

No. _____, Original

In The
Supreme Court of the United States

—◆—
STATE OF DELAWARE,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA
AND STATE OF WISCONSIN,

Defendants.

—◆—
**MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT, BILL OF COMPLAINT,
AND BRIEF IN SUPPORT**
—◆—

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May 2016

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**MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT**



Comes now the State of Delaware, by and through its Attorney General, Matthew P. Denn, pursuant to authority vested in him under the laws of Delaware, and moves the Court for leave to file the accompanying Bill of Complaint.

In support of its Motion, the State of Delaware asserts that its claims arise from the interpretation of a federal statute, its claims are serious and dignified, and there is no alternative forum in which adequate relief may be had. For the reasons more fully stated in the accompanying Brief in Support, the Motion of the

State of Delaware for Leave to File Bill of Complaint
should be granted.

Respectfully submitted,

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BILL OF COMPLAINT



The State of Delaware, by and through its Attorney General, Matthew P. Denn, brings this suit against defendants, the Commonwealth of Pennsylvania and the State of Wisconsin, and for its cause of action states:

1. The Court has exclusive and original jurisdiction of this suit under Article III, Section 2, Clause 2, of the Constitution of the United States and Title 28, Section 1251(a) of the United States Code.

2. The Court is the sole forum in which Delaware may enforce its rights under the Supremacy Clause, Article VI of the Constitution of the United States.

3. The State of Delaware has been sued by the Commonwealth of Pennsylvania and the State of Wisconsin in federal district court over the right to escheat certain unclaimed and abandoned monetary instruments pursuant to the Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. §§ 2501-2503.

4. All 50 States have statutes regarding the States' ability to "take title to certain abandoned intangible personal property through escheat, a procedure with ancient origins whereby a sovereign may acquire title to abandoned property if after a number of years no rightful owner appears." *Texas v. New Jersey*, 379 U.S. 674, 675 (1965).

5. The Supreme Court has on three occasions resolved disputes between States regarding which State had priority to claim certain abandoned intangible personal property. See *Delaware v. New York*, 507 U.S. 490 (1993); *Pennsylvania v. New York*, 407 U.S. 206 (1972); and *Texas*, *supra*.

6. In *Texas*, the Supreme Court initially established what have become known as the "priority rules," whereby the first opportunity to escheat the property belongs to the State of the last known address of the creditor as shown by the debtor's books and records (the "primary rule"), and if there is no record of any address for a creditor, or because the creditor's last known address is in a State which does not provide for

the escheat of abandoned property, the property escheats to the State in which the debtor is incorporated (the “secondary rule”). *Texas*, 379 U.S. at 682.

7. Seven years after *Texas*, Pennsylvania proposed that for transactions where the debtor did not keep records showing the address of the creditor, “the State of origin of the transaction,” *i.e.*, the State of the place of purchase, should have the right to escheat the abandoned property, rather than the State of the debtor’s domicile as was required under the second priority rule in Texas. *Pennsylvania*, 407 U.S. at 213-14. The Supreme Court rejected this alternative and held that the priority rules first established in *Texas* should continue to apply. *Id.* at 214-15.

8. Following the Supreme Court’s decision in *Pennsylvania*, in 1974 Congress adopted the Disposition of Abandoned Money Orders and Traveler’s Checks Act, which had the effect of reversing the Supreme Court’s holding in *Pennsylvania* for certain types of property. Specifically, for a “money order, traveler’s check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable,” the State in which such an instrument was purchased has the exclusive right to escheat or take custody of sums payable on such instruments. 12 U.S.C. § 2503. If the State in which such instruments were purchased is not known, then unclaimed property associated with such instruments escheats to the State in which the banking or financial organization or business association has its principal place of business. *Id.*

9. MoneyGram Payment Systems, Inc. (“MoneyGram”) is a Delaware corporation that has its principal place of business in Texas. MoneyGram is a wholly owned subsidiary of MoneyGram International, Inc. MoneyGram provides Official Check services to financial institutions.

10. MoneyGram determined that the Disposition of Abandoned Money Orders and Traveler’s Checks Act did not apply to MoneyGram Official Checks and escheats unclaimed property from Official Checks to the State of Delaware, pursuant to the general priority rules outlined by the Supreme Court in *Texas, Pennsylvania*, and *Delaware*. Delaware concurs in this determination by MoneyGram.

11. Official Checks were known and recognized monetary instruments at the time the Disposition of Abandoned Money Orders and Traveler’s Checks Act was enacted but were not included in the scope of 12 U.S.C. § 2503. Official Checks are not money orders, traveler’s checks, or other similar written instruments under the Disposition of Abandoned Money Orders and Traveler’s Checks Act.

12. Official Checks differ from money orders in many respects, including, without limitation: (i) Official Checks are not labeled as money orders, (ii) Official Checks are generally issued by financial institutions and not by convenience stores and similar small businesses, (iii) Official Checks are capable of being issued in substantially larger dollar amounts than

money orders, and (iv) Official Checks are treated differently under various federal regulations relating to monetary instruments.

13. Official Checks differ from traveler's checks in many respects, including, without limitation: (i) Official Checks are not issued in fixed denominations generally of \$100 or less like traveler's checks, (ii) Official Checks do not require a counter-signature when used in a transaction, (iii) Official Checks are not issued in a manner and by companies that will facilitate replacement checks if lost or stolen, and (iv) Official Checks are not promoted so as to be widely and easily negotiable by individuals traveling overseas.

14. In the absence of specialized definitions in the Act, money orders and traveler's checks were intended to have the meaning given them in every day usage.

15. Pennsylvania, Wisconsin, and eighteen other States recently retained a third-party auditor, Treasury Services Group ("TSG"), to conduct a review of MoneyGram's Official Checks. At the conclusion of that audit, TSG declared that MoneyGram Official Checks were subject to the Disposition of Abandoned Money Orders and Traveler's Checks Act, and that the funds related to Official Checks that MoneyGram had been escheating to Delaware instead should have been escheated to the State where the Official Checks were sold.

16. On February 26, 2016, the Treasury Department of the Commonwealth of Pennsylvania sued Delaware State Escheator David M. Gregor and MoneyGram in the United States District Court for the Middle District of Pennsylvania. *See* Appendix A-5. In that Complaint, Pennsylvania sought from MoneyGram a sum equal to the amount previously escheated to Delaware for Official Checks that Pennsylvania asserts were purchased in Pennsylvania from 2000-2009, estimated to be \$10,293,869.50, and a declaration interpreting the Disposition of Abandoned Money Orders and Traveler's Checks Act such that all future sums payable on abandoned MoneyGram Official Checks that were purchased in Pennsylvania should be remitted to Pennsylvania.

17. On April 27, 2016, the Wisconsin Department of Revenue sued Delaware State Escheator David M. Gregor and MoneyGram in the United States District Court for the Western District of Wisconsin. *See* Appendix A-27. In that Complaint, Wisconsin sought from MoneyGram a sum equal to the amount previously escheated to Delaware for MoneyGram Official Checks that Wisconsin asserts were purchased in Wisconsin beginning in 2000, estimated to be in excess of \$13,000,000, and a declaration interpreting the Disposition of Abandoned Money Orders and Traveler's Checks Act such that all future sums payable on abandoned MoneyGram Official Checks that were purchased in Wisconsin should be remitted to Wisconsin.

18. Delaware filed a motion to dismiss the Pennsylvania action for lack of personal jurisdiction and lack of subject matter jurisdiction on April 20, 2016, arguing that the suit is, in fact, a dispute between States implicating core sovereign functions, and, as such the suit is subject to the original and exclusive jurisdiction of the United States Supreme Court pursuant to 28 U.S.C. § 1251(a), the Eleventh Amendment, and relevant case law. Delaware also argued that defendant David Gregor lacks the “minimum contacts” with Pennsylvania necessary for the Pennsylvania district court to exercise personal jurisdiction over him. On May 23, 2016, the Honorable Judge John E. Jones III placed the Pennsylvania action, at the request of Pennsylvania, in administrative suspension pending a ruling from this Court on a motion for leave to file a Bill of Complaint to resolve the dispute.

19. Delaware is required to answer or otherwise respond to Wisconsin’s complaint in the Western District of Wisconsin no later than July 5, 2016. At this time, Delaware intends to move to dismiss the Wisconsin action on the same grounds as the motion to dismiss in Pennsylvania.

20. MoneyGram, much like Western Union in *Pennsylvania*, is facing potential double-liability for the escheat of the same unclaimed property to two States unless the issue of whether Official Checks are subject to the Disposition of Abandoned Money Orders and Traveler’s Checks Act is fully and finally resolved in a decision that binds all fifty States.

