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SUPREME COURT OF THE UNITED STATES

DELAWARE,)
PLAINTIFF,) NOS. 145 & 146
VS.) (Consolidated)
ARKANSAS, et al.,)
DEFENDANTS.)

REPORTER'S RECORD

STATUS CONFERENCE VIA VIDEOCONFERENCE REGARDING
CASE MANAGEMENT PLAN

BEFORE THE HONORABLE PIERRE N. LEVAL, SPECIAL MASTER
May 4, 2023 at 3:00 p.m. EDT

Proceedings recorded in realtime via machine shorthand.

Dana Hayden, CCR, RMR, CRR, CRC

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1 ***** PROCEEDINGS *****

2 THE COURT: Good afternoon.

3 MS. WELLINGTON: Good afternoon.

4 THE COURT: So remind me who's speaking for who
5 today. Mr. Bronni?

6 MR. BRONNI: Yes, your Honor. On behalf of our
7 coalition in Wisconsin, I'm planning to speak but
8 also --

9 THE COURT: I don't hear you extraordinarily
10 well. Is it something you can do to either get a little
11 closer or increase the volume?

12 MR. BRONNI: Let me try.

13 Is that better, your Honor?

14 THE COURT: Yeah, okay. It's good enough.
15 And Ms. Wellington?

16 MS. WELLINGTON: Katherine Wellington. I'm
17 appearing on behalf of Delaware, and I'm here with
18 Nathaniel Zelinsky.

19 THE COURT: Okay. Mr. Zelinsky, you are
20 together with Ms. Wellington for Delaware.

21 Mr. Voss, Pennsylvania?

22 MR. VOSS: Good afternoon, your Honor. It's a
23 pleasure to speak with you again. Yes, I'm here on
24 behalf of Pennsylvania.

25 THE COURT: Thank you.

1 And Mr. Rato; is that right?

2 MR. RATO: Rato, your Honor. Thank you.

3 THE COURT: Rato?

4 MR. RATO: Mike -- Rato, yes, your Honor.

5 THE COURT: Okay.

6 MR. RATO: Mike Rato from Reed Smith here in
7 New York for MoneyGram, nonparty MoneyGram Payment
8 Systems, Inc.

9 THE COURT: Okay. So who wants to speak first?

10 MS. WELLINGTON: Your Honor, I'm happy to go
11 first on behalf of Delaware if you'd like.

12 THE COURT: Okay.

13 MS. WELLINGTON: So we think there are two
14 different issues to discuss today, and we're also happy
15 to discuss anything else you'd like to talk about.

16 Based on what we've talked about with defendant
17 states, there's the escrow and then there's the
18 retroactive damages question. So I'm happy to start
19 with the escrow if you'd like and then jump into
20 retroactive damages, if that makes sense.

21 THE COURT: Okay. Tell me about escrow.

22 MS. WELLINGTON: So with respect to the escrow,
23 we want to get this resolved. Our only concern is that
24 we have the correct and accurate data so that we can
25 make sure that these funds are getting distributed

1 correctly with respect to the Supreme Court's opinion.
2 And our only real concern here is with respect to
3 MoneyGram's data and, in particular, what we just don't
4 know is if the data has accurate and complete
5 information about the state of purchase. So that's our
6 concern.

7 There's a field called "financial institution
8 address." We've looked at it, and it looks like, at
9 least in some cases, that address is the corporate
10 headquarters of the bank and maybe that was the place of
11 purchase, maybe not, but that's a concern we have,
12 particularly given some of these states have branch --
13 these banks have branches in multiple states.

14 So what we have proposed is simply to take some
15 time, look at the data, make sure we have complete data,
16 make sure we know what kind of information MoneyGram has
17 about the state of purchase.

18 THE COURT: So you say that the only thing
19 that's standing in the way as far as Delaware is
20 concerned, the only thing that's standing in the way of
21 distribution of the escrowed funds is your satisfaction
22 that MoneyGram's records accurately show state of
23 purchase?

24 MS. WELLINGTON: And, your Honor, we don't
25 think this is just for Delaware. We think this should

1 be done correctly since this involves, you know, money
2 escheated with respect to all 50 states.

3 We would note there's also some entries, for
4 example, for products purchased in Canada, so there are
5 going to be some additional issues that have to be
6 sorted out.

7 We proposed mediation with the defendant
8 states. Their view is that this is so clear, we don't
9 even need to mediate but, you know, given the hundreds
10 of thousands of rows of data, and we don't know for sure
11 if there's information that's accurate and complete as
12 to each of these products.

13 THE COURT: Well, so one concern that you would
14 have is whether some of the purchases were in Delaware?

15 MS. WELLINGTON: So our concern is if there's
16 no place of purchase information, then you are going to
17 be under the secondary rule in the FDA. So, you know,
18 that's our concern is is there a place of -- state of
19 purchase information for each of these products.

20 THE COURT: Okay. Mr. Bron- --

21 MS. WELLINGTON: So --

22 THE COURT: Yeah, go ahead.

23 MS. WELLINGTON: Do you want me to stop there
24 or move on to the retroactive damages issue?

25 THE COURT: Yeah, why don't you do that.

1 MS. WELLINGTON: Okay. So on the retroactive
2 damages issue, as we explained in our submission, we
3 think there are five sets of threshold legal questions
4 that need to be resolved before we go into discovery.
5 So that's the -- whether there's a cause of action,
6 whether there's a statute of limitations, whether the
7 individual states have authority under state law to
8 escheat these products, in particular under state
9 statutes of limitations, whether --

10 THE COURT: Haven't I ruled -- haven't I and
11 the Supreme Court ruled on that latter question?

12 MS. WELLINGTON: So you addressed whether these
13 products were similar written instruments under state
14 law, but certainly we haven't looked at the damages
15 question, which is whether the state statute of
16 limitations prohibits the escheatment of these products.
17 We believe that's a separate question. And then,
18 broadly speaking, whether there are other equitable
19 issues that need to be taken into account, questions
20 like fairness and administrability. So we would propose
21 briefing those first.

22 So, for example, if there's no cause of action,
23 we don't need to go do discovery. If there's a statute
24 of limitations -- it's one year, it's three years --
25 that's going to limit the scope of discovery. You know,

1 whether we're brief -- you know, whether we need to look
2 at things like laches and other equitable principles.

3 As we're talking about discovery going back,
4 you know, almost 20 years involving 30 different states,
5 that's a really significant amount of discovery and, you
6 know, we're in a situation where we should understand,
7 you know, what the scope of that discovery should be and
8 what questions we should be asking. So that's why we
9 propose doing that legal briefing first before moving
10 into discovery.

11 THE COURT: Okay. Mr. Bronni?

12 MR. BRONNI: I guess, your Honor, I'll take
13 those in the same order starting with the escrow
14 account.

15 So as for the escrow account, I think when we
16 met, we all sort of agreed it would warrant one central
17 set of information from MoneyGram. MoneyGram had been
18 reporting that information about date of purchase and
19 things like that, the items, the amounts, every time it
20 made a deposit into the registry account.

21 Now in response to a letter from Delaware, it's
22 actually already produced detailed information on the
23 items that have been deposited into the registry
24 account, which includes the address of the financial
25 institution that sold that item.

1 That's the same data that MoneyGram reports for
2 other items and that is used by MoneyGram to escheat
3 various items around the country now. So it's frankly a
4 little surprising to us that all Delaware has decided
5 now that information's somehow not sufficient.

6 You know, if it turns out that it was
7 improperly reported or something like that, they always,
8 of course, can audit that data on the back end, but
9 that's not commonly how it's done.

10 The way it normally works and, you know,
11 Mr. Rato can correct me if I'm wrong here, but my
12 understanding is that MoneyGram files reports in various
13 states and then escheats, and it relies on the
14 information transmitted to it for the state of purchase.
15 The Supreme Court also made very clear in its opinion we
16 rely on holder data and the holder --

17 THE COURT: We rely on -- hold on. We rely on,
18 what did you say?

19 MR. BRONNI: The money of the holder. So it's
20 MoneyGram that has the data it's reporting for the
21 location of purchase.

22 So in our opinion, there really isn't any
23 discussion to be had here. I know Delaware alludes to
24 wanting to conduct depositions of the individual
25 financial institution to find out what records they

1 have. I really don't understand the relevance of any of
2 that, given that the Supreme Court again has told us
3 that it's the holder data. It's MoneyGram's data, which
4 it's now produced to all the parties here, that
5 indicates the state of purchase.

6 So in our view, this is a relatively simple,
7 straightforward process. So what we proposed is
8 originally we suggested that MoneyGram be given 15 days
9 to produce that data to our various states. MoneyGram's
10 already produced that data.

11 So 30 days from this conference, we would
12 suggest that everybody submit the numbers for each
13 individual state. The plan for our state is to have the
14 individual amounts of money identified within that 30
15 days, as well as to calculate interest that the money in
16 the escrow account would have earned. And we've already
17 spoken to the officials in charge of the registry
18 account to identify the amount of interest that's
19 currently in that account.

20 It's my understanding there's about \$94 million
21 in principal and approximately \$3 million in interest.
22 Our proposal would be that that interest minus the
23 Court's fee is deducted -- or is allocated pro rata
24 based on the amount of money to each individual state,
25 so a relatively straightforward calculation where we

1 think, your Honor, all five can just submit that
2 information to your Honor. And I don't really think
3 there's going to be much dispute about those numbers at
4 the end of the day. Again, this money's not really in
5 dispute. It doesn't just belong to Delaware unless the
6 items were purchased in Delaware.

7 To the extent that my friend on the other side
8 alluded to the possibility that maybe some states
9 don't -- the records were incomplete or some states
10 don't have the ability to take possession of it, to the
11 extent that that is true, the money would go to the
12 principal place of business, that is not Delaware.

13 In fact, in Delaware's own complaint, it
14 alleged that the state of the principal place of
15 business for MoneyGram was Texas, and we admitted that.
16 So there's no dispute that money ultimately would not go
17 to Delaware, so Delaware really doesn't have any
18 standing to make those kinds of arguments.

19 So we think the escrow account is relatively
20 straightforward, and I know our friends in Pennsylvania
21 have a motion pending now, and I'm sure Mr. Voss will
22 address that. But -- so that's our understanding of the
23 escrow account.

24 Did your Honor have any questions about that
25 before I move on to the other?

1 THE COURT: Well, so what's your answer? One
2 of the issues that Ms. Wellington raised was that some
3 of the information sent by MoneyGram reflects the -- as
4 the state of purchase, it reflects the address of the
5 principal office of the bank in question that sold, and
6 she said, well, we don't know whether the sale of the
7 instrument was at the principal office of the bank or
8 whether it was at some subsidiary office and has been
9 reported -- subsidiary office in another state and has
10 been reported as the principal -- as the state of the
11 principal office of the bank. So what do you say in
12 answer to that?

13 MR. BRONNI: So there are a couple of responses
14 to that. One, you know, based on my review, and I have
15 to admit I haven't done a super detailed review, but
16 based on my review, it looks like at the individual
17 branch locations that are more often than not reporting
18 these.

19 So you may -- we have -- for instance, I think
20 Bank of America's one of the entries. It's got hundreds
21 of entries on it, and it's clearly showing the
22 individual branch-by-branch location. So that's point
23 one.

24 Point two --

25 THE COURT: No, her point was some of them show

1 the principal office, the address of the principal
2 office of the bank. What's Bank of America's principal
3 offices? Are they in California?

4 MR. BRONNI: I don't know the answer to that,
5 your Honor, but I will say for some of the financial
6 institutions, what I think opposing counsel's referring
7 to may be smaller financial institutions that may have
8 one principal office and a couple of branches, but it's
9 just as likely that that -- that those individual
10 offices don't actually issue or sell the items at issue
11 and that it may be the main branch or the principal
12 place of business.

