Objection. Vague.

24 THE WITNESS:

25 To the extent that they had similar

1 A. This is an e-mail from Shane Osborn to State of  
2 Texas.

3 Q. And he's forwarding the e-mail from you to Mr.  
4 Osborn.

5 Correct?

6 A. Correct.

7 Q. And in the first paragraph of your e-mail you say  
8 MoneyGram dash the attached PowerPoint is a very rough  
9 draft of the legal findings on this audit so far.  
10 We're still waiting for financial details to fill in  
11 that section. The scope of this audit is solely on  
12 official checks which I don't believe has been the  
13 subject of an audit in the past. There is a massive  
14 liability owed to the participating states.

15 Do you see that?

16 A. Yes.

17 Q. As of October 14th, 2014, had TSG made legal  
18 findings on the audit?

19 A. TSG doesn't make legal findings.

20 ATTORNEY DISHER:

21 Objection. Vague.

22 COURT REPORTER:

23 Who --- who objected?

24 ATTORNEY O'KORN:

25 Same objection.

1 Q. The first bullet point on that page says all  
2 examples were very similar in appearance. Each looks  
3 like a typical check with the exception of either  
4 official check or money order printed on their face.

5 Do you see that?

6 A. Yes.

7 Q. And then the next bullet point says neither  
8 contained legal language on their face that would  
9 distinguish the functions of the instruments to the  
10 purchaser.

11 Do you see that?

12 A. Yes.

13 Q. And was that TSG's tentative conclusion about the  
14 physical differences between official checks and money  
15 orders as of October 2014?

16 A. I believe so.

17 Q. The conclusion on that page says since there is  
18 no important distinction in the appearance of the  
19 instruments official checks are similar to money  
20 orders.

21 A. Yes.

22 Q. What criteria did TSG apply to determine whether  
23 a difference was important or not?

24 A. In our --- our role is to act on behalf of the  
25 states. We're acting on behalf of consumers. And so

1 we look at it from the consumer's perspective and  
2 think well, should this type of particular instrument  
3 have a different treatment than another? And so we  
4 kind of take the perspective of someone going into a  
5 bank and purchasing it. And from their perspective  
6 and from ours after looking at these checks they're  
7 essentially identical. There's no real difference.  
8 There's no, you know, even small print that would say  
9 hey, guess what? This amount is going to Delaware.  
10 They looked very similar and so in our mind they  
11 should function very similarly.

12 Q. Okay.

13 And so is it fair to say that the criteria that  
14 you applied is whether a distinction would be  
15 important to a consumer?

16 A. Yes.

17 Q. And what was TSG's basis for selecting important  
18 to consumer as the criteria that it applied to the  
19 differences?

20 A. We just took a common sense approach just by  
21 looking at the face of it and seeing, you know, here's  
22 our first impression. Here's what a person purchasing  
23 one of these instruments would see.

24 Q. Did you take into consideration the reason that a  
25 person might purchase a money order?

1 A. Yeah. We asked a lot about that. When I went to  
2 the local bank, I said, well, you're --- you know.  
3 They're --- they were a MoneyGram customer. And I  
4 said, well, why would someone get this instead of a  
5 money order? And they said, well, you know, if  
6 somebody's going to get a money order, they're not  
7 going to bring a money order that looks like it's from  
8 Walmart to a closing for a commercial real estate  
9 transaction or to buy a yacht. You know, it's  
10 basically a rebranding of that money order instrument.  
11 So we call it something different because it's a  
12 higher dollar value typically used for a more complex  
13 or significant transaction.

14 Q. And who was making that representation? Was that  
15 a Members First employee?

16 A. Yes. It's a ---.

17 Q. Do you know the name of that person?

18 A. I don't. It was years ago.

19 Q. Can you turn to page 499 of the PowerPoint?

20 We're still in section one, whether official checks  
21 are covered by the federal statute. And it says we  
22 looked for functional differences between the two.

23 Do you see that?

24 A. Uh-huh (yes). Yes.

25 Q. I'm going to ask you about the second bullet

1 point which says both can be used similarly. Both are  
2 considered as good as cash, are widely accepted by  
3 individuals and corporations and can be deposited in  
4 any bank account or cashed at a check cashing  
5 institution.

6 Is it TSG's position that money orders will be  
7 accepted by substantially all the persons and  
8 incorporations that will accept official checks?

9 A. I'm sorry. That money orders will be accepted by  
10 people that will ---?

11 Q. I'll repeat the question. Excuse me.

12 Is it TSG's position that money orders will be  
13 accepted by substantially all the persons and  
14 corporations that will accept official checks?