21. The State of Delaware has no adequate remedy at law to enforce its superior right to that of the State of Wisconsin and the Commonwealth of Pennsylvania to receive abandoned property related to MoneyGram Official Checks.

22. The State of Delaware has no sufficient remedy except by invoking the Court's original jurisdiction in this proceeding.

WHEREFORE, the State of Delaware respectfully prays that the Court:

- A. Declare that MoneyGram Official Checks are not "a money order, traveler's check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable," pursuant to 12 U.S.C. § 2503.
- B. Issue its Decree commanding the State of Wisconsin and the Commonwealth of Pennsylvania not to assert any claim over abandoned and unclaimed property related to MoneyGram Official Checks.
- C. Issue its Decree that all future sums payable on abandoned MoneyGram Official Checks should be remitted to the State of Delaware.

D. Grant such costs and other relief as the Court deems just and proper.

Respectfully submitted,

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**BRIEF IN SUPPORT OF MOTION
FOR LEAVE TO FILE BILL OF COMPLAINT**



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**BRIEF IN SUPPORT OF MOTION
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The State of Delaware, in support of its Motion for
Leave to File Bill of Complaint, submits the following:



INTRODUCTION

The State of Delaware, by and through its Attorney General, Matthew P. Denn, seeks to invoke the Court's original jurisdiction to obtain a determination and enforcement of its superior right against the State of Wisconsin and the Commonwealth of Pennsylvania for the escheat of Official Checks issued by MoneyGram Payment Systems, Inc. The Attorney General of Delaware brings this action on behalf of the State

of Delaware pursuant to his authority as chief legal officer of the State. Delaware brings its claims after being sued by both the Commonwealth of Pennsylvania and the State of Wisconsin in the U.S. District Court for the Middle District of Pennsylvania and the U.S. District Court for the Western District of Wisconsin, respectively. In the absence of a resolution by agreement between the States, only this Court can resolve the dispute.



STATEMENT

All 50 States have statutes regarding the States' ability "to take title to certain abandoned intangible personal property through escheat, a procedure with ancient origins whereby a sovereign may acquire title to abandoned property if after a number of years no rightful owner appears." *Texas v. New Jersey*, 379 U.S. 674, 675 (1965). This Court has on three occasions resolved disputes between States regarding which State had priority to claim certain abandoned intangible personal property. See *Delaware v. New York*, 507 U.S. 490 (1993); *Pennsylvania v. New York*, 407 U.S. 206 (1972); *Texas*, 379 U.S. at 674.

In *Texas*, this Court initially established what have become known as the "priority rules" when determining where certain intangible property, consisting in that case of various debts owed to creditors, should escheat. Under the "priority rules," the first opportunity to escheat unclaimed property belongs to the State of

the last known address of the creditor, as shown by the debtor's books and records. This is known as the primary rule. If the primary rule fails because there is no record of any address for a creditor or because the creditor's last known address is in a State which does not provide for the escheat of abandoned property, the secondary rule gives the right to escheat to the State in which the debtor is incorporated. *Texas*, 379 U.S. at 682.

In *Pennsylvania*, Pennsylvania proposed that for transactions where the debtor did not keep records showing the address of the creditor, in that case Western Union money orders, "the State of origin of the transaction," *i.e.*, the State of the place of purchase, should have the right to escheat the abandoned property, rather than the State of the debtor's domicile as was required under the second priority rule in *Texas*. *Pennsylvania*, *supra*, at 213-14. This Court rejected this alternative by noting that "the [proposed] place-of-purchase . . . rule[] might permit intangible property rights to be cut off or adversely affected by . . . a forum having no continuing relationship to any of the parties" to the transaction. *Id.* at 213 (citation and internal quotation marks omitted). This Court also held that the State of purchase had insufficient ties to the creditor or debtor to justify giving it the right to escheat. Instead, this Court held that the priority rules first established in *Texas* should continue to apply. *Id.* at 214-15.

Following this Court's decision in *Pennsylvania*, in 1974 Congress adopted the Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C.

§§ 2501-2503. *See* Appendix A-1-4. The Disposition of Abandoned Money Orders and Traveler’s Checks Act had the effect of reversing the holding in *Pennsylvania* for certain types of property. Specifically, for a “money order, traveler’s check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable,” the State in which such an instrument was purchased has the exclusive right to escheat or take custody of sums payable on such instruments. *Id.* § 2503. If the State in which such instruments were purchased is not known, then unclaimed property associated with such instruments escheats to the State in which the banking or financial organization or business association has its principal place of business. *Id.*

Nearly two decades after the Disposition of Abandoned Money Orders and Traveler’s Checks Act was passed, this Court again addressed the escheat of unaddressed unclaimed intangible property in *Delaware v. New York*, a case involving competing State claims to unclaimed securities distributions. The *Delaware* Court reaffirmed the application of the priority rules announced in *Texas*, even when the creditors of intangible property are always unknown, and held that the application of the secondary rule requires that the State of incorporation of the debtor, as the sole remaining sovereign with any relationship to one of the two involved parties, receive the escheat of the unaddressed, unclaimed intangible property. *Delaware*, 507 U.S. at 508-09.

MoneyGram Payment Systems, Inc. (“MoneyGram”) is a Delaware corporation that has its principal place of business in Texas. MoneyGram is a wholly owned subsidiary of MoneyGram International, Inc. According to a U.S. Tax Court opinion, MoneyGram provides Official Check outsourcing services to financial institutions who do not want to provide their own “bank checks, cashier’s checks, and teller checks.” *MoneyGram International, Inc. v. Comm’r*, 144 T.C. 1, 5 (2015). In 2007, MoneyGram provided Official Check “services to more than 1,900 financial institutions, consisting mainly of banks, thrifts, and credit unions.” *Id.*

MoneyGram receives fees from financial institution customers for its Official Check services. MoneyGram also derives revenue from the temporary investment of funds remitted from its financial institution customers until such time as the Official Checks clear. Outstanding Official Checks are classified as “payment service obligations” and treated as liabilities on MoneyGram’s consolidated financial statements. *Id.* at 6. MoneyGram escheats unclaimed property from Official Checks to the State of Delaware, pursuant to the general priority rules outlined by the Supreme Court in *Texas, Pennsylvania, and Delaware* because MoneyGram determined that the Disposition of Abandoned Money Orders and Traveler’s Checks Act did not apply to MoneyGram Official Checks. Delaware concurs in MoneyGram’s determination.

In February 2015, a private auditor working on behalf of Pennsylvania, Wisconsin, and approximately

18 other States, Treasury Services Group (“TSG”), first informed MoneyGram that those States believed that under the Disposition of Abandoned Money Orders and Traveler’s Checks Act, MoneyGram had erroneously escheated certain unclaimed property sums relating to Official Checks to Delaware as MoneyGram’s State of incorporation rather than to the States in which the Official Checks had been originally purchased. *See* Declaration of David Gregor, Appendix A-40-41. The various States, including Pennsylvania, and Delaware exchanged correspondence, but were unable to resolve the dispute.

On February 26, 2016, the Treasury Department of the Commonwealth of Pennsylvania sued Delaware State Escheator David M. Gregor in his official capacity and MoneyGram in the United States District Court for the Middle District of Pennsylvania. *See* Appendix A-5. In that Complaint, Pennsylvania sought from MoneyGram a sum equal to the amount previously escheated to Delaware for Official Checks that Pennsylvania asserts were purchased in Pennsylvania from 2000-2009, estimated to be \$10,293,869.50, and a declaration that:

- i. The MoneyGram Official Checks are “similar written instruments” under the Disposition of Abandoned Money Orders and Traveler’s Checks Act.
- ii. In the alternative, the MoneyGram Official Checks are money orders under the Disposition of Abandoned Money Orders and Traveler’s Checks Act.

- iii. MoneyGram Official Checks are not third party bank checks.
- iv. The Delaware State Escheator violated the Disposition of Abandoned Money Orders and Traveler's Checks Act by accepting the sums payable on the Official Checks sold in the Commonwealth of Pennsylvania and by refusing to return them upon demand since Pennsylvania is the State "exclusively entitled" to custody of those sums.
- v. MoneyGram violated the Disposition of Abandoned Money Orders and Traveler's Checks Act and the Pennsylvania Unclaimed Property Act since the sums payable on the MoneyGram Official Checks sold in the Commonwealth of Pennsylvania should have been remitted to the custodial care of Pennsylvania.
- vi. All future sums payable on abandoned MoneyGram Official Checks that Pennsylvania asserts were purchased in Pennsylvania should be remitted to Pennsylvania by MoneyGram.