13 You know, if you have a small regional bank
14 with five locations, it may, in fact, be that principal
15 location that actually issued the item. But I'd also
16 add that I don't think that any of that is relevant
17 because, again, the way this normally works is that the
18 holder uses the information that's transmitted to it to
19 report it.

20 So in a normal, everyday course now, when we're
21 talking about, let's say regular, ordinary money, you
22 know, it's not my understanding that Delaware would
23 quibble about those. Instead, the information that
24 MoneyGram has is what MoneyGram would use to report that
25 information.

1 THE COURT: Well, has MoneyGram responded to a
2 question in what state were these instruments -- what
3 was the state of purchase of these instruments? Had
4 MoneyGram responded to that?

5 MR. RATO: Sorry.

6 MR. BRONNI: I'll let Mr. Rato take that.

7 MR. RATO: So, your Honor, it's Mike Rato for
8 MoneyGram.

9 So we produced the information relating to the
10 escrow, again, when we made the deposits and again in
11 response to a recent request from the states. It's our
12 understanding that the financial institution state that
13 is listed on there should be where the item is
14 purchased.

15 If somebody has not -- we have not responded
16 to -- no one has specifically asked us that question,
17 and I'm not trying to be glib about it. I'm saying that
18 we have produced the records which we believe have that
19 information; but obviously if someone has specific
20 questions, you know, we will answer those questions.

21 It is my understanding, especially with the
22 items that have been deposited in the escrow, that the
23 address listed is the address we have for where it was
24 purchased because we understood that to be relevant. I
25 can't -- I certainly can't testify that that's accurate

1 100 percent of the time, but that is my understanding of
2 what has been provided and --

3 THE COURT: Would it be correct to say that
4 MoneyGram's understanding is that the information it has
5 and has provided with respect to the state of purchase
6 that that's what you know about? That's what you
7 believe on the basis of what was submitted to you by the
8 selling institutions to be the state of purchase?

9 MR. RATO: That's correct, your Honor.

10 THE COURT: Yes. Go on, Mr. Bronni.

11 MR. BRONNI: So that's our view of the escrow
12 account. And I think from what I just heard from
13 MoneyGram, you know, that's the information they have;
14 that's the information they would use. So we think this
15 now is relatively straightforward. There's really no
16 need to engage in a long process here.

17 I think Delaware suggested that we should have
18 two months of dialogue and then mediate the math. I
19 don't really understand that. We're certainly willing
20 to entertain good faith discussions about the other
21 portion of damages that are at issue but not really for
22 the escrow funds that Delaware's never had in its
23 possession and that we can resolve pretty quickly, we
24 think in the next 30 days, your Honor, if the parties
25 could submit information on that and would seek an order

1 from your Honor thereafter.

2 For the non-escrow account, we actually
3 think -- and we unfortunately did not do a great job of
4 this in our status report of explaining this. We
5 actually think that there are arguably three sets of
6 damages on the older money.

7 So I would say that what we're really talking
8 about is the property itself; that is, the property that
9 should have properly gone to the state of purchase and
10 that's going to be the bulk of the money.

11 But we also think that the damages there would
12 include interest payments on that amount of money that
13 Delaware took, some of which is statutory interest under
14 our various state regimes and then penalties that are
15 also attached for not properly paying the funds that
16 were to the state of purchase.

17 So if I can start with I think the easiest one
18 and where the bulk of the money is here. That's the
19 improperly escheated funds. In our view, you know, I
20 know that they have tried to raise now a new cause of
21 action issue, statute of limitations and equity issues,
22 et cetera.

23 The simple fact is, your Honor, they either
24 waived those or abandoned them, and the reason why I say
25 they abandoned them is they filed a lawsuit here. They

1 originally sued in the Supreme Court in Wisconsin and
2 Pennsylvania, and they said that court was -- the
3 Supreme Court was the proper place to resolve that
4 dispute.

5 They didn't say they didn't have a cause of
6 action over resolving where that money should have
7 properly gone to. In fact, they argued to the Court in
8 their motion for leave to file a bill of complaint that
9 the money that was at issue was the money that
10 Pennsylvania and Wisconsin had, in fact, bought, and
11 Pennsylvania in particular, had bought from MoneyGram in
12 Delaware.

13 So, you know, they themselves argue that it was
14 in the Court's jurisdiction to resolve it, and I think
15 that's right. I think *Western Union versus*
16 *Pennsylvania*, tells us very clearly that the Court is
17 the forum for resolving those type of interstate
18 disputes because courts in various states don't have
19 jurisdiction over one another.

20 That was the whole premise of *Western Union*
21 *versus Pennsylvania* was that the Pennsylvania Supreme
22 Court didn't have jurisdiction or the ability to tell
23 Western Union it had to escheat money that it had
24 already escheated to Delaware. And the Court explained,
25 I think very clearly, the proper place to do that is in

1 the Supreme Court in its original jurisdiction. I think
2 that's what supplies the cause of action.

3 I think the moment the Court took this case, it
4 resolved that question. But to the extent your Honor
5 thought it might not have resolved that question, they
6 abandoned that claim by not raising it in their own
7 complaint.

8 They also waived it by not responding when we
9 filed our bill of complaint and motion for leave to file
10 a bill of complaint. They didn't raise any cause of
11 issue. In fact, they told the Court, yes, it's
12 appropriate to resolve Arkansas and its sister state's
13 complaint in the Supreme Court.

14 I don't think they now get to move on after
15 they've lost at the Supreme Court on the merit to come
16 back and again attempt to argue now there's suddenly not
17 a cause of action.

18 I'd make the same argument for the statute of
19 limitations period. They didn't raise it in their
20 answer; they didn't raise it in their complaint. Those
21 issues are abandoned. They're waived. They can't raise
22 them now.

23 The same thing would be true for their various
24 equitable defenses they now seem to want to raise, which
25 I don't think they can raise for other reasons like good

1 faith but, again, they didn't raise them in their
2 answer. They didn't raise them until they suddenly
3 decided to raise them now.

4 This is part of a troubling pattern with
5 Delaware. Every time it gets caught, it changes its
6 argument slightly to raise a new variation of this and
7 discuss something it never said before.

8 But in addition to those legal points, I would
9 add, your Honor, that Delaware repeatedly represented to
10 your Honor and to the Supreme Court and to its sister
11 states that it would pay the funds that were owed.

12 It told your Honor that in the June -- I think
13 as Pennsylvania points out well in the June 2017
14 conference in front of your Honor that it would pay the
15 money it was owed that was improperly escheated.

16 We think in our portion of the status report we
17 pointed out at various places, it made those
18 representations to the various states as well, but it
19 had no interest in retaining money that never belonged
20 to it. It also wrote various states at various times in
21 order to make that point.

22 But, you know, I think given those various
23 representations that it's made in filings in the Court
24 and now, I don't think any of these issues are really
25 before the Court. This may be the appropriate time to

1 attempt to raise them, but that doesn't change the fact
2 that they have been waived or abandoned and that they
3 simply have no legal merit.

4 So we don't think that there's really any
5 quibble about any of that stuff, but to the extent that
6 they want to raise those things, I don't see any reason
7 why we should bifurcate an already bifurcated proceeding
8 and boil this process down even further.

9 I think we can do discovery at the same time
10 that we brief any legal issues that Delaware wants to
11 raise, and we can just do that in summary judgment just
12 as we did before. I mean, everybody agreed back in 2017
13 that we'd bifurcate this between the liability phase and
14 the damages phase and now they want to bifurcate the
15 bifurcation.

16 You know, in our view, that along with the
17 two-month discussion they want to have is just an
18 attempt to slow this process down, and there's no reason
19 we can't move forward with discovery.

20 Again, MoneyGram has the information about
21 where things were escheated, where they were purchased,
22 et cetera. The same information is already produced
23 with respect to the escrow account. It could produce
24 that information now, is our understanding, for the
25 older periods that we're talking about, and there's no

1 reason to slow that down so that they can throw up
2 various legal issues. We can just address them all at
3 the end.

4 The train, there are -- I would also add that
5 another reason for not dividing this entire process is
6 most of their -- the legal arguments they have alluded
7 to in their section of the status report, most of those
8 are fact-bound issues.

9 So, for instance, if we decide the statute of
10 limitations that applies would be the statute of
11 limitations that various states have with respect to
12 their ability to go after MoneyGram for this money, not
13 Delaware but against MoneyGram, which they seem to be
14 trying to use MoneyGram as a shield and then pull the
15 statute of limitations based on their ability to go
16 after MoneyGram. To the extent that they are raising
17 the statute of limitations issues, those would, of
18 course, be fact-bound because there are a lot of --
19 there are various state regimes at issue here. But if
20 they were right and we look to the various statute of
21 limitations for the various states, there are different
22 categories of statute of limitations that apply, and a
23 lot of those involve fact-bound questions.

24 I would start with the easiest. On many
25 states, there is no limitation for recovering the actual

1 property itself, so there simply is no discovery that
2 needs to be done. There's no limitations period. There
3 are no equitable issues that can be raised. The simple
4 fact is there's no limitation period. We can always
5 recover that money for a number of our states.

6 For other states, there is a limitations
7 period, oftentimes about 10 years, but that period is
8 tolled. Again, if we're talking about MoneyGram, that
9 period is tolled until a report is filed that lists the
10 property itself, which hasn't happened here, or until
11 states are given express notice of the property at issue
12 and that is at dispute.

13 And, you know, regardless of which state we're
14 talking about, even if that were the standard, we're
15 certainly well within the limitations period when we
16 filed in 2016 to require express notice.

17 And then there are other states that have
18 statute of limitations that don't begin to run -- or,
19 excuse me, that begin to run after you fail to file
20 appropriately. Those tend to be 10-year statute of
21 limitations. Given that we filed this action in 2016
22 and we're talking about products that go back to 2006,
23 and there's not really a statute of limitations argument
24 to be had there.

25 And then there are some that have more

1 stringent statute of limitations periods where discovery
2 might be appropriate but, again, there's no reason,
3 given all of those various issues, we can somehow
4 divorce the facts from the law here and do them
5 piecemeal.

6 You know, I think most of the issues that they
7 say would take place under Phase 1 are really
8 fact-intensive and fact-bound. I think just like in the
9 liability phase, your Honor, there's no way to break
10 those up and divide them separately. So that's all the
11 residue money or the money that is properly escheated to
12 Delaware.

13 In addition to that, we have claims for
14 interest on that money. Certainly Delaware has enjoyed
15 the use of property that did not belong to it that it
16 was able to use for its citizens, that it was able to
17 earn interest and other money on.

18 In addition to that, to the extent that
19 Delaware agreed by contract to step into the shoes of
20 MoneyGram here, statutory interest that applies in our
21 various state regimes.

22 So, for instance, in Arkansas, it's -- in
23 addition to the federal funds rate that you would
24 normally pay as interest, there is a 2 percent interest
25 rate on pauper debt that is statutory penalty that we

1 believe Delaware also owes. And in addition to the
2 interest, there's also other penalties that are
3 associated with not properly reporting or taking
4 possession of property that's not yours, including in
5 Arkansas a 25 percent penalty on top of the sum itself
6 that is owed.

7 And we think, you know, those may be closer
8 calls about whether there's a cause of action as opposed
9 to the residue itself. But all of that's part of the
10 damages phase, and we can do discovery on that all at
11 the same time. We simply don't see any reason to break
12 up those proceedings.

13 THE COURT: The penalties that you're talking
14 about, these are penalties that are exacted by the laws
15 of some of the defendant states with respect to a holder
16 of abandoned property who does not pay it over by the
17 state's escheat law? Is that what you're talking about?