15 ATTORNEY DISHER:

16 Objection. Calls for speculation.

17 THE WITNESS:

18 I can't say that definitively, but  
19 that's the general understanding.

20 BY ATTORNEY TALIARFERRO:

21 Q. Okay.

22 Mr. Disher of --- of Texas believes that that's a  
23 speculative statement. Are you making a speculative  
24 statement when you say both are considered as good as  
25 cash and are widely accepted by individuals and

1 corporations? Are you speculating?

2 A. Yes.

3 Q. And so TSG doesn't know that to be the case.

4 Correct?

5 A. We don't know definitively that every corporation  
6 will accept them.

7 Q. That's a speculative statement by TSG?

8 A. Right.

9 Q. Will a money order be accepted for a down payment  
10 on a house?

11 A. I don't know. I believe so.

12 Q. And when you say you don't know, TSG doesn't  
13 know, as it sits here today, whether a money order  
14 will be accepted as a down payment on a house.

15 Correct?

16 A. I assume that it would, but I have no particular  
17 insight on that.

18 Q. And TSG didn't do any market research or analysis  
19 about whether a money order will be accepted for a  
20 down payment on a house.

21 A. We have not.

22 Q. Correct?

23 A. No.

24 Q. Will a money order be accepted to purchase a car?

25 A. Yes. I believe so.

1 Q. And how did you reach that determination?

2 A. I feel like I have in the past.

3 Q. And that's a --- so that's a --- that's a  
4 personal --- that's drawing on your personal  
5 experience?

6 A. Correct.

7 Q. And TSG didn't conduct any market research or  
8 consumer analysis to determine whether money orders  
9 could be accepted to purchase a car.

10 Correct?

11 A. We did not.

12 Q. You've mentioned you personally going to a  
13 Members First bank to ask for a money order and being  
14 given an official check.

15 Do I have that right?

16 A. Yes.

17 Q. And you've mentioned that you believe that in the  
18 past you've used a money order to purchase a car.

19 A. Yes.

20 Q. Correct?

21 Beyond those two examples, what fact gathering  
22 did TSG undertake in this examination to reach its  
23 conclusion that money orders and official checks can  
24 be used interchangeably as a payment method?

25 A. I don't remember specifically what, if any,

1 research we did. I know we had discussions with  
2 MoneyGram about this and we talked to our counsel. I  
3 didn't personally do a lot of market research on it.

4 Q. Did TSG conduct any an analysis of what sorts of  
5 instruments a check cashing institution will and won't  
6 cash?

7 A. We acquired that information that they would  
8 accept money orders and official checks, but I don't  
9 remember how we arrived at that conclusion.

10 Q. Did TSG do any analysis on whether check cashing  
11 institutions have dollar limits on checks that they  
12 will and won't cash?

13 A. No. I don't believe we did.

14 Q. Now, does TSG have the institutional capability  
15 to undertake market research or consumer studies about  
16 the practices of individuals and corporations and  
17 whether they will or won't accept official checks and  
18 money orders?

19 A. Yes. We could do that.

20 Q. Who would do that review if --- if you had that  
21 capability?

22 A. If it would've been raised as an issue or a  
23 question, we would've --- we'd have done it in-house  
24 or commissioned someone to do that review.

25 Q. Have you had other examinations where you needed

1 to commission market research or consumer practices to  
2 make determinations?

3 A. We typically do it in --- in-house.

4 Q. The third bullet point on page 499 says both are  
5 regulated similarly by MoneyGram's governing agencies.

6 Do you see that?

7 A. Yes.

8 Q. What governing agencies were you referring to  
9 with that statement?

10 A. I don't recall.

11 Q. So that's not an --- for example, that's not a  
12 --- is that a determination about how the Federal  
13 Reserve treats these instruments?

14 A. I think we were referring back to kind of the  
15 genesis of all this, which was Money Transmitters  
16 Association noticed to MoneyGram that they were  
17 reporting these instruments improperly.

18 And so I believe we verbally asked MoneyGram, you  
19 know, who looks after all these type of things? Is  
20 there just different agencies that regulate money  
21 orders versus official checks? And they told us there  
22 was not.

23 Q. So the governing agency there you're referring to  
24 as the Money Transfer Regulators Association --- or  
25 I'm sorry, if I don't know the exact name.

1 A. I don't know if ---.

2 Q. Do you know the name?

3 A. No.

4 Q. Okay.

5 But this is an organization that regulates money  
6 transfer? Is that your recollection?

7 A. To the best of my recollection, they're the ones  
8 that notified MoneyGram initially that they were  
9 improperly reporting these items. And that prompted  
10 MoneyGram to then contact the State of Delaware and  
11 ask for clarification.

12 Q. So let me circle back to the question I asked a  
13 few minutes ago. Does that bullet point address  
14 whether official checks and money orders are regulated  
15 similarly by the Federal Reserve?