On April 27, 2016, the Wisconsin Department of Revenue sued Delaware State Escheator David M. Gregor in his official capacity and MoneyGram in the United States District Court for the Western District of Wisconsin. See Appendix A-27. In that Complaint, Wisconsin sought from MoneyGram a sum equal to the amount previously escheated to Delaware for Official

Checks that Wisconsin asserts were purchased in Wisconsin beginning in 2000, estimated to be in excess of \$13,000,000, and a declaration that:

- i. The MoneyGram Official Checks constitute “similar written instruments” under the Disposition of Abandoned Money Orders and Traveler’s Checks Act.
- ii. In the alternative, the MoneyGram Official Checks are money orders under the Disposition of Abandoned Money Orders and Traveler’s Checks Act.
- iii. The MoneyGram Official Checks are not third party bank checks.
- iv. The Delaware State Escheator is violating Wisconsin’s right to custody of the sums remitted to Delaware that represent the proceeds of abandoned MoneyGram Official Checks sold in Wisconsin.
- v. MoneyGram’s transfer to Delaware of the proceeds of abandoned MoneyGram Official Checks that were purchased in Wisconsin violates both the Disposition of Abandoned Money Orders and Traveler’s Checks Act and the Wisconsin Unclaimed Property Act.
- vi. All future sums payable on abandoned MoneyGram Official Checks that Wisconsin asserts were purchased in Wisconsin shall be remitted to Wisconsin.

Delaware moved to dismiss the Pennsylvania action in the Middle District of Pennsylvania on April 20, 2016 for lack of subject matter jurisdiction and lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(1) & (2). Delaware argued that while Pennsylvania named a Delaware State official as the defendant, the suit is, in fact, a dispute between States implicating core sovereign functions and as such the suit is subject to the original and exclusive jurisdiction of the United States Supreme Court pursuant to 28 U.S.C. §1251(a), the Eleventh Amendment and relevant case law. Delaware also argued that defendant Delaware State Escheator Gregor lacks the “minimum contacts” with Pennsylvania necessary for the Pennsylvania district court to exercise personal jurisdiction over him. On May 19, 2016, Pennsylvania elected to file a motion to suspend the case rather than respond to Delaware’s motion to dismiss and indicated that Pennsylvania believed it was appropriate to submit the dispute to the Supreme Court on an original jurisdiction motion. That motion was granted on May 23, 2016.

Delaware is required to answer or otherwise respond to Wisconsin’s complaint in the Western District of Wisconsin no later than July 5, 2016. At this time, Delaware intends to move to dismiss the Wisconsin action on the same grounds as the motion to dismiss in Pennsylvania.

Delaware now seeks leave to file a Bill of Complaint to finally and completely resolve the competing escheat claims between Delaware, as the State of domicile of MoneyGram, and Pennsylvania and Wisconsin,

as the States of purchase of certain MoneyGram Official Checks, relating to certain unclaimed and abandoned MoneyGram Official Checks under the Disposition of Abandoned Money Orders and Traveler's Checks Act.

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ARGUMENT

This Court has original jurisdiction over cases and controversies between States. *See* U.S. Const. art. III, § 2, cl. 2. In accordance with Article III, the First Congress adopted a provision of the Judiciary Act of 1789, subsequently codified at 28 U.S.C. § 1251(a), which provides that this Court “shall have original and exclusive jurisdiction of all controversies between two or more States.” In the present case, the exercise of this Court’s original and exclusive jurisdiction is necessary to finally resolve competing escheat claims between the States over the same unclaimed and abandoned monetary instruments. As this Court has long recognized, “the States separately are without constitutional power . . . to settle” interstate escheat controversies. *Texas*, 379 U.S. at 677; *see also*, *Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71, 77 (1961).

Although 28 U.S.C. § 1251(a) gives this Court original and exclusive jurisdiction over “all controversies between two or more States,” this Court views its jurisdiction in these matters as “obligatory only in appropriate cases.” *Illinois v. Milwaukee*, 406 U.S. 91, 93-94 (1972); *see also Arizona v. New Mexico*, 425 U.S. 794,

796-98 (1976) (*per curiam* opinion declining to hear a dispute falling within the Supreme Court’s exclusive jurisdiction). In deciding whether to grant leave to file a complaint, this Court examines two factors: (1) “the nature of the interest of the complaining State,’ focusing on the ‘seriousness and dignity of the claim’”; and (2) “the availability of an alternative forum in which the issue tendered can be resolved.” *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) (citations omitted).

It is only as a sovereign that a State may take custody of abandoned property, and thus the interest Delaware seeks to enforce through its Bill of Complaint relates directly to its sovereign power and to the sovereign powers of the defendant States. Consequently, as this Court has recognized in *Texas*, *Pennsylvania* and *Delaware*, there is no State or lower federal court that has the power to resolve an interstate escheat controversy. Interstate escheat controversies are paradigmatic disputes heard by this Court under 28 U.S.C. § 1251(a). This is particularly true in the present case because the disputed property right was created by federal statute with the express intent to govern competing property claims between the States. Thus, this Court’s exercise of its original and exclusive jurisdiction in this case is warranted, and Delaware should be granted leave to file its Bill of Complaint.

1. The Seriousness and Dignity of Delaware's Claims Warrant Exercise of the Court's Original Jurisdiction.

The demands of Pennsylvania and Wisconsin that MoneyGram cease escheating unaddressed unclaimed Official Checks to Delaware is an attack on the sovereignty of Delaware to govern its corporate citizens. As is true with all controversies involving interstate escheat, fundamental State fiscal concerns are necessarily implicated. Specifically, with respect to the present case, the resolution of whether MoneyGram's Official Checks are subject to the Disposition of Abandoned Money Orders and Traveler's Checks Act ultimately impacts the disposition of unaddressed unclaimed intangible property having a value in the hundreds of millions of dollars. Gregor Declaration, Appendix A-41-42 at ¶¶ 4-6. There can be no more serious sovereign right intrinsically linked to a State's dignity than a State's ability to control its finances and the corollary right to collect unclaimed and abandoned property from its citizens. It is these very rights that Delaware seeks to protect in the Bill of Complaint and that are directly threatened by the litigation instituted by Pennsylvania and Wisconsin, albeit erroneously, in federal district courts located in their respective States.

This Court has previously declared that “[t]he model case for invocation of this Court's original jurisdiction is a dispute between States of such seriousness that it would amount to *casus belli* if the States were fully sovereign.” *Texas v. New Mexico*, 462 U.S. 554, 571

n.18 (1983) (citations omitted). Interstate escheat controversies are widely recognized to be just such disputes. Indeed, as indicated previously, interstate escheat controversies are a principal subject of the Court's original proceedings. *See Delaware*, 507 U.S. 490; *Pennsylvania*, 407 U.S. 206; *Texas*, 379 U.S. 674. Even those lower courts espousing a narrow understanding of the Supreme Court's original jurisdiction by allowing plaintiff States to proceed against defendant State officials to avoid the exclusivity of 28 U.S.C. § 1251(a), have nevertheless recognized that causes of action that implicate a State's core sovereign interests, such as cases involving multi-state escheat or which seek a monetary judgment against a State, must be brought before the Supreme Court pursuant to 28 U.S.C. § 1251(a). *See Connecticut v. Cahill*, 217 F.3d 93, 99-100 (2d Cir. 2000) (recognizing interstate escheat and seeking monetary judgments against a State as affecting core sovereign interests triggering the exclusive jurisdiction of the U.S. Supreme Court). Delaware's Bill of Complaint therefore raises exactly the type of serious claim implicating the dignity of a sovereign State that is appropriate for the exercise of original jurisdiction under 28 U.S.C. § 1251(a).

2. The State of Delaware Has No Alternative Forum

In determining whether to exercise its original jurisdiction, the Court considers the availability of an alternative forum in which the issue tendered can be resolved. *Mississippi*, 506 U.S. at 77. In considering whether an alternative forum is adequate to resolve a

dispute between States, this Court examines whether the alternative body could provide “full relief” for the States. *Wyoming v. Oklahoma*, 502 U.S. 437, 452 (1992). The present case is the quintessential dispute that can only be resolved by recourse to the Supreme Court’s original and exclusive jurisdiction.

Initially, no State court is able to exercise jurisdiction over a foreign State without the express consent of the foreign sovereign State. With respect to lower federal courts, it has been long established that the Eleventh Amendment confirms a broad immunity to States from suit in federal court, which is based upon principles of State sovereignty inherent in the Federal system established by the Constitution:

Since *Hans v. Louisiana*, 134 U.S. 1, 33 L. Ed. 842, 10 S. Ct. 504 (1890), we have understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition of our constitutional structure which it confirms: that the States entered the federal system with their sovereignty intact; that the judicial authority in Article III is limited by this sovereignty, . . . and that a State will therefore not be subject to suit in federal court unless it has consented to suit either expressly or in the ‘plan of the convention.’

