Nos. 22O145 & 22O146

IN THE

Supreme Court of the United States

DELAWARE,

Plaintiff,

v.

PENNSYLVANIA AND WISCONSIN,

Defendants.

ARKANSAS, *et al.*,

Plaintiffs,

v.

DELAWARE,

Defendant.

On Exceptions To The Report Of The Special Master

APPENDIX TO EXCEPTIONS TO REPORT OF THE SPECIAL MASTER BY THE STATE OF DELAWARE – VOLUME II OF III

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Additional counsel listed on inside cover

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TABLE OF CONTENTS

Page

VOLUME I:

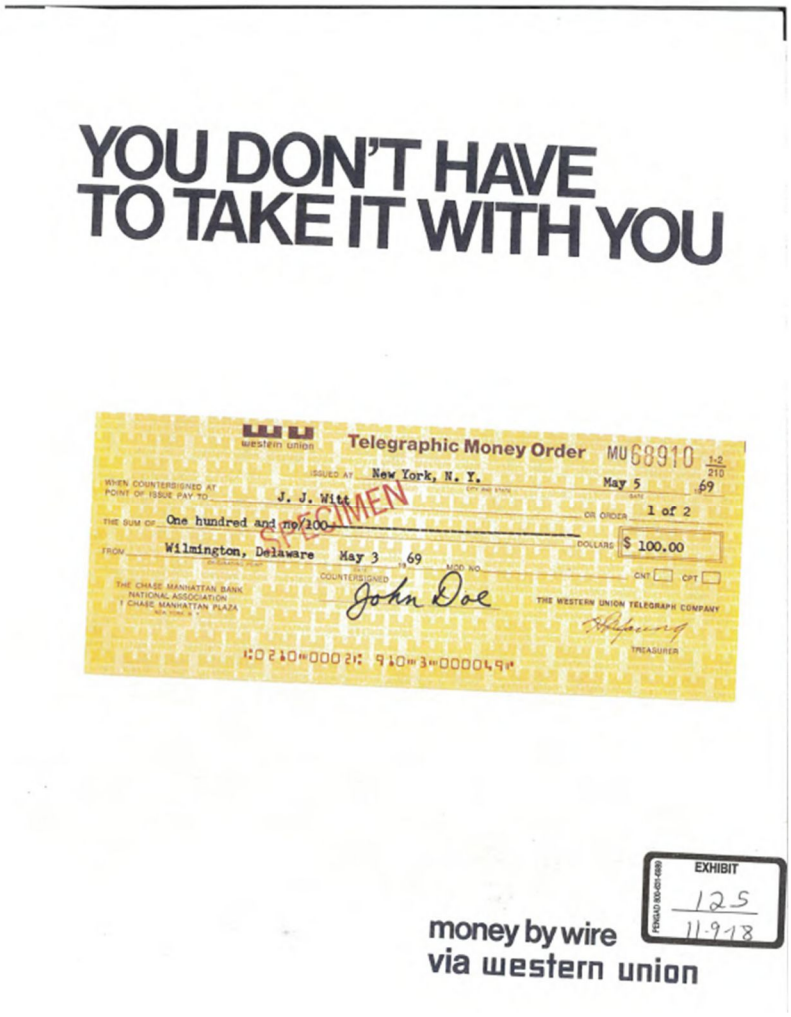
TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

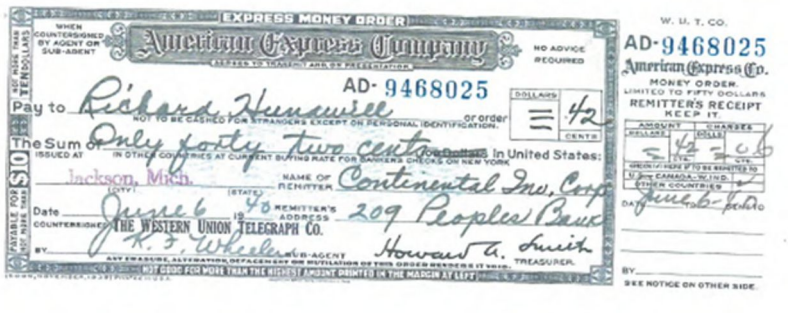
TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

DEPOSITION OF RONALD J. MANN—
EXHIBIT 125



DEPOSITION OF RONALD J. MANN—
EXHIBIT 126


EXPRESS MONEY ORDER
American Express Company
AD- 9468025
Pay to Richard Hunswell or order
The Sum Only forty two cents In United States:
Jackson, Mich.
Date June 6 19 40
THE WESTERN UNION TELEGRAPH CO.
Continental Inv. Corp
209 Peoples Bank
Howard A. Smith TREASURER
W. U. T. CO.
AD-9468025
American Express Co.
MONEY ORDER.
REMITTER'S RECEIPT
KEEP IT.
42 c
June 6 1940

NOTICE

THIS MONEY ORDER IS NOT PAYABLE TO BEARER.

IF HOLDER IS UNKNOWN CONCLUSIVE EVIDENCE OF IDENTITY MUST BE FURNISHED.

ENDORSE HERE

PROTECT YOUR TRAVEL FUNDS

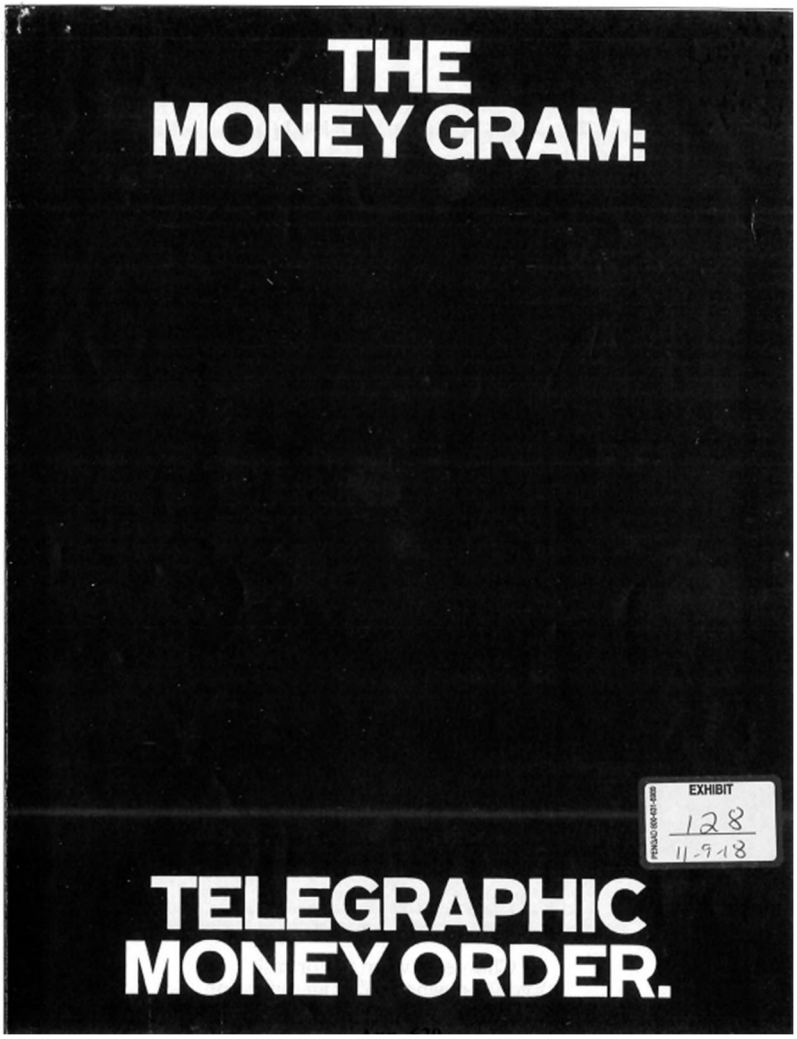
CARRY

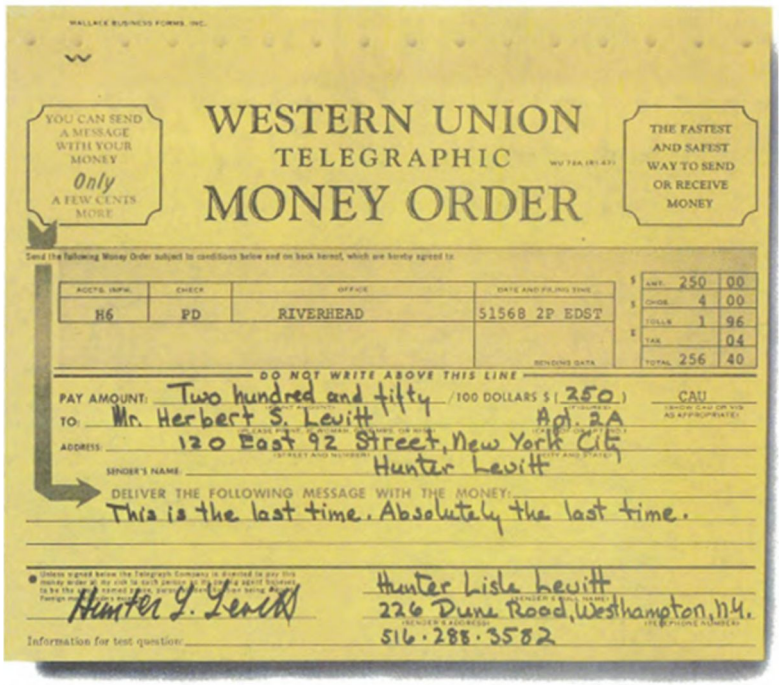
AMERICAN EXPRESS TRAVELERS CHEQUES

WHEN REMITTING TO FOREIGN COUNTRIES
USE AMERICAN EXPRESS SERVICE

NOTICE—IF THE MONEY ORDER DESCRIBED ON REVERSE HEREOF IS LOST OR DESTROYED, THE AMERICAN EXPRESS COMPANY WILL REFUND TO OWNER THE FACE VALUE THEREOF UPON PRESENTATION OF THIS RECEIPT AND EXECUTION OF THE COMPANY'S AGREEMENT FOR REFUND.

DEPOSITION OF RONALD J. MANN—
EXHIBIT 128





WESTERN UNION
TELEGRAPHIC
MONEY ORDER

YOU CAN SEND A MESSAGE WITH YOUR MONEY *Only* A FEW CENTS MORE

THE FASTEST AND SAFEST WAY TO SEND OR RECEIVE MONEY

ACCTG. INFM.	CHECK	OFFICE	DATE AND FILING TIME
H6	PD	RIVERHEAD	51568 2P EDST

AMT.	250 00
CHGS.	4 00
TOLLS	1 96
TAX	04
TOTAL	256 40

DO NOT WRITE ABOVE THIS LINE

PAY AMOUNT: Two hundred and fifty /100 DOLLARS $(250)

TO: Mr. Herbert S. Levitt Apt. 2A

ADDRESS: 120 East 92 Street, New York City

SENDER'S NAME: Hunter Levitt

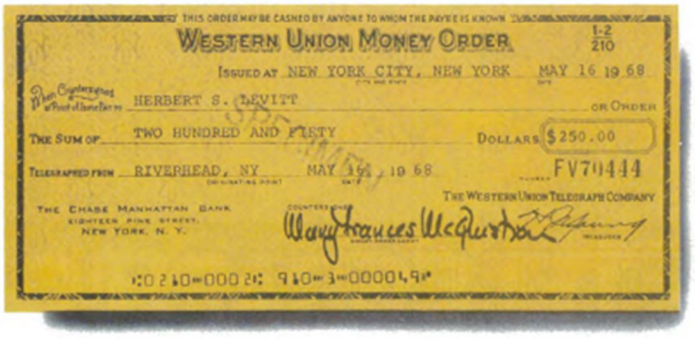
DELIVER THE FOLLOWING MESSAGE WITH THE MONEY:
This is the last time. Absolutely the last time.

Hunter L. Levitt

Hunter Lisle Levitt
226 Dune Road, Westhampton, N.Y.
516-288-3582

Information for test question:

How to answer a cry for help.
Fast.



THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN

WESTERN UNION MONEY ORDER 1-2 210

ISSUED AT NEW YORK CITY, NEW YORK MAY 16 19 68

When Countersigned at Post of Home Office

HERBERT S. LEVITT OR ORDER

THE SUM OF TWO HUNDRED AND FIFTY DOLLARS $250.00

TELEGRAPHED FROM RIVERHEAD, NY MAY 16, 19 68 FV70444

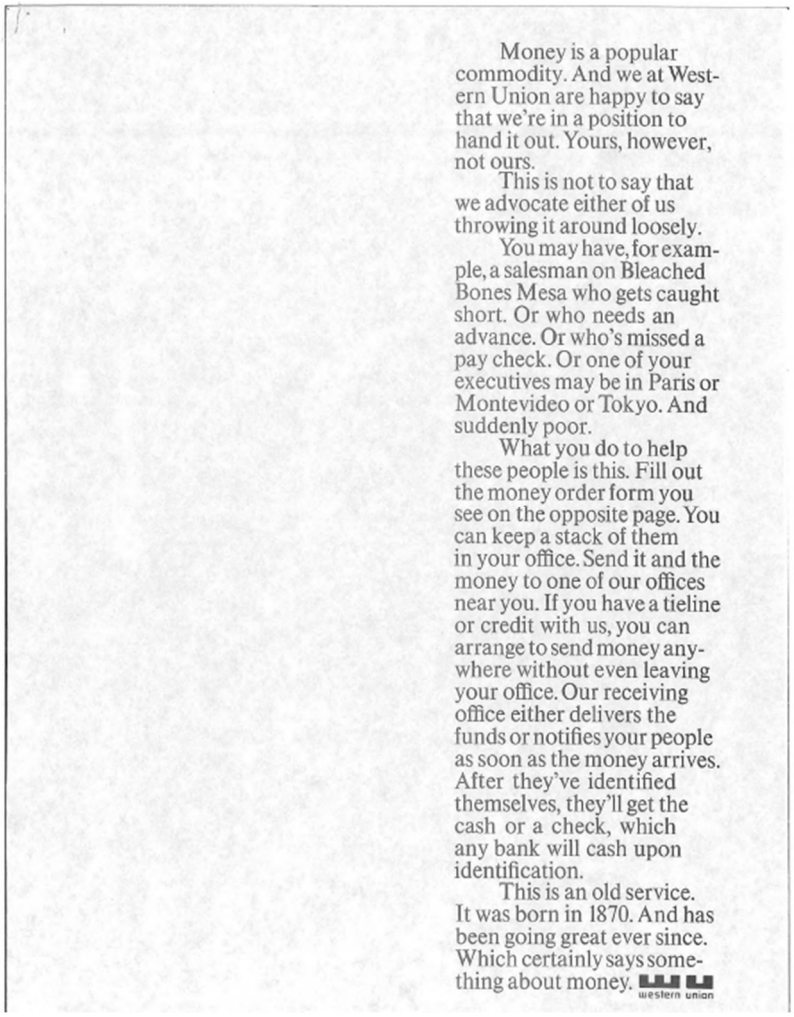
THE WESTERN UNION TELEGRAPH COMPANY

THE CHASE MANHATTAN BANK
EIGHTEEN PINE STREET,
NEW YORK, N. Y.

COUNTERSIGNED Mary Frances McQuarter

⑆0210⑈000 20⑆ 910⑈3⑈0000490⑈

Choose between this or cash.
It's good anywhere. With identification.



Money is a popular commodity. And we at Western Union are happy to say that we're in a position to hand it out. Yours, however, not ours.

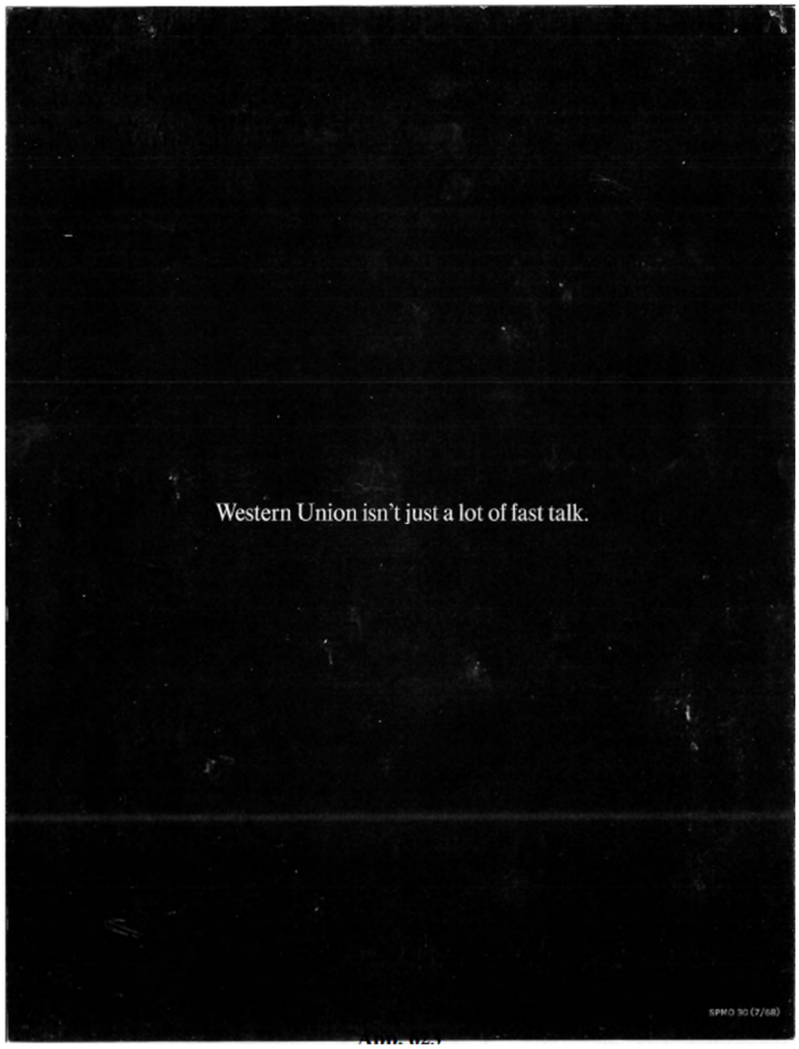
This is not to say that we advocate either of us throwing it around loosely.

You may have, for example, a salesman on Bleached Bones Mesa who gets caught short. Or who needs an advance. Or who's missed a pay check. Or one of your executives may be in Paris or Montevideo or Tokyo. And suddenly poor.

What you do to help these people is this. Fill out the money order form you see on the opposite page. You can keep a stack of them in your office. Send it and the money to one of our offices near you. If you have a tieline or credit with us, you can arrange to send money anywhere without even leaving your office. Our receiving office either delivers the funds or notifies your people as soon as the money arrives. After they've identified themselves, they'll get the cash or a check, which any bank will cash upon identification.

This is an old service. It was born in 1870. And has been going great ever since. Which certainly says something about money.

western union


Western Union isn't just a lot of fast talk.
SPMO 30 (7/68)

DECLARATION OF JOHN DAVID TALIAFERRO—EXHIBIT B

Business Review with Bank

June 23, 2011
Eva Yingst
Eric Fosselman

MoneyGram International, Inc.

MoneyGram®

1

Agenda

- About
- MoneyGram Today
- Outsourcing Payment Services
- Partnership with [redacted]

MoneyGram®

2

About [redacted]

- $9 Billion in Assets
- 124 Bank locations
- [redacted]'s financial services affiliates consist of
  - [redacted]
- Core Processor FIS Bankway System

MoneyGram®

3

MoneyGram Today

- Second largest money transfer business in the world
- Nearly 235,000 agent locations in more than 190 countries and territories worldwide
- Leading issuer of money orders in the U.S.
- Serving financial institutions for over 60 years
- Product lines include:
  - Global Funds Transfer: Person-to-Person payments
  - Bill Payment Services
  - Money Orders
  - Official Check Processing Services

MoneyGram®

4

Outsourcing Payment Services

- Financial Institutions continue to seek revenue generation and cost-saving opportunities through outsourcing:
- Resources are stretched; "do more with less"
  - Increased focus on compliance and security
  - Rapidly evolving technology
  - Limited resources to focus on customer (member)
- Increased competition for customers (members)
  - Alternative players such as processors and retailers continue to pursue the more than 40 million* under-banked Americans
  - "Banks and credit unions of all sizes are well positioned to serve underbanked consumers"*

MoneyGram®

* Source: BAI Banking Strategies, February and March 2011.

5

Partnership with MoneyGram

- Official Check customer since October, 2007
  - Average balances $19,249,528
  - Average monthly volume 11,389
- Type of checks issued
  - Agent Checks
  - Teller Checks

MoneyGram®

6

Outsourcing Official checks Value Proposition	
Overall Program Management	MoneyGram handles all aspects of program design, set-up and ongoing management
Systems Utilized and Processing Services	All performed by MGI and clearing banks; integrated systems and processes
Multiple Payment Types	Flexible payment options MoneyGram supports Teller, Agent, Cashiers, Money Orders
Online real-time availability of information	Intraday database updates and image loads; Real time information
Reconciliation	MoneyGram performs complete reconciliation and research/adjustments handling daily
Inventory Management	MoneyGram manages all stock design, revisions, Inventory management and new locations
Flexibility of Reporting	MoneyGram offers online, real time reporting along with item images and custom search/download capabilities
Customer Service	MoneyGram provides full service to FI branch locations

MoneyGram®

7

Integration & Automation

- MoneyGram's Official Check & Money Order program easily integrates with all core processing systems
- MoneyGram supports changes in core processors
- MoneyGram will support any Teller platform or check automation initiatives

MoneyGram®

8

MoneyGram Program Features

Inventory and Program Management

- Cost of check stock and check stock design
- Cost of ordering and shipping check stock to individual branches
- Inventory storage and replenishment management, including location level thresholds
- Additional locations (new branches, acquisitions) set-up

Processing and Reconciliation

- All supporting systems: Imaging/Microfilming/ Archive/Reconciliation
- Data Processing, returns processing, collections processing, large dollar notifications
- Federal Reserve and clearing bank fees
- Positive Pay reporting & stop payment handling
- Investigation and resolution of differences (misread corrections, encoding errors, duplicates)
- Reconciliation of issuance, funding and clearings
- Cash letter reconciliation
- Day 2+ research: Bank adjustments, collections, correspondence research & resolution

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9

MoneyGram Program Features

Customer Service and Reporting

- Providing and maintaining real-time online system including item status, paid item images, stops and reporting
- Ad-Hoc search and reporting capabilities online
- Producing and Distributing Official Check -reports (daily, weekly, monthly)
- Providing IVR & live operators in support of FI- 1ocat ions (copy requests, stops, voids and refunds)

Compliance

- Annual SAS70 (Official Check and General Computer Controls)
- SOX

Escheatment

- Provide pre-escheatment process reporting
- Researching escheatable items (All types except cashier's checks)
- Filing the escheatment report
- Reimbursements from the state on presented items after escheatment

MoneyGram®

10

Fraud Detection/Loss Prevention

- Fraud loss prevention is a key reason why our customers choose to outsource
- Daily reconciliation results in timely returns of counterfeit and altered items, creating loss avoidance for our customers
- Since 2005, MoneyGram has prevented over $900 million in fraud losses for our customers

MoneyGram®

11

Money Order Program

- Outsourcing converts expense item to revenue generation
- Fee income on every transaction
- Industry leading secure dispenser technology
- Full consumer support, including copy requests, lost/stolen items and research
- Automatic inventory control and replenishment
- Support for new location adds and changes
- Abandon property reporting and remittance

MoneyGram®

12

Payment Processing Services

MoneyGram's Payment Services drive customer acquisition, retention and revenue:

- **Bill Payment: ExpressPayment**
  - Expedited bill payment, prepaid card loads and mobile phone top-ups at your branch locations
  - Thousands of billers available for payment including top mortgage, auto, credit card and utility companies
  - Expedited posting - most billers are available for same-day posting.
- **P2P MoneyTransfer**
  - Person-to-person payments within the US and to over 190 countries from your branches
  - Offering MoneyTransfer will attract and retain new customers to your FI

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Next Steps

- Schedule next business review- meeting
- Follow up on additional opportunities
- Other meeting follow-up/questions

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14

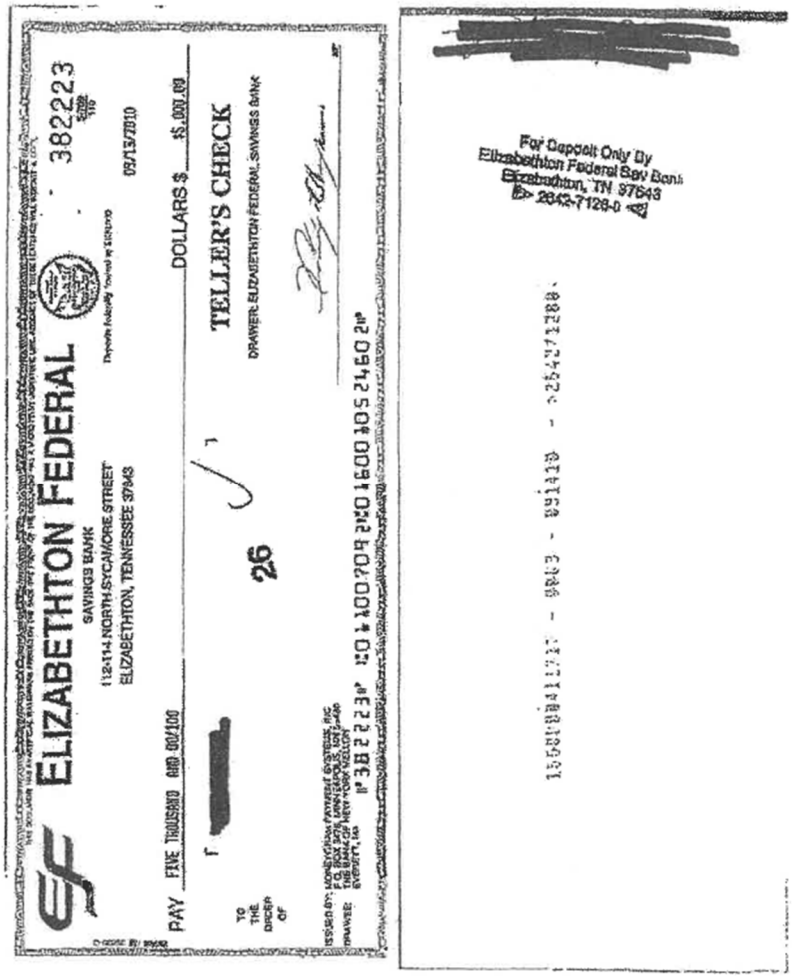
Thank you!