16 A. No. I don't know about the Federal Reserve.

17 Q. And does that bullet point address whether money  
18 orders and official checks are regulated similarly by  
19 the Uniform Commercial Code?

20 A. No. It does not.

21 Q. And does that bullet point take into  
22 consideration state regulations regarding money  
23 service business registration?

24 A. No.

25 Q. Turn to page 500 of the October presentation.

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

2 Q. Do you recall that ever coming up regardless of  
3 whether you can recall it as you sit there today? Do  
4 you recall the issue ---

5 A. Yes.

6 Q. --- ever coming up?

7 A. Vaguely. I'm sorry. I don't --- I just don't  
8 remember the details.

9 Q. Of the \$281 million amount listed in this  
10 executive summary, do you know what portion were  
11 MoneyGram agent checks and what portion were MoneyGram  
12 teller's checks?

13 A. I remember it being about two to one, but I don't  
14 remember which side was the two.

15 Q. Did your audit report, the conclusions in the  
16 PowerPoint or otherwise, distinguish in any way  
17 between MoneyGram agent checks and MoneyGram teller's  
18 checks?

19 A. No. As far as we determined, they were  
20 identical.

21 Q. If you look at the second paragraph which  
22 includes seven bulleted items, do you see that in  
23 front of you?

24 A. Yes.

25 Q. And there's a sentence that begins that

1 conversation.

2 Q. Mr. Kauffman, this is an exhibit marked as  
3 Exhibit 87.

4 ATTORNEY TALIAFERRO:

5 And it has Bates page MG0002423 as the  
6 first page.

7 ---

8 (Whereupon, Plaintiff Deposition Exhibit 87,  
9 4/16/15 Letter, was marked for identification.)

10 ---

11 BY ATTORNEY TALIAFERRO:

12 Q. Do you have that in front of you?

13 A. Yes.

14 Q. And this is a letter sent from Mr. Rato to David  
15 Gregor, the former state escheater of Delaware and  
16 Carrie Cross, the Deputy Attorney General of Delaware.  
17 Have you ever seen this document before?

18 A. I believe I have.

19 Q. If you look at the middle of the second page  
20 there's a paragraph that begins in 2014.

21 Could you look at that?

22 A. Yes.

23 Q. And the last two sentences of that say at the  
24 conclusion of that audit TSG sent a letter to  
25 MoneyGram directing payment of more than \$150 million

1 on account of, quote, unclaimed official checks. See  
2 Exhibit C. The TSG letter contained no supporting  
3 information, legal analysis or calculations  
4 demonstrating how the demand amount was calculated.

5 Do you see that?

6 A. I do.

7 Q. If you look to Exhibit C, to this document, you  
8 see that's the February 10th letter from you to Mr.  
9 Davis?

10 A. Correct.

11 Q. You see that?

12 Is Mr. Rato correct when he says that the letter  
13 contained no supporting information, legal analysis,  
14 or calculations demonstrating how the demand amount  
15 was calculated?

16 A. That's correct.

17 Q. And I take it from Mr. Rato's assertion here,  
18 that the PowerPoint report was not included in the  
19 demand letter to ---

20 A. Correct.

21 Q. --- MoneyGram?

22 Do you know if MoneyGram subsequently got a  
23 version of the final PowerPoint?

24 A. Yes, they did.

25 Q. Do you know about when that was?

1 of 2015?

2 A. It does look familiar.

3 ATTORNEY TALIAFERRO:

4 Sorry. Could you read back that answer?

5 I couldn't ---.

6 COURT REPORTER:

7 It does look familiar.

8 BY ATTORNEY TALIAFERRO:

9 Q. Do you remember doing any follow-up inquiry or  
10 investigation about that statement in Mr. Rato's  
11 letter ---

12 A. No?

13 Q. --- of May, 2015?

14 A. I didn't because it said it didn't affect their  
15 escheat process.

16 Q. Now, in addition to answering the three questions  
17 Mr. Rato provides a statement about the way in which  
18 the report was completed.

19 Do you see that paragraph at the bottom of page  
20 two?

21 A. Yes.

22 Q. And Mr. Rato says we reviewed the sample report  
23 data provided TSG consisting of Ohio Check Detail and  
24 advise you that if the data was simple aggregated by  
25 TSG to arrive at the official check amounts due from

1 the State of Delaware on account of escheated official  
2 checks, such amounts are overstated.

3 Do you remember reading that comment in May of  
4 2015 about the way the demand was calculated?

5 A. Yes.

6 Q. And what did you understand Mr. Rato was  
7 communicating to you there?

8 A. My understanding is that previously MoneyGram had  
9 been improperly reporting these items to Minnesota and  
10 we should go reclaim a percentage of the amount  
11 claimed for MoneyGram from Minnesota instead of  
12 Delaware which we have subsequently did.