Blatchford v. Native Village of Noatak, 501 U.S. 775, 779 (1991) (citations omitted). The exception to the broad State immunity outlined in *Blatchford* is an action initiated by one State against another State under the Supreme Court’s original and exclusive jurisdiction pursuant to 28 U.S.C. § 1251(a). That exception,

however, has been limited to suits between States over property rights like the very unclaimed property dispute Delaware seeks to have heard in this instance. *South Dakota v. North Carolina*, 192 U.S. 286, 318 (1904) (“[T]he clear import of the decisions of this court from the beginning to the present time is in favor of its jurisdiction over an action brought by one State against another to enforce a property right.”); *see also Kansas v. Colorado*, 533 U.S. 1, 7-9 (2001).

The notion of intact State sovereignty inherent in the Federal system that underlies a broad State immunity is particularly acute in the present case. In *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493 (1971), this Court noted two principles that underlie conferring original jurisdiction over a dispute between a State and citizens of another State; principles equally applicable to the present dispute between States. The *Ohio* Court was concerned with the appearance or reality of local jurisdiction partiality and the need for the deciding tribunal to have competent jurisdiction over all the parties. *Id.* at 500 (citations omitted). First, allowing a Pennsylvania or Wisconsin federal district court to entertain this suit, the outcome of which potentially shifts hundreds of millions of dollars from Delaware’s State treasury to the coffers of the other States, subjects Delaware to substantial risks that the cases will be influenced by local passions and concerns.

Second, at the heart of this case is the interpretation of a federal statute that establishes rules governing the disposition of a type of intangible property

subject to claims by two or more States. As such, a dispute under the Disposition of Abandoned Money Orders and Traveler's Checks Act will always necessarily be a property right dispute between States. Therefore, a definitive ruling of the types of monetary instruments governed by the Disposition of Abandoned Money Orders and Traveler's Checks Act is needed because it will touch, at a minimum, the 20 States involved in the TSG audit, and, ultimately, all 50 States in the Union. There simply is no tribunal other than the Supreme Court that can issue a final and complete interpretation of the Disposition of Abandoned Money Orders and Traveler's Checks Act that binds all of the States.

The above demonstrates that the present interstate escheat dispute arising under the Disposition of Abandoned Money Orders and Traveler's Checks Act cannot be heard in either State or federal district courts and can only be heard by the Supreme Court. *See, e.g., Western Union, supra*, at 77.

◆

CONCLUSION

The State of Delaware respectfully requests that the Motion for Leave to File Bill of Complaint be granted and that the Commonwealth of Pennsylvania and the State of Wisconsin be directed to answer the Complaint within sixty days. Because the case presents disputed issues of material fact, the State of

Delaware also requests that the Court appoint a Special Master to conduct proceedings and issue a report.

Respectfully submitted,

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**Counsel of Record*

May 2016

**DISPOSITION OF ABANDONED MONEY
ORDERS AND TRAVELER'S CHECKS**

**12 U.S.C. § 2501. Congressional findings and
declaration of purpose**

The Congress finds and declares that –

- (1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;
- (2) a substantial majority of such purchasers reside in the States where such instruments are purchased;
- (3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment;
- (4) it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto; and
- (5) the cost of maintaining and retrieving addresses of purchasers of money orders and traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments.

12 U.S.C. § 2502. Definitions

As used in this title [12 USCS §§ 2501 et seq.] –

- (1) “banking organization” means any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in the United States;
- (2) “business association” means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals; and
- (3) “financial organization” means any savings and loan association, building and loan association, credit union, or investment company engaged in business in the United States.

12 U.S.C. § 2503. State entitlement to escheat or custody

Where any sum is payable on a money order, traveler’s check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable –

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

extent of that State's power under its own laws to escheat or take custody of such sum;

- (2) if the books and records of such banking or financial organization or business association do not show the State in which such money order, traveler's check, or similar written instrument was purchased, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, until another State shall demonstrate by written evidence that it is the State of purchase; or
- (3) if the books and records of such banking or financial organizations or business association show the State in which such money order, traveler's check, or similar written instrument was purchased and the laws of the State of purchase do not provide for the escheat or custodial taking of the sum payable on such instrument, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, subject to the right of the State of purchase to recover such sum from the State of principal place of

business if and when the law of the State of purchase makes provision for escheat or custodial taking of such sum.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA**

TREASURY DEPARTMENT	:	
OF THE COMMONWEALTH	:	
and TREASURER TIMOTHY	:	No.
A. REESE, in his official	:	<u>[1:16-cv-00351-JEJ]</u>
capacity,	:	<i>(filed electronically)</i>
	:	
Plaintiffs,	:	JURY TRIAL
	:	DEMANDED
v.	:	
	:	
DELAWARE STATE	:	
ESCHEATOR DAVID	:	
GREGOR, in his official	:	
capacity, and MONEYGRAM	:	
PAYMENT SYSTEMS, INC.,	:	
	:	
Defendants.	:	

COMPLAINT

(Filed Feb. 26, 2016)

Treasury Department of the Commonwealth and Treasurer Timothy A. Reese, in his official capacity, allege as follows:

1. This is an action by Treasury Department of the Commonwealth and Treasurer Timothy A. Reese to recover money erroneously submitted to the Delaware State Escheator by MoneyGram Payment Systems, Inc. in violation of 12 U.S.C. § 2503 and Pennsylvania law.

JURISDICTION & VENUE

2. This civil action involves a dispute arising under the laws of the United States, hence the Court has subject matter jurisdiction under 28 U.S.C. § 1331.

3. The Court has supplemental jurisdiction over Plaintiffs' state law claim under 28 U.S.C. § 1367(a).

4. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) since a substantial part of the omissions or events giving rise to the claims at issue occurred in this district. All of the funds at issue in this dispute originated in Pennsylvania and all of them should have been submitted to the Pennsylvania Treasurer in Harrisburg. In addition, this matter calls for the application of Pennsylvania law.

PARTIES

5. Plaintiff Treasury Department of the Commonwealth is an independent department of the Commonwealth government and it is the department responsible for receiving unclaimed and abandoned property under Pennsylvania law.

6. Plaintiff Pennsylvania Treasurer Timothy A. Reese is the Treasurer of the Commonwealth of Pennsylvania. The Treasurer is responsible by statute for pursuing abandoned and unclaimed property under the Disposition of Abandoned and Unclaimed Property Act, 72 P.S. §§ 1301.1 *et seq.* The Treasurer is a party here in his official capacity.

7. Defendant Delaware State Escheator David Gregor is an official of the State of Delaware who is responsible under Delaware law for receiving abandoned and unclaimed property. The Delaware State Escheator is a party here in his official capacity.

8. MoneyGram Payment Systems, Inc. (hereafter, "MoneyGram") is a business incorporated in the State of Delaware and, upon information and belief, has its principal place of business in Texas. MoneyGram Payment Systems is a wholly owned subsidiary of MoneyGram International, Inc.

9. All parties have sufficient contacts with this district to confer personal jurisdiction.

10. The funds at issue originated in Pennsylvania and were required to be remitted to the custodial care of the Pennsylvania Treasury in Harrisburg by MoneyGram, yet the Delaware State Escheator reached into this jurisdiction and instructed MoneyGram not to remit the funds here but to remit them to Delaware instead.

FACTS

A. MoneyGram Money Orders and Official Checks

11. MoneyGram sells money orders and what it markets as "official checks."

12. Money orders are purchased from a participating MoneyGram location.

13. In general, the customer pays a transaction fee and pays the value the customers [sic] seeks to have reflected on the money order.

14. After receiving payment, the money-order seller issues an instrument that is pre-printed with the value of the payment remitted by the customer.

15. MoneyGram is directly liable for the pre-printed value of the money order.

16. Similar to money orders, official checks are purchased at a participating MoneyGram location.

17. Similar to the customer for a money order, in general, the customer for an official check pays a transaction fee and pays the value the customer seeks to have reflected on the official check.

18. After receiving payment, the official-check seller issues an instrument that is pre-printed with the value of the payment remitted by the customer.

19. MoneyGram is directly liable for the pre-printed value of the official check.

20. The only apparent differences between MoneyGram money orders and MoneyGram official checks are where they are sold and the amounts that can be reflected on them.

21. No material commercial difference exists between money orders and official checks.

22. As to place of sale, money orders are generally sold in traditional retail locations, e.g., drug stores;

whereas, official checks are generally sold at financial institutions, e.g., banks.

23. As to the amounts, money orders are generally subject to low face-value amount limits; whereas, official checks are not.

24. Save for where they are sold and the face-value limits, MoneyGram money orders and MoneyGram official checks are indistinguishable.