Sandra (SAM) Tilghman
Account Executive
MoneyGram International
Office: 352-357-6340
Cell: 352-409-0913
Email: stilghman@moneygram.com

MoneyGram®

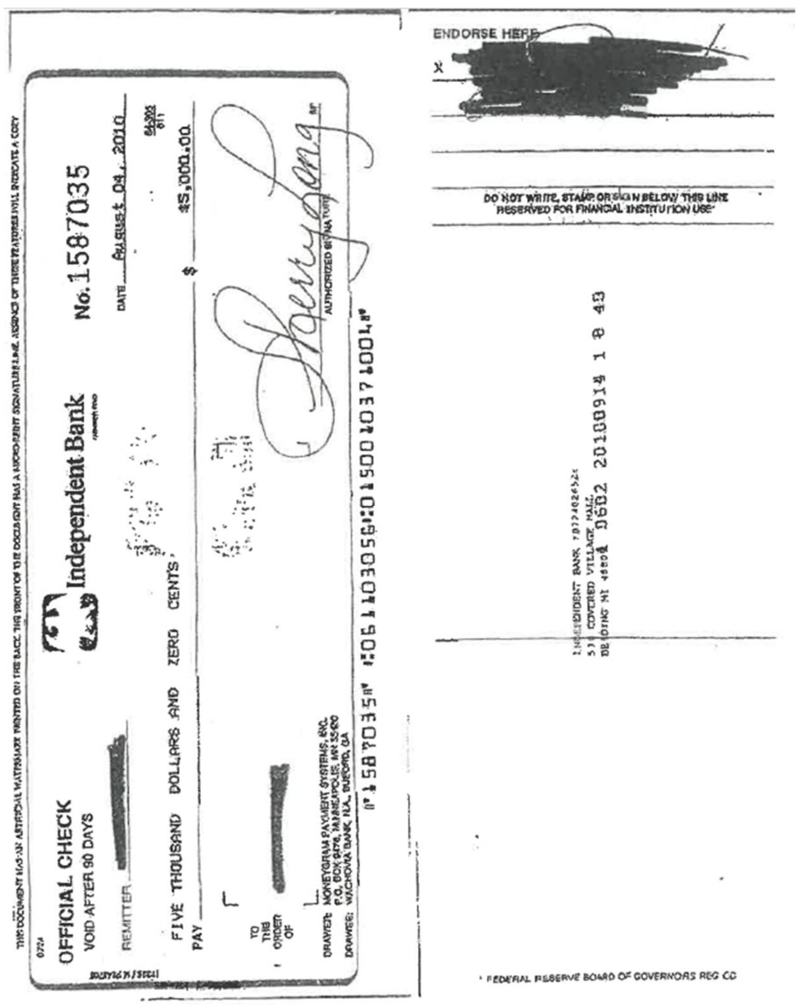
15

DECLARATION OF JOHN DAVID TALIAFERRO—EXHIBIT C



Teller's Check

DECLARATION OF JOHN DAVID TALIAFERRO—EXHIBIT D


OFFICIAL CHECK
VOID AFTER 90 DAYS
Independent Bank
No. 1587035
DATE August 04, 2010
REMITTER [redacted]
FIVE THOUSAND DOLLARS AND ZERO CENTS
PAY $ $5,000.00
TO THE ORDER OF [redacted]
AUTHORIZED SIGNATURE
DRAWER: MONEYGRAM PAYMENT SYSTEMS, INC. P.O. BOX 9476, MINNEAPOLIS, MN 55480
DRAWEE: WACHOVIA BANK, N.A., BUFORD, GA

ENDORSE HERE
X [redacted]
DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE*

*FEDERAL RESERVE BOARD OF GOVERNORS REG CC

DECLARATION OF JOHN DAVID TALIAFERRO—EXHIBIT E

MoneyGram®
bringing you closer

MoneyGram Paper Products Overview

Official Checks and Money Orders

MoneyGram®
bringing you closer

Paper Product Options

	Cashier's Checks	**Tellers Checks**	**Agent Check MO**	**Financial Institution**
Issuer/ Drawer	FI/FI	MoneyGram/FI	MoneyGram/ MoneyGram	MoneyGram/ MoneyGram
Escheatment	Fl	MoneyGram	MoneyGram	MoneyGram
Reg CC/ Next Day Funds Availability	Yes	Yes	No No max amount	No Max issue amount $1000
Check Titles Allowed (sample list)	Cashier's Check, Official Check, Official Bank Check, Treasurer's Check	Official Check, Official Bank Check, Teller's Check, Treasurer's Check	Personal Money Order, Agent Check Money Order, Int'l Money Order	International Money Order-Standard, Fl does not chose

MoneyGram®
bringing you closer

Money Order Options: FIMO or ACMO

Feature	**Financial Institution MO**	**Agent Check MO**
Customer Service	MGI fully supports Purchaser and Payee through Claim Card, 800#	FI Branded item, *FI Maintains Full Control of Customer/Member Experience* (PrimeLink)
Escheatment	MoneyGram performs	MoneyGram performs
Check Stock/Types	MGI Provided and Branded	FI Branded, *"Agent for MoneyGram"*
Dispenser/ Printer Solution Option	FI may use Own Printer or MGI provides Secure Dispenser/Printer	FI Provides Print Solution
Issuance/ Reporting	Automatic w/ Dispenser, TExPort or Transmission	TExPort or Transmission
Dollar Limit	$1,000 Max Amount	No Maximum

DECLARATION OF JOHN DAVID TALIAFERRO—EXHIBIT M

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K

(Mark One)

☒ Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended December 31, 2017.

☐ Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the transition period from ____ to _____.

Commission File Number: 001-31950

MoneyGram®

MONEYGRAM INTERNATIONAL, INC.

(Exact name of registrant as specified in its charter)

Delaware	**16-1690064**
(Stale or other jurisdiction of incorporation or organization)	*(I.R.S. Employer identification No.)*
2828 N. Harwood St., 15th Floor Dallas, Texas	**75201**
(Address of principal executive offices)	*(Zip Code)*

Registrant's telephone number, including area code
(214) 999-7552

Securities registered pursuant to Section 12(b) of the Act:

Title of each claim	**Name of each exchange on which registered**
Common stock, $0.01 par value	The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: None

* * *

Financial Paper Products Segment

Our Financial Paper Products segment provides money orders to consumers through our agents and financial institutions located throughout the U.S. and Puerto Pico and provides official check outsourcing services for financial institutions across the U.S.

In 2017, our Financial Paper Products segment generated revenues of $94.0 million from fee and other revenue and investment revenue. We earn revenue from the investment of funds underlying outstanding official checks and money orders. We refer to our cash and cash equivalents, settlement cash and cash equivalents, interest-bearing investments and available-for-sale investments collectively as our "investment portfolio." Our investment portfolio primarily consists of low risk, highly liquid, short-term U.S. government securities and bank deposits that produce a low rate of return.

Money Orders - Consumers use our money orders to make payments in lieu of cash or personal checks. We generate revenue from money orders by charging per item and other fees, as well as from the investment of funds underlying outstanding money orders, which generally remain outstanding for approximately six days. We sell money orders under the MoneyGram brand and on a private label or co-branded basis with certain agents and financial institutions in the U.S. As of December 31, 2017, we issued money orders through our network of over 17,500 agents and financial institution locations in the U.S. and Puerto Rico.

Official Check Outsourcing Services - Official checks are used by consumers where a payee requires a check drawn on a bank. Financial institutions also use official checks to pay their own obligations. Similar to money orders, we generate revenue from our official check outsourcing services through U.S. banks and credit unions by charging per item and other fees, as well as from the investment of funds underlying outstanding official checks, which generally remain outstanding for approximately four days. As of December 31, 2017, we provided official check outsourcing services through approximately 800 financial institutions at approximately 5,600 branch bank locations.

Marketing - We employ a wide range of marketing methods. We use a marketing mix to support our brand, which includes traditional, digital and social media, point of sale materials, signage at our agent locations and targeted marketing campaigns. Official checks are financial institution branded, and therefore, all marketing to this segment is business to business.

Sales - Our sales teams are organized by product and delivery channel. We have dedicated teams that focus on developing our agent and financial institution networks to enhance the reach of our official check and money order products. Our agent and financial institution requirements vary depending upon the type of outlet or location, and our sales teams continue to improve and strengthen these relationships with a goal of providing the optimal consumer experience with our agents and financial institutions.

Competition - Our money order competitors include a small number of large money order providers and a large number of small regional and niche money order providers. Our largest competitors in the money order industry are Western Union and the U.S. Postal Service. We generally compete for money order agents on the basis of value, service, quality, technical and operational differences, price commission and marketing efforts. We compete for money order consumers on the basis of trust, convenience, availability of outlets, price, technology and brand recognition.

Official check competitors include financial institution solution providers, such as core data processors, and corporate credit unions. We generally compete against a financial institution's desire to perform these processes in-house with support from these types of organizations. We compete for official check customers on the basis of value, service, quality, technical and operational differences, price and commission.

* * *

DECLARATION OF JOHN DAVID TALIAFERRO—EXHIBIT R

How to Get Paper Reports and Electronic Files for Agent Checks and Teller Checks

Agent Checks and Teller Checks

By rule, if the names and addresses of the owners of checks are unknown, they are reported to the holder's state of incorporation. We do not have the names and addresses for the owners of agent checks and teller checks. Therefore, these two products are reported to MoneyGram's state of incorporation—Delaware. The reports created in Tracker will combine the agent check and teller check products. The NAUPA code used for these products is CK15.

The unclaimed property report for Delaware is due to the state annually on March 1. Run these reports around February 1 to allow time to prepare the report.

* * *

How to Get Paper Reports for Agent Check Money Orders and Money Transfer Checks

Paper—Agent Check Money Orders and Money Transfer Checks

By federal rule, if the names and addresses of the owners of money orders are unknown, they are reported to the state in which they were issued. We do not have the names and addresses for the owners of agent check money orders and money transfer checks. Therefore, these two products are reported to the state

in which they were issued. Since the money transfer check is part of the money transfer process, we treat money transfer checks as money orders for unclaimed property purposes. The reports created in Tracker will combine the agent check money order and money transfer check products. The NAUPA code used for these products is CK77.

The example used in the following procedure is Montana, which allows paper reporting.

DECLARATION OF JOHN DAVID TALIAFERRO—EXHIBIT W

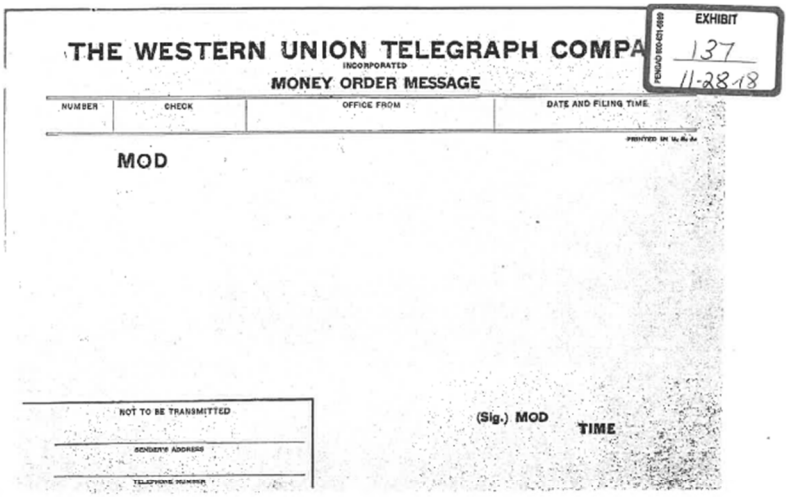


EXHIBIT
137
11-28-18

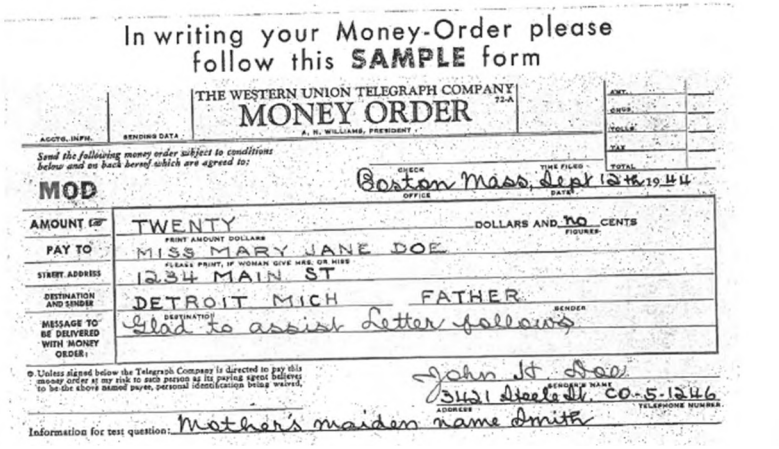
THE WESTERN UNION TELEGRAPH COMPA
INCORPORATED
MONEY ORDER MESSAGE

NUMBER	CHECK	OFFICE FROM	DATE AND FILING TIME

MOD

NOT TO BE TRANSMITTED
SENDER'S ADDRESS
TELEPHONE NUMBER

(Sig.) MOD TIME



In writing your Money-Order please follow this **SAMPLE** form

THE WESTERN UNION TELEGRAPH COMPANY
MONEY ORDER
A. R. WILLIAMS, PRESIDENT

ACCTG. INFM. | SENDING DATA

CHK
CHGS
TOLLS
TAX
TOTAL

Send the following money order subject to conditions below and on back hereof which are agreed to:

MOD

CHECK OFFICE: Boston Mass. TIME FILED: DATE: Sept 12 19 44

AMOUNT: TWENTY (PRINT AMOUNT DOLLARS) DOLLARS AND NO (FIGURES) CENTS

PAY TO: MISS MARY JANE DOE (PLEASE PRINT, IF WOMAN GIVE MRS. OR MISS)

STREET ADDRESS: 1234 MAIN ST

DESTINATION AND SENDER: DETROIT MICH (DESTINATION) FATHER (SENDER)

MESSAGE TO BE DELIVERED WITH MONEY ORDER: Glad to assist Letter follows

* Unless signed below the Telegraph Company is directed to pay this money order at my risk to such person as its paying agent believes to be the above named payee, personal identification being waived.

John H. Doe (SENDER'S NAME)
3421 Steele St. CO-5-1246 (ADDRESS / TELEPHONE NUMBER)

Information for test question: Mother's maiden name Smith

REVISED UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT (1966)

AN ACT RELATING TO THE DISPOSITION OF UNCLAIMED PROPERTY AND MAKING UNIFORM THE LAW WITH REFERENCE THERETO

SECTION 1. [*Definitions and Use of Terms.*] As used in this Act, unless the context otherwise requires:

(a) "Banking organization" means any bank, trust company, savings bank [industrial bank, land bank, safe deposit company], or a private banker engaged in business in this state.

(b) "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.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, [cooperative bank] or investment company, engaged in business in this state.

* * *

SECTION 2. [*Property Held by Banking or Financial Organizations or by Business Associations.*] The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon,

excluding any charges that may lawfully be withheld, unless the owner has, within 7 years:

(1) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) corresponded in writing with the banking organization concerning the deposit; or

(3) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization [or any deposit made therewith in this state], and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within 7 years:

(1) increased or decreased the amount of the funds [or deposit], or presented an appropriate record for the crediting of interest or dividends; or

(2) corresponded in writing with the financial organization concerning the funds [or deposit]; or

(3) otherwise indicated an interest in the funds [or deposit] as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that, with the exception of traveler's checks, has been outstanding for more than 7 years from the date it was payable,

or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than 15 years from the date of its issuance, unless the owner has within 7 years, or within 15 years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository [or agency or collateral deposit box] in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than 7 years from the date on which the lease or rental period expired.

COMMENT

Section 2(a) establishes the criteria for the presumption of abandonment of deposits held by banking organizations. Section 2(b) establishes similar criteria for funds paid toward shares or other interests in financial organizations other than banks. Section 2(c) deals with other forms of obligations of both banking and financial organizations, or business associations, and section 2(d) covers the contents of safe deposit boxes and other deposit arrangements. In each instance the jurisdictional test for presumption of abandonment within the enacting state bears direct relationship to events taking place within that state, e.g., deposits "made in this state," funds "paid in this

state," written instruments "issued in this state," property removed from safe deposit boxes "in this state." These qualifications are explicitly included both for the legal reason that there must be a jurisdictional basis for the claiming of the property within the state and also for the practical reason that the presence of the events within the state means that the convenience of various parties in interest will be best served in this way. Including both the states having general abandoned property laws, and others that deal only with certain specific items of property, some 36 states now have legislation designed to capture dormant bank deposits (See Garrison, "Escheats, Abandoned Property Acts, and their Revenue Aspects," 35 Ky. L.J. 302 (1947)). Section 2 parallels section 300 of the New York Abandoned Property Law which is a general statute, and more or less similar provisions are found in the legislation of Arizona, California, Connecticut, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, North Carolina, and Pennsylvania.

Comment should be made concerning the seven-year period, the lapse of which gives rise to the presumption of abandonment. This period is used throughout the Uniform Act and is applied to all types of property, with the exception of traveler's checks, subject to the Act. It is a fact, however, that the various states have adopted different time periods for this purpose. Moreover, in any single state different time periods may be prescribed for different items of property. Possibly differing business practices in various parts of the country will indicate the desirability in some states of the utilization of a period other than seven years in connection with at least some types of property. This may be especially the case with respect to savings bank

deposits, for in many states it may be deemed desirable to allow more than seven years, and perhaps allow a longer period of dormancy for such deposits than is allowed in connection with other items of unclaimed property. Because of problems arising under the original Act, the Act is amended to provide a period of 15 years from date of issuance for traveler's checks before abandonment is presumed. Each state may adjust the time period to its own needs, and although a seven-year period, with 15 years for traveler's checks, seems reasonably satisfactory for most purposes for most parts of the country, the benefits of this Uniform Act, particularly the benefits of the reciprocal provisions of section 10, will in no way be diminished by the substitution of some other time periods if deemed more satisfactory in view of the local practices.

Comment should also be made concerning the reference to "deposits" in section 2(b). Normally financial organizations, as that term is defined in this Act, do not receive deposits, but instead they receive funds for the purchase of shares. However, in some states such funds are in fact referred to as "deposits" in the pertinent statutes. Therefore the word is included in section 2(b), but is set forth in brackets to indicate that it may be eliminated in any state where it is inapplicable.

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UNIFORM UNCLAIMED PROPERTY ACT (1981)

* * *

Why Change is Needed

Thirty-one states and the District of Columbia have enacted either the original 1954 version of the Uniform Disposition of Unclaimed Property Act, or the 1966 revision of that Act. Of the remaining 19 states, all but 2 have some form of escheat or abandoned property legislation. The 1954 Uniform Act was drafted as a response to conflicting legislation among the various states and in response to a series of Supreme Court decisions in the late 1940's and early 1950's. The 1954 and 1966 Acts served well as evidenced by their numerous adoptions. However, the era of stability was ended with the decision in Texas v. New Jersey, 379 U.S. 674 (1965). That decision established a set of priorities for claimant states which were, in some instances, inconsistent with those established by the Uniform Act. A few states which previously had enacted the Uniform Act have changed their legislation to reflect the holding in Texas v. New Jersey.

In the last decade states have become increasingly aware of the opportunities for collecting and returning to their residents unclaimed money and using the "windfall" unreturned funds as general fund receipts for the benefit of citizens of the state. Accordingly several states have sought to enforce their unclaimed property laws with enhanced vigor. They have found, however, that obtaining compliance with the law has

been extremely difficult. In some instances the uncertain status of unclaimed property statutes in the wake of Texas v. New Jersey accounts for the high degree of noncompliance; many holders feel they do not know what is required of them. In addition the enforcement provisions of the Uniform Act are inadequate and have not served to encourage compliance with the Act.

The Uniform Act served its time. However, to conform the Uniform Act expressly to the Supreme Court ruling in Texas v. New Jersey a comprehensive revision is desirable.

The Impact of Texas v. New Jersey

The 1954 and 1966 Uniform Acts basically tied the enacting state's claim to abandoned property to the ability of that state's courts to assert personal jurisdiction over the holder. The basic jurisdictional test of Sections 2, 4, 5, 6, 7, 8 and 9 for a presumption of abandonment bears a direct relationship to events taking place within the state. The thrust of this "contacts" test generally is to allow any state with jurisdiction over the holder, i.e., the debtor, to take unclaimed property. In recognition of the potential for conflict among jurisdictions over the application of a contacts test, the Uniform Act contained a reciprocity clause in Section 10. Section 10 allowed another state to claim abandoned property if the last known address of the claimant was in that state and if other states with contacts would forego their claims. The success of this clause was dependent upon uniform enactment by competing states. However, this was never forthcoming, and the assertion of competing claims by states continued.