13 Q. And do you know if you --- once that money was  
14 recovered from Minnesota, if you subsequently changed  
15 your demand or --- strike that.

16 Do you know if any states revised the demand that  
17 they made to Delaware for the return of MoneyGram  
18 official checks?

19 A. I don't know if they issued new demand letters or  
20 not but we --- we copied MoneyGram on the process of  
21 recovering amounts from Minnesota.

22 Q. So wherever this litigation ends up, this ---  
23 this Minnesota money would have to be accounted for in  
24 however it was settled up.

25 Correct?

1 Q. And so from October 2014 until at least May 2015,  
2 you did not receive any information that caused TSD to  
3 change its conclusions regarding whether official  
4 checks are covered by the federal statute, at least on  
5 the page we're talking about.

6 A. No.

7 Q. And could you turn to page 6381 in the May  
8 version of the report? And are these TSDs final  
9 conclusions about the fiscal characteristics of  
10 MoneyGram's official checks and money orders?

11 A. Yes.

12 Q. And this --- if you could turn to page 498 in  
13 Exhibit 76, those conclusions are exactly the same on  
14 this slide between October 2014 and May 2015.

15 Correct?

16 A. Correct.

17 Q. Now, as of October 2014, you had not received any  
18 examples of the instruments from MoneyGram.

19 Correct?

20 A. I don't know about that.

21 Q. Well, the date of the letter, I'll save you the  
22 trouble, is November 24th --- November 21st. And the  
23 cover e-mail is November 24th. So as of the date of  
24 October 2014, you hadn't received these instruments  
25 from MoneyGram.

1 Right?

2 A. Apparently not.

3 Q. And subsequent to this draft being completed or  
4 --- I won't use the word completed. But subject to  
5 --- subsequent to this language being placed in the  
6 October 2014 draft you did receive copies of the  
7 financial instruments?

8 A. Correct.

9 Q. And receiving those financial instruments in  
10 November of 2014 did not cause TSG to change any of  
11 its conclusions about the physical appearance of the  
12 instruments. Correct?

13 Could you please turn to page 6382 in the May  
14 2015 report? And this is a picture of two  
15 instruments.

16 Correct?

17 A. Correct.

18 Q. And there is no picture of any instrument in the  
19 October draft.

20 Correct? You didn't put in the Members First one  
21 that you had found yourself?

22 A. Correct.

23 Q. And you didn't put in any other version that you  
24 had gotten from any other source?

25 A. No.

1 sent to Delaware.

2 Right?

3 A. Correct.

4 Q. And on that page is a picture of the official  
5 check agent check. And then there is a picture of the  
6 front of the agent check money order, but not the  
7 back.

8 A. Correct.

9 Q. Correct?

10 Why were the terms and conditions on the agent  
11 check money order admitted from the presentations that  
12 you sent to other states and to Delaware?

13 A. I don't know specifically but I --- I would guess  
14 that they didn't seem relevant at the time since they  
15 don't address the nature of the instrument or its  
16 interaction with its treatment or anything like that.

17 Q. Now, when you say that the terms and conditions  
18 which were omitted from this page in the presentation  
19 don't affect --- I'm sorry.

20 ATTORNEY TALIAFERRO:

21 Could you read that answer back?

22 COURT REPORTER:

23 I don't know specifically, but I would  
24 guess that they do not seem relevant at the time since  
25 they do not address the issues in the nature of this

1 incident or action ---.

2 ATTORNEY TALIAFERRO:

3 Instrument?

4 COURT REPORTER:

5 Yes. Instrument or action or anything

6 like that.

7 BY ATTORNEY TALIAFERR:

8 Q. Now, when you say they don't affect the nature of  
9 this instrument are you making a legal determination  
10 there or are you making a factual determination?

11 A. I guess I'm just trying to guess why we would not  
12 have included them in the picture. And I'm --- I'm  
13 saying that at the time it must not have seemed  
14 relevant.

15 Q. But as you sit here today, you don't know exactly  
16 why you would've made the determination that it didn't  
17 seem relevant?

18 A. No.

19 Q. Now, we talked earlier about your client states  
20 making their own determination about the outcome of  
21 this examination. How would one of your client states  
22 have determined whether it thought those terms and  
23 conditions were relevant to determining the nature of  
24 the instrument?