18 MR. BRONNI: That's correct, your Honor. And
19 the reason why we think it's appropriate to raise those
20 is because Delaware agreed -- as you may recall back in
21 2017, it reached an agreement with MoneyGram that if
22 MoneyGram had continued paying money to it, despite
23 having represented to our very state that it would not
24 after we filed this lawsuit, Delaware agreed to
25 indemnify MoneyGram for statutory penalties, interest,

1 and other things associated with it. So, essentially
2 Delaware stands in the shoes of MoneyGram and Delaware
3 is on the hook for those fees.

4 MS. WELLINGTON: And, your Honor, I'm happy to
5 address any of that now or after Mr. Voss has an
6 opportunity to talk.

7 THE COURT: Have you finished, Mr. Bronni?

8 MR. BRONNI: Unless your Honor has any
9 questions, yes.

10 THE COURT: Okay. Does Pennsylvania want to be
11 heard now?

12 MR. VOSS: Yes, your Honor, if I may, and I'll
13 be brief.

14 We actually look at this as four buckets of
15 money, not two, and the first we think is the easiest,
16 which is right now, the stipulation needs to be lifted
17 that permits MoneyGram to continue to pay into the
18 registry.

19 Under the Supreme Court's opinion, MoneyGram
20 should start reporting to the respective states by the
21 various statutory deadlines. Pennsylvania's happens to
22 be tax day, so we're already past due, but we understand
23 until that stay issue is resolved that MoneyGram is sort
24 of in stasis, and we ask that that be lifted
25 immediately.

1 As I understood the parties' meet-and-confer
2 and the joint report here, no one disputes that portion
3 of the stay, or stipulation, if you will, it should be
4 lifted, and we would ask that that be done immediately,
5 that MoneyGram be subject to reporting per statute on
6 all starting for the 2023 report year.

7 THE COURT: Well, let me just -- let me just
8 pause there and ask you a question about that because
9 what you say certainly makes a lot of sense, but on the
10 other hand, a concern that I have about going forward
11 here is that I don't think this should be organized in a
12 manner in which we send dribs and drabs to the Supreme
13 Court from time to time requiring a new ruling by the
14 Supreme Court.

15 So, I mean, if I were a district judge handling
16 this case, I would say, yes, that sounds great. I don't
17 see any reason why MoneyGram shouldn't start paying --
18 shouldn't start paying the appropriate states rather
19 than the state of MoneyGram's incorporation. But I
20 don't think I have the authority to order MoneyGram to
21 do that.

22 I mean, would that be something that you-all
23 could stipulate to? Would Delaware stipulate that,
24 going forward, MoneyGram will pay in accordance with the
25 Supreme Court's decision rather than paying to an escrow

1 fund?

2 MS. WELLINGTON: Yes, that's something we can
3 stipulate to.

4 THE COURT: So maybe that can be handled. That
5 can be handled by agreement of the parties, that
6 everybody will simply agree that hence forth MoneyGram
7 no longer pays to an escrow fund but pays pursuant to --
8 consistent with the act.

9 MR. VOSS: And I think that's right, your
10 Honor. Frankly, the reason they are not -- they are
11 able to pay into the escrow was a stipulation of the
12 parties and not an order of the Court. So that seems
13 appropriate to us, and we're certainly happy that
14 Delaware has agreed, and we will work that out without
15 the Court's involvement.

16 As I said, there's four buckets of money from
17 our perspective. The --

18 THE COURT: I'm sorry. I have to ask you-all
19 to speak a little bit more slowly. My audio is not
20 great, and if you speak rapidly, I don't always get
21 everything you say. Go ahead.

22 MR. VOSS: Sure. And I apologize, your Honor.

23 THE COURT: No, nothing to apologize for.

24 MR. VOSS: The second category of funds here
25 is, of course, the escrow. As was noted by Arkansas, we

1 have put a motion before the Court, and we did that for
2 a couple of reasons.

3 The first is as a very technical matter,
4 because these monies were paid in to the court registry,
5 there's a statutory scheme in the U.S. Code that
6 requires a formal court order, and we endeavor to put an
7 order in front of your Honor that once this issue is
8 resolved, you could sign that result in an appropriate
9 statutory order that the clerk could then act on.
10 That's the first reason.

11 The second reason is to make abundantly clear
12 that the amount of money in that account that's
13 attributable to the citizens of Pennsylvania, and that
14 would be somewhat of a theme of what I have to say, is
15 this belongs to the citizens of the state. They should
16 get the benefit of their money if we can't restore it to
17 them.

18 But that number not only is known and knowable,
19 but MoneyGram has been telling us throughout its
20 escheats. So we didn't find out last week what our
21 number was; MoneyGram told us in 2018, "Hey, we made an
22 escheat." I asked, how much was Pennsylvania's; got a
23 number. They escheated again. I don't have the dates,
24 but it's three times I timely asked, "How much of that
25 is ours."

1 The significance of that is common law, the
2 FDA, and certainly Pennsylvania's statutes and
3 Delaware's are in accord: You rely on the books and
4 records of the holder. MoneyGram's books and records,
5 as you just heard from Mr. Rato, and as now we've all
6 seen in the spreadsheets that were produced, reflect
7 where these items originated.

8 So Pennsylvania's responsible for \$6.3 million.
9 I don't want to get into the dollars and cents, but we
10 know that exactly. Frankly I did Delaware's
11 calculation, too, just as a point of contrast; it's
12 about \$600,000.

13 So while we appreciate their concern that some
14 other states may not get what they're entitled to or may
15 get too much, that's not their concern *vis-a-vis* the
16 money that under the FDA, the common law, Pennsylvania
17 state statutory law belongs to the citizens of
18 Pennsylvania and should immediately escheat.

19 THE COURT: We're talking now -- you're talking
20 now about escrowed funds?

21 MR. VOSS: Yes, your Honor. And, frankly, the
22 reason we pointed out that transcript in our argument is
23 that was part of -- you may recall Pennsylvania was the
24 only state that attempted to implead MoneyGram. We
25 sought leave to file a third-party complaint against

1 MoneyGram.

2 As we anticipated, some of these issues might
3 come up one day, and the warrant and representation from
4 Delaware was, "Don't worry. We'll pay. We'll make
5 good." And part of that exchange was, "Well, we'll do
6 this escrow, we'll find out the liability question, and
7 when it's done, we'll quickly close that out."

8 Well, that unfortunately doesn't seem to be the
9 case because now some discovery that I don't frankly
10 understand the books and records are clear. That's the
11 only thing we rely on in an escheat model.

12 And for the Pennsylvania treasurer, that's all
13 we would rely on -- books and records of the holder --
14 and that holder has told us repeatedly \$6.3 million and
15 change should go to Pennsylvania. And we think that it
16 warrants an issue immediately and without delay.

17 The third bucket of revenue here is --

18 THE COURT: Let's stick with that second bucket
19 for a minute.

20 MR. VOSS: Sure.

21 THE COURT: What was the third one going to be?

22 MR. VOSS: The third one is going to be the
23 2016-2017 report year escheat, the payment that
24 MoneyGram made to Delaware after this case started.

25 THE COURT: Okay. Let's pause that for a

1 moment and talk about the escrowed funds for the moment.

2 I'm not sure what the documents that have been
3 produced by MoneyGram look like. I assume the -- is it
4 correct that the documents that have been produced,
5 these were documents that were created by MoneyGram;
6 isn't that correct?

7 MR. VOSS: That question may be more
8 appropriate for Mr. Rato, so I'll defer to him.

9 THE COURT: Yeah.

10 MR. RATO: I'm happy to answer that.

11 Yes, your Honor, every time MoneyGram made a
12 deposit into the Court's escrow, we prepared a
13 spreadsheet that showed exactly what items were being
14 deposited. So for each item that has been deposited in
15 escrow, there is the serial number of the item, the
16 amount, the date, as well as information concerning the
17 place where we believe that it was purchased.

18 THE COURT: What do you mean by this? This is
19 an Excel sheet that has columns?

20 MR. RATO: Correct, correct.

21 THE COURT: Lists columns?

22 MR. RATO: Correct.

23 THE COURT: And the column that you were just
24 talking about a moment ago, how is that column
25 identified? You were using a lot of words there. I

1 doubt that all those words are in the identification of
2 the column. What does it say at the top of that column?

3 MR. RATO: The particular column relating to
4 the state of purchase we believe --

5 THE COURT: Does it say state of purchase? Is
6 that what it is?

7 MR. RATO: -- is financial institution state.

8 THE COURT: Financial institution?

9 MR. RATO: State.

10 THE COURT: "Financial institution state" is
11 what it says at the top of the --

12 MR. RATO: Correct.

13 THE COURT: "Financial institution state"?

14 MR. RATO: Correct, your Honor. With the
15 exception -- I went back and looked at the data -- I
16 believe in the 2022 deposit, I believe it is the PRNT
17 state, p-r-n-t state, but I've been advised by MoneyGram
18 that that reflects the state of purchase, again as far
19 as we know it.

20 THE COURT: Do you know what "PRNT" stands for?

21 MR. RATO: Are you asking me, your Honor?

22 THE COURT: Do you know what the letters "PRNT"
23 stand for?

24 MR. RATO: I believe it is where the item was
25 physically printed, which would be what we have as the

1 state of purchase.

2 THE COURT: Well --

3 MR. RATO: Again, I'm not attempting to
4 testify, but that is my understanding. And then
5 certainly it is my understanding that, again, the data
6 that we provided every time we made a deposit showed
7 again, to the best of our ability, the state of purchase
8 for those items.

9 THE COURT: So what would MoneyGram do? What
10 would MoneyGram -- how would MoneyGram respond if
11 MoneyGram received an interrogatory asking something
12 along the lines of, with respect to every instrument
13 reported, what does -- what state is reflected on
14 MoneyGram's records as the state of purchase of that
15 instrument?

16 MR. RATO: I believe that we would -- you know,
17 again, I don't -- I'm not authorized to testify on
18 behalf of the company, but based on my understanding
19 from discussing it with them, you know, we could say
20 that whatever column in a particular report, if that's
21 PRNT state, if that's financial institution, the earlier
22 one, where that interrogatory response would likely be
23 that to the best of our knowledge, that is the state
24 where the item was purchased.

25 THE COURT: You know, Ms. Wellington, you want

1 to talk about that for a second?

2 MS. WELLINGTON: Sure. So, thank you, your
3 Honor.

4 So, you know, a problem we have here is we've
5 looked at this, and we have some concern. So at least
6 in what I've reviewed, it doesn't -- the column doesn't
7 say "financial institution state." It says "financial
8 institution address." And we've looked at some of these
9 banks.

10 So Sterling Bank & Trust, that's \$1.6 million
11 in the escrow. It has one address in Southfield,
12 Michigan, which appears to be the corporate
13 headquarters, but it has branches in multiple states.

14 There's a million dollars for Cadence Bank.
15 Has one address in Birmingham, Alabama; has branches in
16 multiple states. There's \$1.2 million from Susquehanna
17 Bank with the main office in Pennsylvania but branches
18 in multiple states. It looks like there are online
19 banks that are included; there are addresses that are
20 P.O. boxes. It's hard for us to evaluate whether that
21 P.O. box would be the place of purchase. There are also
22 addresses --

23 THE COURT: Well, the P.O. boxes are in a
24 state, are they not?

25 MS. WELLINGTON: Is that the P.O. box for the

1 corporate headquarters of the bank, or is that the P.O.
2 box, that they purchased this item at a P.O. box? I
3 mean, I think --

4 THE COURT: I know it sounds to me -- I mean, I
5 can understand a litigator raising the questions that
6 you are raising, but how much benefit is Delaware going
7 to get out of the answers to all of those questions?

8 I mean, if the state of purchase was Delaware
9 and it's reported on MoneyGram's books and records as an
10 address in Michigan, which is the headquarters of a bank
11 that also has an office in Delaware where, in fact, that
12 instrument was sold, in that unlikely event, Delaware
13 would probably be entitled to the \$67.13 covered by that
14 particular instrument.