The Supreme Court decisions leading up to Texas v. New Jersey did little to clarify the law. The state of residence of the creditor could claim, Connecticut Mutual Life Insurance v. Moore, 333 U.S. 541 (1948), and the state of the holder's domicile could likewise escheat, Standard Oil Co. v. New Jersey, 347 U.S. 428 (1951).

Standard Oil also held that it was a denial of due process for more than one state to escheat the same property. This rule created a race of diligence among the states. In Western Union Telegraph Co. v. Pennsylvania, 368 U.S. 71 (1962), however, the court told the most diligent state (Pennsylvania) that it had to assure Western Union that no other state would claim the property. In Western Union, Pennsylvania sought to escheat uncashed money orders and drafts which were held by Western Union and unclaimed by either the senders or the payees. The court held that Western Union should not be embroiled in a race of diligence among New York, Pennsylvania and other states. The Supreme Court's opinion in effect admonished the states mutually to resolve which state was entitled to claim abandoned property or, absent agreement, to present their conflicting claims to the only judicial forum in which they could be resolved, the Supreme Court. Thus any state facing an actual or potential dispute by a sister state was forced to bring an original action in the Supreme Court for a declaration of its rights before it could take the

property. This was the condition of the law when the Supreme Court decided Texas v. New Jersey.[1]

The problem in Texas v. New Jersey was which of several states was entitled to escheat intangible property consisting of debts owed by Sun Oil Company and left unclaimed by creditors. Four rules were proposed:

1. that the funds should go to the state having the most significant "contacts" with the debt;

2. that the funds should go to the state of the debtor company's incorporation;

3. that the funds should be paid to the state in which the company has its principal place of business; and

4. that the funds should be paid to the state of the creditor's last known address as shown by the debtor's books and records.

Rule 4 was adopted by the Supreme Court as a "simple and easy" standard to follow. The court pointed out that this rule tended to "distribute escheats among the states in proportion of the commercial activities of their residents". In addition to the holding that the state of the creditor's last known address is entitled to escheat or custodially claim the property owed to the creditor, the court held that, if the creditor's address does not appear on the debtor's books or is in a state that does not provide for the escheat of intangibles, then the state of the debtor's incorporation may take

[1] While the court in Texas v. New Jersey set down rules applying to both escheat statutes and custodial type unclaimed property statutes (such as the Uniform Act), all but a few of the states have laws which are custodial and allow the lawful owner to claim the property at any time.

custody of the property until some other state comes forward with proof that it has a superior right to escheat or take custody.

The Texas v. New Jersey rule makes the Uniform Act inadequate because the Uniform Act is based on the claimant state's ability to assert jurisdiction over the holder. Under Texas v. New Jersey a Uniform Act state may not claim certain property held by persons subject to its jurisdiction (which the Uniform Act covers) but can assert custody to property held by persons not subject to its jurisdiction (which the Uniform Act does not cover).

A simple hypothetical illustrates the problem of meshing the rule of Texas v. New Jersey with the Uniform Act. Assume a corporate holder, incorporated in State A, holding unclaimed property (an uncashed dividend check) belonging to a claimant whose last known address was in State B. The holder does not do business in State B. Under the Texas v. New Jersey rule, State B is the first priority claimant. However, since the holder does not do business there the Uniform Act would not authorize State B to assert a claim to the property. State A, if it had enacted the Uniform Act, could claim the property under its abandoned property law in accordance with the second priority rule of Texas v. New Jersey; however, that frustrates the goal of equitable distribution of unclaimed property among creditor states.

* * *

§ 4. [Travelers Checks and Money Orders].

(a) Subject to subsection (d), any sum payable on a travelers check that has been outstanding for more than 15 years after its issuance is presumed abandoned unless the owner, within 15 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(b) Subject to subsection (d), any sum payable on a money order or similar written instrument, other than a third-party bank check, that has been outstanding for more than 7 years after its issuance is presumed abandoned unless the owner, within 7 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(c) A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(d) No sum payable on a travelers check, money order, or similar written instrument, other than a third-party bank check, described in subsections (a) and (b) may be subjected to the custody of this State as unclaimed property unless:

(1) the records of the issuer show that the travelers check, money order, or similar written instrument was purchased in this State;

(2) the issuer has its principal place of business in this State and the records of the issuer do not show the state in which the travelers check, money order, or similar written instrument was purchased; or

(3) the issuer has its principal place of business in this State, the records of the issuer show the state in which the travelers check, money order, 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 property or its escheat or unclaimed property law is not applicable to the property.

(e) Notwithstanding any other provision of this Act, subsection (d) applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

Comment

Prior Uniform Act Provision:

Section 2.

Section 4 is concerned with travelers checks and money orders which are unclaimed. Subsections (a) and (b) deal with the substantive requirements for presuming this property abandoned and follow closely the provisions of Section 2 of the 1966 Act. Although the general dormancy period has been reduced for

many kinds of property, the 15-year period for travelers checks and the 7-year period for money orders is retained. Statistical and economic evidence has shown that these periods continue to be appropriate.

Subsection (c) is consistent with those cases which have ruled on the issue of service charges by money order issuers under the 1966 Act.

Subsections (d) and (e) are new and adopt the rules, including the dates, provided by congressional legislation which determine the state entitled to claim sums payable on travelers checks, money orders, and similar instruments, see Pub.L. 93-495, §§ 603, 604 (Oct. 28, 1974), 88 Stat. 1525-26, 12 U.S.C. §§ 2501 et seq. The congressional action was in response to the Supreme Court decision in Pennsylvania v. New York, 407 U.S. 206 (1972), which held that the state of corporate domicile was entitled to escheat money orders when there was no last known address of the purchaser although the property had been purchased in other states. Subsection (d) substitutes as the test for asserting a claim to travelers checks and money orders the place of purchase rather than the state of incorporation of the issuer.

§ 5. [Checks, Drafts and Similar Instruments Issued or Certified by Banking and Financial Organizations].

(a) Any sum payable on a check, draft, or similar instrument, except those subject to Section 4, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than 5 years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless

the owner, within 5 years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

(b) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

Comment

Prior Uniform Act Provision:

Section 2.

Section 5 covers checks and similar instruments issued or certified by banking and financial organizations. Checks and other instruments issued by persons other than banking and financial organizations are covered generally by Section 2. Travelers checks and money orders are covered by Section 4.

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THE REPORT OF THE PRESIDENT'S COMMISSION ON FINANCIAL STRUCTURE & REGULATION

(Hunt Commission Report)

December 1971

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Part II

Recommendations*

A. The Regulation of Interest Rate Ceilings on Deposits

TIME AND SAVINGS DEPOSITS AND CERTIFICATES OF DEPOSIT

The Commission recommends that:

1 the power to stipulate deposit rate maximums be abolished for time and savings deposits, certificates of deposit and share accounts of $100,000 or more

2 the power to stipulate deposit rate maximums on time and savings deposits, certificates of deposit and share accounts of less than $100,000 at commercial banks, mutual savings banks, savings and loan associations, and credit unions be given to the Board of Governors of the Federal Reserve

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* Recommendations are numbered consecutively within each lettered section of the report.

System for use on a standby basis, to be exercised only when serious disintermediation is threatened

3 the Board have discretionary power to reduce the $100,000 cut-off amount for the standby power

4 the standby power of the Board to establish interest rate ceilings on time and savings deposits, certificates of deposit and share accounts include the power to:

a establish for a period of five years ceiling differentials between institutions providing third party payment services and institutions not providing such services[1]

b establish for up to two years from the date these recommendations are adopted rate ceiling differentials between commercial banks and deposit thrift institutions then offering third party payment services

c establish for up to two years from the date of inauguration of third party payments rate ceiling differentials between commercial banks and individual deposit thrift institutions that inaugurate third party payment services subsequent to the date these recommendations are implemented

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[1] Third party payment services, as here defined, include any mechanism whereby a deposit intermediary transfers a depositor's funds to a third party or to the account of a third party upon the negotiable or non-negotiable order of the depositor. Checking accounts are one type of third party payment service. Escrow accounts incidental to loan agreements are not included as third party payments.

5 after the limited period stipulated in recommendation 4a above, the Board may only establish uniform interest rate ceilings for depository institutions under its jurisdiction with no differentials based on whether or not third party payment services are provided or on the time such services were inaugurated

6 the standby power of the Board to establish interest rate ceilings be abolished at the end of a ten-year period following the implementation of these recommendations

Federal regulation of maximum rates that commercial banks can pay for time and savings deposits was first imposed by the Banking Act of 1933. The intent of the legislation was to reduce interest rate competition among banks, which was believed to increase bank costs and encourage banks to purchase high yielding, risky assets. The view at the time was that holdings of such assets had been a major factor in bank losses and failures after the crash of 1929.

Federal maximums for savings and loan associations and mutual savings banks were established in 1966. Since then, the regulation of maximum interest rates on time and savings accounts has had an entirely different purpose. These ceilings have been used since 1966 to protect the liquidity positions of the deposit thrift institutions, life insurance companies and some commercial banks during periods of rising interest rates. One objective has been to hold down deposit rates and insulate deposit institutions from forces in the money markets that might drain funds from them. Another has been to maintain a differential between the rates paid by commercial banks and deposit thrift

institutions in order to prevent a shifting of deposits among the intermediaries.

For extended periods of time between 1966 and 1971, deposit rate maximums were below the market interest rates. During such periods, depositors who left their funds with commercial banks or deposit thrift institutions received a lower return on their funds than they might have received through direct investment. This fact gradually became known to an increasing number of depositors, a learning process assisted by borrowers who developed instruments attractive to depositors and other holders of funds. Funds that otherwise would have remained as deposits, or would have been deposited with intermediaries, were withdrawn or withheld because of the availability of higher yielding direct investments. As a result, the regulations failed to achieve a primary objective.

The disintermediation between the institutions and other parts of the money and capital markets had several undesirable consequences. As deposit thrift institutions became unable to attract funds, the private mortgage market shrank and interest rates rose, adversely affecting consumers. The housing crisis prompted direct federal intervention on a massive scale in the mortgage market.

Large commercial banks that had relied heavily on large certificates of deposit and time and savings deposits were faced with redemptions and deposit withdrawals. Smaller banks, although less drastically affected, also felt a liquidity pinch as depositors became more aware of competing returns. The loss of deposits limited the ability of all banks to serve their customers' credit needs. Large businesses with the skill and the credit rating to borrow in the commercial paper

market continued to have access to credit. Small and medium sized businesses did not have attractive alternatives to borrowing at banks and therefore found their ability to acquire funds restricted.

Because of the enlarged borrowing through the commercial paper market and the reduced importance of intermediaries in credit flows, the liquidity position of an important segment of business was weakened. The loss of liquidity caused serious concern to many businesses. Even more important, sharp market fluctuations raised fears of a liquidity crisis which might well have produced a collapse of confidence and serious financial losses throughout the economy.

The disintermediation also affected the ability of the Federal Reserve to control credit through conventional monetary policy techniques. With large and increasing credit flows moving outside the commercial banking sector, the Federal Reserve's restrictive policies were required to become more and more stringent even as they became less and less effective.

Depositors who withdrew their funds and invested directly received a yield higher than the deposit rates. If intermediaries could have paid the market value for these funds and handled the investment process they would have fared better. There is a positive relationship between the size of a deposit and the rapidity of disintermediation; therefore, interest rate regulations have discriminated against small savers. In addition, since a growing number of depositors have learned of ways to take advantage of alternative direct investments and borrowers have developed new instruments that lessen the difficulties of direct investments, the regulations afford diminishing shelter.

The Commission believes for these reasons that rate regulations on time and savings deposits should be removed. Their precipitous removal, however, would cause harm to the deposit thrift institutions, life insurance companies and many banks. These firms have substantial holdings of long term investments and, in the case of insurance companies, have contracts with their policyholders to make loans at low fixed rates. These commitments make them sensitive to the interest rate risks of a fully de-regulated market. Thus, except for deposits of $100,000 or more, the Commission's recommendations aim at a gradual phasing-out of these ceilings, with the Board of Governors of the Federal Reserve System having the power for a period of ten years to impose ceilings in case of future emergency conditions (Recommendations 1, 2 and 6).

The maximums on large certificates of deposit and on large deposits—those of $100,000 or more—should be removed immediately. The Board of Governors should be given the power to reduce the size of the deposit in this category. Large depositors are almost certain to disintermediate when market rates go above the maximum rates. Retention of these maximums would force disintermediation from the deposit intermediaries and would encourage funds to be redirected through less efficient channels (Recommendations 1 and 3).

The additional powers recommended for deposit thrift institutions in the next section of Part II should eliminate the necessity of a differential between rate ceilings for the thrift institutions and commercial banks. But a period of transition is required. The authority for a differential would be maintained for two

years after third party payment services are inaugurated by a deposit thrift institution; and, for those currently offering the services, for two years after the implementation of these recommendations. After the two years it is recommended that no differential be permitted for such institutions. In five years, all of the deposit thrift institutions and other intermediaries should have made asset and liability adjustments. Whether or not third party payment services have been introduced by individual deposit thrift institutions, it is recommended that the authority for maintaining any differential be removed after five years (Recommendations 4 and 5).

After a period of time, all institutions will have had the incentive as well as the opportunity to alter their mix of assets, liabilities and services. The regulations, especially if they have been used several times, will probably be unable to prevent disintermediation of even small deposit accounts. Accordingly, the Commission recommends that the standby authority to establish rate ceilings be abolished in ten years (Recommendation 6).

DEMAND DEPOSITS

The Commission recommends that:

7 the prohibition against the payment of interest on demand deposits be retained

The prohibition of interest payments on demand deposits, imposed by the Banking Act of 1933, was intended to achieve the same purpose as the interest rate ceilings on time deposits. The problems involved with prohibition of interest payments on demand deposits are somewhat different, however, and the

Commission recommends against the removal of the prohibition at this time.

The regulatory changes recommended by the Commission imply extensive changes in the operations of the depository institutions. A phasing-in process will be needed to provide for an orderly transition to the new system. Immediate abolition of the prohibition of interest payments on demand deposits, with all the other changes recommended, would create a situation that might cause deposit thrift institutions to experience disintermediation. This would have adverse effects on the flow of mortgage funds. To combat this, the deposit thrift institutions might be forced to shift to extensive third party payment services more rapidly than many are capable of doing in an orderly way. The phasing-in process necessary to the success of the Commission's recommendations would be lost.

Nonetheless, the Commission believes that its recommendation against the removal of the prohibition should be reviewed in the future. There are important trends in the use of demand deposits and other third party payment services that should be noted. Large businesses have improved cash management techniques in recent years and reduced the amount of deposit balances held for given levels of transactions. Deposit balances have been shifted into short-term, highly liquid interest bearing instruments. Because of the strong competition for business accounts, banks have encouraged this trend by aiding in the investment of corporate funds in commercial paper, bankers acceptances, government bills and similar money market instruments. In effect, large businesses now receive interest on assets serving the same purpose that demand deposit balances served a few years ago.

The accounts of smaller businesses and individuals cannot be so easily transferred to interest bearing assets.

Some banks have experimented with devices to transfer funds from savings accounts to checking accounts as required when checks written by depositors are presented for payment. These devices generally have been ruled evasions of the prohibition of interest payments on demand deposits. Still, the accepted practice of permitting withdrawals from savings accounts on demand and of paying interest on savings accounts from day of deposit to day of withdrawal blurs any clear distinction between demand and time deposits. The ingenuity of bankers seeking ways for customers to receive interest on demand balances will continue to be shown in the future, especially if interest rates are high and customers' options are the liabilities of institutions other than commercial banks.

Some savings and loan associations and mutual savings banks currently offer non-negotiable third party payment services using customers' interest bearing accounts. A number of states permit mutual savings banks to offer checking accounts. Again, it is likely that these institutions will find ways to pay interest on what are really transactions balances. Technical changes may make these methods more efficient and thereby more widespread.

Many credit unions provide third party payment services for their members through variations of the negotiable order service. The State of Rhode Island has passed legislation allowing credit unions to offer checking accounts, though the act specifically prohibits interest payments on checking account balances.

Finally, there is the problem of "non-price" competition. Interest payments are means by which financial institutions attract funds. When interest is prohibited or limited, substitute rewards for depositors are found. The substitutes are in the forms of convenience—especially branching in states where it is permitted—and in the provision of "free" services. Nonprice competition in convenience and services leads to uneconomic increases in operating costs and forces some customers to use services when they would prefer interest payments. The interest rate prohibition, therefore, causes resources to be misallocated.

Even so, the Commission concluded the potential deleterious effects of the immediate abolition of prohibition of interest on demand deposits would be larger than the costs imposed by its continuation (Recommendation 7).

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B. Regulation of the Functions of Depository Financial Institutions

SAVINGS AND LOAN ASSOCIATIONS AND MUTUAL SAVINGS BANKS

The Commission recommends that:

* * *

3 under specified conditions, savings and loan associations and mutual savings banks be permitted to provide third party payment services, including checking accounts and credit

cards, to individuals and non-business entities only[1]

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[1] See Recommendations 5 and 6 in Section A, 1 and 2 in Section D, 1 in Section E and 1, 2, and 9 in Section H.

* * *

—Bank draft. A check, draft, or other order for payment of money, drawn by an authorized officer of a bank upon either his own bank or some other bank in which funds of his bank are deposited. Polotsky v. Artisans Sav. Bank, Del., 180 A. 791, 792, 7 W.W.Harr. 142.

* * *

CERTIFIED CHECK. A depositor's check recognized and accepted by bank officer as valid appropriation of the amount specified and as drawn against funds held by bank.

The usual method of certification is for cashier or teller to write across face of check, over his signature, statement that it is good when properly indorsed. See McAdoo v. Farmers' State Bank of Zenda, 106 Kan 662, 189 P. 155, 156, Bathgate v. Exchange Bank of Chula, 199 Mo.App. 583, 205 S.W. 875, 876.

The certification of a check is a statement of fact, amounting to an estoppel of the bank to deny liability, Bank of Bay Biscayne v. Ball, 99 Fla. 745, 128 So. 491, 492. A warranty that sufficient funds are on deposit and have been set aside. World Exchange Bank v. Commercial Casualty Ins. Co., 255 N.Y. 1, 173 N.E. 902, 904. It means that bank holds money to pay check and is liable to pay it to proper party. Sundial Const. Co. v. Liberty Bank of Buffalo, 277 N.Y. 137, 13 N.E.2d 745, 746.

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CHECK, *n.* A commercial device intended for use as a temporary expedient for actual money, and generally designed for immediate payment, and not for circulation. Kennedy v. Jones, 140 Ga. 302, 78 S.E. 1069, 1070, Ann.Cas.1914D, 355; Merchants' Nat. Bank v. Bank, 10 Wall. 647, 19 L.Ed. 1008.

A draft for payment of money. Wright v. Loring, 351 Ill. 584, 184 N.E. 865, 866. An order for payment of money. Glennan v. Rochester Trust & Safe Deposit Co., 209 N.Y. 12, 102 N.E. 537, 539, 52 L.R.A., N.S., 302, Ann.Cas.1915A, 441; Weiss v. Fenwick, 111 N.J.Eq. 385, 162 A. 609, 611; Anderson v. National Bank of Tacoma, 146 Wash. 520, 264 P. 8, 10. A request to pay money, Standard Factors Corporation v. Manufacturers Trust Co., 182 Misc. 701, 50 N.Y.S.2d 10, 13.

A draft or order upon a bank or banking-house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable instantly on demand. 2 Daniel, Neg.Inst. § 1506; Bank v. Wheaton, 4 R.I. 33; Economy Fuse & Mfg. Co. v. Standard Electric Mfg. Co., 359 Ill. 504, 194 N.E. 922, 924.

A bill of exchange drawn on a bank payable on demand. Commercial & Savings Bank Co. of Bellafontaine, Ohio, v. Citizens' Nat. Bank of Franklin, 68 Ind.App. 417, 120 N.E. 670, 674; Bell-Wayland Co. v. Bank of Sugden, 95 Okl. 67, 218 P. 705, 706; Thomas v. Berger, 118 Pa.Super. 422, 180 A. 32. A check differs from an ordinary bill of exchange in that it is drawn on a bank or bankers, and is payable immediately on presentment, without days of

grace; it is payable immediately on presentment, and no acceptance as distinct from payment is required; it is supposed to be drawn upon a previous deposit of funds, and is an absolute appropriation of so much money in the hands of the bankers to the holder of the check. Merchants' Nat. Bank v. State Nat. Bank, 10 Wall. 647, 19 L.Ed. 1008; People v. Compton, 123 Cal. 403, 56 P. 44.

The term "check," within the ordinary meaning of that, term, includes "draft," the only distinction being that in a draft the drawer is a bank, while in the ordinary check the drawer is an individual. Leach v. Mechanics' Say. Bank, 202 Iowa, 899, 211 N.W. 506, 508, 50 A.L.R. 388.

A. check is a contract. Deal v. Atlantic Coast Line R. Co., 225 Ala. 533, 144 So. 81, 82, 86 A.L.R. 455; Roff v. Crenshaw, Cal.App., 159 P.2d 661, 662.

Cashier's Check

One issued by an authorized officer of a bank directed to another person, evidencing that the payee is authorized to demand and receive upon presentation from the bank the amount of money represented by the check. State v. Tyler County State Bank, Tex.Com.App. 277 S.W. 625, 627, 42 A. L.R. 1347. A form of a check by which the bank lends its credit to the purchaser of the check, the purpose being to make it available for immediate use in banking circles. Duke v. Johnson, 127 Wash. 601, 221 P. 321, 322. A bill of exchange drawn by a bank upon itself, and accepted by the act of issuance. Anderson v. Bank of Tupelo, 135 Miss. 351, 100 So. 179; In its legal effect, it is the same as a certificate of deposit, certified check or draft. Montana-Wyoming Ass'n of Credit Men v. Commercial Nat. Bank of Miles City, 80 Mont.

174, 259 P. 1060, 1061. An acknowledgment of a debt drawn by bank upon itself. In re Liquidation of State Bank of Binghamton, 152 Misc. 579, 274 N.Y.S. 41.

* * *

MONEY ORDER. Under the postal regulations of the United States, a money order is a species of draft drawn by one post-office upon another for an amount of money deposited at the first office by the person purchasing the money order, and payable at the second office to a payee named in the order. U. S. v. Long, C.C.Ga., 30 F. 679.

* * *

TRAVELER'S CHECK. A bill of exchange drawn by the issuing bank upon itself, accepted by the act of issuance, and the right of countermand applied to ordinary checks does not exist as to it. It has the characteristics of a cashier's check of the issuing bank. Pines v. United States, C.C.A. Iowa, 123 F.2d 825, 828.

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BLACK'S LAW DICTIONARY

(5th ed. 1979)

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Certified check. The check of a depositor drawn on a bank on the face of which the bank has written or stamped the words "accepted" or "certified" with the date and signature of a bank official. The check then becomes an obligation of the bank. The certification of a check is a statement of fact, amounting to an estoppel of the bank to deny liability; a warranty that sufficient funds are on deposit and have been set aside. It means that bank holds money to pay check and is liable to pay it to proper party. See also **Certification of check;** *compare* **Cashier's check**.

* * *

Check, *n.* A draft drawn upon a bank and payable on demand, signed by the maker or drawer, containing an unconditional promise to pay a sum certain in money to the order of the payee. State v. Perrigoue, 81 Wash.2d 640, 503 P.2d 1063, 1066. U.C.C. § 3 104(2)(b).

The Federal Reserve Board defines a check as "a draft or order upon a bank or banking house purporting to be drawn upon a deposit of funds for the payment at all events of a certain sum of money to a certain person therein named or to him or his order or to bearer and payable instantly on demand." It must contain the phrase "pay to the order of."