25 ATTORNEY DISHER:

1 Objection. Calls for speculations.

2 ATTORNEY VOSS:

3 Joined.

4 THE WITNESS:

5 I don't know.

6 BY ATTORNEY TALIAFERRO:

7 Q. It --- it's a hypothetical. It's not speculative  
8 but it's hypothetical. If they were to conclude that  
9 terms and conditions were important in their  
10 determination they would not based on this PowerPoint  
11 be able to review what those terms and conditions  
12 were.

13 A. Sure.

14 ATTORNEY DISHER:

15 Same objection.

16 ATTORNEY O'KORN:

17 Same.

18 ATTORNEY VOSS:

19 Joined.

20 ATTORNEY TALIAFERRO:

21 Did you get that answer?

22 COURT REPORTER:

23 Sure.

24 BY ATTORNEY TALIAFERRO:

25 Q. Do you know if ---?

1 COURT REPORTER:

2 That was his answer. I'm sorry.

3 ATTORNEY TALIAFERRO:

4 That's fine.

5 COURT REPORTER:

6 That seemed ---.

7 BY ATTORNEY TALIAFERRO:

8 Q. Do you know if any state, client state in this  
9 examination, had an independent source for learning  
10 about the terms and conditions that appear on the back  
11 of an agent check money order?

12 A. I don't know.

13 Q. As you sit here today you're not aware of any  
14 independent source that the state would be ---?

15 A. No.

16 Q. And their sole source of what these instruments  
17 look like would be TSG?

18 ATTORNEY DISHER:

19 Objection. Calls for speculation.

20 ATTORNEY O'KORN:

21 Same.

22 ATTORNEY VOSS:

23 Join.

24 THE WITNESS:

25 I don't know.

1 BY ATTORNEY TALIAFERRO:

2 Q. Now, if go back to the first page of Exhibit 80  
3 that's labeled teller check.

4 Correct?

5 A. Correct.

6 Q. And that teller's check from Elizabethton Federal  
7 Credit --- sorry, Federal Savings Bank does not appear  
8 in any of the January 2015 presentation or the May of  
9 2015 presentation.

10 A. Correct.

11 Q. And if you turn to the second page of Exhibit 80,  
12 the agent check teller check, that document was  
13 included in the January presentation and the May  
14 presentation?

15 A. Correct.

16 Q. Did you think it was important to include both  
17 versions of the MoneyGram official check in your audit  
18 conclusions?

19 A. No. We tried to make it as simple as possible  
20 for non-legal state employees to look at this and  
21 decide whether it was something they wanted to kick up  
22 the ladder, as it was.

23 Q. Okay.

24 And in making it simple for non-legal state  
25 employees to kick up the ladder, you made

1 A. Correct.

2 Q. And Mr. Rato's cover letter refers to that as a  
3 MoneyGram retail money order.

4 Correct?

5 A. Correct.

6 Q. Is there any reason why TSG didn't include that  
7 retail money order in its audit findings?

8 ATTORNEY VOSS:

9 Objection as to form.

10 THE WITNESS:

11 No. We just took a sample.

12 BY ATTORNEY TALIAFERRO:

13 Q. And how did you select which of the money orders  
14 you chose as your sample item?

15 A. I think we chose the two that looked identical.

16 Q. So you chose the two that looked the most  
17 similar?

18 A. Yes.

19 Q. And you omitted the ones that looked most  
20 dissimilar.

21 Correct?

22 A. Didn't omit. Just chose a sample and selected  
23 some.

24 Q. And not only did you choose the two items that  
25 were most similar, you omitted the back of one of the

1 items.

2 Correct?

3 A. Yes.

4 ATTORNEY DISHER:

5 Objection. Vague.

6 BY ATTORNEY TALIAFERRO:

7 Q. In the May presentation which is Exhibit 97,  
8 could you please turn to 6383?

9 Do you have that in front of you?

10 A. Yes.

11 Q. And then if you could turn to page 499 in the  
12 October report?

13 A. Okay.

14 Q. Okay.

15 So we're back to comparing Exhibits 76 and 97  
16 side by side.

17 ATTORNEY DAY:

18 Which page is 76? I'm sorry.

19 ATTORNEY TALIAFERRO:

20 Page 499.

21 BY ATTORNEY TALIAFERRO:

22 Q. If we compare page 7683 from the --- the May  
23 presentation to page 499 from the October presentation  
24 the conclusions are exactly the same.

25 Aren't 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

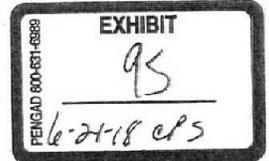
23 Cynthia Piro Simpson

24

# Exhibit JJ

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MICHAEL RATO  
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May 12, 2015

**Via E-Mail (w/o encl.) and Federal Express**

Mr. Alex Kauffman  
Treasury Services Group  
1100 Main St, Suite 2720  
Kansas City, Missouri 64105

**RE: Unclaimed Property Examination of MoneyGram International, Inc.**

Dear Alex:

As you know, this Firm represents MoneyGram International, Inc. ("MoneyGram") in the above-referenced matter. Please find below the answers to the questions you raised by e-mail last week.