15 But this sounds to me like a subject matter on
16 which you could easily spend \$2 or \$3 million in order
17 to resolve \$16,000 total of liability. If you want to
18 do that, I guess I can't stop you. Or maybe I can, I
19 don't know, but it doesn't sound to me as if you are
20 questioning the states.

21 I mean, assuming there is some -- assuming that
22 in some cases there is a report that gave the head
23 office of the bank, whereas, in fact, those instruments,
24 some of those instruments were sold in an office in a
25 different state. That's pretty unlikely to benefit

1 Delaware in any substantial way.

2 Yes, it would if they were sold in Delaware or,
3 yes, it would perhaps if it were sold, although this is
4 less clear, if it were sold in a state that is not a
5 litigant in this case, but in few instances is it going
6 to benefit Delaware.

7 You could be spending a lot of money exploring
8 all those things without, in the end, your having --
9 Delaware's having any financial interest in the answer
10 to the very expensively achieved answer to all those
11 questions.

12 MS. WELLINGTON: Your Honor, we propose
13 mediation because we want to solve this problem and do
14 it amicably. We do think it's very important to get
15 this right.

16 This is a lot of money, and it's going to
17 different states; and according to the Supreme Court,
18 you have to apply the text to the FDA, and we do have
19 real concerns here about MoneyGram's data. And
20 certainly our concern with the escrow is one thing, but
21 we're also going to be looking at MoneyGram's --

22 THE COURT: You say you're concerned about
23 MoneyGram's data. I mean, what is the concern that you
24 have an interest in? You said maybe you don't want
25 money going to Michigan that should be going to

1 Minnesota. It just doesn't seem right that money should
2 go to Michigan that ought to go to Minnesota. But
3 unless it's going to go to Delaware, what difference
4 does it make to Delaware?

5 MS. WELLINGTON: So with respect to the escrow,
6 we think it should be done correctly, but we also think
7 this is an issue with respect to retroactive damages.
8 We're going to be doing the same thing when we look at
9 MoneyGram's records. And, you know, MoneyGram --

10 THE COURT: We're talking about the escrow fund
11 now.

12 MS. WELLINGTON: And so our view is the escrow
13 fund should be done correctly, particularly since funds,
14 something's going to have to be done with respect to the
15 nonparty states.

16 So our point is it should be done correctly and
17 that we should understand what this data is, at least
18 ask the question is this data accurate before we go and
19 distribute, you know, almost \$100 million to different
20 states. And that's our concern with respect to the
21 escrow, but it is also reflected with respect to the
22 retroactive data damages question.

23 THE COURT: So you've looked at all these to
24 see, and approximately what percentage of the money in
25 the escrow fund do you think has those question marks

1 attached to it, where it looks -- where you can't tell
2 whether the -- where it seems ambiguous whether the
3 institute -- the address reported is of the head office
4 or of the selling office?

5 MS. WELLINGTON: So there are over 300,000
6 entries in this dataset, and I think it would require
7 looking at every single bank. We haven't been able to
8 do that. All we've been able to do is just look at, you
9 know, okay. Here is the bank. Does that look like a
10 place where something was being sold or not?

11 And we started doing that, and we started
12 running into a lot of questions, and those are the
13 examples that I put forward. But I think it would be a
14 really -- you know, we have to look at 300,000 lines to
15 figure that out, and we haven't had an opportunity to do
16 that.

17 We'd also note, you know, we appear to be
18 missing the 2018 data for the deposit, so we're going to
19 follow up with MoneyGram on that, but we seem to be
20 missing that data in addition to these questions that we
21 have.

22 THE COURT: All right. Well, it does seem to
23 me that I'd like to make a few observations. It seems
24 to me that there would be potential, potential great
25 value to mediating not only as to the prelitigation and

1 pre-escrow payments but also the escrow payments.

2 And, I mean, I think that for the moment, I
3 mean, as I said a few moments ago, Delaware can take the
4 position of saying, "Well, we want it to be accurate";
5 and accuracy, it's hard to talk against accuracy.
6 Accuracy is always nice. But spending tons of money on
7 litigation to produce ultimate accuracy when you could
8 much more profitably to everybody reach an
9 accommodation.

10 I mean, I think perhaps it would behoove
11 Delaware to identify the instances among the MoneyGram
12 records that you believe represent a danger that
13 Delaware would be done out of money that it might be
14 entitled to and then, first of all, reach agreement as
15 to everything else, to have everything else paid out, at
16 least leaving for the moment -- this doesn't have to be
17 done all in a bundle.

18 I would think -- you say there's \$94 million in
19 the escrow fund; is that right? Is that correct,
20 something like that?

21 MR. BRONNI: That's right, your Honor, based on
22 the Southern District's report we got.

23 THE COURT: It seems to me that after Delaware
24 identifies the items that it -- as to which it thinks
25 they might belong under some set of facts to Delaware

1 rather than to one of the defendant states, agree to the
2 payment out of all the rest and then we'll deal with the
3 part that Delaware has not agreed to.

4 Does that make sense?

5 Yes, Mr. Rato?

6 MR. RATO: Yes, your Honor.

7 Just, I don't want to complicate this, and I
8 don't think that it does. But with respect to the \$94
9 million escrow, since the property has been there,
10 MoneyGram has paid out; that is, has honored \$4 million
11 worth of checks that we would plan to submit to the
12 states, whichever ones need to approve it again --
13 that's not an issue on the merits -- that we would be
14 able to reclaim from the escrow before it gets paid out;
15 and we would be prepared for those items to provide, as
16 we have previously, evidence of the cancelled check
17 showing that it was, in fact, paid, as long as no one
18 has an objection to that.

19 THE COURT: Well, does it make sense for
20 Delaware to identify the items which it believes may
21 belong to Delaware and then agree among all the parties
22 to the distribution of all the rest? Would that be a
23 sensible approach?

24 MS. WELLINGTON: Your Honor, our concern is if
25 there is no record of the place of purchase, the money

1 would go to potentially Minnesota, which is the
2 principal place of business, at least on the website of
3 MoneyGram Payment Systems and so I think that would be
4 an issue.

5 If you want us to identify that issue, I think
6 that is a much bigger issue than whether this money
7 would go to Delaware.

8 THE COURT: Wait a second. You want to protect
9 the interests of Minnesota? I'm sorry. I don't --
10 what -- I'm not sure I understand what interests you are
11 protecting.

12 MS. WELLINGTON: Your Honor, we simply want
13 this to be distributed correctly under the FDA in
14 accordance with the Supreme Court's opinion and so if
15 money is supposed to go to a particular location, I
16 think we ought to figure out where it's supposed to go
17 and that's our position that it should be done correctly
18 under the FDA and the Supreme Court's decision.

19 MR. VOSS: Your Honor, may I be heard on that?

20 THE COURT: Well, let me just -- let me just
21 say one thing, first of all, is that perhaps it would
22 make sense to call upon MoneyGram by a discovery demand
23 to answer a specific question, something along the
24 line -- the formulation of the question to be something
25 along the lines of what do the records of MoneyGram show

1 as to the state of purchase of these instruments. And
2 let MoneyGram answer that, phrasing the question in a
3 manner that's designed to eliminate unnecessary
4 ambiguity in the columns that MoneyGram has now
5 constructed, if there is such, if that would be helpful.

6 And then -- I don't quite know what to make of
7 what Ms. Wellington is saying. I do believe, it's maybe
8 my hopeful expectation, that there would be a large
9 amount of money that Delaware would not object to the
10 payment of at this time, and I see no reason to hold up
11 such payment.

12 Is there a reason to hold up the payments that
13 Delaware would not identify as problematic?

14 MS. WELLINGTON: Well, our concern here is
15 there is going to be, I think, a significant dispute
16 between the parties with respect to MoneyGram's records
17 with respect to these specific instruments and where
18 they should go.

19 And if there are no accurate reports as to the
20 state of purchase going back to 2006 under the FDA, you
21 know, that would go to the principal place of business.
22 And so this is a specific dispute between the parties.

23 I think certainly we can mediate this dispute
24 with respect to the escrow, but going retroactively, I
25 think this is going to be a significant subject of

1 discovery and depositions and I don't think can be
2 answered, at least with respect to the retroactive
3 damages, by a simple --

4 THE COURT: We're talking about escrow. We're
5 talking about escrow.

6 MS. WELLINGTON: So certainly we don't want to
7 agree or concede that MoneyGram's records are accurate,
8 and we don't -- you know, in the context --

9 THE COURT: Well, perhaps I should put it this
10 way. Perhaps Delaware -- perhaps what is the first step
11 to be looked for is for Delaware simply to say as to
12 some percentage -- you know, maybe it would be 75
13 percent, maybe it would be 85; I don't know what
14 percentage it would be -- to say Delaware relinquishes
15 any claim to those escrowed funds.

16 And then I agree with you there might be
17 disputes between Michigan and Minnesota, there might be
18 disputes between other states, but Delaware would pull
19 itself out and Delaware would make clear that it is not
20 making -- with respect to so much of the \$94 million,
21 Delaware does not claim any interest in those funds.

22 Can that be achieved?

23 MS. WELLINGTON: Your Honor, I think like we
24 said from the beginning, we'd like to mediate this issue
25 and reach a resolution. You know, we're raising these

1 issues because we think that there are problems with the
2 data, but frankly, if we can reach an agreement with the
3 other states about how to resolve this issue, that would
4 be our preference, and we're happy to do that
5 expeditiously.

6 I think what we aren't comfortable with is
7 simply saying we agree that MoneyGram's records are, in
8 fact, accurate. So, you know, if we can just --

9 THE COURT: I don't think anybody asked you to
10 say that MoneyGram's records were accurate. I think the
11 issue is what monies you claim/what monies Delaware
12 claims an interest in. That's an issue.

13 Then to the extent there are disputes between
14 other states, that's not your concern; that's their
15 concern. But I think it would be -- I think at least it
16 could advance things materially in a very helpful way if
17 Delaware would simply go over the 300,000 records and
18 identify the ones that give you concern, that are of
19 concern to Delaware; and simply if they are not of
20 concern to Delaware, you just say Delaware acknowledges
21 it has no interest in those records.

22 And that doesn't mean that they will go out
23 possibly to the wrong state; it means that the states
24 can then deal with it themselves and perhaps have an
25 easier time reaching understanding than with Delaware.

1 MS. WELLINGTON: Certainly we're happy to do
2 that. We do need some time to look at this data. Like
3 we said, is a significant dataset and --

4 THE COURT: I do think it would be helpful to
5 have a mediator appointed. I mean, does this require a
6 mediator? I mean, perhaps down the line.

7 But I think as a first step for Delaware to go
8 over all those records and say -- and pick out the ones
9 which Delaware thinks it has a financial interest in;
10 and then as to the others, simply say Delaware
11 relinquishes any claim that it may have to those monies,
12 then that would seem to me -- I'm not sure you need a
13 mediator for that step, but I think that would advance
14 quite a long way to freeing up a lot of this money.

15 Does that make sense?

16 MS. WELLINGTON: Certainly that makes sense.
17 We just ask for a reasonable time to review this data,
18 given the --

19 THE COURT: Sure. Sure. And then maybe we'll
20 have a mediator later down the line as to the ones to
21 which Delaware is claiming an interest.

22 When you're dealing with -- I mean, it's very
23 nice to talk about doing things accurately, but when
24 you're talking about millions of payments, millions of
25 payments involving -- how many defendant states are

1 there, Mr. Bronni?