See also Bad check; Bogus check; Cancelled check; Cashier's check; Draft; Registered check; Stale check; Travelers check.

* * *

Cashier's check. A bank's own check drawn on itself and signed by the cashier or other authorized official. It is a direct obligation of the bank. One issued by an authorized officer of a bank directed to another person, evidencing that the payee is authorized to demand and receive upon presentation from the bank the amount of money represented by the check. A form of a check by which the bank lends its credit to the purchaser of the check, the purpose being to make it available for immediate use in banking circles. A bill of exchange drawn by a bank upon itself, and accepted by the act of issuance. In its legal effect, it is the same as a certificate of deposit, certified check or draft. An acknowledgment of a debt drawn by bank upon itself. See also **Certified check**.

* * *

Money order. A type of negotiable draft issued by banks, post offices, telegraph companies and express companies and used by the purchaser as a substitute for a check. Form of credit instrument calling for payment of money to named payee, and involving three parties: remitter, payee, and drawee. Fidelity Bank & Trust Co. v. Fitzimons, Minn., 261 N.W.2d 586, 589. Money order may encompass nonnegotiable as well as negotiable instruments and may be issued by a governmental agency, a bank, or private person or entity authorized to issue it, but essential characteristic is that it is purchased for purpose of paying a debt or to transmit funds upon credit of the

issuer of the money order. People v. Norwood, 26 C.A.3d 148, 103 Cal.Rptr. 7, 12.

* * *

Traveler's check. Instrument purchased from bank, express company, or the like, in various denominations, which can be used as cash upon second signature by purchaser. It has the characteristics of a cashier's check of the issuer. Pines v. United States, C.C.A.Iowa, 123 F.2d 825, 828. It requires the signature of the purchaser at the time he buys it and also at the time when he uses it.

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GLENN G. MUNN'S ENCYCLOPEDIA OF BANKING AND FINANCE

(7th ed. 1973)

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BILL OF EXCHANGE The *Uniform Commercial Code* (sec. 3-104) provides that a writing which complies with the requirements of that section for any writing to be a "negotiable instrument", is a "draft" ("bill of exchange") if it is an order.

The terms "bill of exchange" and "draft" are used interchangeably but the former is usually applied to an order to pay money arising out of a foreign transaction, while the latter term is more often reserved for domestic transactions. Technically, moreover, a bill of exchange is always a negotiable instrument whereas a draft may be non-negotiable.

See DRAFT, FOREIGN BILLS OF EXCHANGE.

* * *

CASHIER'S CHECK A bank's own check; a check drawn upon a bank and signed by its cashier, or assistant cashier, being a direct obligation of the bank. Cashier's checks are issued to borrowers when loans are made in lieu of a deposit credit or actual cash, sold to customers for remittance purposes, and issued in payment of the bank's own obligations, money transfers, etc. When a cashier's check is issued it becomes a credit, and upon its return through the clearing house or otherwise, a debit to the cashier's account. Cancelled cashier's checks are preserved as vouchers in the bank's files.

* * *

CERTIFIED CHECK A check which certifies that the signature of the drawer is genuine and that the depositor has sufficient funds on deposit for its payment. The amount certified is then set aside for the express purpose of paying the check and payment cannot be refused because of insufficient funds. When a bank certifies a check, certification is acceptance, *i.e.*, the check becomes an obligation of the bank, instead of being an order on the bank. It is incorrect, however, to say that the bank "guarantees" payment of the check.

The new *Uniform Commercial Code* (sec. 3-411 (2)) now makes specific the point that unless otherwise agreed, a bank has no obligation to certify a check. When a check is presented at the window for certification, the drawer's account in the ledger is first inspected to see that sufficient funds are on deposit to cover the amount which is immediately deducted from the drawer's deposit balance before the check is certified. Certification consists of stamping or writing across the face of the check the word, "Certified" or "Accepted", together with the date, the bank's title, and signature of the officer authorized to make certification.

Since a certified check becomes an obligation of the bank, when a check is certified the drawer's account is reduced (charged) and "Certified Checks" account (in the general ledger) is increased (credited). When certified checks are returned through the clearing house or other channels, the account "Certified Checks" is reduced (charged). Thus the balance of this account represents the total certified checks outstanding.

Although a bank is not obliged by law to certify checks for its customers, among the banks in the larger cities, especially in New York, certification business forms a very important service, especially for customers who deal in securities. Certified checks are also extensively used in those types of business where it is important to receive the equivalent of cash, without at the same time using cash, such as in brokerage and security transactions, payments of loans, and real estate transfers.

A check may be certified at the instance of either the holder or drawer. Where a holder obtains the certification, the drawer and all prior indorsers are discharged (sec. 3-411 (1), *Uniform Commercial Code*). On the other hand, certification obtained by drawer of the check still leaves him liable in the event the certifying bank should fail, before the check is presented for payment. A bank may certify a check before returning it for lack of proper indorsement, but if it does so, the drawer is discharged (sec. 3-411 (3), *Uniform Commercial Code*).

* * *

CHECK As defined by the *Uniform Commercial Code* (sec. 3-104) and by the British Bills of Exchange Act, a check is: "a bill of exchange drawn on a bank, payable on demand." Commentators usually treat checks under the general classification of bills of exchange, but checks differ from bills of exchange also in that they purport to be drawn against a deposit, and are always payable on demand.

As defined by the Board of Governors of the Federal Reserve System (footnote to Regulation J, pertaining to Check Clearing and Collection), "a check is generally defined as a draft or order upon a bank or

banking house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to the order of a certain person therein named, or to him or his order, or to bearer, and payable on demand."

Under the *Uniform Commercial Code*, checks (along with drafts, certificates of deposit, and notes) are "commercial paper", covered specifically by Art. 3 of the Code, which represents a complete revision and modernization of the Uniform Negotiable Instruments Law. All such "commercial paper" under Art. 3 must have the attributes of negotiability (signed by the maker or drawer; containing an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; payable on demand or at a definite time; and payable to order or to bearer); and if it is a draft drawn on a bank and payable on demand, it is a "check".

Other definitions of a check are: (1) a written order drawn by a depositor upon his bank to pay a sum of money to a designated party; (2) an order on a bank (drawee) by a depositor (drawer, maker or payer) to pay a certain sum of money to a third party (payee); (3) an order upon a bank or banker for the payment of money to a stated party out of funds credited to the account of the drawer. While a check from a legal point of view is an order calling for the payment of money, in actual practice it is rather an order for transferring bank credit used as a substitute for money from one account to another.

The essential elements of a check are: (1) the words of negotiability — "order" or "bearer" — express or

implied. The phrase "Pay to the order of" imparts negotiability to the check and makes it an unconditional promise to pay upon demand. The single word "Pay" if used makes such a check not negotiable, *i.e.*, payable only to the person named as the payee; (2) name of payee — person in whose favor the check is drawn. Checks are sometimes made out payable to Self, Currency, Bearer or Cash, which makes them payable to bearer; (3) amount payable in figures; (4) amount payable in written words; (5) name and location of drawee bank; (6) signature of drawer or maker. In the case of some corporations the signature and counter signatures of designated officers are necessary. The signature is the final touch without which the check is valueless; (7) indorsement. The check should be indorsed as drawn, either in blank or by a special or other indorsement.

The non-essential but convenient elements of a check are: (1) location (name of city in which maker or drawer is located); (2) date of drawing the check; (3) number of the check; (4) transit number, indicating the name and location of the drawee bank according to the universal numerical transit system.

In cashing checks, the paying-teller observes the following points to insure against irregularities, informalities, or discrepancies which, if unnoticed, might involve the drawee bank in a loss; identification of presenting party; date, filling; alterations; signature (authority to sign and forgery); stop payment; financial responsibility; whether a home debit or drawn on another bank; indorsement.

Checks should not be dated ahead (post dated), otherwise they are, in effect, time bills of exchange. Checks should be presented promptly. "In the case of

an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection: (a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and (b) with respect to the liability of an indorser, seven days after his indorsement" (sec. 3-503(2), *Uniform Commercial Code*). Banks usually refuse to honor checks more than six months old. These are known as STALE CHECKS, since when checks are not presented within a reasonable time after they are drawn there arises a presumption of irregularity. The date is not an essential element of a check, and an undated check is valid.

The amount written in words should agree with the amount written in figures and when there is a discrepancy between the two the amount denoted by the words is the sum payable.

A bank is usually responsible to its customer for paying raised or altered checks. A number of mechanical devices have been invented to prevent the fraudulent alteration of checks.

See CHECK PROTECTING DEVICES.

A bank is not required to make a partial payment on a check whenever the drawer has insufficient funds to his credit to make payment in full. Checks made payable to Cash, Currency, or Self, legally require no indorsement when presented by the drawer, but as a matter of practice, paying tellers request indorsement as a type of receipt. In case the drawer himself does not present the check so drawn, the indorsement of

the precentor, the drawer's representative, should be requested by the paying teller.

Checks may be classified according to method of collection into five groups: (1) checks drawn on the bank in which they are deposited for credit or cashed over the paying teller's window, known as "own checks," "self checks," or "home debits"; (2) checks drawn on banks in the same city and which will be paid through the clearing house, known as "clearing house checks"; (3) checks drawn on banks, corporations, and individuals in the same city which are not members of the clearing house and which must be presented for payment either through the city collection department of the clearing house, or directly by messengers; (4) checks drawn on banks located at various out-of-town points which must be collected through the Federal Reserve Clearing System, or through correspondents or other collecting agents, known as out-of-town checks, transit checks, or foreign checks, and (5) checks drawn on, or issued by a bank located in a foreign country.

See ALTERATION, CASHIER'S CHECK, CERTIFIED CHECK, CHECK BOOK, CHECKING ACCOUNT, COMMERCIAL CODE, CREDIT INSTRUMENTS, CROSSED CHECKS, DATE, FILLING, FORGED INSTRUMENTS, NEGOTIABLE INSTRUMENTS LAW, SIGNATURE, TRAVELERS CHEQUES, VOUCHER CHECK.

* * *

MONEY ORDERS A form of credit instrument calling for the payment of money to the named payee which provides a safe and convenient means of remitting funds by persons not having checking accounts. There are three parties to a Money Order:

the remitter (payer), the payee, and the drawee. Money Orders are issued by the Post Office Department; American Express Co., and various other private organizations, and their franchised retail stores; and by some commercial and savings banks, and savings and loan associations. An advantage of Money Orders in handling, as compared to checks, is that presentation to their original place of purchase, for payment, is not required. A disadvantage is cost; domestic Postal Money Orders, for example, may not be issued for over $100 on any single Order, and fee for $100 Order as of 1971 was 40¢. Thus a person wishing to remit $200 would have to take out two orders, costing him 80¢; as compared with normally current charges on "no minimum balance", popular checking accounts of 15¢ or so per check (with monthly service charge of 50¢ or so on the entire account, which latter cost would be distributed over the total number of checks drawn in a month).

Postal Money Orders. — Domestic Money Orders may be bought at all post offices, branches, and stations in the United States, except for certain offices in Alaska. Money Order facilities are also provided for members of the Armed Forces. Three types of Money Order forms are issued: (1) standard domestic form; (2) international form, used for remittance of money to foreign countries; and (3) the "reissued" form, used to provide for domestic payment of Money Orders purchased in foreign countries. To facilitate handling, all three forms are of the punch-card type.

Scale of fees for Postal Money Orders as of 1971 was as follows:

Amount of Money Order	*Amount of fee*	
	Domestic	*International*
$0.01 to $10.00	$0.25	$0.45
$10.01 to $50.00	0.35	0.65
$50.01 to $100.00	0.40	0.75

The list of countries on which International Money Orders can be purchased may vary from year to year; inquiry should be made at the Post Office. As of 1971, when the International Money Order was payable in Greece, Japan, Lebanon, Syria, or Yugoslavia, the purchaser was to use Form 6083, POD, instead of the usual Form 6701, POD, writing thereon the name and address in the language of the country of payment. The Post Office would then forward Form 6083 with the Money Order to the Money Order Division, Bureau of Finance and Administration of the Post Office headquarters for further processing and action. In completing the Application for International Money Order (Form 6701, POD), the purchaser is to furnish the given names of both purchaser and payee. If full names cannot be supplied, initials may be accepted. If the payee has only one given name, known to the purchaser, it shall be written in full. Example: John Jones (not J. Jones). If possible, the given name of a married woman (not that of her husband) shall be stated. Example: Mrs. Mary J. Brown (not Mrs. William H. Brown).

The Postmaster must refuse to issue an International Money Order payable to any person if the full given name (or initials) cannot be furnished by the applicant, unless the payee be a peer or bishop, for whom his title is sufficient. When the payee is a business firm, its usual commercial designation is acceptable.

American Express Co. Money Orders. — An advantage of such American Express Money Orders is that they may be used in making either domestic or foreign payments. Fee scale as of 1971 was 40¢ up to $200 for domestic Money Orders; and the following scale for foreign payments:

Up to $500	$2.00
$501 to $1,200	3.00
Over $1,200	¼%

American Express Co. Money Orders are payable at any office of the company, and may pass from hand to hand by continuous endorsement, without limitation as to number, as compared with one endorsement permitted on Postal Money Orders. Further, American Express Co. Money Orders have no time limit, being good until paid.

* * *

TRAVELERS' CHEQUES International cheques, or more technically, a modified form of a traveler's letter of credit, not drawn on any specified bank or banks, but payable at practically all banks throughout the world, and guaranteed by some well known institution. They furnish a convenient and safe currency for travelers and may be purchased at all

principal banks for cash. They are issued in convenient denominations, in dollars — $10, $20, $50, and $100 but may be also available in foreign currencies, chiefly sterling and francs. The signature of the payee (usually also the buyer) is written on the face of the check at the time of purchase. Space is reserved for the beneficiary's counter-signature in the presence of the person agreeing to cash the cheque, for purposes of identification. The signature written in the presence of the paying bank or other institution must correspond with the signature written at the time of the purchase, agreement of the two signatures being regarded as sufficient identification for the payment of the money. For this reason, a traveler's cheque should never be countersigned by the payee, except in the presence of the person who agrees to accept it. These cheques are almost universally acceptable abroad, and the principal hotels, railroads, steamship lines and merchants accept them as freely as cash.

Where stability of exchange rates permits, travelers' cheques issued in dollars may be issued payable at fixed rates of exchange. Generally, dollar travelers' cheques are convertible into various foreign currencies at the prevailing buying rate of exchange for bankers' cheques on New York on the date presented. When drawn in a foreign currency, these cheques are payable at face value. When drawn in dollars, they are accepted at the current buying rate for bank checks on New York.

Travelers' cheques are also used domestically. They are usually acceptable as currency, *i.e.*, without being first cashed, by railroads, hotels, gas stations, and

principal merchants. Thus, they are equivalent to insured money.

Two types of travelers' cheques can be purchased: American Express Company cheques, and cheques issued by some of the larger banks. American Bankers' Association cheques were discontinued in March, 1933, following the bank holiday. The commission for issuance is usually one percent.

Travelers' cheques are both safe and convenient, and if lost or stolen, no loss is likely to be incurred, due to the fact that no person other than the payee can cash them, since the countersignature must be written in the presence of the person agreeing to accept them. In case of loss, however, owners of American Express Company cheques are reimbursed, provided the second signature has not been affixed. Unused portions of travelers' cheques are redeemable at face value by the issuing bank. When presented for redemption they must be countersigned exactly as when cashed at any other place.

Banks sometimes issue guaranteed travelers' cheques, in which case the payee does not pay for them at the time of issue but permits the bank to charge his account after they have returned from abroad and are presented to the payee's bank for collection.

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COMPTON'S ENCYCLOPEDIA AND FACT-INDEX (Vol. 14) (1972)

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MONEY ORDER. A safe and convenient way to send money through the mails is by money order. Money orders are especially helpful to persons who do not have checking accounts. They are also useful in situations in which a personal check would not be acceptable, because unlike checks money orders are paid for at the time they are issued.

Although there are several different types of money order, all have the same basic features. Three parties are involved—the payer, who buys the money order; the payee, who receives it; and the drawee, the organization which issues it. The fee charged for the purchase of a money order varies with its amount, and the drawee generally sets limits to the amount for which a single money order may be issued. Should a money order be lost, the drawee may replace it after the payer establishes proof of loss and produces the money order receipt.

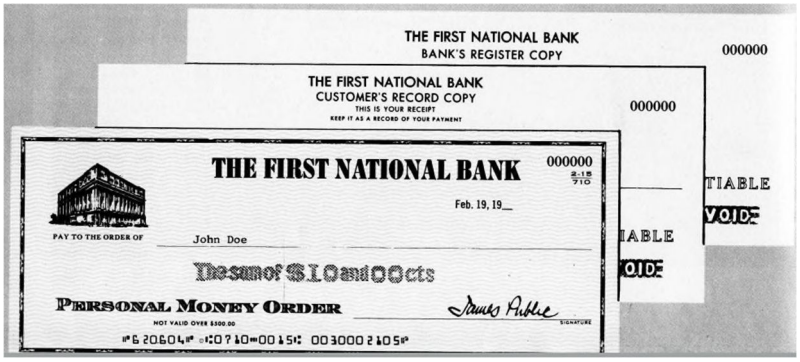
In the United States the most common type of money order is the postal money order. This can be purchased at any post office. The two most common kinds of postal money order are the domestic (for the remittance of money within the United States) and the international (for the remittance of money to foreign countries). The maximum amount for which a postal money order may be issued is one hundred

dollars. Each year United States post offices sell more than 200 million money orders.

Private organizations, such as the American Express Company, currency exchanges, and banks and savings institutions, also issue money orders. These organizations usually set higher limits than those of the Post Office Department. However, the fees they charge are generally greater than those charged by post offices. Money orders can be purchased at the issuing organization's offices or at authorized retail stores. Money orders issued by banks and savings institutions are of two forms—the bank money order and the personal money order.

The fastest way to transmit money to almost any part of the world is by use of a Western Union money order. Such a money order may be purchased at any Western Union office. Instructions to issue the money order are telegraphed to the Western Union office closest to the payee. The money order is then either delivered to him or picked up by him at that office.

Money orders were introduced in the United States during the 19th century. The first Post Office Department money order was issued in 1864. In 1882 the American Express Company initiated its money order service. At present money orders worth billions of dollars are sold annually in the United States.



A PERSONAL MONEY ORDER

This personal money order was issued by a bank and signed by the payer. Shown here in addition to the money order are the copies that serve as receipts for the bank and the payer.

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THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE

(1971)

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money order. *Abbr.* m.o., M.O. An order for the payment of a specified amount of money, usually issued and payable at a bank or post office.

* * *

traveler's check. An internationally redeemable draft purchasable from a bank, express company, or travel agency, in various denominations, valid only with the holder's own endorsement against his original signature.

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WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY

(1972)

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money order *n*: an order issued by a post office, bank, or telegraph office for payment of a specified sum of money at another office

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AM. BANKERS ASS'N, BANK MGMT. PUB. NO. 140, *MONEY ORDER SERVICES* (1956)

MONEY ORDER SERVICES

INTRODUCTION

In 1942 the Bank Management Commission, acting in response to a widespread demand by banks for an expression on bank money orders, appointed a special committee to study the subject and as a result Commercial Bank Management Booklet No. 26 was published.

Because of the many developments in the field of money orders in recent years the Bank Management Commission, in following its policy of keeping bankers informed of better ways of doing things, has appointed a new committee to restudy this subject and to the extent necessary revise and enlarge Booklet No. 26 so that it would be modern and up to date.

This manual, like its predecessor, is published as an aid to bankers that are considering the merits of the money order services that are offered to the public. The sale of money orders is certainly a logical function of any bank; and in addition, it is a service that can be profitable. In spite of steadily increasing sales of money orders issued by banks it is obvious that banks are supplying only a small part of the market. The major part is still being supplied by the post office.

The number of postal money orders sold is an impressive figure—359,761,452 for the fiscal year

ending June 30, 1954. Bankers interested in the volume sold in their own communities can usually obtain that information from their local postmaster. The figures of the Post Office Department alone definitely indicate the great potentialities of the money order market for banks.

THE MONEY ORDER MARKET

Inasmuch as postal money orders, which have been in use since 1864, are now supplying the majority of the needs for this type of service, it may be of interest to observe from the table on page 8 the volume as shown in the published report of the Postmaster General, covering the fiscal year ending June 30, 1953.

The money order market is also served by American Express money orders and money orders of a number of other nonbanking establishments; and there are thousands of banks selling either bank money orders or the more recently developed personal money orders, in addition to official bank checks.

"Special," or "Pay-as-You-Go," checking accounts have often been considered as being competitive with money orders, but the experience of banks which offer not only regular checking accounts and special checking accounts but a money order service as well, proves conclusively that this is not the case because money orders serve those who for one or more reasons do not want or need a checking account. There has been much emphasis on the part of banks in recent years to develop a large volume of special checking accounts and hundreds of thousands of these accounts have been opened. In spite of this the domestic postal money order volume rose from 171 million in 1933 to 359 million in 1954 (fiscal year ended June 30). Other

money order services have also shown a substantial growth in the same period.

Banks must recognize that the hours they serve the public are not as long as those of the post offices and certainly far short of the hours of drug stores and other establishments where money order services may be available. This is a factor to be considered in estimating the volume that may be developed but it should not deter any bank from entering this field. It is a big field and many banks have developed a substantial volume of business.

POSTAL MONEY ORDERS

Since the postal money order service is the oldest and is serving the major part of the existing market which banks can reach, it seems worthwhile to consider the issuing procedure and the fees charged to the purchaser. This will serve to point out how banks can render a superior service at a lower price.

For a great many years a purchaser of a postal money order has been required to fill out an application form which calls for the amount, the name of the payee, the complete address of the payee, the purchaser's name, and the purchaser's complete address. From this application the postal clerk would interpret the information and then write out the money order and the essential records for the Post Office Department.

NEW POST OFFICE PROCEDURE

The Post Office Department has recognized this method as cumbersome and has recently put into use a new procedure which eliminates the use of an application, and which provides for the customer to insert

the name of the payee and his own name and address on the money order. Under the new procedure the postal clerk places a figure amount with pen and ink in three places: on the money order itself, on the purchaser's stub, and on the issuing office's stub. He also writes his initials in two places on the form. He places a rubber stamp impression designating the issuing post office and the date in three places. Another rubber stamp impression is placed on the money order itself, the purpose of which is designed to limit the amount and prevent raising. While this procedure is more efficient than the old, it is still time-consuming for both the customer and the postal clerk in that it requires a number of manual repetitive operations.

POSTAL MONEY ORDER VOLUME FISCAL YEAR ENDING JUNE 30, 1953

(1953 is the last fiscal year in which the number of Money Orders issued in the states will be made available by the Post Office Department.)