- 1. Whether the total amounts of Official Checks were reported to Delaware in aggregate or with individual check detail, State of purchase, etc (in other words, did Delaware receive with their annual reports the same level of detail that TSG did in the data file you sent us)?**

Response to Question 1: From 2010 to present, Delaware was provided with individual check detail comprised of name and address (as "unknown"), escheat state (DE), issue date, amount, serial number, and NAUPA code. Prior to that time, items under \$50 were reported in the aggregate, but items above \$50 were reported with the information indicated above. Thereafter, in connection with an initiative by MoneyGram to reclaim amounts associated with Official Checks honored and cashed by MoneyGram after the underlying items were reported and remitted as unclaimed property, the individual check detail described above was provided to Delaware even for those items of \$50 or less. As described in further detail below, however, please note that the amounts TSG seeks on account of escheatment to Delaware are overstated, in that TSG's data does not account for the fact that certain items were escheated to other states, most notably, Minnesota (the former state of incorporation for MoneyGram's predecessor entity).

NEW JERSEY

NEW YORK

PENNSYLVANIA

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ALF00001175

MC ELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

Page 2

2. Is there any important distinction between items identified in that file as “agent checks” versus “teller checks?” Would you please define these items and their differences?

Response to Question 2: There are some differences between the Official Check “Teller Check” item and the Official Check “Agent Check” item, but those differences do not currently affect MoneyGram’s escheat practices. The main distinction is that under some circumstances, a Teller’s Check may be considered a “next day” item under Federal Reserve Board Regulation CC.

Before MoneyGram’s predecessor entity was reincorporated in Delaware in 2005, Agent Checks were escheated to Minnesota (as the state of incorporation) and Teller Checks were escheated to the state in which the teller check customer was incorporated or, for customers with multiple locations in multiple states, the Company may have reported teller’s checks to the state in which they were issued. As you know, the state where a given item was escheated is reflected in the data provided to TSG.

3. Did MoneyGram file reports containing Official Checks with Delaware in 2014, and have they or do they plan to do so in 2015? If so, would you please provide us with a copy of the data from that report(s)?

Response to Question 3: MoneyGram filed reports with Delaware containing Official Checks in both 2014 (as of year end 12/31/13) and 2015 (as of year end 12/31/14). A copy of the 2014 report data was previously provided to TSG, and the 2015 report data requested is provided on the enclosed disc.

Also, we reviewed the sample “report” data provided by TSG consisting of Ohio check detail and advise you that if that data was simply aggregated by TSG to arrive at the Official Check amounts due from the State of Delaware on account of escheated Official Checks, such amounts are overstated. For example, TSG’s February 10, 2015 letter seeks \$25,706,091 allegedly due to the State of Ohio, which equals the aggregate sum of the file, ignoring the fact that in excess of \$500,000 of that sum was escheated to TSG’s client, the State of Minnesota, at a time when MoneyGram’s predecessor was incorporated in that state. We presume that TSG is in a better position than MoneyGram to facilitate the transfer of those funds from Minnesota to Ohio, but please let us know if that is not the case. We believe that the situation would be similar with respect to the amounts sought by TSG for each of its client states.

As always, please be advised that our responses and communications with TSG herein and otherwise are without waiver of any rights, remedies or defenses MoneyGram may have at law or in equity.

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Page 3

Please do not hesitate to contact me if you have any other questions.

Very truly yours,

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP



Michael Rato

Enclosure

cc: Cory Feinberg, Esq. – MoneyGram International, Inc. (via e-mail)  
Ms. Kate Petrick – MoneyGram International, Inc. (via e-mail)

# Exhibit KK

# REVISED UNIFORM UNCLAIMED PROPERTY ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIFTH YEAR  
STOWE, VERMONT  
JULY 8 - JULY 14, 2016

*WITH PREFATORY NOTE AND COMMENTS*

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By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

November 16, 2016

# REVISED UNIFORM UNCLAIMED PROPERTY ACT

## PREFATORY NOTE

This revised Act is a complete revision of its immediate predecessor, the Uniform Unclaimed Property Act (1995) (the 1995 Act), which itself was a rewrite of its predecessor, the Uniform Unclaimed Property Act (1981) (the 1981 Act), which was a revision of the Uniform Disposition of Unclaimed Property Act (1966) (the 1966 Act), and of the Uniform Law Commission's first effort in this field which was the Uniform Disposition of Unclaimed Property Act (1954) (the 1954 Act).