2 MR. BRONNI: 29, your Honor.

3 THE COURT: 29? By 29 states and possibly
4 other states that aren't involved in the litigation,
5 efforts to achieve absolute accuracy could consume more
6 money than is involved in this litigation and much more.
7 But that's -- I mean, settlements and resolutions and
8 mediations sometimes dispense with 100 percent accuracy
9 in the interest of achieving a sensible solution that
10 reasonably protects everyone's interests. So I think it
11 might be very beneficial to try to work towards that.

12 Now, we were at a stage where somebody was
13 going to be, was it Mr. -- was it Pennsylvania was going
14 to move on to the next issue?

15 MR. VOSS: Yes, your Honor.

16 Just before we leave that, we heard reasonable
17 time to review and reasonable time to meet. We're
18 certainly curious to what that is, how long Delaware
19 thinks that is.

20 I'll exercise again the laws of escheat. In
21 Pennsylvania we rely on the holder's books and records.
22 The holder's books and records have been supplied to us.
23 The holder's books and records reveal 6.3 million and
24 change exactly as set forth in our motion.

25 From our perspective, there's nothing to

1 mediate, there's nothing to examine.

2 Consistent with the FDA, the common law,
3 Pennsylvania common law, we rely on the holder's books
4 and records that have been supplied, and they tell us
5 that sum of money should escheat right away.

6 And it's important that --

7 THE COURT: The books and records, the act
8 expresses particular concern for the books and records
9 of the holder of the funds, and I don't think that it
10 envisions extensive inquiry into what's behind the
11 information received by the holder of the funds and
12 whether the -- and the possibility that it may have
13 received inaccurate information as to the state of
14 purchase. But anyway, go ahead.

15 MR. VOSS: Okay. If your Honor isn't going to
16 put in there, we would ask before this cause ended that
17 this reasonable period be defined by Delaware so we have
18 some certainty as we move forward.

19 So I wanted to talk about that third category,
20 which is the '16-'17 escheat, which happened after this
21 case began as set forth in the joint statement.
22 Pennsylvania put in writing to Delaware and to
23 MoneyGram: Don't pay this money going forward. It's
24 ours.

25 We gave them our FDA analysis. We then sent

1 them a draft of our complaint, where we filed the
2 complaint in the Middle District and then ultimately
3 Delaware, a claim against us here, and we answered all
4 in 2016.

5 And in that period of time, MoneyGram had asked
6 us for an extension to report, and unbeknownst to us, we
7 learned in the June 2017 conference that Delaware had
8 their offer, which was: We will make you whole if you
9 pay it all to us.

10 Well, that's fine, but that time to make us
11 whole, Pennsylvania, as your Honor questioned MoneyGram
12 about directly at that conference and we put forward in
13 our footnote in the motion, the time to make us whole is
14 now and that's the sum of \$2,153,501.24.

15 Again, that is a sum certain based on the
16 holder's books and records which have been supplied to
17 all parties, not this week, years ago in discovery.
18 That sum has been with the parties for some time, and we
19 demand immediate payment on that consistent with the FDA
20 and the contractual agreement, which was also produced
21 to the parties in discovery and that was described at
22 the June 2017 conference.

23 Frankly we struggle to understand what the
24 legal or factual issues are with that sum of money.
25 It's, from our perspective, crystal clear.

1 The fourth issue is, of course, the old money.
2 I'll try not to repeat too many of Mr. Bronni's point.
3 But from our perspective, Delaware has absolutely
4 forfeited these so-called gating issues. They filed an
5 answer to our complaint on November 8, 2016 --

6 THE COURT: Forfeited the what issue?

7 MR. VOSS: Laches, statute of limitations, lack
8 of a cause of action, all the avoidance doctrines that
9 they wish to raise now, which are affirmative defenses
10 under the Rules of Civil Procedure, none of which were
11 raised in answer to our counterclaim on docket 18,
12 November 18, 2016.

13 Frankly, they had an all-in theory which was,
14 "We're right under the FDA and you're wrong," and they
15 backed that horse, but that horse came in second. And
16 that's fine, but now that means you don't get a second
17 bite at it.

18 You don't get to suddenly raise avoidance
19 doctrines seven years into the case particularly, as
20 Mr. Bronni points out, when they were first to court to
21 say, "Hey, Court, tell us that we're right on this
22 theory." No whiff of avoidance doctrines, no whiff of,
23 "And, by the way, if we're wrong, make sure the Court
24 enter an order saying we don't have to pay."

25 Forfeited and, frankly, I say advisedly waived.

1 They knew that issue was going to be in the case. We
2 wrote them before anybody sued anybody, told them
3 exactly what we were going for, which was all of the
4 money that had been escheated from the official check
5 program.

6 The other sort of gating issue here is Delaware
7 has no reasonable expectation of continued possession of
8 these monies. Let me tell you what I mean by that.
9 Under the common law, *Texas versus New Jersey*, it was
10 always stated that the true owner could come forward at
11 any time or that a state with a superior right to take
12 could come forward.

13 Same thing under the FDA. It was always
14 contemplated since 1974 that a state with a superior
15 right to take could always come forward.

16 Delaware's own laws permit a holder to come
17 forward forever to claim holder -- excuse me -- an owner
18 forever to come forward to claim their money. They say
19 on their website today: The State only acts as a
20 custodian for missing owners holding property in trust
21 until it is claimed or returned to its rightful owner.
22 There is no statute of limitations regarding claim
23 requests. You may submit a claim at any time.

24 I'm happy to supply that discovery, but that's
25 Delaware's FAQs on its unclaimed property website.

1 We are seeking this money for the benefit of
2 citizens of Pennsylvania to make sure they get the
3 benefit of the money or have it restored. Delaware is a
4 custody state, same as Pennsylvania. They never took
5 title to this. They are not a true escheat state.

6 They have no reasonable expectation that
7 somebody could come forward, as we are now, claiming you
8 received money you shouldn't have. It should come to us
9 as the sovereign protecting the interests of the
10 Pennsylvania true owners.

11 THE COURT: I hear what you're saying, but this
12 seems to me to be the subject matter of the main motion
13 that Delaware intends to make. I don't see that there's
14 a lot of point arguing this now because this is not
15 going to be mediate -- it's unlikely to be mediated or
16 agreed.

17 I mean, I guess there's always a hope that
18 people can reach a settlement of things without having
19 to litigate them, but it seems to me that Delaware will
20 want to move for a ruling that as to the prelitigation
21 and probably also the pre-escrow collections that it
22 made that the defendant states, notwithstanding the
23 Supreme Court holdings, don't get them and so I don't
24 see a way of avoiding having that all argued.

25 Did Delaware see that as a motion for partial

1 summary judgment that it would be making?

2 MS. WELLINGTON: Your Honor, we are happy to
3 style it however you like, but we do think these
4 threshold legal issues should be addressed certainly
5 before we go do 30-state discovery going back 20 years.

6 THE COURT: I don't think it necessarily needs
7 to precede all discovery. I mean, I certainly agree
8 with Delaware that until that issue is resolved, at
9 least to the extent that I would reach my decision on
10 the resolution of it, there's not much point doing
11 discovery state by state on laches and the like.

12 But I don't think that means that there should
13 be no discovery. I mean, it's very important, most of
14 all, to be getting discovery from MoneyGram, and maybe
15 almost all of that has been done already despite not
16 having a schedule.

17 But I don't want to preclude all discovery, but
18 it seems to me it would make sense at this point to set
19 a schedule for Delaware's motion to bar payment of
20 damages with respect to the prelitigation escheats paid
21 to it and the -- and as a separate matter the
22 pre-escrow, post-initiation of litigation but pre-escrow
23 fund and to have those things briefed and answered at
24 least by me before going forth with scheduling the end
25 of discovery.

1 Does that make sense? I would envision that we
2 would set a schedule for that motion to be made and
3 answered and replied to and submitted to me for my
4 recommended judgment on that subject.

5 And following that, you would agree to a
6 schedule of completing the discovery and further
7 motions, depending whether I rule -- there won't be that
8 much.

9 If I ruled in favor of Delaware, there wouldn't
10 be that much left outside of that to litigate depending
11 what the Supreme Court ultimately decided. If I rule in
12 favor of the states, then the door would be open to
13 pursuing all the laches and that stuff.

14 Unless, of course, the states, the defendant
15 states could also move, according to what you've been
16 arguing here, to preclude that litigation on the grounds
17 that it has been -- that, as you've been arguing, that
18 Delaware has waived or forfeited those issues.

19 MS. WELLINGTON: That certainly sounds
20 reasonable and, you know, we could also brief that in a
21 single briefing schedule, if that makes sense, your
22 Honor.

23 THE COURT: All right. So should we make a
24 schedule now for --

25 MR. BRONNI: Your Honor, if I can interject on

1 that point.

2 I think the one concern that we sort of had
3 with that is, as your Honor alluded to earlier, that we
4 could end up playing ping-pong with the Supreme Court
5 and asking that --

6 THE COURT: Could end up what?

7 MR. BRONNI: Back and forth to the Supreme
8 Court, your Honor.

9 THE COURT: Yeah, I don't want to go back and
10 forth to the Supreme Court.

11 MR. BRONNI: And we share your Honor's concerns
12 there. That's why we were envisioning that this would
13 all happen together and at the end of the process, there
14 would be cross-motions for summary judgment.

15 Otherwise, your Honor, if you were to rule for
16 Delaware, and I don't think there's any likelihood of
17 that, but if you were to agree with Delaware here, we
18 would have to take exception to that report, go to the
19 Court, get the Court to reverse and then we would all be
20 back once again and we'd take the final report from that
21 back up to the Court.

22 I think it's just in the interest of keeping
23 things moving, I think our perspective is it's better to
24 keep everything moving at the same time. We've already
25 been to the Court once, and we agreed to bifurcate the

1 two proceedings.

2 I don't see why we can't proceed expeditiously
3 with discovery at the same time and in the --

4 THE COURT: Well, I'm proposing -- what I
5 envision is that we would not go back to the Supreme
6 Court except with a proposed ruling from me, a
7 recommended ruling that would dispose of the case.

8 Now, I can't guarantee that it would dispose of
9 the case because if the Supreme Court disagrees with --
10 I mean, in other words, supposing I determine in your
11 favor that Delaware has forfeited all of the laches and
12 statute of limitations.

13 I don't think it makes sense for us to then go
14 ahead nonetheless, in spite of my having that ruling,
15 which then ends the case, to go ahead and do all of
16 the -- have Delaware then go ahead and do all of the
17 discovery which I have proposed to rule is forfeited?
18 Is that what you're recommending?

19 MR. BRONNI: No, your Honor.

20 THE COURT: That we litigate out every
21 conceivable answer, every conceivable issue that might
22 arise in the case regardless so that I send to the
23 Supreme Court proposed rulings on every -- that cover
24 all the possible alternatives?

25 MR. BRONNI: I think our concern, your Honor,

1 is that for most of those issues that they have raised,
2 as I already mentioned, I think I don't really
3 understand what discovery they want to do, what exactly
4 they want to get at. But I don't --

5 THE COURT: Well, if they are doing discovery
6 on laches, you know, you know what discovery on laches
7 would be. It would be personal discovery; it would be
8 state by state.

9 If it's an issue in the case, they are entitled
10 to do it. If it's not an issue -- if, according to my
11 ruling, it's not an issue in the case, then they
12 wouldn't do it. But then the Supreme Court might say,
13 "Well, no, Leval was wrong," then it might become an
14 issue in the case again.

15 But as I envision it, at least as I see it now,
16 I would hope that I don't send the case to the Supreme
17 Court, don't issue a report that calls for more
18 exceptions until I've reached a proposed decision that
19 pretty much terminates the case. Doesn't that make
20 sense?