States, Territories, etc.	*Domestic*		*States, Territories, etc.*	*Domestic*	
	Number	*Value*		*Number*	*Value*
Alabama	6,472,688	$94,655,100	Nevada	880,263	$18,294,999
Alaska	750,865	22,714,691	New Hampshire	1,844,655	25,508,312
Arizona	2,399,239	41,784,775	New Mexico	2,020,202	36,040,324
Arkansas	4,565,747	63,121,683	New York	36,730,258	685,774,524
California	34,822,800	728,936,98	North Carolina	8,091,334	118,780,719
Canton Island	834	26,394	North Dakota	1,434,370	20,807,120
Colorado	3,630,147	58,477,588	Ohio	18,652,199	294,746,836
Connecticut	4,893,570	77,441,447	Oklahoma	4,984,875	77,487,957
Delaware	804,653	12,060,579	Oregon	4,001,851	66,874,216
District of Columbia	3,938,981	68,745,306	Pennsylvania	26,718,667	386,128,296
Florida	8,682,565	149,057,903	Puerto Rico	1,343,677	28,427,478
Georgia	8,548,260	123,323,897	Rhode Island	1,498,150	22,159,313

Guam	67,223	2,676,448	Samoa (Tutuila)	1,178	21,263
Hawaii	1,014,397	21,127,202	South Carolina	4,824,464	72,216,607
Idaho	1,302,994	26,221,716	South Dakota	1,233,512	17,608,296
Illinois	15,619,281	246,621,328	Tennessee	5,906,460	85,683,970
Indiana	9,891,243	162,594,909	Texas	17,256,009	276,653,195
Iowa	4,243,687	59,431,824	Utah	1,764,069	30,340,661
Kansas	4,133,416	64,600,508	Vermont	1,196,147	16,036,964
Kentucky	6,147,904	90,737,970	Virginia	8,480,585	128,832,451
Louisiana	7,252,812	107,257,224	Virgin Islands	100,698	1,850,040
Maine	3,271,250	43,700,642	Wake Island	4,374	190,474
Maryland	6,001,442	94,721,223	Washington	6,659,907	119,879,733
Massachusetts	10,496,837	153,235,139	West Virginia	6,340,126	92,062,836
Michigan	13,614,523	215,684,759	Wisconsin	7,496,462	113,004,675
Minnesota	5,904,595	86,467,331	Wyoming	956,917	17,219,303
Mississippi	4,879,581	68,250,050	Caroline, Mariana, and Marshall Islands	13,070	677,029
Missouri	9,371,640	132,189,132	Total	368,762,221	$6,033,322,494
Montana	1,677,647	28,649,029			
Nebraska	2,129,045	31,193,489			

(359,761,452 sold in 1954, detail by States, Territories, etc., not available.)

POSTAL MONEY ORDER FEES

The postal money order fees charged are based upon the amount of the order, and are currently as follows:

From $ 0.01 to $ 5.00..... 10 Cents

From 5.01 to 10.00..... 15 Cents

From 10.01 to 50.00..... 25 Cents

From 50.01 to 100.00..... 35 Cents

(The maximum amount is $100.)

A graduated scale of rates has been used since the service was established in 1864, and it is probable that the then required method of transferring funds warranted a charge based on the amount to be transmitted. However, it is readily apparent that the amount of work involved in issuing and paying a money order does not vary with the amount.

The average amount of domestic postal money orders is about $16 and the aggregate dollar amount of those sold in the year ending June 30, 1954, was $6,047,736,612. Aggregate fees collected the same year were $66,938,154, which is an average of $0.186 per order.

BANK MONEY ORDERS

Bank money orders have been in use for many years and were undoubtedly adopted to compete with postal money orders. Volume figures are not available and the fees charged by banks are not consistent. Some banks apply a graduated scale of charges based on the amount, and others use a single fee. Some banks limit the amount to $100, while others use a higher maximum.

The legal status of a bank money order, as the name implies, is that of an official check or instrument of the issuing bank, the same as Cashier's or Treasurer's checks. This status will be referred to again in considering the status of personal money orders.

TWO PLANS

Two plans were developed for the purpose of handling bank money orders by the banks. One plan uses a bank money order form which is provided with a stub as a receipt to the purchaser. The other plan uses

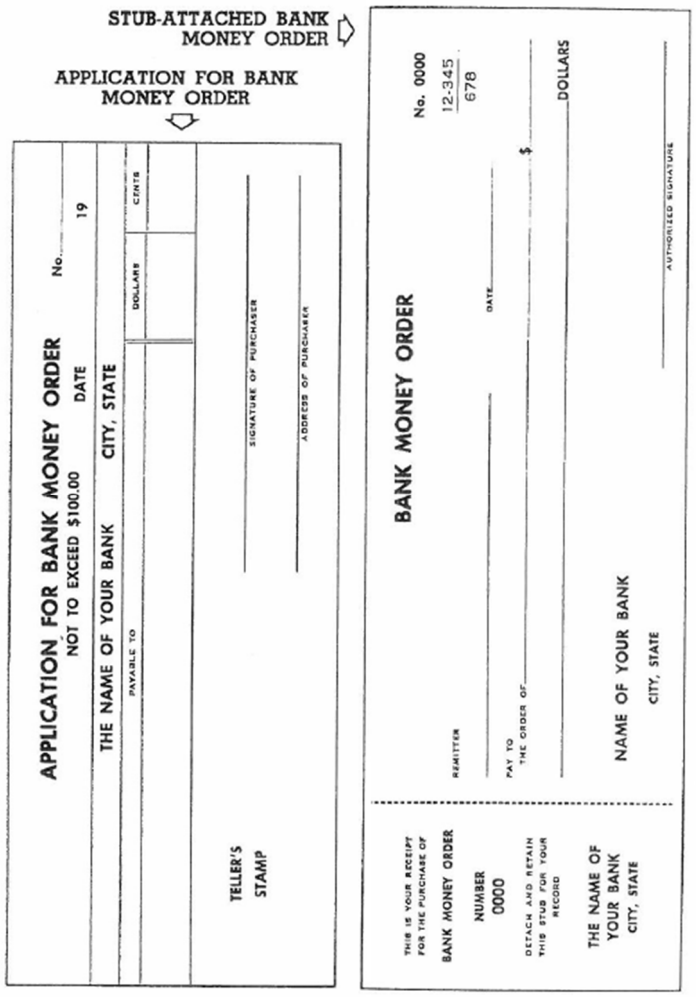
a three-part bank money order form which includes the customer's receipt and a copy for the bank's records.

Both plans generally use an application for bank money order form which is to be filled out by the purchaser (see page 11). This application form provides spaces for a number, the payee, amount, signature, and address of the purchaser, and stamp of the teller handling the transaction. The application form is to be filled out by the customer who inserts the name of the payee, the amount, his signature, and address. The bank inserts the number, the date, and the teller's stamp.

STUB TYPE BANK MONEY ORDER

As stated before, one plan calls for the use of a bank money order form which is provided with a stub as a receipt to the purchaser (see page 11). The bank money order bears on its face the date, the number, name of the payee, amount, name of the remitter, and the authorized signature of the bank officer (or employee). The application, which as previously mentioned, will have been stamped, dated, and numbered by the teller becomes the bank's copy or register and will serve as a record which will go from the teller to the general ledger to be filed in numerical order. When the bank money order is returned to the bank for payment, the register (which is the application blank) will be taken out and both will be stamped or perforated "paid" and then will be filed. The bank money order may be filed either by date paid or in numerical order. The application may be filed alphabetically by the name of the remitter, the date paid, or by the number, depending upon the preference of the bank. If they desire to do so, banks may use a regular

register sheet to record these bank money orders, but this is not recommended as it will necessitate a special writing, which creates another possibility of error as well as additional work.

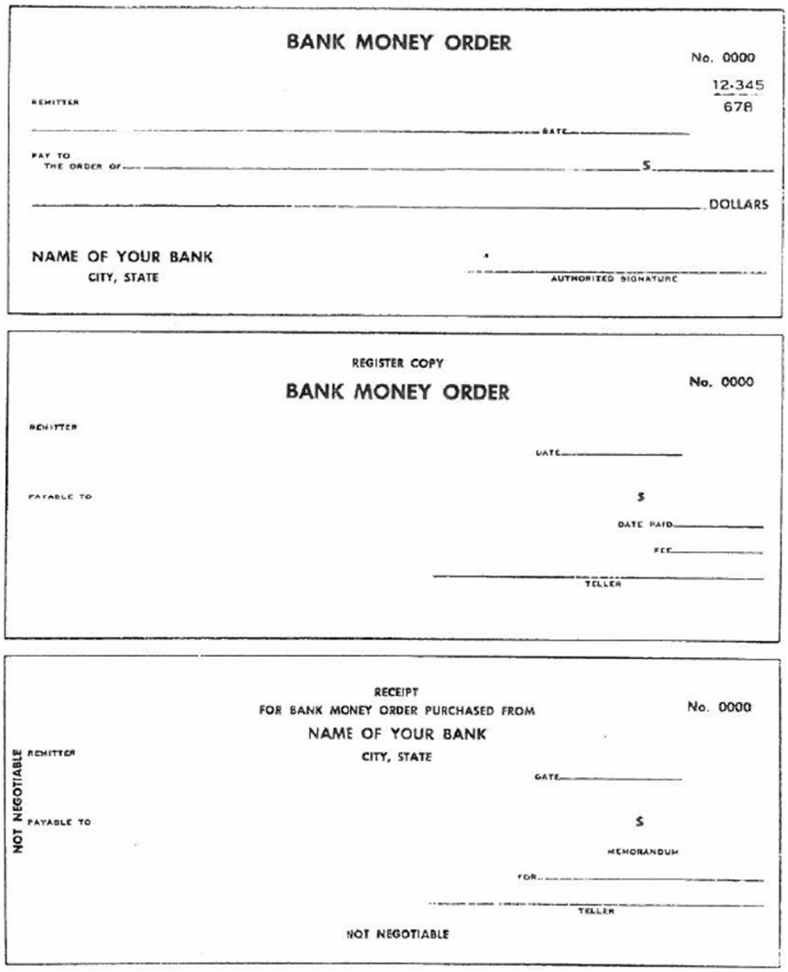


THREE-PART MONEY ORDER

The other bank money order plan makes use of a three-part form (see page 13). An application is generally used with this plan, although it is not absolutely

essential, as the purchaser may recite audibly the necessary information. The original is the bank money order itself, the second copy is the register, and the third copy is the purchaser's receipt. These three forms are filled out at one writing, either on the typewriter or by pen and ink. The original and the purchaser's receipt go to the purchaser. The second copy is to be retained by the bank as its register copy. It is to be filed in numerical order and is to be withdrawn and stamped or perforated "paid" at the time the bank money order is presented. Here again, the bank money order may be filed numerically and the register copy alphabetically by the name of the remitter, although again this is not absolutely essential.

Irrespective of which form of bank money order is used, the bank employee must prepare the money order and it must have an authorized signature, as it is an official instrument of the bank.



BANK MONEY ORDER

No. 0000

12-345
678

REMITTER

DATE

PAY TO
THE ORDER OF $

DOLLARS

NAME OF YOUR BANK
CITY, STATE

AUTHORIZED SIGNATURE

REGISTER COPY

BANK MONEY ORDER

No. 0000

REMITTER

DATE

PAYABLE TO $

DATE PAID

FEE

TELLER

RECEIPT
FOR BANK MONEY ORDER PURCHASED FROM
NAME OF YOUR BANK
CITY, STATE

No. 0000

NOT NEGOTIABLE

REMITTER

DATE

PAYABLE TO $

MEMORANDUM

FOR

TELLER

NOT NEGOTIABLE

THREE-PART SNAP-OUT BANK MONEY ORDER

PERSONAL MONEY ORDERS

ORIGINAL TYPE OF PERSONAL MONEY ORDER

In 1937 a new idea was developed to serve the need of money order users. This idea involved the use of checks numbered and protected in amount with a checkwriter by the bank but otherwise made out and signed by the customer rather than by the bank. Because these checks were signed by the customers, they were considered personal money orders. They were first known as "Register Checks" because this process of numbering and protecting them was referred to as "registering" the check for subsequent payment. The bank's record consisted of a ticket bearing only the amount and number of the issued check and not the name of the payee or signer—a somewhat revolutionary idea at the time. The Register Check is the forerunner of similar plans that have been adopted both by banks and check suppliers.

Checks with attached customer's stubs, which were available to customers in blank at the bank's offices, were used in the original service. A customer wishing to purchase one of these checks would fill out the complete form (check and stub), sign it, and present it to the teller with funds for the face amount and the fee. The teller would number the check and stub to correspond with a pre-numbered register ticket. He would then place the amount on the check, stub, and register ticket with three impressions of a checkwriter.

This new personal money order service, when it was first introduced, was viewed with some skepticism but it soon proved itself to be entirely workable and gained early popularity, particularly among New England banks. Since its inception, it experienced a

substantial growth among banks, and the volume has increased constantly.

IMPROVED TYPE OF PERSONAL MONEY ORDER

As might be expected in a service so radically different, some improvements were made. The improved type of personal money order is a three-part form consisting of the check, the bank's register copy, and the customer's record copy—interleaved with one-time snap-out carbons. The manufacturer pre-numbers these forms through the carbons so that absolute accuracy of numbering on all three parts of the form is assured. Another improvement was the inclusion of the words, "Personal Money Order" on the check.

The inclusion of "Personal Money Order" on the check serves to point out that it is a *personal* money order and not an official instrument of the bank. It may also have some effect in supporting the premise that it is a personal check of the drawer and not a direct obligation of the bank. Since this original service was offered, a number of banks have adopted similar services and there have been instances where the names seem to imply that they are bank instruments, whereas they are operated on the basis of personal money orders. It seems unwise to feature a personal money order, either in its name or in any advertising pertaining to it, as being good or guaranteed in any way by the drawee bank, as such a needless implication certainly carries with it a moral guarantee, if not a legal one. There are occasions when a certified or guaranteed instrument is called for, but they are relatively rare, and in such cases a personal money order may be certified just as would be done with any personal check.

OPERATION OF THREE-PART FORM

In contrast to the original type of personal money order service where blank checks were available to customers—an objectionable feature to some banks—the new type personal money orders are controlled by the bank and are not available to customers until the funds are paid to the bank. To obtain one, a customer merely states the amount he desires and pays that amount, plus the fee, to the teller, who then places the amount on the three-part form with a single impression of the checkwriter. The carbons are snapped out and the check and the customer's record copy are given to the customer who completes them. This procedure permits a very fast teller's operation and the speed is a valuable feature because the selling peaks for personal money orders usually occur when other activities, particularly check cashing, are also at a peak. One bank which sold more than 1,500,000 of these items in 1954, made some time studies and found that the average time required for a sale, including the making of change, was thirteen seconds. Obviously, this is many times faster than the sale of a bank money order which requires the bank to make out the entire money order with its necessary records. The overall cost of issuing a personal money order is only a fraction of the cost of issuing a bank money order.

LOWER COST OPERATION

The chief merits of the personal money order are the lower cost of operation by the bank and the faster service that can be rendered to customers. Costwise, the price of personal money order forms is comparable to bank money order forms of similar type. The net result is that banks can offer this new service to the

public at a lower price and yet operate the service profitably. The fact that a customer can make out and sign his own check is also an attractive feature of the personal money order service and it has considerable customer appeal.

SPECIAL OCCASION MONEY ORDERS

Personal money orders also lend themselves toward the use of special occasion or special purpose money orders: such as for gifts at Christmas, Easter, birthdays, etc. Some banks have designed very attractive, specially imprinted personal money orders for such occasions.

STATUS OF MONEY ORDER

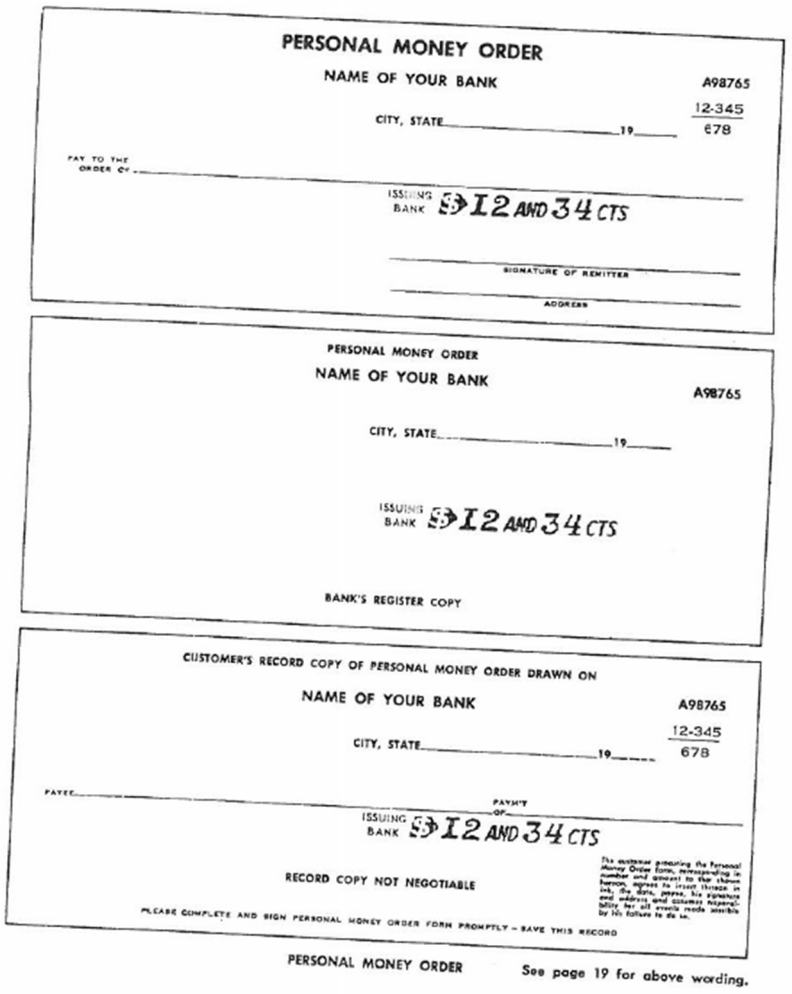
As previously pointed out, a bank money order is an official bank instrument and is, therefore, a direct obligation of the issuing bank; whereas a personal money order, which is not signed by the bank, is considered in the same status as a personal check—more specifically, the personal check of the signer. While no law case has established this as a premise, it seems to be the general opinion of counsel.

The fact that a personal money order is the personal obligation of the signer is advantageous to banks, particularly if it becomes necessary to stop payment. Banks using personal money orders readily accept stop payments as on checks drawn against regular checking accounts, and generally issue a replacement or reimburse the customer after an established period of time. This period of time varies from bank to bank; in some cases it is as short as 24 hours while in other cases it may be a number of days. In the case of bank money orders or other official checks, it is the custom for a bank to obtain a surety or guarantee to protect it in the event the item is subsequently presented for

payment. The simplicity which surrounds reimbursement or the issuance of a replacement personal money order is particularly gratifying to the customer and a source of good will. Incidentally, a paid personal money order may be released to a purchaser if for some reason it becomes necessary to establish proof of payment, in which case a memorandum receipt is filed in place of the surrendered item. Also, if for any reason the purchaser does not wish to use a personal money order for the purpose intended, it may be cashed for the purchaser on his endorsement even though payable to someone else.

THREE-PART SNAP-OUT FORM

Because the new three-part snap-out personal money order form has the greatest acceptance among banks, it is used as an exhibit in this publication (page 18). As previously mentioned, there are other personal money order services employing similar ideas and procedures. One of the variations is a type of form which has attached to it an envelope, obviously for the convenience of the customer in mailing the money order. These forms are, necessarily, more costly than those without envelopes and are slightly more cumbersome for the bank to handle, but they may have some customer appeal which may justify their use. However, observation indicates that many customers come to the bank with addressed envelopes and contents in readiness for mailing except for inserting the money order. Furthermore, some bankers feel that they should avoid the nuisance of providing any form of stationery or postage stamps.



PERSONAL MONEY ORDER
NAME OF YOUR BANK
A98765
12-345
678
CITY, STATE 19
PAY TO THE ORDER OF
ISSUING BANK $12 AND 34 CTS
SIGNATURE OF REMITTER
ADDRESS

PERSONAL MONEY ORDER
NAME OF YOUR BANK
A98765
CITY, STATE 19
ISSUING BANK $12 AND 34 CTS
BANK'S REGISTER COPY

CUSTOMER'S RECORD COPY OF PERSONAL MONEY ORDER DRAWN ON
NAME OF YOUR BANK
A98765
12-345
678
CITY, STATE 19
PAYEE
PAYMT OF
ISSUING BANK $12 AND 34 CTS
RECORD COPY NOT NEGOTIABLE
The customer procuring the Personal Money Order form, corresponding in number and amount to that shown hereon, agrees to insert thereon in ink, the date, payee, his signature and address and assumes responsibility for all events made possible by his failure to do so.
PLEASE COMPLETE AND SIGN PERSONAL MONEY ORDER FORM PROMPTLY – SAVE THIS RECORD

PERSONAL MONEY ORDER See page 19 for above wording.

The following statement appears on the customer's copy of the forms appearing on pages 18, 23, and 25:

> The customer procuring the Personal Money Order form, corresponding in number and amount to that shown hereon, agrees to insert thereon in ink, the date, payee, his signature and address and assumes responsibility for all events made possible by his failure to do so.

MAXIMUM LIMIT ON AMOUNT

In operating a personal money order service where the bank's record consists only of a number and amount, it has been the general practice to limit responsibility by adopting a maximum limit on the amounts. Some banks use $100 while others permit orders to be written up to $250 or more. A few banks have printed the dollar limit on the instrument, but such legends are inconsistent with recommendations of the Check Standardization Committee of the Bank Management Commission of the American Bankers Association, and also inconsistent with efforts of many banks which have discouraged these legends on customers checks. In the occasional instances where instruments for amounts that are in excess of the limit are required, the use of an official check, where more complete records such as payee's and purchaser's names and addresses would be made, may be more satisfactory.

ADDRESS OF REMITTER HELPFUL

It will be noted from the specimen form of personal money order that an "address" line is provided. The address of the remitter is often helpful to a payee in making proper application of the funds. If, for instance, a department store receives a money order signed Mary A. Smith intended to pay her account which may stand in the name of Mrs. John B. Smith, the address will be helpful to the store in properly identifying the account. Without the address, in such instances, the payee would be likely to contact the drawee making extra work for the bank and usually without accomplishment.

PAYING OPERATION

The text of this booklet has been confined primarily to the issuing process because it is the costliest part of the entire cost of operating a money order service and is affected mostly by the variety of methods employed. The paying process is quite similar whether bank money orders or personal money orders are used, although it is admitted that banks exercise somewhat greater care in paying official orders issued by the bank. This pertains particularly to the examination of endorsements.

Banks having branches may find it desirable to centralize the paying operation in the main office, but it could be decentralized if circumstances warranted by properly identifying the money orders by the branch responsible for the paying operation. Wherever a substantial volume of personal money orders has been developed, a tabulating procedure for the paying process and for proving the outstanding items, can provide some volume economies. The limited application, which necessitates tabulating equipment as well as a substantial volume, does not warrant a description in this booklet.

ADVANTAGES OF PERSONAL MONEY ORDER

There seems to be no doubt that the use of personal money orders provides advantages to the bank. In addition, there are advantages to the customer, too—less waiting time; usually less cost; and he makes out and signs his own money orders. Banks using a bank money order service may, however, be hesitant to change to a personal money order service because such a change involves necessary explanation to the customer. There are cases where banks have adopted personal money orders but have continued to use bank

money orders as well, perhaps to give the customer a choice, or possibly to prolong the period of "conversion." Having two systems could conceivably cause confusion both within the bank and to the customer; hence, each bank will have to analyze its own position and make its own decision. For the benefit of those who decide to adopt personal money orders, the procedure and form used by one bank is as follows:

For about five weeks prior to the inauguration of the personal money order plan, a printed form announcing the plan was given to each purchaser of a bank money order. This form served as a preliminary introduction, and the result was that the changeover to the personal money order plan was carried out with a minimum of explanation.

To Our Money Order Customers:

In order to serve you better and faster, we will soon provide you with a new personal money order service. To purchase one you simply state the amount to the teller. You will receive a money order which you fill out and sign — just like your personal check. You will also receive a record copy which you fill out and keep.

Any amount up to $200 Only — cents.

We are sure you will enjoy this modern personal money order service.

(Name of Bank)

To minimize the verbal explanation to new users thereafter, a teller need only say "Just fill in all the blank lines."