25. With both money orders and official checks, and as is also the case with traveler's checks, the customer pre-pays the value reflected on the instrument; that is, the funds for the value are immediately taken from the customer's custody.

26. The scenario for issuing a money order or an official check (or a traveler's check) is unlike the scenario for issuing a personal check to a third party: in the former the value for the instrument is immediately taken from the customer's custody, whereas in the latter the value remains in the customer's custody until the instrument is presented for payment at a financial institution.

27. MoneyGram money orders and MoneyGram official checks are similar written instruments.

28. In the alternative, MoneyGram official checks are money orders by a different name.

29. MoneyGram is directly liable for paying the sums owed on official checks.

30. When a MoneyGram official check is sold in Pennsylvania, MoneyGram ultimately becomes the holder of the value of the official check as a matter of Pennsylvania law and is not required to pay the value of the official check until it is processed for payment by a financial institution.

31. If an official check is never presented for payment, MoneyGram never releases the value of the official check.

32. This results in MoneyGram amassing large sums of money each year for which it is not the owner, but a mere holder.

33. With both money orders and official checks, sellers of the instruments typically do not record the address of the purchaser of the instruments.

B. Pennsylvania's Disposition of Abandoned and Unclaimed Property Act

34. Pennsylvania's Disposition of Abandoned and Unclaimed Property Act (the "Pennsylvania Unclaimed Property Act"), 72 P.S. § 1301.1 *et seq.*, defines which property is subject to placement with, or deposit in, the Pennsylvania Treasury, and subject to the custody and control of Commonwealth through the Pennsylvania Treasurer.

35. The Pennsylvania Unclaimed Property Act defines a "financial institution," in relevant part, as

“any issuer of travelers checks, money orders, or similar monetary obligations or commitments[.]” 72 P.S. § 1301.1.

36. MoneyGram issues money orders or similar monetary obligations or commitments.

37. MoneyGram is a “financial institution” under the Pennsylvania Unclaimed Property Act.

38. For MoneyGram official checks issued in Pennsylvania for which MoneyGram does not have the last known address of the owner of the check, the address of the owner of the official check is presumed to be in Pennsylvania. 72 P.S. § 1301.2(a)(2).

39. Under the Pennsylvania Unclaimed Property Act, the sums payable on checks or written instruments on which a financial institution is directly liable are presumed abandoned after being outstanding for a period of at least three years for checks/instruments generally, and seven years for money orders issued in 2004 and thereafter. 72 P.S. § 1301.3(3).

40. All statutorily abandoned property under the Pennsylvania Unclaimed Property Act is subject to the custody and control of the Commonwealth. 72 P.S. § 1301.1(a).

41. Pennsylvania abandoned property under the Pennsylvania Unclaimed Property Act must be reported to the Pennsylvania Treasurer in the year after it is abandoned and must eventually also be remitted to the custodial care of the Treasurer. 72 P.S. §§ 1301.11(a), 1301.13(a).

42. The Treasury Department retained an outside auditor to perform an audit of MoneyGram to determine if any abandoned property held by MoneyGram should have been remitted to Pennsylvania.

43. As a result of the audit, the Treasury Department learned MoneyGram sent to the Delaware State Escheator the sum of \$10,293,869.50, which represents the value paid for official checks issued in Pennsylvania but never cashed in the period 2000 through 2009 (hereafter, “the Pennsylvania Checks”).

44. All of the Pennsylvania Checks were issued in Pennsylvania.

45. All of the Pennsylvania Checks were outstanding for at least three years.

46. MoneyGram claims it does not have the last known address for the owners of the Pennsylvania Checks.

47. The last known address of the owner of the official checks is presumed to be Pennsylvania.

48. Under the Pennsylvania Unclaimed Property Act, the value held by MoneyGram for the Pennsylvania Checks was and is subject to the custody and control of the Commonwealth.

49. Under the Pennsylvania Unclaimed Property Act, MoneyGram is obligated by law to remit into the custodial care of the Pennsylvania Treasurer, via deposit in a Treasury account, all of the \$10,293,869.50

remitted to the Delaware State Escheator for the Pennsylvania Checks. MoneyGram is also obligated to submit a holder report, containing such information as the place where the instrument was purchased, the date of purchase, the amount of the purchase, the check number, and other relevant information related to the property.

50. Prior to its incorporation in Delaware, MoneyGram was incorporated in Minnesota.

51. During its incorporation in Minnesota, MoneyGram remitted payment for the sums due on abandoned official checks issued in Pennsylvania to Minnesota.

52. In 2015, Minnesota remitted to the Pennsylvania Treasurer the sum of \$209,840.30.

53. The sum remitted by Minnesota to the Pennsylvania Treasurer was for the sums payable on abandoned official checks issued by MoneyGram in Pennsylvania, which sums MoneyGram had previously remitted to Minnesota.

54. Integrated Payment Systems, Inc. is a business that also issues official checks.

55. Integrated Payment Systems remits the sums payable on abandoned official checks issued in Pennsylvania to the Pennsylvania Treasurer.

56. PNC Bank also issues official checks.

57. PNC remits the sums payable on abandoned official checks issued in Pennsylvania to the Pennsylvania Treasurer.

C. Disposition of Abandoned Money Orders and Traveler's Check Act

58. In *Pennsylvania v. New York*, 407 U.S. 206 (1972), the United States Supreme Court held that in the absence of record evidence of the address of the owner of an un-cashed money order, the state of the holder's corporate domicile had the right to escheat the sums owed on the money order.

59. In direct response to the Supreme Court's decision in *Pennsylvania v. New York*, Senator Hugh Scott of Pennsylvania introduced bill S. 1895 in the United States Senate, styled as the Federal Disposition of Unclaimed Property Act of 1973.

60. In support of his proposed legislation, Senator Scott entered into the official Senate Record an explanatory memorandum. In the memorandum, Senator Scott explained that the Supreme Court's decision inequitably resulted in millions of dollars generated in all 50 states being remitted to but 1 state:

The difficulty with the Supreme Court's decision is that in the case of travelers checks and commercial money orders where addresses do not generally exist large amounts of money will, if the decision applies to such instruments, escheat as a windfall to the state of corporate domicile and not to the other 49 states

where purchasers of travelers checks and money orders actually reside.

. . . .

Finally, Congress should note that the problem to which this bill is directed is a matter of important public concern in that the bill would, in effect, free for distribution among the states several million dollars in proceeds from abandoned property now being claimed by one state. The bill is eminently fair and equitable because it would permit the state where a travelers check or money order was purchased and which is the state of the purchasers' actual residence in over 90% of the transactions to escheat the proceeds of such instruments. . . .

119 Cong. Rec. S9749-9750 (daily ed. May 29, 1973).

61. With some modifications, Senator Scott's proposed bill was eventually enacted into law (under another bill number) as the Disposition of Abandoned Money Orders and Traveler's Checks Act (the "Federal Disposition Act"), 12 U.S.C. §§ 2501-03.

62. In relevant part under the Federal Disposition Act, "[w]here any sum is payable on a money order, traveler's check, or similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable," the State where the money order, traveler's check, or similar written instrument was purchased "shall be entitled exclusively to escheat or take custody of the sum payable on such instrument,

to the extent of that State's power under its own laws to escheat or take custody of such sum[.]” 12 U.S.C. § 2503(1).

63. Under the Federal Disposition Act, a “business association” is defined as “any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals[.]” 12 U.S.C. § 2502(1).

64. MoneyGram is a business association under the Federal Disposition Act.

65. MoneyGram's books and records show Pennsylvania as the state where the Pennsylvania Checks were purchased.

66. MoneyGram official checks are not third party bank checks.

67. Pennsylvania's Unclaimed Property Act permits Pennsylvania to take custody of the sums payable on the Pennsylvania Checks.

68. Under the Federal Disposition Act, Pennsylvania has the “exclusive” right to take custody of the sums payable on the Pennsylvania Checks.

D. Treasury Department's Demands for Payment

69. As early as July 2015, the State of Texas made a demand on the Delaware State Escheator for

payment of the sums remitted by MoneyGram for abandoned official checks purchased in that state.

70. Other states, including Colorado, have made similar demands on Delaware for payment of the sums payable on abandoned MoneyGram official checks that were purchased in states other than Delaware, but that were nevertheless remitted to the Delaware State Escheator.

71. The Delaware State Escheator has acknowledged that he has been aware of the issues with MoneyGram official checks since at least April 2015.

72. Prior to initiating this action, the Treasury Department in mid-2015 contacted representatives of the Delaware State Escheator regarding the sums payable on abandoned MoneyGram official checks issued in Pennsylvania.

73. By way of letter on September 29, 2015, the Delaware State Escheator indicated his “preliminary analysis” showed that Delaware was rightfully in custody of the sums payable on the MoneyGram official checks at issue.