21 MR. BRONNI: I suppose where I see a hiccup
22 there, your Honor, is I'm just not sure. Separating out
23 those legal and factual issues I think is going to be
24 somewhat difficult. But we're certainly, we're open,
25 your Honor, to finding a way to do that. I just -- it

1 seems like we're talking about things that might all be
2 wrapped up --

3 THE COURT: So what are you suggesting? What
4 are you suggesting?

5 MR. BRONNI: On statute of limitations -- one
6 example, your Honor. On the statute of limitations, if
7 they were raising statute of limitations defenses and
8 they were saying you've waived them, you've abandoned
9 them, et cetera. Even if, let's say your Honor
10 disagreed with us and on the way of abandonment, that's
11 state by state, and in some states it's going to depend
12 on certain pieces of information.

13 Like, it's difficult to break out the factual
14 stuff from the legal stuff there. I'm just not seeing a
15 clear divide to brief those issues.

16 THE COURT: I mean, you're saying that they
17 might be -- there might be a trial? There might be
18 trials of factual issues before me?

19 MR. BRONNI: No, your Honor. I'm saying on
20 those issues if the only evidence shows, for instance,
21 if you have a state that says for statute of limitations
22 purposes it floats to one at the time the state is
23 given -- let's say Delaware's right and went and looked
24 at state statute of limitations that would apply
25 *vis-a-vis* MoneyGram, then we have to look to see when

1 that notice or express notice was given in order to
2 determine when the statute of limitations would even
3 start running.

4 So that's a legal factual determination where
5 they are all bound up. So with the briefing statute of
6 limitations issue as well, I'm not sure how we can
7 divide those. If we do discovery and it turns out we
8 can both file summary judgment motions that the only
9 evidence shows this, you know, that's not a trial issue.
10 It's the only evidence that in discovery shows this.
11 It's an undisputed fact.

12 THE COURT: Well, and if it's an undisputed
13 fact, it would be amenable to a summary judgment.

14 MR. BRONNI: Well, I agree with that, your
15 Honor. I just think we have to do -- we would be doing
16 discovery at -- we would have to have done the discovery
17 in order to file those kinds of motions.

18 What I'm not sure I understand is how your
19 Honor's proposing to divide the various issues here for
20 briefing.

21 THE COURT: Well, I guess it's probably foolish
22 to try to predict how all questions will be resolved.
23 And, of course, it's entirely possible that down the
24 line, at least insofar as my appraisal of the case goes,
25 that there will be some issues of fact that would

1 require a trial and would not be amenable to summary
2 judgment. But it seems to me that there's at least a
3 fair likelihood that an awful lot and perhaps all can be
4 resolved by summary judgment.

5 I mean, the first Delaware will move to say --
6 will move and say as a matter of law, there's no
7 liability, no damages prelitigation and pre-escrow.

8 And if I recommend in favor of that, if I'm
9 persuaded and we deal otherwise with the escrow funds,
10 we manage to get that out of the way, hopefully by
11 agreement among the parties, then I could send the
12 Supreme Court a recommended ruling that they go with
13 that and that would end the litigation.

14 Then if I rule against Delaware on that but
15 then you have your motion, would you want to say that
16 Delaware forfeited the laches and statute of limitations
17 issues. And if I rule in your favor, that again would
18 provide a path to a recommendation to the Supreme Court,
19 which, if the Supreme Court accepted it, would then
20 terminate the case, assuming the escrow funds have been
21 agreed to.

22 Now, if Supreme Court disagreed, they would
23 send it back and there would be factual issues that
24 would be other issues to be resolved, but I -- doesn't
25 that sound like a sensible way to approach it and to

1 hope that whichever way the decisions go, they can -- my
2 recommendation can be sent to the Supreme Court as part
3 of a package, which, if the Supreme Court agrees with
4 it, would end the litigation.

5 If the Supreme Court doesn't, as we've
6 already -- as we've seen here, the Supreme Court would
7 send it back and there would be more litigation to go,
8 as we have now.

9 What am I missing?

10 MR. BRONNI: What I think, just let me make
11 sure I understand your Honor. You are proposing that,
12 or Delaware's proposal was that we brief only the cause
13 of action issue, leaving the statute of limitations
14 issue for later because it's necessarily -- I mean, we
15 may assert raising --

16 THE COURT: No, I'm seeing two motions, or
17 maybe it would be responses to each others' motions,
18 that Delaware moves to bar any award of damages
19 prelitigation and pre-escrow.

20 And you, in responding to that motion, you add
21 a cross-motion. In the event that you lose on that, you
22 have cross-motions to bar Delaware from any litigation
23 on the theory that it has waived or forfeited any
24 litigation on laches and statute of limitations and any
25 other issue that, as you see it, Delaware -- as you're

1 prepared to argue, Delaware has forfeited.

2 And I will rule on those, and depending how I
3 rule, or how I recommend should be ruled, that may be
4 the end of what needs to be done in proceedings before
5 the special master, or may not.

6 But I think Delaware is right that there's not
7 much point in having litigation over laches before a
8 determination that laches is a relevant issue in the
9 case because that would be very time-consuming and
10 expensive litigation, going state by state.

11 Doesn't that make sense?

12 MR. BRONNI: As I understand the proposal, your
13 Honor, that's fine with us. I think we would work with
14 Delaware and Pennsylvania to come up with a schedule.

15 THE COURT: Okay. So should we now set a
16 schedule for the filing of -- for the filing and
17 briefing of the motions by Delaware and the responsive
18 motions by the defendant states to bar Delaware?

19 Leaving discovery open, not forbidding
20 discovery from going ahead but assuming that you will
21 not be going into discovery of things that are not yet
22 and may never be relevant, but you certainly want the
23 opportunity to be taking further discovery, if needed,
24 of MoneyGram.

25 MR. RATO: Your Honor?

1 THE COURT: Yes.

2 MR. RATO: I would like to be heard regarding
3 discovery, but you can finish this part first. You
4 know, I'm not -- I don't want to interrupt. I just
5 would have some comments regarding discovery, but you
6 can certainly deal with the briefing schedule first.

7 THE COURT: So does it make sense to now set a
8 schedule at which MoneyGram will move and then the
9 defendant states will answer and cross-move and Delaw --
10 I'm sorry. Did I say -- Delaware will move to bar
11 damages, and the defendant states will respond and
12 cross-move to take issues out of the case and so forth
13 without affecting -- without prohibiting taking
14 discovery of a matter that's pertinent during this
15 period.

16 Does that make sense?

17 All right. Delaware, when would you like to
18 file your motion?

19 MS. WELLINGTON: Your Honor, we had proposed 90
20 days. I think that does -- August 2nd, but I am on
21 vacation that week, so I would personally prefer the
22 next week, something like August 9th, but I'm happy to
23 defer to what works for others.

24 And I did want to note. So some of these
25 issues that we're briefing would be dispositive, like

1 the cause of action. Some of these issues, like what is
2 the statute of limitations, might be partially
3 dispositive as to some of these claims.

4 So just to be clear, you know, if it's a
5 three-year statute of limitations, that's, you know, not
6 going to dispose of the entire case.

7 THE COURT: Well, my understanding of your
8 motion is that you are going to move saying there's
9 no -- the statute doesn't call for any award of damages
10 against Delaware, that the statute, notwithstanding the
11 Supreme Court's ruling that the money should have gone
12 to the defendant states, that doesn't mean that they get
13 damages from you. That's the main thrust of your
14 motion, isn't it?

15 MS. WELLINGTON: So that's true with respect to
16 the cause of action. Several of the other issues are
17 about shaping the scope of discovery. So if there's a
18 three-year statute of limitations, that might mean that
19 we do owe money, some amount of money, but there's a
20 cutoff.

21 Or, you know, laches might apply to some states
22 potentially but not others. We'd have to -- what we
23 would be briefing is, is laches an available defense.
24 If the answer is yes, then we'd have to go into
25 discovery on that.

1 So what we had proposed briefing are here are
2 the legal issues that need to get resolved before we go
3 into discovery --

4 THE COURT: Well, the defendant states, they
5 want to respond to your motion by a motion saying that
6 you can't get into laches and statute of limitations at
7 all because you have waived or forfeited it by not
8 including it in your complaint and your answer to the
9 cross-complaints.

10 Is that correct, Mr. Bronni and Mr. Voss? Is
11 that right?

12 MR. BRONNI: That's, yeah, part of the
13 definitive issues, but, yeah.

14 MR. VOSS: Yes, your Honor.

15 MS. WELLINGTON: So we certainly disagree with
16 that, and we would argue that they have waived
17 forfeiture. At oral argument with the Supreme Court,
18 they said we deal with these types of issues like the
19 cause of action on remand when we talk about damages.

20 So we disagree with that, but I think that's a
21 good reason why we need to brief these issues. So, you
22 know, if we want to file a brief and they want to
23 respond and raise these sorts of issues and we file a
24 reply, we certainly think that that would be an
25 appropriate way to go about it.

1 MR. VOSS: Your Honor.

2 THE COURT: Hang on one second, please. One
3 second.

4 Well, it seems to me that the first document
5 that should be filed with me is Delaware's motion for
6 partial summary judgment, ruling that there should be no
7 damages awarded against Delaware for its receipt of
8 escheat payments prior to the initiation of the
9 litigation; and then as a second issue that there should
10 be partial summary judgment to the same effect with
11 respect to the period from the initiation of the
12 litigation until the start of the escrow fund.

13 And that then the defendant states would answer
14 that and together with their -- as part of their answer,
15 they would include a cross-motion to say that -- to bar
16 Delaware from raising statute of limitations and laches
17 defenses, and Delaware would respond and say they didn't
18 waive the laches and statute of limitations defenses.

19 And then I would make my recommended ruling on
20 all those issues and then if there was -- assuming that
21 we can -- I'm not talking now about the escrowed funds,
22 which I hope can be dealt with by agreement ultimately.

23 That would -- that might result in a
24 recommended ruling to the Supreme Court that would
25 dispose of the case in its entirety, but it might not;

1 and if it doesn't, if I rule that the damages remedy
2 goes forward against Delaware and rule that Delaware is
3 permitted to raise laches and statute of limitations
4 defenses, then there will be discovery state by state on
5 laches and statute of limitations and any other issues
6 that need to be resolved. And then we'll proceed to the
7 next stage after that, and you'll make a -- you'll agree
8 on a schedule for going forth from there.

9 Does that make sense? Does anybody object to
10 that?

11 MR. VOSS: Your Honor, I'll, I guess, pose a
12 question. I'm not sure I'm objecting.

13 We just want to make clear. What is the
14 timetable for our pending motion, *vis-a-vis* the escrowed
15 money? When are we going to resolve the escrowed money?
16 Because none of that summary judgment piece, as we
17 understand it, has anything to do with the escrow we
18 heard.

19 THE COURT: Delaware proposed that they would
20 file their motion to bar damages in prelitigation and
21 pre-escrow, and they would file that motion with the
22 papers covering briefs and so forth on August 9th.

23 Then I think the next item is for the defendant
24 states, including Pennsylvania, to respond to Delaware's
25 motion and make your cross-motion to bar Delaware in

1 case you lose with respect to -- I'm sorry. In case you
2 win with respect to Delaware's liability, you want to
3 bar Delaware from advancing claims based on laches and
4 statute of limitations.

5 And then Delaware would answer that and then I
6 would make my recommended ruling on those things and
7 then we'd see what issues remain to be litigated.

8 And then you would all agree on a further
9 schedule for tying up the loose ends for the further
10 discovery that needed to be done and further motions for
11 judgment and so forth to tie up whatever ends remain to
12 be tied up.

13 MR. VOSS: Understood, your Honor. My question
14 is somewhat, somewhat different. We have a pending
15 motion to pay Pennsylvania out of the escrow account,
16 and what we heard was Delaware needed a reasonable time
17 to do something.

18 THE COURT: Yeah. Okay.

19 MR. VOSS: We want to know what that is. We
20 might --

21 THE COURT: Let's go to that as a separate
22 issue. That's a separate track, and it needs to be
23 dealt with. I agree with you it needs to be dealt with.
24 I was -- I'm talking about two separate tracks which can
25 proceed simultaneously.