CHARGES

A survey of a representative group of banks presently selling personal money orders indicates that charges range from a low of 10 cents to a high of 20 cents per order, with the majority being 15 cents. Banks are urged, however, to set their own fee based on their issuing and paying costs and expected margin of profit.

CHECKWRITER IMPRESSION

It is recommended that banks adopting a personal money order plan in which the form is completed by a single impression of a checkwriter should employ equipment that will print the amount in figures of reasonable size and style so that they are easily read on all copies. The suggested location consistent with the recommendations in the publication "Standards for Designing Checks and Drafts" issued by the Bank Management Commission of the American Bankers Association, is shown in the personal money order specimen on page 18. The name, abbreviation, or other symbol identifying the issuing bank should be included in the checkwriter impression.

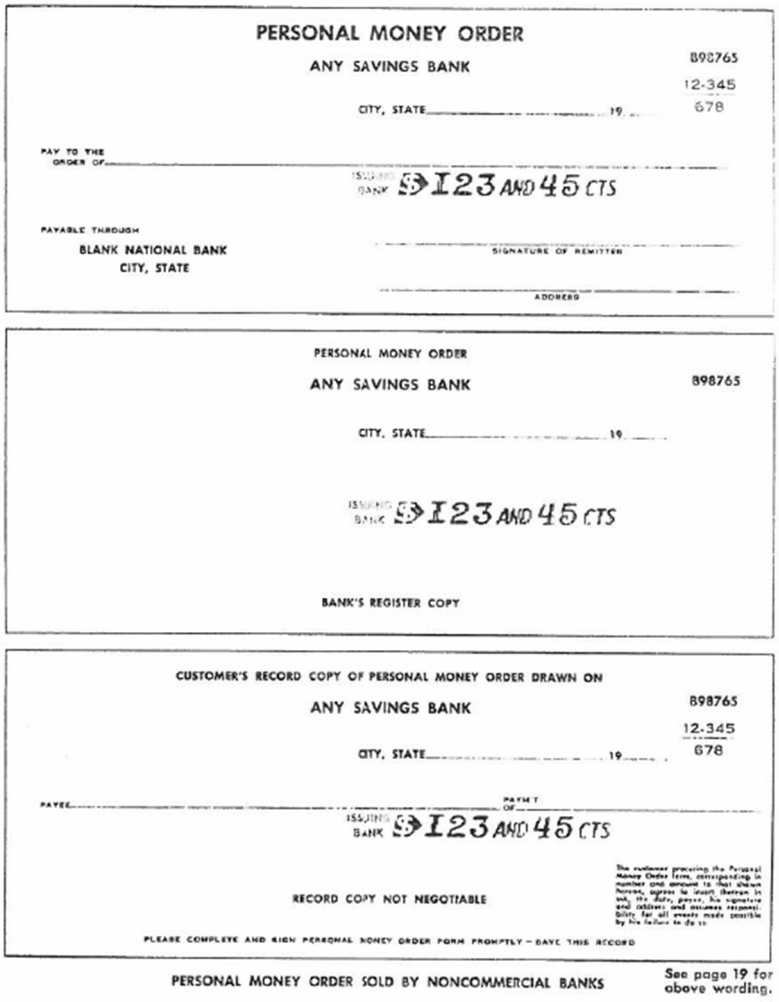
MONEY ORDER SERVICES BY NONCOMMERCIAL BANKS

Other types of financial institutions such as mutual savings banks, and the like, must have their money orders payable through a commercial bank. In the use of personal money orders, it is desirable to establish the bank of issue as the drawee bank, and to accomplish this the money order is usually made "payable through" a commercial bank.

PAYING FUNCTION

If the commercial bank is merely to clear the money orders and be reimbursed for the items presented for payment, the bank of issue retains the register copies and performs the paying process each day as items are received from the commercial bank. It is essential in such cases to have an agreement between the banks on matters such as when and where items will be picked up or delivered each day, method of reimbursement for the items, and the handling of any items which may be returned unpaid. Under such an arrangement the items should be delivered to the bank of issue uncanceled, so that items not to be paid may be returned uncanceled.

Where the commercial bank is to perform the complete paying function, the bank of issue should provide the commercial bank with the funds and register copies representing money orders sold each day. This arrangement relieves the bank of issue of all paying responsibilities and naturally justifies greater compensation to the commercial bank performing the function. Such an arrangement should be formalized to the extent of setting forth the agreed upon procedure and responsibilities, such as time, place, and method for providing the commercial bank with funds and the supporting register copies each day, method of accounting for any spoiled money order forms, handling of items upon which payment must be stopped, handling of refunds or reimbursements when necessary, disposition of paid money orders, and compensation arrangements for the commercial bank. The latter is usually an agreed upon price per item issued.



PERSONAL MONEY ORDER
ANY SAVINGS BANK
898765
12-345
678
CITY, STATE _____ 19 ___
PAY TO THE ORDER OF _____
ISSUING BANK $ 123 AND 45 CTS
PAYABLE THROUGH
BLANK NATIONAL BANK
CITY, STATE
SIGNATURE OF REMITTER
ADDRESS

PERSONAL MONEY ORDER
ANY SAVINGS BANK
898765
CITY, STATE _____ 19 ___
ISSUING BANK $ 123 AND 45 CTS
BANK'S REGISTER COPY

CUSTOMER'S RECORD COPY OF PERSONAL MONEY ORDER DRAWN ON
ANY SAVINGS BANK
898765
12-345
678
CITY, STATE _____ 19 ___
PAYEE _____ PAYMENT OF _____
ISSUING BANK $ 123 AND 45 CTS
The customer procuring the Personal Money Order here, corresponding in number and amount to that shown hereon, agrees to insert thereon in ink, the date, payee, his signature and address and assumes responsibility for all events made possible by his failure to do so.
RECORD COPY NOT NEGOTIABLE
PLEASE COMPLETE AND SIGN PERSONAL MONEY ORDER FORM PROMPTLY – SAVE THIS RECORD

PERSONAL MONEY ORDER SOLD BY NONCOMMERCIAL BANKS

See page 19 for above wording.

MONEY ORDER SERVICES BY NONBANKING ESTABLISHMENTS

Money order services in stores and establishments which in some states are licensed to cash checks and sell money orders (or their equivalent) have grown in recent years at a rate which is believed to be greater than the growth of similar services by banks. This is

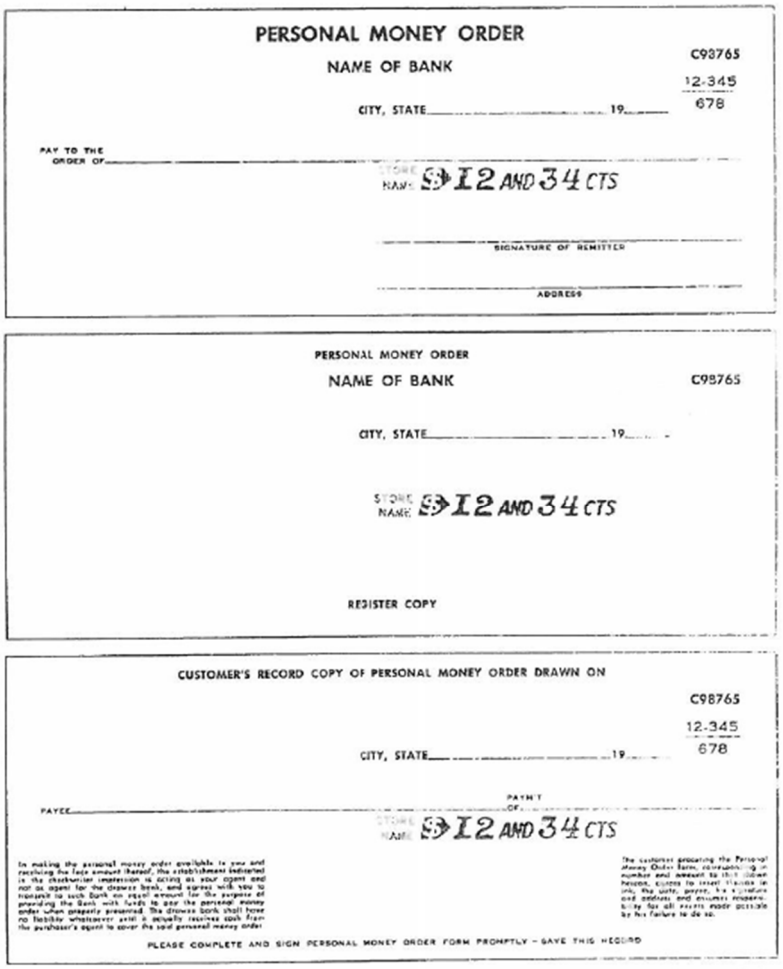
due, in part at least, to their longer public hours, but also because these stores and establishments recognize an opportunity for profit directly or indirectly and have sought the business. Some banks do not look favorably on the idea of nonbanking establishments rendering a money order service, but the demand for the service is unquestioned and banks can only meet the demand as fully as their location and hours permit. It must be recognized that a bank can only reach and serve money order users in its own immediate area.

DRAWEE BANK REQUIRED

Nonbanking establishments cannot operate such a service without a drawee bank, and it may be wise for banks, in states which permit this activity, to seek to become the drawee on a mutually profitable basis, so that the bank's community will receive the best type of service at a good price. In such cases, the bank usually makes a service charge to nonbanking establishments; and in addition, they have on deposit the funds representing the outstanding money orders. Many such arrangements are now in effect between banks and department stores, drugstores, supermarkets, etc.

LIMITING RESPONSIBILITY

It is not likely that a bank will want to enter into an arrangement whereby a store would sell the bank's own money orders, or other official instruments of the bank, due to the responsibility the bank would incur. The situation is quite different, however, with the use of personal money orders, which because of their personal status are not the direct obligation of the drawee bank.



PERSONAL MONEY ORDER

NAME OF BANK

C98765

12-345
678

CITY, STATE _____ 19____

PAY TO THE ORDER OF _____

STORE NAME $ 12 AND 34 CTS

SIGNATURE OF REMITTER

ADDRESS

PERSONAL MONEY ORDER

NAME OF BANK

C98765

CITY, STATE _____ 19____

STORE NAME $ 12 AND 34 CTS

REGISTER COPY

CUSTOMER'S RECORD COPY OF PERSONAL MONEY ORDER DRAWN ON

C98765

12-345
678

CITY, STATE _____ 19____

PAYEE _____ PAY TO THE ORDER OF

STORE NAME $ 12 AND 34 CTS

In making the personal money order available to you and receiving the face amount thereof, the establishment indicated in the check-writer impression is acting as your agent and not as agent for the drawee bank, and agrees with you to transmit to such bank an equal amount for the purpose of providing the Bank with funds to pay the personal money order when properly presented. The drawee bank shall have no liability whatsoever until it actually receives such from the purchaser's agent to cover the said personal money order.

The customer procuring the Personal Money Order form, corresponding in number and amount to that shown hereon, agrees to assist Travelers in only the sale, payee, [illegible] and address and assumes responsibility for all errors made possible by his failure to do so.

PLEASE COMPLETE AND SIGN PERSONAL MONEY ORDER FORM PROMPTLY – SAVE THIS RECORD

See page 26 for above wording.

PERSONAL MONEY ORDER SOLD BY NONBANKING ESTABLISHMENTS
(Note Special Wording on Customer's Record Copy)

See page 19 for above wording.

OPERATING ARRANGEMENTS

Some banks have sought to become the drawee bank for stores which may sell money orders, while other banks have limited their interest to acting as drawee bank only when requested by a nonbanking establishment. In setting up these arrangements some banks supply the personal money order forms, and in some

cases checkwriters as well, and they base their compensation accordingly. In other cases the nonbanking establishment furnishes its own material and merely employs a drawee bank to operate the money order account and effect payment of the orders sold. While a bank can limit its responsibilities in acting as drawee bank for a nonbanking establishment selling personal money orders, it should enter into such arrangements only with establishments of responsibility and where adherence to agreed upon practices would be unquestioned.

When a bank seeks or accepts an arrangement whereby it is to be the drawee for personal money orders issued by a nonbanking establishment, it should agree in writing with the nonbanking establishment as to the daily procedure and the responsibilities of both parties. This should cover the time and method of delivering to the bank the register copies and the covering funds for money orders issued each day. The bank should agree to pay the personal money orders at the instructions of the store when supplied with register copies and funds representing those issued. It should also include the accounting for all serially numbered money orders, the procedure for handling stop payments and refunds, the disposition of paid money orders, and the bank's charge for operating the account and effecting payment of the money orders. It should set forth the fact that the nonbanking establishment, in receiving the face amount of a money order issued, is acting as agent for the purchaser and not as agent for the drawee bank, and a legend to such effect should appear on the customer's record copy. One such legend used, as shown in specimen on page 25, is as follows:

> In making the personal money order available to you and receiving the face amount thereof, the establishment indicated in the checkwriter impression is acting as your agent and not as agent for the drawee bank, and agrees with you to transmit to such Bank an equal amount for the purpose of providing the Bank with funds to pay the personal money order when properly presented. The drawee bank shall have no liability whatsoever until it actually receives cash from the purchaser's agent to cover the said personal money order.

The agreement should further stipulate that the bank has no responsibility in the funds paid by a customer to the nonbanking establishment until the bank has received them, or an equal amount, on deposit for the specific purpose of paying the money orders issued as evidenced by the respective register copies. A specimen of a type of personal money order such as may be used by a nonbanking establishment is shown on page 25, and it differs primarily from those used by a bank in the added wording printed on the Customer's Record Copy.

The name, abbreviation, or other symbol identifying the issuing outlet should be included in the checkwriter impression. Sometimes a different color of lithography is used to readily differentiate between the orders issued by the bank itself and those drawn on it and issued by nonbanking establishments. A prefix in connection with the numbering is another way of identifying those issued through various nonbanking outlets.

ACTING AS PAYING AGENT

If the bank is to act as the paying agent and match off the checks against the register copies, it is expected that it will receive funds each day representing money orders sold the preceding day. The deposit should be supported by register tickets serially numbered to correspond to those on the money orders sold. When the money orders are presented for payment, the bank should match the number and amount with their respective register copies. This operates as a control and the remaining register copies in the bank's possession represent the outstanding money orders to support the balance in the money order account.

ACTING AS "PAYABLE-THROUGH" AGENT

If the bank is to act as a "payable-through" agent and turn the checks over to the nonbanking establishment for payment, the matching will be done by the latter. On such a basis the bank has less responsibility, less work, and the service charge to the nonbanking establishment would be less than that charged on a drawee bank arrangement. The balances carried in the account may also be less under this arrangement as the establishment may carry enough funds to meet the money orders as presented rather than carrying a balance representing money orders issued. On any such arrangement the bank, of course, has absolutely no control over the operation, and it therefore should exercise great caution before permitting its name to appear on the money order. It should satisfy itself that the establishment and the operation is financially sound. The bank should be especially careful in accepting money order accounts from individual store units with modest capital and where their ability to

adequately safeguard the operation may be subject to question.

COMPANIES ORGANIZED TO SELL MONEY ORDERS

There are several companies which are organized specifically for the purpose of selling money orders through agencies such as drug stores and department stores, and the substantial increase in the number of these outlets and the volume of money orders sold shows conclusively that a sizable market exists outside of banks and post offices. The type of money order generally used for these outlets is, in effect, the check or money order of the company organized for conducting the money order business, with the store or seller acting as agent for the company. All of these companies must use banks to clear the items, either on a basis where the bank acts as a paying agent and does the matching off operation, or where the company pays and does the matching. In the latter case, it is desirable that the money orders clearly indicate this condition by having them read "payable through" rather than "payable at" or "to" the clearing bank. The bank, in either case, should have a written agreement with the company covering all of the arrangements, and it should require that the check meet the standards set by the Check Standardization Committee of the Bank Management Commission of the American Bankers Association.

CONCLUSION

A tremendous amount of money order business has been generated by the banks especially since 1937, when the new personal money order came into being. Banks have at their disposal a fast, efficient personal money order service and are now in a better position than ever to supply the money order market, to do so

profitably, and at the same time render to their communities a service that is useful, attractive, and reasonable in price.

G. P. OSLIN, WESTERN UNION TELEGRAPH CO., *TELEGRAPH SERVICES*, J. BUS. EDUC., SEPT. 1950, AT 28

TELEGRAMS are an inseparable part of American life. They are, indeed, a record of the times.

More than any other company in the land, Western Union is "everywhere" a part of the American scene. It would be difficult to find anyone whose daily life is not influenced in some way by the telegraph. For 97 years, through good times and bad, the people behind the Yellow Blank have been building their service and adjusting it to suit changing conditions. They are still building it today to anticipate the needs of the future.

Western Union services all have these purposes—to facilitate the sale and delivery of goods and the development of business and industry, and to meet the social needs of the nation.

People skillful in handling business correspondence are an asset to any company. When sending a telegram, they should use figures and punctuation correctly, estimate the time differential at destination properly, and select the proper class of telegraph service.

How to Use the Services

Many telegrams are transmitted from business offices by the use of the teleprinter, a printing telegraph machine with a typewriter-like keyboard, over a direct wire to telegraph offices. In other business offices, the handle of a call box is turned to summon a messenger to pick up the telegram. Other people go to a nearby

telegraph office, or dictate the message to Western Union by telephone.

The time a telegram is sent is important. People on the Atlantic Coast should remember that when the business day closes at their offices, it still has an hour to go at points in the Central Time Zone, such as Chicago, St. Louis or Dallas, two hours to go at points in the Mountain Time Zone, such as Denver, or Albuquerque, and three hours to go at points in the Pacific Time Zone, such as Reno, Seattle or Los Angeles. There still is time to send a fast telegram and close a deal that is pending rather than to delay the shipment or transaction until another day and perhaps lose to a competitor who acts at once. So first consider the class of service to use.

Full-rate Telegrams are fastest. The cost for ten chargeable words ranges from 35 cents for a local telegram to $1.45 between the most distant points in the United States. Words in excess of ten are charged for at a low extra-word rate. The address and one signature are carried without charge.

Serial Service is designed for use when there is intermittent correspondence with one addressee during the course of a day. It is the most economical service to use in sending a series of short telegrams to the same addressee. Serial telegrams are transmitted with the same expedition as full-rate telegrams. A minimum of 15 text words per installment is counted and the minimum charge is for an aggregate of fifty words a day. Aggregate Serial rates are approximately twenty per cent higher than those for Day Letters of corresponding length. Each installment must be marked “Ser”.

Teleprinter in Use in a Business Office

Day Letter Service is suitable for all messages which can be sent less speedily and still serve their purpose. Generally, the cost of a fifty-word day letter is the same as that of a seventeen-word full-rate telegram. When what would normally be a Day Letter is sent to a business house so late that its delivery during business hours is doubtful, full-rate service should be used.

Night Letter Service is a low-rate overnight service. Night Letters may be filed up to 2 A.M. for delivery the ensuing morning. The charge for a 25-word night letter varies from a minimum of thirty cents to a maximum of ninety-five cents depending on the distance. The rates for additional words in excess of twenty-five decrease progressively as the length of the message increases, so that a 200 word Night Letter can be put on the wire to nearby places for only $1.15. This

service makes it possible for business proposals, reports and instructions to be written in detail and telegraphed at low cost.

Principal Miscellaneous Services

Telegraph Money Orders provide a rapid, accurate service for transferring money quickly and safely from one point to another. The rates are the same as regular full-rate telegrams of fifteen words plus a money order fee. For Night Letter Money Orders, the telegraph charges are calculated at Night Letter Rates.

Commercial News is another important Western Union service. Reports of quotations by message and ticker are available from twenty seven stock and commodity exchanges. Ticker quotations from the largest of these, the New York Stock Exchange, are transmitted to cities in 43 states, Canada and Cuba. Period reports and running story accounts of sporting events as well as general sports information can also be furnished by message, by direct wire and by ticker.

Time Service: Western Union is the Nation's Timekeeper. Correct Naval Observatory Time is furnished for as little as five cents a day in more than 2,000 American cities through Western Union's correct Time Service. Only Western Union provides self-winding clocks which are electrically synchronized with Naval Observatory Time every hour of the day and night.

Messenger Services: Western Union offers a complete line of messenger services both locally and nationally. Four major classes of messenger service are described below:

Errand Service includes the performance of a variety of individual errands, local and inter-city. Here

are a few examples: Business Errands—Pickup and delivery of envelopes, documents, blueprints, briefs, news copy and press releases; advertising cuts, mats, proofs and drawings; biologicals, pharmaceuticals and other professional materials. Personal Errands—Pickup and delivery of packages of all kinds, including candy, flowers, cigars, perfume and other gifts for holidays, birthdays, anniversaries; securing of forgotten articles from home or office, of garments from tailor, books from library; taking of prescriptions to pharmacist.

Parcel Service. Contract arrangements are made with retail merchants, drug and department stores, transportation companies and service establishments for the pickup and delivery of merchandise and articles on a regular route basis, or as "specials".

Advertising Distribution Service (Addressed and Unaddressed). Western Union handles contract service for national, regional and local advertisers and advertising agencies. This includes delivery, reshipment, and remailing of addressed material of all kinds, direct-to-consumer distribution of unaddressed samples and printed matter, placement of displays and other point-of-sale advertising and a score of other services.

Special Services: The gathering of market analysis data, making traffic counts, dealer inquiry service arrangements, window display, checking, test buying, health and weather report service; purchasing, packing and shipping products and countless other special services are performed by Western Union. Some of these arrangements do not necessarily require the services of messengers.

Telemeter Service: By use of the varioplex, telemeter service provides direct telegraphic connection between customers' main offices and branches or correspondents for the economical handling of large volumes of telegraphing. Varioplex divides the large word-carrying capacity of long-distance wire, operated by the multiplex method, between several users. In effect it provides many more direct telegraph facilities over one multiplex circuit, without requiring the use of any more wires.

Private Wire Systems: Western Union provides important private wire networks and switching systems, such as the Civil Aeronautics Administration's weather reporting network, linking the airports of the country; a system linking the Federal Reserve Banks in all parts of the nation; the network connecting the offices and plants of the U. S. Steel Corporation, and the system connecting the airports and offices of the United Air Lines.

American Express Company Money Orders and Travelers Cheques: Express money orders, generally sent by mail, supplement the usual telegraph service for rapid transmission of funds. They are sold in principal Western Union offices. Likewise, American Express Travelers Cheques, which afford the public protected funds when traveling, can be purchased at most telegraph offices.

Installment Payment Service: Western Union offices accept installments on cars, refrigerators, appliances and similar items for a small fee which the patron pays at the time of making his payment. These collections are then remitted by the Telegraph Company to the subscriber.

Illustrated Telegram Service: This is a local telegraph service for advertisers who wish to depict their product on either our regular or decorated telegraph blanks. The service offers an excellent method of publicizing new items or offering products directly for sale by telegraph. A small charge in addition to the standard telegraph charge is made for the advertising illustration.

Miscellaneous Services: Telegrams may be sent to and from mobile units equipped with radiotelephones, such as automobiles, trains, airplanes, buses, trucks, and inland waterways boats. Messages may be paid for through any Western Union office, or charged to the mobile unit telephone number.

Thirty-one Business Uses of Telegrams

Acknowledging First Order: This emphatically impresses the new customer with your desire to please and proves that you are up-to-date.

Wiring For Credit Information: This is a distinct service to the customer as it expedites opening of the account and the shipment of the order.

Expediting Shipments : A telegraphic order invariably receives prompt attention. As a follow-up of mailed orders and specifications, the Yellow Blank gets action.

Acknowledging Complaints: This tends to disarm the customer and indicates that his complaint will receive prompt consideration.

Price Changes: By covering a section, or the entire country simultaneously, the telegram plays fair with all customers; often brings immediate orders.