All 53 jurisdictions that make up the Uniform Law Commission have some form of unclaimed property law on their books, some which predate the 1954 Act. The various Uniform Acts have received substantial but not complete acceptance. In one form or another (with modifications) either the 1981 Act or the 1995 Act has been adopted in 39 of the 53 jurisdictions. Of these, the most accepted version is the 1981 Act which has been adopted (with revisions) in 23<sup>1</sup> jurisdictions. Nine<sup>2</sup> states have adopted the 1995 Act without revisions and six<sup>3</sup> more have a hybrid version. There are fourteen jurisdictions—most notably California, New York, Texas, and Delaware, that have non-uniform unclaimed property acts.

The concept of “unclaimed property” is a modern outgrowth of the English law of escheat, and while the two concepts have substantial differences they are somewhat improperly used interchangeably.<sup>4</sup> Although rooted in the doctrine of escheat, since inception all of the Uniform Unclaimed Property Acts have been “custodial” acts which deal with the right of states to take custody of abandoned property to hold indefinitely for the benefit of the owner, which is different from a state taking title to and ownership of abandoned property under its escheat law.

Since the Norman Conquest all real property in England has belonged to the Crown who could give the use of it to a tenant, but if the tenant was convicted of a felony or died without an heir who could take the tenancy, it escheated to the sovereign to keep or give to another as he or she saw fit. The official in charge of collecting escheated property was called the Escheator, a term still in use today. Over time the concept has been extended to tangible and intangible personal property, and in modern times the concept of custodial taking of unclaimed property by the sovereign to hold for the benefit of owners has developed.

---

<sup>1</sup> AK, CO, DC, FL, GA, ID, IL, IA, MD, MN, NH, NJ, ND, OK, OR, RI, SC, SD, TN, UT, VA, WA, WI, and WY.

<sup>2</sup> AL, AZ, AR, IN, KS, LA, MT, MI, NM, and VI.

<sup>3</sup> HI, MI, NV, VI, VT, and WV.

<sup>4</sup> See e.g., Section 23(c) of the 1995 Act which allows a state to maintain an action to enforce the unclaimed property laws of another state against the holder of property “subject to escheat” or a claim of abandonment by the other state, and Section 14 which refers to the laws of another state that do “not provide for the escheat or custodial taking of property.”

# Exhibit LL

# UNIFORM LAWS ANNOTATED



**Estate, Probate and Related Laws**

With

Annotations From State and Federal Courts

Vol. 8A

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Part 5

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## UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

### REVISED 1966 ACT

*The Uniform Disposition of Unclaimed Property Act, as enacted in 1954, and the Uniform Unclaimed Property Act, enacted in 1981, are set out, infra, this volume.*

*Table of Jurisdictions Wherein 1966 Act Has Been Adopted*

| Jurisdiction               | Laws                    | Effective Date | Statutory Citation                      |
|----------------------------|-------------------------|----------------|---|
| Alabama .....              | 1973, No. 1084          | 4-27-1973      | Code 1975, §§ 35-12-20 to 35-12-48.     |
| Arkansas .....             | 1979, No. 256           | 7-1-1979       | Ark.Stats. §§ 50-620 to 50-647.         |
| Dist. of<br>Columbia ..... | 1981, D.C.<br>Law 3-160 |                | D.C.Code 1981, §§ 42-201 to 42-242.     |
| Georgia .....              | 1972, p. 762            |                | O.C.G.A. §§ 44-12-190 to 44-12-221.     |
| Hawaii .....               | 1974, c. 75             | 8-17-1961      | HRS §§ 523-1 to 523-30.                 |
| Illinois .....             | 1961, p. 3426           | 3-10-1967      | S.H.A. ch. 141, §§ 101 to 130.          |
| Indiana .....              | 1967, c. 253            | 7-1-1967       | West's A.I.C. 32-9-1-1 to 32-9-1-45.    |
| Iowa .....                 | 1967, c. 391            |                | I.C.A. §§ 556.1 to 556.29.              |
| Louisiana .....            | 1972, No. 146           | 1-1-1979       | LSA-R.S. 9:151 to 9:182.                |
| Maine .....                | 1977, c. 707            | 7-1-1969       | 33 M.R.S.A. §§ 1301 to 1365.            |
| Minnesota .....            | 1969, c. 725            | 7-1-1963       | M.S.A. §§ 345.31 to 345.60.             |
| Montana .....              | 1963, c. 244            |                | MCA 70-9-101 to 70-9-316.               |
| Nebraska .....             | 1969, c. 611            | 1-1-1980       | R.R.S.1943, §§ 69-1301 to 69-1329.      |
| Nevada .....               | 1979, c. 682            | 3-30-1959      | N.R.S. 120A.010 to 120A.450.            |
| New Mexico .....           | 1959, c. 132            | 7-1-1975       | NMSA 1978, §§ 7-8-1 to 7-8-34.          |
| North Dakota .....         | 1975, c. 425            | 4-24-1967      | NDCC 47-30-01 to 47-30-28.              |
| Oklahoma .....             | 1967, c. 107            |                | 60 Okl.St. Ann. §§ 651 to 686.          |
| Rhode Island .....         | 1968, c. 256,<br>§ 1    |                | Gen.Laws 1956, §§ 33-21-11 to 33-21-40. |
| South Carolina .....       | 1971, p. 709            |                | Code 1976, §§ 27-17-10 to 27-17-360.    |
| South Dakota .....         | 1973, c. 276            | 7-1-1973       | SDCL 43-41A-1 to 43-41A-52.             |
| Tennessee .....            | 1978, c. 561            | 3-6-1978       | T.C.A. §§ 64-2901 to 64-2932.           |
| Wisconsin .....            | 1969, c. 404            | 3-1-1970       | W.S.A. 177.01 to 177.30.                |