1 Because it does seem to me that the one you're
2 talking about where I was suggesting that Delaware
3 identify the items that it sees that it has an interest
4 in contesting and that everything else, that Delaware, I
5 hope, will agree just to simply say as to these other
6 ones, Delaware has no interest in those funds. And then
7 it would be left to all the states to recommend what
8 should be done with them, but Delaware would then be out
9 of it with respect to that amount; and there would be
10 another amount that's contested and we'd deal with that.

11 But I'm talking about two tracks. I think that
12 the escrowed funds raise a different -- I think the
13 escrowed funds show a high possibility of being
14 ultimately resolved by mediation and agreement, and
15 we'll make a schedule for those things, but we've got
16 two different schedules.

17 Does that not make sense?

18 MR. VOSS: That does make sense, your Honor. I
19 just -- we were concerned that the first piece might
20 drift while we're talking about the second piece.

21 THE COURT: The first might what?

22 MR. VOSS: Drift, or not be part of this order,
23 but sounds like it's your intent to make it part of the
24 order.

25 THE COURT: I think there are two different,

1 two different tracks, and I think they can proceed
2 simultaneously. Because I'm hoping that as to the
3 escrow funds, that can be resolved by agreement, maybe
4 with the help of mediation, and that maybe after a
5 certain amount of exploring of it, maybe there will be
6 realization that there really isn't a great interest in
7 pursuing accuracy as to the last tiny detail, spending
8 \$50,000 of discovery and litigation to resolve \$400 in
9 dispute.

10 MR. VOSS: Regarding the back and forth motions
11 for summary judgment, just as a point of clarity, are we
12 still permitted to pursue discovery on damages?

13 Frankly, we have most of it from MoneyGram is my --

14 THE COURT: Yes. Yes, that will be -- I mean,
15 once it's -- if I rule against Delaware, if I rule
16 against Delaware's claims that there's no damages, that
17 the statute doesn't envision any damages and they are
18 not liable for any of the prelitigation payments that
19 they received, then, yes, there will be discovery on all
20 that.

21 MR. VOSS: I suppose it was our hope that we
22 could pursue that discovery while these motions --

23 THE COURT: Yeah. Well, I didn't want to bar
24 discovery. I guess I misspoke just now. I don't think
25 you -- I don't think that discovery should be barred.

1 I think that getting into making discovery of
2 30 different states with respect to laches of each of
3 them before it's decided that that will be in the case
4 doesn't make much sense. But I don't see why you
5 shouldn't be entitled to at least broad strokes of
6 discovery with respect to.

7 But what is the discovery you're envisaging?

8 MR. VOSS: Frankly, I just need one more
9 spreadsheet from MoneyGram. They have produced
10 spreadsheets in the last phase of discovery.

11 THE COURT: I think I've said about eleven
12 times that I envision that you go on, that you persist
13 in getting whatever you need from MoneyGram.

14 MoneyGram, Mr. Rato said he wanted to be heard
15 further on that, and we'll get to that. But I'm not
16 suggesting that you should be stayed in any way from
17 getting information from MoneyGram.

18 MR. VOSS: Fair enough, your Honor.

19 I have no further concerns. Thank you.

20 MR. BRONNI: Your Honor, can I ask one point of
21 clarification on the motion? Sorry to belabor the
22 point.

23 On our cross-motion in response to theirs, I
24 assume in addition to the forfeiture abandonment favor
25 point, we're also allowed to raise the fact that you

1 just can't raise laches against states, statute of
2 limitations don't apply against states, et cetera, in
3 that same motion?

4 THE COURT: That not only -- you say not only
5 has Delaware -- one branch of the motion is that
6 Delaware has forfeited those defenses, and another is
7 that they just don't -- that those defenses just don't
8 exist --

9 MR. BRONNI: Right.

10 THE COURT: -- under the laws of any of the
11 states?

12 MR. BRONNI: As applies to this action, that's
13 correct, your Honor.

14 THE COURT: I guess that's all right, yeah.
15 Yeah.

16 All right. So what's a date for your response
17 to Delaware's motion and your cross-motion?

18 MR. BRONNI: I think, your Honor, we would
19 object to the idea that 90 days is the amount of time
20 that they need to file a motion.

21 THE COURT: I'm sorry. Say that again?

22 MR. BRONNI: I think they had suggested they
23 need 90 days to file this motion. I don't know why it
24 takes them 90 days to file this. You know, I think a
25 faster timetable would make more sense.

1 THE COURT: That does seem like a lot of time.

2 MS. WELLINGTON: Your Honor --

3 THE COURT: How about 65?

4 MS. WELLINGTON: Your Honor, our concern is

5 here we have to do research on the statute of

6 limitations that applies to all 30 states. So that's

7 going to take a significant amount of --

8 THE COURT: No, you don't. No, the motion that
9 you're making doesn't talk about statutes of limitation.

10 The motion that you're making is saying there's no
11 damage remedy against Delaware.

12 You're advancing to a response to the
13 defendant's motion to you saying that you're not --
14 that's there's no -- there's nothing to litigate about
15 laches or statute of limitations.

16 MS. WELLINGTON: So I think to be clear, what
17 we were intending to litigate is five issues, and some
18 of them are dispositive and some of them are not
19 dispositive.

20 So the first issue is: Is there a cause of
21 action. We agree that that is a dispositive question
22 and so if you agree with us, that's the end of it; if
23 not, then we would go into discovery.

24 The second issue that we were proposing
25 briefing is what -- you know, first, is there a statute

1 of limitations; and the second question is, if so, what
2 is it. That is not necessarily a dispositive issue, but
3 it is a crucial issue for figuring out discovery going
4 forward. So that's why we wanted to brief that issue.

5 The third issue we wanted to brief is
6 defendant's authority under the FDA to recover these
7 damages retroactively and that would potentially depend
8 on state statutes of limitations for all 30 states.

9 The fourth question we wanted to litigate is
10 whether laches is available in original jurisdiction
11 action. That's not a dispositive question from our
12 perspective. It might be dispositive if you hold it at
13 least to that issue that laches isn't available. But if
14 laches is available, then we would have to go and do
15 discovery.

16 And the fifth question that we propose briefing
17 is whether other equitable principles such as fairness,
18 administrability have to be taken into account when we're
19 determining these retroactive damages. Again, that's
20 about shaping what the course of discovery looks like.

21 And the concern here, you know, with laches:
22 Do we want to go do 30-state discovery if we don't know,
23 you know, we need to determine if laches applies.

24 So that's why we picked these issues. I think
25 strictly speaking, the cause of action is the only

1 dispositive issue from our perspective, but these other
2 issues are incredibly important.

3 And certainly, you know, we don't want to
4 litigate all of this piecemeal. We want to, you know,
5 get a clear picture of what -- of any discovery we need
6 to do on these crucial issues.

7 These are all open questions of law. I mean,
8 these are quest- -- there's a reason why we want to
9 think deeply about them, research them, and get them
10 right to you and to the Supreme Court.

11 Justice Gorsuch raised this question in
12 argument: Is there a cause of action; how are you going
13 to go get damages. The Supreme Court has in several
14 cases looked at but not fully resolved whether or not
15 laches is available. We would argue that it is but, you
16 know, that's -- these are really important questions for
17 the Supreme Court and so that's why we think they need
18 to be briefed and resolved before we go into discovery
19 but not all of them from our perspective are dispositive
20 from our standpoint.

21 THE COURT: What is the difference between
22 number one and number three?

23 MS. WELLINGTON: Sure. So number one is
24 does -- so number one is: Is there a cause of action in
25 the statute, looking at the text.

1 Number three is: If you look at Section 2503,
2 it says that states are entitled to these instruments,
3 to the extent of that state's power under its own laws
4 to escheat or take custody of such sum.

5 We think there's a serious problem here because
6 a lot of these states have their own statutes of
7 limitations. If that statute of limitations has run, we
8 certainly don't think they should be coming after a
9 sovereign state to try to get these funds. That's an
10 issue that hasn't been addressed or resolved, and it's
11 plainly, from the text of the FDA, something that we
12 think should be addressed.

13 THE COURT: So issue three is just about state
14 statutes of limitations?

15 MS. WELLINGTON: That and, you know, frankly,
16 we think there's potentially other issues. We
17 understand some states like Ohio don't allow escheatment
18 actions if the instruments are transferred between
19 states, so if you have an instrument here that was
20 purchased by a bank, used by a bank to pay a bank, pay a
21 bank vendor or something.

22 There may be other reasons that haven't been
23 explored in this case. I think the statute of
24 limitations is the most important, but it's the
25 business-to-business, you know, exception to these state

1 statutes, and the state authority is also something we'd
2 want to look at. You know, that's a -- it's a 30-state
3 question here that the FDA is asking with respect to
4 retroactive damages.

5 And, frankly, that's just a lot of statutes for
6 us to look at and think about, and these are really
7 important issues of law, and we think 90 days is
8 certainly appropriate. That's the standard briefing
9 period in the court of appeals and we think is warranted
10 here, particularly if we're looking at these escrow
11 funds and potentially also doing discovery on MoneyGram.
12 It sounds like Mr. Voss wants to do that at the same
13 time too. So we're going to have a lot of things going
14 on at the same time.

15 MR. VOSS: Your Honor, if I might with the
16 schedule. I mean, the opinion came out in February;
17 it's May. They need to start researching these issues
18 is what I'm hearing. I'm not sure 90 days is
19 appropriate.

20 I'll submit again this doesn't feel like
21 Groundhog Day: We thought we resolved liability and now
22 we find there's some collateral FDA question that also
23 goes to liability that we're going to brief again in
24 three or six months.

25 So I guess we would reiterate our point that

1 this, the time to get down to who owes who what is now.
2 That's the deal we thought we struck in 2017 when we
3 agreed to bifurcation, when we agreed to keep MoneyGram
4 out of the case.

5 So we would just emphasize again we are looking
6 for a swift disposition here. It's been seven years.
7 It's time to be done. It's time to get the money to
8 where it should go, as the Supreme Court said.

9 I understand Delaware has issues that it thinks
10 will impact the math, but I'm not sure that those issues
11 should delay us in getting to the math.

12 THE COURT: All right. Well, so --

13 MR. BRONNI: Your Honor?

14 THE COURT: Yes. Go ahead.

15 MR. BRONNI: So I'm sorry to belabor the point,
16 but I'm now confused to the scope of this motion.

17 It sounds like now Delaware is proposing to
18 draft, that wants a motion to cover multiple issues.
19 You know, I would emphasize again I think everything
20 discovery-related should just move forward, we would
21 file cross-motions for summary judgment, the process.

22 Dividing this up and slowing things down, I
23 agree with my colleagues in Pennsylvania this is
24 Groundhog Day. They are just throwing up issues to slow
25 the process down. We should just move forward with

1 everything, and our position is file cross-motions at
2 the end.

3 THE COURT: Yeah, I think I agree with you.

4 All right. So when do you want to answer
5 Delaware's motion?

6 MR. BRONNI: I'm not sure when they are filing
7 a motion or what it covers now, your Honor.

8 THE COURT: Well, you heard Ms. Wellington said
9 five issues. Is there a claim, is there a statute --
10 are there statutes of limitation; what are they. I'm --
11 now I have a question what's the difference between two
12 and three because they both are the question whether
13 there are statutes of limitations; and the next one is
14 whether there's laches; and then the last one was not
15 specified, but there might be other equitable
16 principles. I don't know what they are.

17 MR. BRONNI: Your Honor, the schedule we had
18 proposed is the schedule that we had put in the status
19 report, I believe at Page 23, which would just resolve
20 everything together.