74. After having heard nothing further from Delaware regarding a “final analysis,” via letter dated January 25, 2016, Plaintiffs demanded that the Delaware State Escheator and MoneyGram remit to Plaintiffs the sums payable on the Pennsylvania Checks.

75. Plaintiffs included with the demand letter a spreadsheet showing each of the Pennsylvania Checks

and showing the total amount payable on the Pennsylvania Checks: \$10,293,869.50.

76. In the letter, Plaintiffs also demanded that MoneyGram immediately cease remitting sums payable on official checks purchased in Pennsylvania to Delaware.

77. In response to the January 26 letter, the Delaware State Escheator by letter dated February 3, 2016 still refused to take a final position on whether the sums payable on the Pennsylvania Checks were payable to Pennsylvania, though he indicated his skepticism that state and federal law required payment to Pennsylvania.

78. The Delaware State Escheator also refused to meet in person or by phone to discuss the matters, stating: "While we appreciate your offer to meet in person or to conduct a teleconference, Delaware believes at this time written documentation, as opposed to discussion, would be most constructive."

79. In response to the January 26 letter, MoneyGram indicated that it would abide by a decision by Delaware and Pennsylvania, or by a court's declaration, regarding which state is entitled to the sums payable on the Pennsylvania Checks.

80. MoneyGram also indicated that it would consider paying future sums payable on uncashed official checks purchased in Pennsylvania to the Pennsylvania Treasurer.

81. By letter dated February 9, 2016, MoneyGram sought extensions from the Delaware State Escheator and the Pennsylvania Treasurer of its upcoming deadline to report uncashed official checks purchased in Pennsylvania, or, in the alternative, that it be permitted to report and remit the uncashed official checks to an acceptable third-party.

82. In reply to the responses from the Delaware State Escheator and MoneyGram, Plaintiffs sent a letter to the Delaware State Escheator dated February 18, 2016, demanding that Delaware take a final position within seven days on whether the sums payable on the Pennsylvania checks should be remitted to Plaintiffs.

83. Representatives of the Delaware State Escheator then agreed to a call on the matter, which was had on February 22, 2016.

84. Despite the multiple letters and the telephone call, the Delaware State Escheator has taken the position that the MoneyGram official checks are “third party bank checks” and thus the sums payable on the Pennsylvania Checks are not subject to custody by Plaintiffs.

**COUNT I: DECLARATORY JUDGMENT ACT,
28 U.S.C. § 2201 (AGAINST ALL DEFENDANTS)**

85. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

86. There exists an actual controversy between Plaintiffs and Defendants regarding whether MoneyGram official checks are subject to the custody and control of Plaintiffs or the Delaware State Escheator under the Federal Disposition Act and the Pennsylvania Unclaimed Property Act.

87. Plaintiffs seek a declaration that the MoneyGram official checks are “similar written instruments” under the Federal Disposition Act.

88. In the alternative, Plaintiffs seek a declaration that the MoneyGram official checks are money orders under the Federal Disposition Act.

89. Plaintiffs seek a declaration that the MoneyGram official checks are not third party bank checks.

90. Plaintiffs seek a declaration that the Delaware State Escheator stands in violation of the Federal Disposition Act since Pennsylvania is the state “exclusively entitled” to custody of the sums payable on the Pennsylvania Checks.

91. Plaintiffs seek a declaration that MoneyGram stands in violation of both the Federal Disposition Act and the Pennsylvania Unclaimed Property Act since the sums payable on the Pennsylvania Checks should have been remitted to the custodial care of Plaintiffs.

92. Plaintiffs seek a declaration that all future sums payable on abandoned MoneyGram official

checks that were purchased in Pennsylvania be remitted to Plaintiffs.

93. The interests of Plaintiffs and Defendants are adverse: Plaintiffs have demanded payment on the sums payable on the Pennsylvania Checks and demanded that future sums payable on abandoned MoneyGram official checks be remitted to Plaintiffs; Defendants have refused to comply with Plaintiffs' demands.

94. A ruling by this Court on whether MoneyGram official checks are subject to the custody of Plaintiffs under the Federal Disposition Act and the Pennsylvania Unclaimed Property Act will conclusively resolve the disputes between the parties.

95. A decision by this Court on the issues presented will render practical help to the parties in that a decision will determine which parties are entitled to which sums now and going forward.

**COUNT II: VIOLATION OF 12 U.S.C. § 2503
(AGAINST ALL DEFENDANTS)**

96. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

97. The Federal Disposition Act was intended to provide federal priority rules between competing states regarding which state has a superior claim to certain un-cashed instruments, such as the Pennsylvania Checks.

98. It was also, on its face, intended to give a state an implied remedy to seek payment if sums subject to the priority rules under the Federal Disposition Act were not remitted to the custodial care of the state that has the “exclusive[]” right to take custody of the sums at issue.

99. The Delaware State Escheator has violated the Federal Disposition Act by unlawfully taking custody of the sums payable on the Pennsylvania Checks because Pennsylvania has the exclusive right to take custody of the sums payable on the Pennsylvania Checks.

100. MoneyGram has violated the Federal Disposition Act by remitting to the Delaware State Escheator the sums payable on the Pennsylvania Checks because Pennsylvania has the exclusive right to take custody of the sums payable on the Pennsylvania Checks.

**COUNT III: VIOLATION OF DISPOSITION OF
ABANDONED AND UNCLAIMED PROPERTY
ACT, 72 P.S. § 1301.1 *ET SEQ.* (AGAINST
MONEYGRAM PAYMENT SYSTEMS, INC.)**

101. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

102. The Pennsylvania Unclaimed Property Act allows the Treasurer to pursue a civil action against a person that refuses to pay to the Treasurer sums payable under the Act. 72 P.S. § 1301.24(a).

103. The sums payable on the Pennsylvania Checks should have been remitted to the custodial care of the Pennsylvania Treasurer by MoneyGram.

104. Despite demands for payment by Plaintiffs, MoneyGram has refused to pay the sums payable on the Pennsylvania Checks.

105. The Pennsylvania Unclaimed Property Act provides that if the holder of abandoned property subject to the Act fails to pay without proper cause as required, the holder is subject to an interest rate of 12% per annum. 72 P.S. § 1301.24(b).

106. MoneyGram is without proper cause to fail to pay the sums payable on the Pennsylvania Checks, and as such, it is liable for 12% interest.

107. MoneyGram should have reported the sums payable on the Pennsylvania Checks to the Treasurer in the year after they became subject to the Pennsylvania Unclaimed Property Act. 72 P.S. § 1301.11.

108. MoneyGram is without proper cause to fail to report the sums owed.

109. By failing to report as required and without proper cause, Plaintiffs are entitled to a \$1000 per day penalty from MoneyGram. 72 P.S. § 1301.24.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment as follows:

A. On Count One, entering judgment in favor of Plaintiffs and against Defendants and entering the following declarations:

- i. The MoneyGram official checks are “similar written instruments” under the Federal Disposition Act.
- ii. In the alternative, the MoneyGram official checks are money orders under the Federal Disposition Act.
- iii. MoneyGram official checks are not third party bank checks.
- iv. The Delaware State Escheator violated the Federal Disposition Act by accepting the sums payable on the Pennsylvania Checks and by refusing to return them upon demand since Pennsylvania is the state “exclusively entitled” to custody of those sums.
- v. MoneyGram violated the Federal Disposition Act and the Pennsylvania Unclaimed Property Act since the sums payable on the Pennsylvania Checks should have been remitted to the custodial care of Plaintiffs.
- vi. All future sums payable on abandoned MoneyGram official checks that were purchased in Pennsylvania should be remitted to Plaintiffs by MoneyGram.

B. On Count Two, awarding damages in favor of Plaintiffs and against MoneyGram, in an amount to be determined at trial, but in no event less than

\$10,293,869.50 plus interest at 12% per annum, penalties of \$1000 per day, and attorneys' fees and costs, and entering judgment in favor of Plaintiffs and against Defendants, entering the following declarations:

- i. The MoneyGram official checks are "similar written instruments" under the Federal Disposition Act.
- ii. In the alternative, the MoneyGram official checks are money orders under the Federal Disposition Act.
- iii. MoneyGram official checks are not third party bank checks.
- iv. The Delaware State Escheator violated the Federal Disposition Act by accepting the sums payable on the Pennsylvania Checks and by refusing to return them upon demand since Pennsylvania is the state "exclusively entitled" to custody of those sums.
- v. MoneyGram violated the Federal Disposition Act and the Pennsylvania Unclaimed Property Act since the sums payable on the Pennsylvania Checks should have been remitted to the custodial care of Plaintiffs.
- vi. All future sums payable on abandoned MoneyGram official checks that were purchased in Pennsylvania should be remitted to Plaintiffs by MoneyGram.