#### Historical Note

The Revised Uniform Disposition of Unclaimed Property Act was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association, in 1966.

#### PREFATORY NOTE

##### *Reason for Proposed Uniform Act*

Uniform and comprehensive state legislation dealing with the disposition of unclaimed property should fill a very real need. Present statutory provisions on the subject are exceedingly diverse in character and are often not well formulated. Most states already have statutes dealing with the disposition of unclaimed tangible personal property, the abandonment of which is a more or less obvious fact. In addition, a considerable number of states have statutes dealing with the disposition of unclaimed bank deposits. However, at the time the

## UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

### 1954 ACT

*The Uniform Disposition of Unclaimed Property Act, as revised in 1966, is set out, supra, this volume. The Uniform Unclaimed Property Act, enacted in 1981, is set out, infra, this volume.*

*Table of Jurisdictions Wherein 1954 Act Has Been Adopted*

| Jurisdiction               | Laws           | Effective Date | Statutory Citation                         |
|----------------------------|----------------|----------------|--|
| Arizona <sup>1</sup> ..... | 1956, c. 126   | 7-14-1956      | A.R.S. §§ 44-351 to 44-378.                |
| Florida .....              | 1961, c. 61-10 | 9-30-1961      | West's F.S.A. §§ 717.01 to 717.30.         |
| Maryland .....             | 1966, c. 611   | 6-1-1966       | Code, Commercial Law, §§ 17-101 to 17-324. |
| New Hampshire .....        | 1965, c. 214   | 1-1-1966       | RSA 471-A:1 to 471-A:28.                   |
| Oregon .....               | 1957, c. 670   | 8-20-1957      | ORS 98.302 to 98.436.                      |
| Utah .....                 | 1957, c. 6     | 5-14-1957      | U.C.A.1953, 78-44-1 to 78-44-28.           |
| Vermont .....              | 1964, No. 35   | 1-1-1965       | 27 V.S.A. §§ 1208 to 1237.                 |
| VirgInla .....             | 1960, c. 330   | 1-1-1961       | Code 1950, §§ 55-210.1 to 55-210.29.       |
| Washington .....           | 1955, c. 385   | 6-8-1955       | West's RCWA 63.28.070 to 63.28.920.        |
| West VirgInla .....        | 1966, c. 1     | 7-1-1967       | Code, 36-8-1 to 36-8-31.                   |

<sup>1</sup> See General Statutory Note, *Infra*.

#### Historical Note

The Uniform Disposition of Unclaimed Property Act was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association, in 1954.

#### PREFATORY NOTE

Uniform and comprehensive state legislation dealing with the disposition of unclaimed property should fill a very real need. Present statutory provisions on the subject are exceedingly diverse in character and are often not well formulated. Most states already have statutes dealing with the disposition of unclaimed tangible personal property, the abandonment of which is a more or less obvious fact. In addition, a considerable number of states have statutes dealing with the disposition of unclaimed bank deposits. However, only ten states have adopted really comprehensive legislation covering the entire field of unclaimed property. They are: Arkansas, Connecticut, Kentucky, Massachusetts, Michigan, New Jersey, New York, North Carolina, Oregon, and Pennsylvania. Several other states have, however, currently manifested interest in adopting comprehensive legislation on the subject. If the Uniform Disposition of Unclaimed Property Act serves to promote a fair and adequate treatment of the subject in state legislation, a good cause will be served.

In addition to the general desirability of symmetry in the law for the benefit of persons doing business in more than one state, there is at least one especially important reason for uniform legislation on the subject. Two recent decisions of the United States Supreme Court,