Style Changes: Notifying customers immediately by telegraph keeps their stocks of out-of-date styles and

shelf warmers at a minimum; keeps orders for new goods coming in to you.

Advice On Meeting Competition: A sales force is like an army on a wide front; it must be given instructions that meet the needs of the moment. Telegrams reach all points instantly.

Paving the Way for Salesmen: A telegram hurdles barriers, is considerate of the buyer's time, makes the salesman's call more productive.

Extending Invitations to Buyers: Out of town buyers have no time to waste. They will read telegrams which tell them briefly and convincingly what they want to know.

Reviving Inactive Accounts: The telegram is accepted as evidence that you are unusually anxious to iron out causes for dissatisfaction.

Between Salesmen's Calls the telegram reminds the buyer; urges him to order if stocks are low, thereby reducing the effect of a competitor's call.

Encouraging Purchases of Additional Items: A skillfully worded telegram acknowledges the receipt of his order and can whet the desire of the customer to add seasonal or bargain items to his order.

Telegraph Blanks As Order Forms: Western Union will supply a reasonable quantity of sending blanks for enclosing with catalogs and circulars. When imprinted with skeleton order forms they stimulate the urge to buy.

Supplementing Advertising: Telegrams to carefully selected lists of customers make an impressive way to emphasize the high spots of sales or to extend invitations to a pre-showing.

Encouraging Salesmen: On the road or in branch offices, salesmen do better work when they feel that they are only a few minutes from the home office by telegraph.

Instructions to Branches and Salesmen: Telegrams are an inexpensive, quick and direct means of informing salesmen of new customers, prospect inquiries, changes in itinerary, seasonal items and overstocks.

Stimulating Sales Campaigns: Whether directed to sales force, dealers, or consumers, the telegram is encouraging, convincing—a pace-setter that never fails.

Special Sales: The telegraph invitation is sure to be read; it subtly flatters.

Daily Sales Reports: The sales manager needs them; the salesman accepts them as a daily challenge to his ability. Special telegraph forms are used by some firms.

Quoting Prices or Making Offers: Flash the price by telegraph and you get in ahead of slower competitors. Offers by telegraph profit by the immediate attention always given the Yellow Blank.

Salesmen's Orders: Telegraphic orders indicate customers' urgent need for goods and, if shipped promptly, will build goodwill.

Answering Inquiries: The telegraphic reply strikes while the iron is hot, maintains interest, dodges competition.

Tracing Orders or Shipments: Telegrams invariably reach officials who have authority to start things moving.

Wiring Shipping Dates of Orders: Another way to impress the buyer telegraphically that you can and do give extra service.

Daily Production Reports: Telegrams coordinate all facilities, and often produce economies in a many-sided business.

Requesting Replies to Unanswered Letters: By commanding immediate attention, the telegram gets action.

Accepting Offers: If they are good offers, the quicker they are accepted by telegraph, the quicker the profit can be banked. The telegram is a permanent record of the transaction.

Requesting Prices: Changing markets make use of telegrams imperative.

Replenishing Stocks: Ordering goods by wire reduces investment in stock, gives quicker turnover, keeps customers satisfied with fresh, modern items.

Remittances to Salesmen: Money for salaries and expenses sent quickly, safely by Western Union Money Orders.

Collecting Delinquent Accounts: Telegrams have collected as high as 95 per cent of accounts at costs as low as ½ of 1 per cent.

How to Write Telegrams

There are a number of rules to be remembered in preparing a telegram. The class of service should be marked in the box at the upper left-hand corner of the telegraph blank. The point of origin and the date should be written in at the upper-right side of the blank.

The telegraph company makes no extra charge for long addresses except in unusual cases. For instance, in a telegram addressed to "John Doe or Henry Roe", the words "or Henry Roe" are charged for.

The name of the person, firm, or corporation to whom a telegram is to be delivered should be written below the upper-left corner of the blank. In addressing telegrams, include all information that will be helpful in locating the addressee quickly. There is no extra charge, for instance for the address "George P. Oslin, care John Doe Mfg. Co., 7 Meade Terrace, Glen Ridge, N. J." Even a telephone number, the business title of the addressee or "Mr. and Mrs. John Roe and family", may be used without extra charge. Code addresses are not permissable in domestic telegrams.

In replying to a telegram when no street address is known, write "Answer date" or "Answer" after the name of the addressee, and address the telegram to the city and telegraph office from which the original telegram was sent.

The originating branch office is indicated by one or two letters which may appear immediately preceding the "place from" in the date line of the telegram received. For example: "Joe Jones, Answer Date MS, New York City."

Sometimes people address a telegram to "John Jones, Empire State Building, New York City." forgetting that there are thousands of people employed in that building. Use firm names and room numbers. The address "11 Forty-Second Street, New York City," may necessitate attempts at delivery on both East and West Forty-Second Street. If, however, the telegram is addressed to a well-known national or local figure, or a nationally known business or bank, it is

unnecessary to give the room number, building and street address.

In addressing a telegram to a passenger on a train, airplane or bus, give full details. For example: "John Jones, Enroute Chicago, care conductor (or Pullman Reservation if known, such as 'lower 6, car 92') N.Y.C. Train Three, First Section, due 10:35 P.M. Cleveland, Ohio."

NOTE, *NEGOTIABILITY OF TRAVELERS CHECKS*, 47 YALE L.J. 470 (1938)

NEGOTIABILITY OF TRAVELERS CHECKS*

ALTHOUGH the travelers check has been in use for almost a half century, its precise legal characteristics are as yet largely undetermined. [1] This unique instrument has rarely been the subject of litigation because the issuers consistently have pursued a policy of insuring saleability and negotiability by sustaining losses upon doubtful checks.[2] This practice, together with extensive advertising of travelers checks,[3] has resulted in a widespread acceptance of these instruments in lieu of currency so that the travelers check now boasts a ready negotiability throughout the

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* American Express Co. v. Anadarko Bank & Trust Co. of Anadarko, 179 Okla. 606, 67 P. (2d) 55 (1937).

[1] Little analysis has been made in the few decided cases. The courts have been satisfied merely to liken the travelers check to a cashier's check [Mellon Nat. Bank v. Citizens Bank & Trust Co. of Camden, Ark., 88 F. (2d) 128 (C. C. A. 8th, 1937)] or to currency [American Express Co. v. Anadarko Bank & Trust Co., 67 P. (2d) 55 (Okla. 1937)], or to find a contract relation between the issuer and the original purchaser [Sullivan v. Knauth, 220 N. Y. 216, 115 N. E. 460 (1917)].

[2] Peoples Sav. Bank of Grand Haven, Mich. v. American Surety Co. of N. Y., 15 F. Supp. 911, 913 (W. D. Mich. 1936).

[3] The travelers check is represented as a substitute for currency, self-identifying and acceptable everywhere, but, unlike currency, it can be carried without danger of loss in case of theft or misplacement because of the protective device of signature and countersignature.

world.[4] A recent decision suggests that the custom surrounding travelers checks has ripened into law, and that innocent parties will receive legal protection in accepting them as a medium of exchange. Travelers checks, duly signed by an officer of the American Express Company but with the spaces for signature and countersignature unfilled and with no name inserted after the words, "to the order of," were stolen from a bank acting as selling agent for the express company. Subsequently, one of the thieves signed and countersigned some of these checks with the same signature, and another bank acquired them in due course. The Supreme Court of Oklahoma, emphasizing the fact that travelers checks pass current as money, granted the cashing bank a recovery upon the checks against the American Express Company. Stating that the bank as a holder in due course could assert a conclusive presumption of a valid delivery under Section 16 of the Negotiable Instruments Law provided the travelers checks were complete instruments at time of theft, the court found that the checks were then complete since they had been signed by an officer of the issuer and nothing remained to be done by the issuer or its agent. Moreover, the rule that a *bona fide* holder of stolen currency has good title was held applicable on the score that travelers checks, signed and countersigned

[4] The American Express Company alone does a business of $200,000,000 per year. Communication to the YALE LAW JOURNAL from H. A. Smith, Vice-President and Treasurer, Dec. 3, 1937.

with the same signature, are functionally the same as currency.[5]

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[5] American Express Co. v. Anadarko Bank & Trust Co. of Anadarko, 67 P. (2d) 55 (Okla. 1937) (suit was brought by the Express Company to recover the proceeds of other checks issued by the Bank as its selling agent, and the issue was raised by way of counterclaim).

NOTE, *PERSONAL MONEY ORDERS AND TELLER'S CHECKS: MAVERICKS UNDER THE UCC*, 67 COLUM. L. REV. 524 (1967)

PERSONAL MONEY ORDERS AND TELLER'S CHECKS: MAVERICKS UNDER THE UCC

With the emergence of the personal check as the standard means for paying debts in the post-war period,[1] banks have been prompted to provide similar instruments for persons who cannot afford or have little need to maintain checking accounts.[2] Two devices which are widely used to fulfill this need are the personal money order and the savings bank teller's check. Personal money orders are issued by and drawn upon commercial or savings banks;[3] the purchaser pays the

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[1] *See* E. FARNSWORTH & J. HONNOLD, CASES AND MATERIALS ON COMMERCIAL LAW 44-46 (1965) [hereinafter cited as FARNSWORTH & HONNOLD].

[2] They are in greatest use primarily among the poor, but are also employed by housewives, minors and other persons whose noncash transactions are too few to warrant the upkeep of a checking account. *See* G. MUNN, ENCYCLOPEDIA OF BANKING AND FINANCE 458 (6th ed. F. Garcia 1962); Bailey, *Bank Personal Money Orders as Bank Obligations*, 81 BANKING L.J. 669, 671 (1964) (calling money orders a "poor man's checking account"); BANK NEWS, July 15, 1965, at 9 (students).

[3] Although savings banks often issue personal money orders, noncommercial institutions are ordinarily required to make their money orders "payable through" a commercial bank, which performs the clearing and paying functions by prior arrangement

face amount plus a small service charge at the time of issuance and subsequently inscribes his signature and the name of a payee. A teller's check is obtained from a savings bank, usually by one of its depositors, and is drawn by the bank on its own account with a commercial institution. The amount of the teller's check is either charged against the purchaser's savings account or paid by him at the time of issuance. The name of the payee, designated by the purchaser, is entered by the bank.

Despite the growing popularity of these instruments, there has been no clear delineation of the respective rights and duties of the purchaser, the issuing bank, and the payee or holder. While many banks make it a practice to accept stop payment orders on personal money orders and teller's checks,[4] the courts have only begun to consider whether the customer has a *right* to have payment stopped, enforcible in an action against the bank which pays an item over a valid stop order, and have yet to define the rights of payees and holders in the event that the drawee refuses to pay. Furthermore, the consequences of theft, loss, or forgery, and of the drawer's negligence in permitting any of these occurrences, remain unclear. Many of

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with the issuing bank. *See* BANK MANAGEMENT COMM'N, AMERICAN BANKERS ASS'N, MONEY ORDER SERVICES 22 (Banking Management Pub. No. 140, 1956) [hereinafter cited as MONEY ORDER SERVICES]. Although this study was written in 1956, the American Bankers Association still considers it "a generally accurate indication of current banking practices." Letter from M. C. Deitrick, Director, Bank Management Committee, American Bankers Ass'n, to the *Columbia Law Review*, Feb. 14, 1967 on file in Columbia Law Library.

[4] *See* MONEY ORDER SERVICES 16.

these questions in turn depend upon the resolution of more fundamental issues of characterization, such as whether the instrument constitutes an assignment and whether it represents the bank's promise of payment or merely the drawer's order to pay.

The few court decisions which have attempted to define the status of personal money orders and teller's checks have, for the most part, relied upon similarities between these and other instruments, including cashier's checks,[5] traveler's checks,[6] postal money orders,[7]

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[5] The cashier's check, an instrument drawn by a commercial bank on itself, represents an unconditional promise to pay the face value to the payee named thereon and is the primary obligation of the issuing bank. *See* Robert Arnold Mfg. Co. v. Troy Associates, Inc., 33 Misc. 2d 439, 440, 226 N.Y.S.2d 333, 334 (1962). Correspondingly, it has generally been held incapable of being stopped by either the purchaser or the bank. *See Stopping Payments of Checks*, 79 BANKING L.J. 185, 194-95 (1962); Annot., 107 A.L.R. 1463, 1464-65 (1937).

[6] The characteristics of a traveler's check are considered in UNIFORM COMMERCIAL CODE § 3-104, Comment 4 [hereinafter cited as UCC]. *See* also Emerson v. American Express Co., 90 A.2d 236 (D.C. Mun. Ct. App. 1952).

[7] *See* MONEY ORDER SERVICES 7-9 for a description of current postal money orders and state-by-state statistics on the volume of such orders used in 1953. The transferability of postal money orders is sharply restricted, *see, e.g.*, 39 U.S.C. § 5104 (1964), and because of these limitations and the governmental sovereignty of the issuing body, they have been held to be nonnegotiable instruments, governed by federal or postal law. *See* United States v. Cambridge Trust Co., 300 F.2d 76, 78 (1st Cir. 1962) (federal law); Lewin v. United States, 170 F. Supp. 646, 648 (Ct. Cl. 1959) (nonnegotiable, postal law); United States v. Northwestern Nat'l Bank & Trust Co., 35 F. Supp. 484, 488 (D. Minn. 1940) (nonnegotiable, federal law). The purchaser of a postal money order cannot place a stop order against it, *see* 14 OP. ATT'Y GEN. 119 (1872),

bank money orders,[8] and bank drafts.[9] The often illusive deftness of these analogies and the disparity in the courts' conclusions, as well as the varying and confusing terminology used in discussing negotiable instruments, further demonstrate the need for a coherent set of rules. The most appropriate source of such rules is, of course, the Uniform Commercial Code, which governs negotiable instruments generally. But the Code, despite the broadness of its scope, remains largely oriented toward the older, more conventional instruments; hence its provisions may not always provide specific answers to questions arising in the course of issuance, negotiation, and payment of personal money orders and teller's checks.

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though the Postmaster General may, in his discretion, refund the amount of a lost order to the purchaser. 39 U.S.C. § 5103(b) (1964).

[8] Bank money orders are notes, the official instruments of the issuing bank, signed by an authorized agent thereof and issued to a named payee. *See* MONEY ORDER SERVICES 10-13 for their form and characteristics. *See also* First State Bank v. First Nat'l Bank, 319 F.2d 338 (10th Cir. 1963) (countermandable by the issuing bank); State *ex rel.* Babcock v. Perkins, 165 Ohio St. 185, 134 N.E2d 839 (1956); Cross v. Exchange Bank Co., 110 Ohio App. 219, 221, 168 N.E2d 910 (1958) (payment on the bank money order cannot be stopped by the purchaser).

[9] Bank drafts are drawn by one bank on another, payable to a third party. While the bank draft has been referred to as "an executed sale of credit which is not subject to recission or countermand," International Firearms Co. v. Kingston Trust Co., 6 N.Y.2d 406, 411, 160 N.E.2d 656, 658, 189 N.Y.S.2d 911, 914 (1959), the revocability of the instrument under the UCC is at least open to question. *See* pp. 541-43 *infra*.

I. PERSONAL MONEY ORDERS

A. *General Characteristics*

Personal money orders were first issued in 1937[10] and have grown steadily in popularity since 1944, when the price of the competing Post Office Money Order was raised.[11] Personal money orders are attractive to people who have no ordinary checking accounts, for they offer a safe, inexpensive, and readily acceptable means of transferring funds, in a form that has the prestigious appearance of a personal check.[12] Moreover, banks favor the instruments because they are simpler, faster, and less expensive to issue than cashier's checks and bank money orders; because they attract potential customers for other bank services; and because they can create a substantial deposit balance for the bank's use.[13]

The typical personal money order consists of a check-sized form containing the name of the issuing bank, an amount impressed into the paper, an identification number, and an indication that it is not valid in excess of a specified sum, usually between $100 and $250. A widely used "snap-out" form of the order has three elements: the instrument itself, a register copy kept by the bank, and a customer's record copy. While

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[10] MONEY ORDER SERVICES 14. In their earliest forms personal money orders were also known as "Register Checks," and some issuing banks still maintain this nomenclature. *See id.* at 18 for a sample personal money order form.

[11] *See Banks Rival P.O.*, BUSINESS WEEK, June 3, 1944, at 80.

[12] Specially designed "gift" forms of personal money orders are also available from some banks. MONEY ORDER SERVICES 16.

[13] *See, e.g.*, MONEY ORDER SERVICES 15-17, 20; Wall Street Journal, March 21, 1956, at 1, col. 1.

all three record the identification number and amount of the order, the bank's copy does not indicate the identity of the purchaser or the payee. The customer may complete the original and his copy by filling in the name of the payee, the date, and his own signature at any time after he purchases the instrument. However, bold-face print on the customer's copy often cautions him to fill out the order promptly and to save the copy; it may even state that the customer assumes responsibility for his failure to do so.

B. *Stopping Payment*

A prominent attribute of the personal money order is the purchaser's ability to postpone entering the payee's name until he is certain that he wishes to complete the transaction. If the instrument is not completed at the time of purchase, however, there is a risk that, in the event of theft or loss, the finder will fill in his own name as payee and negotiate the instrument to a third party. Consequently, the utility of the personal money order is, in large part, dependent on the purchaser's ability to stop payment and to obtain a refund upon discovery of loss or theft. Indeed, since the typical purchaser of a personal money order seeks the benefits of a personal checking account, he may wish to employ the power to stop payment in all those circumstances in which it would be invoked by the drawer of a personal check. In light of the confused state of the law in this area, however, it is difficult to predict whether he will be successful in asserting the power.

The competing analogies employed by courts attempting to analyze the power to stop payment of a personal money order are the personal check and the cashier's check or bank money order. The drawer of a

personal check has an absolute right to stop payment on the instrument prior to its acceptance or payment by the drawee.[14] Because the check is considered a draft—an order to pay rather than a bank's promise to pay—and because it does not constitute an assignment of the funds on deposit in the bank,[15] the payee or holder of the instrument has no right of action against the bank if payment is stopped;[16] his only recourse is against the drawer, who may assert certain defenses.[17] Moreover, the bank is prima facie liable to the drawer if it pays over a valid stop order.[18] Before the adoption of the Uniform Commercial Code, many jurisdictions permitted the bank to limit its liability by prior agreement with the customer.[19] The Code prohibits the bank from disclaiming liability entirely, but permits a reasonable agreement defining the standards by which its responsibility is to be measured.[20] In addition, it requires the drawer to show loss resulting from payment of the check before he can recover from the bank.[21] Unlike personal checks,

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[14] UCC § 4-403; *see* American Defense Soc'y, Inc. v. Sherman Nat'l Bank, 225 N.Y. 506, 122 N.E. 695 (1919).

[15] UCC § 3-409; UNIFORM NEGOTIABLE INSTRUMENTS ACT § 189 [hereinafter cited as NIL].

[16] UCC § 3-409; *see* UCC § 3-410.

[17] *See* UCC § 3-305(2) (holder in due course); UCC § 3-306 (one not holder in due course).

[18] UCC § 4-403; *see id.*, Comment 2.

[19] *See, e.g.*, Gaita v. Windsor Bank, 251 N.Y. 152, 167 N.E. 203 (1929); Annot., 1 A.L.R.2d 1155 (1948).

[20] UCC § 4-103(1).

[21] UCC § 4-403(3).

cashier's checks[22] and bank money orders[23] are signed by an authorized agent of the issuing bank and are thus considered to be notes—primary obligations of the bank and unconditional promises to pay.[24] Consequently, it has generally been held that these instruments cannot be stopped by either the purchaser or the bank.[25]

Since it is an order by the purchaser to the bank which bears no signature of a bank official, the personal money order is properly classified as a draft.[26] Most drawee banks in fact treat the instruments in this fashion, permitting the purchaser to stop

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[22] *See* note 5 *supra*.

[23] *See* MONEY ORDER SERVICES 10-12; note 8 *supra*.

[24] *See* notes 5 & 8 *supra*.

[25] The certified check cannot be stopped, but for different reasons. By certification, the bank guarantees the payee that the drawer of an ordinary check has on deposit sufficient funds to cover the check as drawn; these funds are charged against the depositor's account pending collection of the instrument. Certification constitutes legal acceptance of the check by the bank, UCC § 3-411(1); NIL § 187, and operates to substitute the bank for the drawer as the debtor of the payee. *See, e.g.*, Greenberg v. World Exch. Bank, 227 App. Div. 413, 415, 237 N.Y.S. 200, 202 (1st Dep't 1929); NIL § 188. Consequently, the drawer can never stop a check once it has been certified. *See* UCC § 4-403(1) & Comment 5; *cf.* N.Y. UCC § 4-403, N.Y. Annot. 1 (McKinney 1964).

[26] *See* U.C.C. § 3-104. "A bank money order is an official bank instrument and is, therefore, a direct obligation of the issuing bank; whereas a personal money order, which is not signed by the bank, is considered in the same status as a personal check—more specifically, the personal check of the signer. While no law case has established this as a premise, it seems to be the general opinion of counsel." MONEY ORDER SERVICES 16.

payment.[27] But the public's lack of familiarity with personal money orders, as well as the outward resemblance between these instruments and bank money orders or cashier's checks, has often led payees and holders to suppose that personal money orders may not be countermanded.[28] This confusion has been reflected in, and compounded by, the few cases which have heretofore dealt with the legal attributes of personal money orders.[29]

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[27] MONEY ORDER SERVICES 16.

[28] Personal money orders are more reliable than personal checks, however, in that they cannot be dishonored for insufficient funds in the drawer's account.

[29] The cases discussed are all New York decisions. No cases involving personal money orders have been reported in any other jurisdiction to date. The New York decisions were rendered after the UCC became operative in that state, but the UCC was not applicable to the transactions in question, which had been entered into prior to the UCCs adoption. Nevertheless, the UCC was cited extensively and could have been used as a valid source of general policy. For a discussion of these cases and relevant Code law *see* Comment, *The Rights of a Remitter of a Negotiable Instrument*, 8 B.C. IND. & CONS. L. REV. 260, 264-66 (1967). The decisions have not considered the purposes and usage of personal money orders, ignoring the direction of the UCC that its intent was not simply to set down a static body of rules governing all negotiable instruments, but to "permit the continued expansion of commercial practices through custom, usage and agreement of the parties." UCC § 1-102(2)(b). *See also* UCC § 1-102, Comment 1.

1. *Liability of Bank to Holder When Payment Is Refused.*

a. *The recent cases. Garden Check Cashing Service, Inc. v. First National City Bank*,[30] the first case to come to trial, involved a personal money order that had been lost before the purchaser had signed it or filled in the name of the payee. Since the purchaser was able to identify the number, amount, branch, and date of purchase to the defendant bank's satisfaction,[31] the bank accepted his stop payment order and refunded the amount of the instrument. These actions were undertaken even though the "customer's record copy," which had also been lost, indicated that no refund or stop order would be permitted unless the copy was presented. Plaintiff, a licensed check cashing service, cashed the money order for a person who apparently had found it and entered his name as both payee and purchaser. In *Rose Check Cashing Service, Inc. v. Chemical Bank New York Trust Co.*,[32] which came to trial nine months later, a similar service cashed a personal money order for the original purchaser. Thereafter, the issuing bank stopped payment on its own initiative when it discovered that the purchaser had paid for the order with a personal check drawn on insufficient funds. In both cases, the check cashing

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[30] 38 Misc. 2d 623, 238 N.Y.S.2d 751 (N.Y. City Civ. Ct. 1963), *rev'd*, 46 Misc. 2d 721, 260 N.Y.S.2d 718 (App. T., 1st Dep't 1965), *rev'd*, 25 App. Div. 2d 137, 267 N.Y.S.2d 698 (1st Dep't 1966), *aff'd mem.*, 18 N.Y.2d 941, 223 N.E.2d 566, 277 N.Y.S.2d 141 (1966).