C. On Count Three, awarding damages in favor of Plaintiffs and against MoneyGram, in an amount to be determined at trial, but in no event less than

\$10,293,869.50 plus interest at 12% per annum, penalties of \$1000 per day, and attorneys' fees and costs.

D. Granting Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,	Respectfully submitted,
KLEINBARD LLC	CHRISTOPHER B. CRAIG
By: <u>/s/ Matthew H. Haverstick</u>	Chief Counsel
Matthew H. Haverstick,	Attorney ID No. 65203
Esq. (No. 85072)	<u>/s/ Jennifer Langan</u>
Mark E. Seiberling, Esq.	<i>(with consent)</i>
(No. 91256)	Jennifer Langan, Esq.
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Attorneys for Plaintiffs

Dated: February 26, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WISCONSIN DEPARTMENT
OF REVENUE,

Plaintiff,

v.

Case No. 16-cv-281

DELAWARE STATE
ESCHEATOR DAVID
GREGOR, in his official
capacity,

and

MONEYGRAM PAYMENT
SYSTEMS, INC.,

Defendants.

COMPLAINT

(Filed Apr. 27, 2016)

The Wisconsin Department of Revenue (DOR or Wisconsin), for a complaint against the defendants, alleges:

1. This is an action by Wisconsin to recover money erroneously submitted to the Delaware State Escheator by MoneyGram Payment Systems, Inc. in violation of 12 U.S.C. § 2503 and Wisconsin law.

JURISDICTION & VENUE

2. This Court has subject matter jurisdiction in this case under 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States.

3. This Court has supplemental jurisdiction over Wisconsin's state law claim under 28 U.S.C. § 1367(a).

4. The case is properly venued in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the omissions or events giving rise to the dispute occurred in this district. All of the funds at issue in this dispute originated in Wisconsin, and all of the money should have been submitted to the Wisconsin Department of Revenue in Madison, Wisconsin. In addition, adjudication of this case requires the application of Wisconsin law.

PARTIES

5. DOR is a department of the State of Wisconsin and is the statutory repository for unclaimed and abandoned property under Wisconsin law.

6. Defendant Delaware State Escheator David Gregor (Gregor) is an official of the State of Delaware who is responsible under Delaware law for receiving abandoned and unclaimed property. Gregor is made a party to this action in his official capacity.

7. MoneyGram Payment Systems, Inc. (MoneyGram) is a Delaware corporation that has its principal place of business in Texas. MoneyGram is a

wholly owned subsidiary of MoneyGram International, Inc.

8. All parties have sufficient contacts with this district to warrant personal jurisdiction in this district.

FACTS

A. MoneyGram Money Orders and Official Checks

9. MoneyGram sells money orders and instruments that it markets as “official checks.”

10. These mediums of exchange are “instruments” within the meaning of the Uniform Commercial Code as adopted in Wisconsin (Wis. Stat. § 403.104(2)), and are collectively called “instruments” in this complaint.

11. MoneyGram sells its instruments to the public through MoneyGram offices located in Wisconsin.

12. Purchasers pay MoneyGram the amount of the instrument, plus a transaction fee.

13. After receiving payment, MoneyGram issues the instrument to the purchaser.

14. MoneyGram is directly liable for the stated amount of the instrument.

15. “Official check” is synonymous with “money order.” There is no material commercial difference between the instruments.

16. MoneyGram sells money orders in traditional retail locations, such as drug stores.

17. MoneyGram generally sells official checks at banks and other financial institutions.

18. MoneyGram accepts only immediate payment when selling its instruments; it does not sell instruments on credit.

19. MoneyGram is directly liable to pay the amount of its instruments.

20. When a MoneyGram official check is sold in Wisconsin, MoneyGram is the holder of the value of the official check as a matter of Wisconsin law and is not required to pay the value of the official check until it is processed for payment by a financial institution.

21. If an instrument is never presented for payment, MoneyGram never releases the value of the instrument.

22. MoneyGram does not generally record the addresses of the purchasers of the instruments.

B. Wisconsin's Unclaimed Property Law

23. Wisconsin's Unclaimed Property Act (the "Act"), Wis. Stat. ch. 177, defines which property is subject to deposit in the unclaimed property fund and which is subject to the custody and control of the state through the DOR.

24. Wisconsin Stat. § 177.01(8) defines a “holder” as any entity that is in possession of property belonging to another, or indebted to another on an obligation.

25. As an issuer of the described instruments, MoneyGram is a holder for purposes of the Act.

26. Any sum payable on an instrument that has been outstanding more than 7 years after issuance without communication from the owner is presumed to be abandoned property. Wis. Stat. § 177.04(2).

27. Sums payable on abandoned instruments are subject to Wisconsin’s custody if the records of the issuer show that the instrument was purchased in Wisconsin. Wis. Stat. § 177.04(4)(a).

28. Wisconsin Stat. § 177.17(4)(a) requires MoneyGram to report all abandoned property to the administrator of the Act.

29. Wisconsin Stat. § 177.17(4)(a)2. requires MoneyGram to pay or to deliver to the administrator of the Act all abandoned property that MoneyGram is required to report.

30. On information and belief, MoneyGram has sent to the Delaware State Escheator sums exceeding \$13,000,000 as abandoned property, that represent amounts for which MoneyGram was liable on instruments purchased in Wisconsin but never negotiated for the years 2000 and after (hereafter, the “Wisconsin Instruments”).

31. Wisconsin Stat. § 177.17(4)(a)2. required MoneyGram to pay or deliver all of them [sic] money described in the preceding paragraph to the administrator of the Act.

C. Disposition of Abandoned Money Orders and Traveler’s Check Act

32. A federal law, The Disposition of Abandoned Money Orders and Traveler’s Checks Act (the “Federal Disposition Act”), 12 U.S.C. §§ 2501-03, applies to the facts of this case.

33. Under the Federal Disposition Act, if any sum is payable on a money order, traveler’s check, or similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable, the State where the money order, traveler’s check, or similar written instrument was purchased holds the exclusive right to escheat or take custody of the sum payable on such instrument, to the extent of that State’s power under its own laws to escheat or to take custody of such sum. 12 U.S.C. § 2503(1).

34. Under the Federal Disposition Act, a “business association” is defined as “any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals[.]” 12 U.S.C. § 2502(2).

35. MoneyGram is a business association under the Federal Disposition Act.

36. MoneyGram's books and records show Wisconsin as the state where the Wisconsin Instruments were purchased.

37. The Wisconsin Instruments are not third party bank checks.

38. The Wisconsin Unclaimed Property Act permits Wisconsin to take custody of the sums payable on the Wisconsin Instruments.

39. Under the Federal Disposition Act, Wisconsin has the exclusive right to take custody of the sums payable on the Wisconsin Instruments.

40. The funds at issue originated in Wisconsin and were statutorily required to be remitted to the Wisconsin Department of Revenue in Madison, Wisconsin.

41. Gregor instructed MoneyGram not to remit the funds to Wisconsin, and to remit the money to Delaware instead.

42. Gregor has not honored Wisconsin's right to custody of the sums payable on Wisconsin Instruments.

**COUNT I: DECLARATORY JUDGMENT ACT,
28 U.S.C. § 2201
(AGAINST ALL DEFENDANTS)**

43. Wisconsin incorporates the foregoing paragraphs as if fully set forth herein.

44. There is an actual controversy between Wisconsin and the defendants regarding Wisconsin's right to custody of the sums payable on abandoned Wisconsin Instruments.

45. Wisconsin seeks a declaration that:

- a. the MoneyGram official checks constitute "similar written instruments" under the Federal Disposition Act;
- b. in the alternative, the MoneyGram official checks are money orders under the Federal Disposition Act;
- c. the MoneyGram official checks are not third party bank checks;
- d. as to abandoned Wisconsin Instruments, Gregor, as the Delaware State Escheator, is violating Wisconsin's right to custody of the sums remitted to Delaware that represent the proceeds of abandoned Wisconsin Instruments;
- e. MoneyGram's transfer to Delaware of the proceeds of abandoned Wisconsin Instruments violates both the Federal Disposition Act and the Wisconsin Unclaimed Property Act; and

- f. all future sums payable on abandoned MoneyGram official checks that were purchased in Wisconsin shall be remitted to Wisconsin.

46. The interests of Wisconsin and the defendants are adverse: Wisconsin has demanded payment on the sums payable on the Wisconsin Instruments and has demanded that future sums payable on abandoned MoneyGram official checks purchased in Wisconsin be remitted to Wisconsin; the defendants have refused to comply with Wisconsin's demands.