21 Rather than filing a motion on some issues, not
22 others -- not entirely sure what those are at this
23 point -- you know, we just proceed forward with
24 discovery, we brief it all at the end, the same way we
25 did the liability phase, we wrap this thing in a bow and

1 sent it to the Supreme Court.

2 THE COURT: All right. Let me just ponder this
3 for a minute. I'm going to -- let's take a five- --
4 let's say a ten-minute recess.

5 (Recess taken from 3:52 p.m. to 4:08 p.m.)

6 THE COURT: All right. So are you hearing me?

7 All right. So I will adopt the schedule
8 proposed by the defendant states on Page 23. And so I
9 think you should convert that into a document, looking
10 forward from now, a document that agrees to these, that
11 specifies that these will be the -- whether you agree or
12 not, that these will be the dates on which these things
13 will be done.

14 And when we reach on -- as to the item on
15 Page 23, when you get to the dispositive motions due, I
16 think you want to convert that into a schedule for
17 starting with Delaware's motion with 45 days, Delaware's
18 motion for partial summary judgment in various regards,
19 followed 45 days later by the defendants' response,
20 responses to Delaware's motions, plus Delaware's
21 cross-motions for partial summary judgment and then
22 Delaware's response to that and its reply and the
23 defendants' reply. So put that into four stages with
24 dates.

25 And then as to the escrowed funds, as to the

1 escrowed funds, Delaware asked for the opportunity to
2 make a status report in 60 days, so we'll have that.
3 Delaware can make a status report in 60 days and can, at
4 that time, identify the items as to which Delaware
5 claims a continuing interest, where Delaware claims that
6 it has some possible entitlement to keep those monies,
7 to get those monies for itself, and I will see what --
8 how to proceed thereafter.

9 It's to be hoped that there could be a prompt
10 distribution of everything that Delaware has not claimed
11 some interest in and then we'll see how we can go from
12 there to a resolution of the ones where Delaware is
13 claiming an interest. And perhaps we'll have a
14 conference call shortly after Delaware submits that
15 information.

16 MS. WELLINGTON: Your Honor, just to confirm.
17 It does seem like this schedule is missing some time to
18 analyze the third-party document discovery and fact
19 depositions between, you know, the close of discovery
20 and the expert reports.

21 It's possible 60 days is enough time, but
22 that's -- you know, for talking about discovery going
23 back 20 years on 30 states, I think we certainly have a
24 concern if we have to hire contract attorneys or
25 whatever that entails that this is really quite short

1 scheduling.

2 THE COURT: Is this a number that you want
3 to -- you say reports from retained experts? That's the
4 number that --

5 MS. WELLINGTON: I mean, so I think we're
6 concerned 150 days may be too short in general to
7 schedule 30 state depositions and do all that document
8 discovery, but certainly we think there should be some
9 time to analyze after the close of document discovery
10 before we would go into these expert reports. And that
11 could take a couple of months since, you know, it sounds
12 like we're doing really unlimited discovery here with
13 respect to, you know, these issues having been narrowed
14 for discovery.

15 THE COURT: Well, so how do you want to modify?
16 You want to modify the number 150 and make it 180?

17 MS. WELLINGTON: I think that would be
18 reasonable, and I think that we need at least another 90
19 days on the reports from -- or, excuse me, another 30
20 days to 90 days on the expert report.

21 THE COURT: All right. Okay. So that item,
22 the second item that now says discovery, it says 150
23 days; we're changing that to 180? And then the third
24 item after that, we're changing 60 to 90?

25 MS. WELLINGTON: From 60 to 90.

1 THE COURT: Okay.

2 MS. WELLINGTON: And just to confirm, we
3 weren't sure what "expert report deadlines" meant here,
4 but I guess we could work that out with the other party.
5 I assume that's reply reports?

6 MR. BRONNI: I think that's what we were
7 anticipating, just to answer that question.

8 THE COURT: Okay. All right. So you will then
9 put this -- convert this into a timetable, a timetable
10 beginning now?

11 MS. WELLINGTON: We can work with the other
12 parties to come up with a timetable for this.

13 THE COURT: Okay.

14 MS. WELLINGTON: You know, be cognizant of
15 holidays and things.

16 THE COURT: Okay. And then you put into that
17 timetable that with respect to the escrow funds,
18 Delaware will submit its status report in 60 days,
19 including the identification of all items in which
20 Delaware claims that it has some interest, some
21 reasonable possibility of having a claim to keep that
22 money, to get that money and then that Delaware
23 relinquishes any claim to anything, any item that's not
24 on that list.

25 MS. WELLINGTON: We certainly can do that.

1 And we just want to confirm, your Honor, that
2 you don't want to brief the cause of action issue up
3 front? I mean, that's certainly dispositive issue
4 before we go into a year of discovery.

5 THE COURT: Well, you wanted to go into five
6 different issues on that motion that raise all kinds of
7 things about statutes of limitations and laches and so
8 forth. I had hoped to separate out. I tried to
9 schedule it that way, and you opposed it and said you
10 want it to be all those different issues.

11 In any event, a lot of them would be raised by
12 the counter-motion of the defendants, which would move
13 not only to claim that you have forfeited raising some
14 of those issues but also that they simply don't lie
15 under the respective statute. So I think we'll stick
16 with what we've got here now.

17 Okay. Does that do it? Anything else we need
18 to talk about?

19 MS. WELLINGTON: No.

20 THE COURT: Yes, okay. Yes, sir?

21 MR. BRONNI: Not anything from our side.

22 THE COURT: I'm sorry. I didn't catch what you
23 said, Mr. Bronni.

24 MR. BRONNI: I was just saying no more issues
25 from us, your Honor.

1 THE COURT: Yes, Mr. Rato?

2 MR. RATO: Yes, your Honor. I think largely
3 our concerns about discovery have been resolved. I
4 think the main issue that we were sensitive to is we
5 didn't want to be in the position where we're stuck in
6 the middle, you know, trying to decide if there's a
7 disagreement between the parties about what discovery is
8 permissible and isn't. If it's being done predominantly
9 on the front end, I think that's less of a problem.

10 We have the issue of sort of the process of
11 reporting going forward and making a claim on the money
12 that we've already paid out of the escrow, but I will
13 suggest that I will at least take a shot at trying to
14 reach agreement with all the states on that process
15 going forward before we need to seek further
16 intervention.

17 We don't have a problem obviously reporting in
18 the ordinary course going forward. There are reasons
19 why starting January 1st might be easier
20 administratively for us because we've missed certain
21 reporting deadlines already.

22 And we were prepared to make another deposit
23 into the escrow but, again, I can try to discuss that
24 with the states first and get that resolved so maybe we
25 can enter into a stipulation.

1 THE COURT: Okay. And I think that the
2 defendant states should consider giving a further
3 interrogatory to MoneyGram that puts it -- you would do
4 a better job than I would of selecting the exact
5 wording, but attempting to -- I mean, I haven't seen
6 what the column that you rely on as the state of
7 purchase says at the top of the column, but an effort to
8 get MoneyGram to put it in terms of what its records
9 show as to the state where the instrument was purchased.

10 MR. RATO: Your Honor, just to sort of be
11 cooperative and move this along, can I suggest that we
12 put into writing what we believe that it shows.

13 THE COURT: Yes.

14 MR. RATO: And certainly I'm not trying to
15 prevent Mr. Voss, Mr. Bronni, Ms. Wellington,
16 Mr. Zelinsky, anybody from asking questions about those,
17 but it might be easier if we say up front this is what
18 we believe it shows and then obviously if people have
19 their questions. Again, I'm not trying to stop them
20 from doing discovery but just might be easier to do it
21 that way.

22 THE COURT: Well, I think you should at least
23 consult with them --

24 MR. RATO: Okay.

25 THE COURT: -- about what they think how they

1 would put the interrogatory so as to, if possible,
2 influence how you characterize or label this
3 information, to see whether it fits the bill as what the
4 FDA is looking for when it speaks of the records of the
5 holder, whether it show -- whether the records of the
6 holder shows the state of purchase.

7 MR. RATO: Well, your Honor, I don't suspect,
8 your Honor, that we will take a position on that, but we
9 will certainly answer any questions about what the
10 records are and where they come from. I mean, they can
11 obviously draw their own conclusions about the merits.

12 MS. WELLINGTON: We would like -- we may have
13 questions about individual entries with respect to
14 MoneyGram.

15 And we just want to say one more time,
16 Judge Leval, we respect your decision in this case. We
17 were not opposing, you know, briefing this in a
18 different way. All we were trying to do is make
19 discovery as efficient as possible.

20 If you're interested in briefing the cause of
21 action issue, we're happy to do that first and nothing
22 else because we think that would prevent a year of
23 discovery, 30 state depositions, and a lot of
24 expenditure of resources.

25 The reason why we wanted to brief these other

1 issues too is they also would help limit discovery, but
2 certainly we weren't objecting to a more efficient
3 approach, which is really what we've been seeking here.

4 THE COURT: Okay. And it does seem to me that
5 possibly with respect to the escrowed funds, the ones
6 that might remain in dispute and possibly over the
7 whole -- the whole business, it may be that you could
8 use some help in an effort to resolve the case because
9 it does look as if you litigate in a fastidious way over
10 every possible tiny issue, you might be spending a ton
11 of money far beyond what the issues can reasonably
12 justify economically, and it might be very advantageous
13 to reach a settlement that's based on a reasonable
14 appraisal of what your -- what the various parties'
15 chances are.

16 I mean, you -- you know, you can either win or
17 lose; and winning is good, losing is bad, and sometimes
18 a compromise between the two is very advantageous. So I
19 will be thinking about recommending a mediator who might
20 be helpful, and does anybody oppose having a mediator
21 get involved with you?

22 MS. WELLINGTON: We're --

23 MR. BRONNI: Your Honor -- go ahead.

24 MS. WELLINGTON: We're certainly open to
25 mediation and in resolving this dispute. I think there

1 is a big question here about the cause of action that
2 Justice Gorsuch raised and so, you know, I think there's
3 going to be a lot of uncertainty about whether there are
4 any damages retroactive at all as we go through this
5 hearing process.

6 THE COURT: Of course. Of course. That's a
7 very big issue. There's no question about it.

8 Starting out more modestly, it seems to me that
9 it would not be in the -- that it would be very much in
10 the interest of all concerned to reach a settlement with
11 respect at least to the escrowed funds. And maybe just
12 as to that, I think a mediator might do some real good;
13 and whether that could be parlayed into bigger issues as
14 well remains to be seen.

15 MS. WELLINGTON: And certainly we're happy to
16 mediate the entire case if the other parties are
17 interested in it. We're fully open to that, Judge
18 Leval.

19 THE COURT: Okay.

20 MR. BRONNI: And on behalf of our state, your
21 Honor, if we're discussing mediation, we are open to
22 having discussions as we signaled in the status report,
23 of the entirety of the case that remains.

24 I mean, I don't think there's any close call to
25 the cause of action issue. I think the Court's already

1 resolved that very clearly. I think Delaware's
2 recognized that in their earlier filings, but we're
3 certainly willing to have those discussions.

4 THE COURT: Okay. All right. Thank you very
5 much. Look forward to our next, next discussion, okay?

6 MR. VOSS: Thank you, your Honor.

7 THE COURT: Bye-bye. Have a good weekend.

8 Bye.

9 (Proceedings adjourned at 4:24 p.m.)

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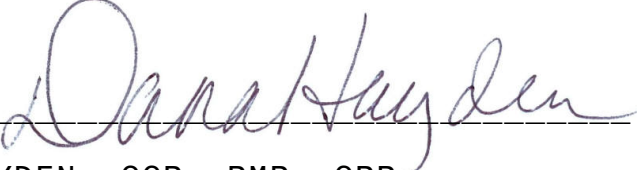
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Witness my hand and seal this 18th of May, 2023.

**DANA HAYDEN
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