47. A determination by this Court of the competing rights of Wisconsin and Delaware to abandoned MoneyGram official checks purchased in Wisconsin under the Federal Disposition Act and the Wisconsin Unclaimed Property Act will conclusively resolve the disputes between the parties.

48. A decision by this Court on the issues presented will render practical help to the parties, in that a decision will determine which parties are entitled to the proceeds of abandoned Wisconsin Instruments in the future.

**COUNT II: VIOLATION OF THE ACT
(AGAINST MONEYGRAM PAYMENT
SYSTEMS, INC.)**

49. Wisconsin incorporates the foregoing paragraphs as if fully set forth herein.

50. The Act required MoneyGram to report to Wisconsin all abandoned Wisconsin Instruments.

51. MoneyGram failed to report as required.

52. Money Gram was lawfully required to remit the sums payable on the abandoned Wisconsin Instruments to the custody of the DOR.

53. MoneyGram has not remitted to DOR the sums payable on the abandoned Wisconsin Instruments.

54. The Act provides that if the holder of abandoned property fails to report or remit as required, it is subject to a forfeiture of not less than \$100/day, not to exceed \$5,000, for each day the report is not filed or the funds are not remitted. Wis. Stat. § 177.34(2).

55. The Act provides that if the holder of abandoned property subject to the Act fails to remit funds as required, the holder is subject to an interest charge of 18% per annum from the date the property should have been remitted. Wis. Stat. § 177.34(1).

56. The Act provides that if the holder of abandoned property subject to the Act fails to remit funds as required, the holder is subject to a forfeiture of 25% of the value of the property that should have been remitted. Wis. Stat. § 177.34(3).

57. The Wisconsin Unclaimed Property Act authorizes the Wisconsin Attorney General to pursue civil actions for the purpose of enforcing the Act. Wis. Stat. § 177.32.

COUNT III: VIOLATION OF THE FEDERAL DISPOSITION ACT (AGAINST MONEYGRAM PAYMENT SYSTEMS, INC.)

58. Wisconsin incorporates the foregoing paragraphs as if fully set forth herein.

59. Under the Federal Disposition Act, Wisconsin has the exclusive right to take custody of the sums payable on the Wisconsin Instruments.

60. Money Gram [sic] was lawfully required under the Federal Disposition Act to remit the sums payable on the abandoned Wisconsin Instruments to the custody of the DOR.

61. MoneyGram has not remitted to DOR the sums payable on the abandoned Wisconsin Instruments.

WHEREFORE, Wisconsin requests judgment as follows:

A. On Count I, entering judgment in favor of Wisconsin and against defendants and declaring that:

- a. The MoneyGram official checks constitute "similar written instruments" under the Federal Disposition Act;
- b. in the alternative, the MoneyGram official checks are money orders under the Federal Disposition Act;
- c. the MoneyGram official checks are not third party bank checks;

- d. as to abandoned Wisconsin Instruments, Gregor, as the Delaware State Escheator is violating Wisconsin's right to custody of the sums remitted to Delaware that represent the proceeds of abandoned Wisconsin Instruments;
- e. MoneyGram's transfer to Delaware of the proceeds of abandoned Wisconsin Instruments violates both the Federal Disposition Act and the Wisconsin Unclaimed Property Act; and
- f. all future sums payable on abandoned MoneyGram official checks that were purchased in Wisconsin shall be remitted to Wisconsin.

B. On Count II, awarding damages in favor of Wisconsin and against MoneyGram, in an amount to be determined at trial, plus interest at 18% per annum, penalties of \$100/day (up to \$5,000) a 25% penalty on amounts for which required remittance was not made, and attorneys' fees and costs.

C. On Count III, awarding damages in favor of Wisconsin and against MoneyGram in an amount to be determined at trial.

D. Granting Wisconsin such other and further relief as the Court deems just and proper.

Dated this 27th day of April, 2016.

BRAD D. SCHIMEL
Wisconsin Attorney General

/s/F. Mark Bromley
F. MARK BROMLEY
Assistant Attorney General
State Bar #1018353

THERESA (ESA) M. ANZIVINO
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No. _____, Original

**In The
Supreme Court of the United States**

—◆—

STATE OF DELAWARE,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA AND
STATE OF WISCONSIN,

Defendants.

—◆—

DECLARATION OF DAVID GREGOR

David Gregor hereby declares pursuant to 28 U.S.C. § 1746, as follows:

1. I am over 18 years of age and have personal knowledge of the facts set forth herein. I am the Delaware State Escheator. I am responsible for the administration and enforcement of Delaware's abandoned property statute. I submit this Declaration in support of Delaware's Motion For Leave to File Bill of Complaint in the United States Supreme Court.

AMOUNT OF CONTROVERSY

2. According to a February 10, 2015 letter from contract auditor TSG to MoneyGram, the amount related to MoneyGram official checks that TSG asserted was owed to Pennsylvania, but had instead escheated to Delaware was \$9,660,480. The amount related to MoneyGram official checks that TSG asserted was owed to Wisconsin, but had instead escheated to Delaware was \$15,646,260. A copy of the February 10, 2015 letter from TSG to MoneyGram is attached hereto as Exhibit A.

3. The February 10, 2015 letter also lists amounts owed to 18 other states that are TSG's clients. The total amount listed in the February 10, 2015 letter as owed to Pennsylvania, Wisconsin and the 18 other states, but had instead escheated to Delaware, was \$151,158,897. No time period was provided in the February 10, 2015 letter. The State of Delaware disputes that this is the correct amount, even if TSG's position was accepted.

4. In response to requests from the State of Delaware for documentation to support the asserted \$151,158,897 liability, TSG provided to the State of Delaware an Excel spreadsheet. The total asserted liability was \$146,944,156.02 for transaction years 1999-2009. No explanation was provided for the discrepancy in the numbers between the spreadsheet and the February 10, 2015 letter.

5. The State of Delaware estimates that an additional \$135 million from report years 2005 to 2014,

which generally corresponds to transaction years 1999 to 2009, relates to MoneyGram official checks issued in states not participating in TSG's audit. This amount would also be due by Delaware to those non-participating states if TSG's position was accepted.

6. In total, then, the total past-due amount at issue relating to the MoneyGram Official Checks is nearly \$300 million.

7. Since additional MoneyGram official checks have become dormant since the period covered by TSG's audit, the determination sought in this case would affect the escheat to Delaware of amounts relating to MoneyGram official checks in addition to those described above.

8. Additionally, the determination sought in this case would affect the escheat to Delaware of additional amounts related to MoneyGram official checks issued in the future.

9. The State of Delaware has been directly contacted by more than ten states, all of whom have asserted that Delaware or MoneyGram owes that respective state some amount of money related to MoneyGram Official Checks. In addition, Delaware has been directly sued by the Commonwealth of Pennsylvania and the State of Wisconsin in the United States District Courts.

I declare under penalty of perjury that the foregoing is true and correct.

May 17, 2016
Date

/s/
David M. Gregor

Exhibit A

TSG

TREASURY SERVICES GROUP

1100 Main Street • Suite 2720 • Kansas City, MO
64105 • Tel: 402.682.7260 • Fax: 402.939.0200

February 10, 2015

Tim Davis
Vice President & Associate General Counsel
MoneyGram International
2828 North Harwood Street, 15th Floor
Dallas, TX 75201

Dear Mr. Davis:

Treasury Services Group, LLC has completed its review of MoneyGram International's books and records regarding unclaimed Official Checks on behalf of the States listed below. After reviewing your records and consulting with the States, we have determined that the following amounts are now past-due for reporting (in addition to amounts that have accumulated subsequently):

Alabama	\$14,568,460
Arkansas	\$669,885
Colorado	\$6,069,914
Florida	\$11,849,081
Idaho	\$1,586,148
Kentucky	\$2,681,101
Louisiana	\$1,543,601
Maryland	\$10,517,801
Michigan	\$8,285,387
Minnesota	\$18,701,534

Nebraska	\$1,826,474
New Hampshire	\$242,762
Ohio	\$25,706,091
Oregon	\$4,468,441
Pennsylvania	\$9,660,480
South Dakota	\$1,121,173
Texas	\$9,404,897
Washington	\$5,367,141
Wisconsin	\$15,646,260
Wyoming	\$1,242,266

We understand that these amounts have been improperly reported to Delaware, contrary to the requirements of 12 U.S.C. §§ 2501-2503. We suggest that you immediately begin the process of requesting reimbursement from that State.

These amounts are due and payable immediately. Please let us know when the payment is ready and we will send you transmission instructions. If payment is not received within 30 days, the States have informed us that they will initiate enforcement action.

Please let me know if you have any questions.

Sincerely,

/s/ Alex Kauffman
Alex Kauffman