[31] Brief for Appellant at 10, Garden Check Cashing Serv., Inc. v. First Nat'l City Bank, 25 App. Div. 2d 137, 267 N.Y.S.2d 698 (1st Dep't 1966).

[32] 40 Misc. 2d 995, 244 N.Y.S.2d 474 (N.Y. City Civ. Ct. 1963).

service brought suit against the bank to recover the face value.

The court in *Garden-First Nat'l* denied recovery. It found that the money order was identical to an ordinary check except for its pre-written amount, and similar to a postal money order, which may be refunded if lost—"in essence stopping payment."[33] The bank could therefore stop payment—although it was not obligated to do so—and could waive its own requirement that the record be presented.

The court in *Rose* disapproved of the *Garden-First Nat'l* decision.[34] It granted summary judgment for the plaintiff, holding that there were sufficient differences between checks and personal money orders to satisfy the rule that the holder of an ambiguous instrument may treat it as either a draft or a note at his discretion. [35] This decision was affirmed by Appellate

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[33] Garden Check Cashing Serv., Inc. v. First Nat'l City Bank, 38 Misc. 2d 623, 625, 238 N.Y.S.2d 751, 754 (N.Y. City Civ. Ct. 1963).

[34] The court distinguished *Rose* on the ground that, because the instrument had been transferred by one who found and completed it, there could be no holder in due course. Since the issue in question is whether the bank is initially liable on the instrument as its own obligation, the status of the plaintiff is irrelevant: if the personal money order is classified as a bank obligation the holder's status only affects the defenses available to the bank.

[35] In support of this rule the court cited N.Y. NIL § 36(5) (McKinney 1943). N.Y. UCC § 3-118(a), Comment 2 & N.Y. Annot. (a) (McKinney 1964) retains this section in substantially similar form.

Term,[36] which found the money order to be an irrevocable bank obligation. Although the order had not been signed by a bank official, the court held that the imprinted name and seal of the bank were sufficient to "evidence the bank's intent to be bound thereunder."[37] The opinion dismissed the analogy to postal money orders drawn in the earlier *Garden-First Nat'l* decision on the ground that their statutory origin and nonnegotiable character set them apart from ordinary commercial instruments.

In the wake of this opinion, the Garden Check Cashing Service not only appealed the dismissal of its suit against First National City Bank, but brought a second suit against the Chase Manhattan Bank, which had also stopped payment on personal money orders cashed by Garden. The initial results were favorable to Garden: the Appellate Term reversed the dismissal of the *Garden-First Nat'l* suit,[38] and the trial court granted summary judgment against Chase Manhattan.[39] Both courts relied upon the *Rose* decision and indicated that the personal money order was "akin to a cashier's check."[40] The Appellate Term in *Garden-*

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[36] Rose Check Cashing Serv., Inc. v. Chemical Bank N.Y. Trust Co., 43 Misc. 2d 679, 252 N.Y.S.2d 100 (App. T., 1st Dep't 1964).

[37] *Id.* at 682, 252 N.Y.S.2d at 103.

[38] Garden Check Cashing Serv., Inc. v. First Nat'l City Bank, 46 Misc. 2d 721, 260 N.Y.S.2d 718 (App. T., 1st Dep't 1965).

[39] Garden Check Cashing Serv., Inc. v. Chase Manhattan Bank, 46 Misc. 2d 163, 258 N.Y.S2d 918 (N.Y. City Civ. Ct. 1965).

[40] Garden Check Cashing Serv., Inc. v. First Nat'l City Bank, 46 Misc. 2d 721, 722, 260 N.Y.S.2d 718, 719 (App. T., 1st Dep't 1965); Garden Check Cashing Serv. v. Chase Manhattan Bank,

First Nat'l also noted that the stop order was ineffective since it had not been executed in accordance with the bank's procedure, requiring the customer to present his record copy along with the stop payment request.[41]

On appeal to the Appellate Division, the *Garden-First Nat'l* decision was unanimously reversed and the check cashing service's claim dismissed.[42] Citing the analogy to an ordinary check, the court held that a personal money order was not valid until signed,[43] and that the drawee was not liable until the order was accepted.[44] Moreover, the court noted that since the purchaser had not signed the money order, it was not operative as a draft; nor could it be treated as a note, for there was no place on the instrument for the defendant bank to sign it.

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46 Misc. 2d 163, 165, 258 N.Y.S.2d 918, 921 (N.Y. City Civ. Ct. 1965).

[41] This reasoning, implying that the stop order would have been valid and enforceable if the procedure had been followed, was inconsistent with the *Rose* court's analogy of the personal money order to a bank instrument—which ordinarily cannot be stopped—as well as with the court's own assertion that the order was, like a cashier's check, "drawn by the issuing bank upon itself." Garden Check Cashing Serv., Inc. v. First Nat'l City Bank, 46 Misc. 2d 721, 722, 260 N.Y.S.2d 718, 719 (App. T., 1st Dep't 1965).

[42] Garden Check Cashing Serv., Inc. v. First Nat'l City Bank, 25 App. Div. 2d 137, 267 N.Y.S2d 698 (1st Dep't), *aff'd mem.*, 18 N.Y.2d 941, 223 N.E.2d 566, 277 N.Y.S.2d 141 (1966).

[43] *See* UCC § 3-104(1)(a).

[44] UCC §§ 3-409(1); 3-410; N.Y. NIL §§ 220, 325 (McKinney 1943).

b. *Policy, usage and the UCC*. None of the fragments of reasoning dispersed by these decisions constitutes a satisfactory analysis of personal money orders and holders' rights against issuing banks. The argument of the second *Rose* decision—that the bank's name printed on the money order represents its signature—would lead to the conclusion that banks are liable on ordinary checks as well, for the drawee's name also appears on the face of such instruments. Yet, it is well recognized that this marking serves only to identify, for purposes of collection, the bank and branch upon which the check has been drawn and that it does not signify a bank undertaking. Equally unpersuasive is the determination of the Appellate Term in the *Garden-First Nat'l* suit that the stop order was ineffective against the holder because the customer had not returned his record copy to the bank. The condition upon the bank's duty referred to by the court was intended to protect the bank; it could not be invoked by the payee or holder after it was, in effect, waived by the drawee through the acceptance of a noncomplying stop payment request.[45]

Arguments based upon the rule—contained in both the UCC and the NIL[46]—that the holder may treat an "ambiguous instrument" as either a draft or a note have some appeal. There undoubtedly has been confusion among banks, payees and purchasers of personal money orders as to the nature of these instruments. But the rule in question should not be construed as

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[45] *See* Stamford State Bank v. Miles, 186 S.W.2d 749 (Tex. Civ. App. 1945). *See also* UCC § 2-209(a); RESTATEMENT OF CONTRACTS §§ 297-98 (1933).

[46] UCC § 3-118(a); NIL § 36(5).

referring to uncertainty in the mind of the holder; rather, it is meant to encompass the rare case of an instrument which cannot be placed in any of the statutory categories of drafts or notes. Analysis of the relevant sections of the UCC makes it clear that the personal money order cannot be considered "ambiguous" within the meaning of this rule.

The Code requires that a writing be signed by the drawer or maker in order to be negotiable.[47] Furthermore, any item which is an order to pay is considered a "draft" and any draft drawn on a bank and payable on demand is a "check."[48] Since the only signature on a personal money order is that of the purchaser, since the instrument takes the form of an order to pay, and since it is drawn on a bank and payable on demand, it is clearly within the Code classification of a check. The absence of the bank's signature as "maker" and of any express "undertaking to pay" by the bank[49] precludes a finding that the instrument is a note under the Code. As a check, the personal money order does not bind the drawee until it is accepted.[50]

The rule of drawee nonliability is a corollary of the widely accepted doctrine that a check is not of itself an assignment.[51] One of the principal justifications for

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[47] UCC § 3-104(1)(a).

[48] UCC §§ 3-104(2)(a), (b).

[49] *See* UCC § 3-102(1)(c) ("A 'promise' is an undertaking to pay and must be more than an acknowledgment of an obligation"); UCC § 3-104(2)(d) ("[A writing is] a 'note' if it is a promise other than a certificate of deposit"); UCC § 3-104(1)(a).

[50] UCC § 3-409.

[51] *See* UCC § 3-409(1).

this doctrine—the bank's inability to determine priorities among competing "assignees" of the same funds[52]—is of course inapplicable to personal money orders, since there is no possibility of a second "assignment" of the funds. However, the second basis for the doctrine—the belief that the drawer of a personal check does not intend to part with all rights in and control over an identifiable fund[53]—remains applicable in the case of the personal money order. Since the drawer is not required to indicate the payee when he purchases the instrument, and since he commonly assumes that he can stop payment at any time, it is unlikely that he intends to make a present assignment.[54] Indeed, the very inability to stop payment on notes such as cashier's checks, certified checks, and bank money orders was probably a substantial factor in the

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[52] *See* Attorney Gen. v. Continental Life Ins. Co., 71 N.Y. 325 (1877); *cf.* Gibralter Realty Corp. v. Mount Vernon Trust Co., 276 N.Y. 353, 12 N.E.2d 438 (1938); Comment, *Assignment by Check—A Comparative Study*, 60 YALE L.J. 1007, 1024 (1951).

[53] *See, e.g.*, Leary v. Citizens & Mfrs. Nat'l Bank, 128 Conn. 175, 23 A.2d 863 (1942).

[54] Certainly, if a lost instrument is found and negotiated by a stranger, no intent to assign can be imputed to the purchaser. The NIL provided that a check was not an assignment of "any part of" the funds on deposit. NIL § 189. Some cases decided under that section held that a check for the entire amount on deposit might be an assignment. *See, e.g.*, McEwen v. Sterling State Bank, 222 Mo. App. 660, 5 S.W2d 702 (1928); Riegert v. Mauntel, 44 Ohio App. 470, 185 N.E. 811 (1932). It might have been argued from these cases that, since a personal money order transfers the only sum "on deposit" with the bank, it too is an assignment. But the UCC forecloses this contention by providing that a check does not assign "any funds in the hands of the drawee available for its payment." UCC § 3-409(1).

creation and proliferation of the personal money order. The identification numbers on these orders, the provisions on the record copies, and the representations of the issuing banks, make it reasonable for a purchaser to assume that the money order will be stopped on his request.

While drawers and banks usually assume that the personal money order may be stopped, payees and holders frequently are unaware of this possibility; they may give value in the belief that the instruments represent the bank's obligation. To protect the holder's interest, however, it is not necessary to deprive the purchaser of the power to stop payment—a valuable incident of this substitute for a personal check. Rather, banks could publicize the fact that they may be countermanded. A simple indication to that effect on the face of the money order would act to dispel any misconceptions that it is "akin to a cashier's check." The payee could still insist on payment in the form of a cashier's check when the circumstances of the transaction made a bank obligation desirable.[55]

Even if the customer's power to stop payment is recognized, it might nevertheless be wise to preserve the outcome in *Rose*, imposing liability upon a bank which stopped payment on its own initiative after discovering that the money order had been purchased with a bad check. Obviously, a guarantee that the bank cannot with impunity stop payment on its own initiative is to the advantage of the drawer. And no serious burden is placed upon the drawee as a result. When the money order is purchased for cash, the bank is clearly responsible—as in any other cash transaction—for

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[55] *See* UCC § 3-802; MONEY ORDER SERVICES 17.

ascertaining that the correct amount is paid. Since the purchaser of a money order ordinarily has no checking account, the situation in *Rose* is not likely to recur often. When it does, it seems reasonable to place upon the bank the responsibility for determining whether the check is good before issuing the money order. In the event of loss, the bank retains the right to recover from the purchaser as drawer of the check.

The bank might also assert a right to stop payment where it sought to apply the money order payment to offset an outstanding debt of the drawer to the bank.[56] Under the generally accepted "special deposits" doctrine,[57] however, the bank may be required to treat the deposit in payment of the money order as one made by the customer for a specific purpose; the deposit would not be available for set-off against pre-existing obligations.

In conclusion, a rule which permits the drawer, but not the bank, to stop payment on a personal money order would further the interests of purchasers and—to a limited extent—holders, while it subverts no strong interests of the bank. The purchaser can stop payment in the same manner as the drawer of an ordinary check. Concededly, the holder who assumes the

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[56] *See, e.g.*, Ballard v. Home Nat'l Bank, 91 Kan. 91, 136 P. 935 (1913).

[57] *See* Comment, *Effect of Agreement to Finance Agricultural Marketing on Bank's Liability to Payee of Check*, 46 YALE L.J. 483, 487 at notes 17 and 18 (1937). For more recent cases applying the "special deposit" theory, *see, e.g.*, Bender v. Neillsville Bank, 10 Wis. 2d 282, 102 N.W.2d 744 (1960); *cf.* White Truck Sales v. Citizens Commercial & Say. Bank, 348 Mich. 110, 82 N.W.2d 518 (1957). Although the doctrine is not mentioned in the UCC, it may be incorporated under § 1-103.

order to be nonstoppable is disillusioned. However, to the extent that a holder's preference for a personal money order rather than a check reflects his belief that the money order cannot be drawn on insufficient funds, the rule proposed would fulfill his expectations.

2. *Liability of Bank for Payment by Mistake*. The drawee bank can be held liable for paying an instrument after presentation of a valid stop order only if it is determined that the drawer has a *right* to have payment stopped. The cases on personal money orders have all involved situations in which the bank voluntarily accepted and honored a stop payment request; there has yet to be a determination as to the purchaser's right and the bank's correlative duty to stop payment.

Uniform Commercial Code Section 4-403 preserves the NIL rule that the drawer of a personal check has the right to stop payment.[58] Indeed, the section goes beyond prior law in that it gives the "customer" of a bank a right to stop payment on "any item payable for his account." The official comments to the Code indicate that stopping payment is "a service which depositors expect and are entitled to receive from banks notwithstanding its difficulty, inconvenience and expense"[59] and that the right is "not limited to checks, and extends to any item payable by any bank."[60] In

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[58] UCC § 4-403(1): "A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4-303."

[59] UCC § 4-403, Comment 2.

[60] UCC § 4-403, Comment 4.

view of the broad scope of the section and the comments, there should be little doubt that section 4-103 applies to personal money orders. The only substantial question which may be raised is whether the purchaser of a personal money order is a "customer" possessing an account at the issuing bank. The Code elsewhere defines "customer" as "any person having an account with a bank or for whom a bank has agreed to collect items,"[61] and defines "account" as "any account with a bank" including "a checking, time, interest or savings account."[62] It is arguable that the drafters of the Code intended to restrict the right to stop payment to persons who maintain a continuing relationship with the bank, excluding the purchaser of a single instrument. On the other hand, cases concerning the meaning of the term "account"—all decided prior to the Code—construed it as encompassing any debtor-creditor relationship between a bank and one who deposits money with it for any purpose.[63] Furthermore, the official comments to section 4-403 employ the terms "depositor" and "drawer" interchangeably with "customer," indicating that the section should not be read to exclude the purchaser of a personal money order. Since leaving stop payment orders to the discretion of the banks would impair the utility of these

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[61] UCC § 4-104(1) (e).

[62] UCC § 4-104(1) (a).

[63] *See, e.g.*, Peter Kiewit Sons', Inc. v. County of Douglas, 172 Neb. 710, 715, 111 N.W2d 734, 738 (1961).

instruments as the "poor man's checking account,"[64] a broad interpretation of section 4-403 should prevail.[65]

The bank's duty to honor stop payment orders under section 4-403 is subject to the condition that the customer give notice of his desire to have payment stopped "at such time and in such manner as to afford the bank a reasonable opportunity to act on it." Furthermore, section 4-103(1) sanctions agreements determining the standards by which the bank's responsibility is to be measured, as long as such standards are not "manifestly unreasonable."[66] It might well be argued that the countermanding procedure commonly prescribed on personal money order forms—presentation of the customer's record copy—represents a reasonable standard for the bank's responsibility. It is clear from the *Garden-First Nat'l* case, however, that the absence of the record copy does not make it

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[64] Bailey, *Bank Personal Money Orders as Bank Obligations*, 81 BANKING L.J. 669, 671 (1964).

[65] If banks are obligated to stop payment under the UCC, they would clearly be unable to follow a recent suggestion that they accept stop payment orders on personal money orders only upon the purchaser's signed agreement to hold the bank harmless for any consequences of its failure to do so and to defend any claim against the bank if it does stop payment. See Bailey, *supra* note 64, at 680. Evidently many banks have sought to protect themselves by requiring a surety or guarantee with a stop payment request. *See* MONEY ORDER SERVICES 16-17.

[66] For discussion of the effect and extent of this provision *see* Collins, *Bank-Customer Relations Under the Uniform Commercial Code*, 64 W. VA. L. REV. 657, 684 (1962); *Stopping Payments of Checks*, 79 BANKING L.J. 185, 200 (1962). For the only judicial application of § 4-103(1) to date *see* Thomas v. First Nat'l Bank, 376 Pa. 181, 188, 101 A.2d 910, 913 (1954), decided under pre-UCC law.

impossible for the bank to trace the check and to stop payment. Moreover, since the customer who loses the order is also likely to lose the record copy, the condition may be deemed so burdensome as to be unreasonable. Banks might be required to assume the "difficulty, inconvenience and expense"[67] of recording the purchaser's name and address, as well as the date of issuance.[68] In any event, as long as the purchaser provides sufficient information to enable the bank to locate its record of the instrument, he should be deemed to have complied with the requirements of the Code. Of course, the bank remains free to impose reasonable requirements by way of agreement with the purchaser—insistence upon written stop orders, for example—in the same manner as it deals with its personal checking account customers.[69] There is no

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[67] UCC § 4-403, Comment 2.

[68] It is possible that requiring banks to record and file the money order purchaser's name and address would be so burdensome as to make the service of issuing the instruments unprofitable. However, banks which provide bank money orders do record this information, *see* MONEY ORDER SERVICES 10-12, although evidently there is even less reason to do so than in the case of personal money orders, as payment on the former cannot be stopped. *See* note 8 *supra*.

[69] The bank may, of course, subsequently be held to have waived any such requirement by its acceptance of a noncomplying stop order. The bank may still protect itself against the possibility of payment by mistake by expressly informing the customer that its agreement to accept the order is only a voluntary accommodation, not a waiver, and that it will not be liable for failure to stop payment.

While the issuing bank is prima facie liable to the drawer if it pays the instrument over a valid, timely stop order, it is in turn

apparent reason why the issuer of a personal money order should not also retain its common law defenses, such as the customer's ratification of the bank's action in paying despite the stop order.[70]

A final problem concerns the burden of proof of the purchaser's loss resulting from payment over a valid stop order. Section 4-403(3) places the burden of "establishing the fact and amount" of such loss upon the customer. That rule is not incongruous in the context of the typical suit arising from the bank's failure to obey a stop order on a personal check. Such actions generally take the form of a suit by the drawer of a check to have his account recredited; section 4-403(3) merely defines one element of the prima facie case which must be established by the plaintiff-drawer.

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subrogated to any rights of the drawer against the payee or holder and of the holder or payee against the drawer. These rights are granted "to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item." UCC § 4-407. Thus, where the purchaser's reason for stopping payment concerns the underlying transaction, the bank which pays over his stop order after making a refund will be able to recover the amount of the money order from whichever party to the transaction is ultimately found to be at fault.

If the bank is subrogated to the rights of a holder in due course to whom it has paid the value of the instrument, it may be able to recover from the drawer, even if he was not at fault in the underlying transaction. Similarly, the bank may have grounds for recovery if the drawer's negligence contributed to loss or theft of the money order. *See* pp. 538-39 *infra*.

UCC § 4-303 governs the time requirements for stopping payment on countermandable instruments generally; there is no apparent reason for not applying the section to personal money orders.

[70] *See* UCC § 4-407, Comment 5.

When payment is stopped on a personal money order, however, the issuing bank normally gives the purchaser a cash refund at the time it accepts his stop payment order or a few days thereafter.[71] Withholding the refund until the instrument has been presented for collection and payment has been refused would be impractical, since a lost personal money order might never be presented. Consequently the initial loss usually falls upon the bank when it pays over a stop order, for it will already have made a refund.[72] If the bank is unwilling to absorb the loss,[73] it may bring an action against the drawer to recover the amount refunded, in which it will be subrogated to the rights of a payee or holder.[74] Section 4-403 should not be construed to impose upon the defendant-purchaser the burden of proving his own loss in such an action. To allocate the burden in this manner would be to relieve the bank of the necessity of showing that there were rights to which it was legally subrogated; the defendant would, in effect, be required to prove that no payee or holder had rights against him on the instrument. This rule would be onerous for the typical purchaser of a money order, who—unversed in commercial practices and probably unable to afford the assistance of counsel—

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[71] *See* MONEY ORDER SERVICES 16.

[72] When the bank issues a replacement money order, instead of a cash refund, to the drawer of a lost order, *see id.,* and then pays the first instrument by mistake, it should not thereafter be permitted to stop payment on the replacement order on its own initiative. *See* pp. 532-33 *supra.*

[73] *See* Collins, *supra* note 66, at 661, arguing that banks' possible one-eighth of one percent loss in regular check transactions is less than the cost of eliminating the risk of the loss.

[74] *See* note 69 *supra.*

faces the bank's suit to recover a refund which he has obtained in good faith.[75]

C. *Theft, Loss and Forgery*

Although personal money orders are properly classified as checks under the Code, they differ from ordinary checks in ways which may impede satisfactory solution of problems unrelated to stopping payment. Specifically, the Code sections relating to the consequences of theft, loss and forgery may be insufficient to protect the interests of purchasers and holders of personal money orders.[76]

Unlike the drawee of a check, the issuer of a personal money order will accept and pay it no matter who signs it as drawer. In the case of a personal check, the bank has the responsibility of recognizing its customer's signature and is liable for accepting or paying a check signed by anyone else.[77] The bank issuing a money order, however, retains no specimen of the

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[75] To prevent inequity to the purchaser in the rare case in which the payment by mistake has been made and discovered in the interval between acceptance of the stop order and payment of the refund, the bank should be prohibited from withholding a refund on a personal money order on which it has agreed to stop payment.

[76] Unlike a check, the personal money order's value is predetermined and usually impressed upon its face. This feature obviates the danger of fraudulent raising of the face value, a recurrent problem with respect to personal checks. *See, e.g.,* Savings Bank v. National Bank, 3 F.2d 970 (4th Cir. 1925); Critten v. Chemical Nat'l Bank, 171 N.Y. 219, 63 N.E. 969 (1902); UCC § 3-407.

[77] UCC § 3-417 & Comment 4; UCC § 4-207(2) & Comment 4. This rule is grounded in the well-known doctrine of Price v. Neal, 97 Eng. Rep. 271 (K.B. 1762).

purchaser's signature and is obviously unable to verify the genuineness of the signature on an order presented for collection.

When a blank personal money order is lost, the purchaser bears the risk that the finder will complete the instrument and cash it. Indeed, even if the purchaser has signed the order at the time of purchase, the finder may negotiate it after filling in his own name as payee. Consequently, the purchaser is fully protected only if he enters the payee's name when he obtains the order. At the time of purchase, however, he may be either uncertain of the payee's identity or not completely committed to the transaction for which the order is drawn. Furthermore, if he does enter the payee's name and later decides not to deliver the completed instrument, he cannot merely destroy it as can the drawer of a personal check, but must go to considerable trouble to obtain a refund from the bank. Thus, the customer may well choose to postpone designating the payee until he intends to transfer the order. It is true that a lawyer would recognize a safer alternative: the purchaser could enter his own name as payee and drawer, and later endorse the instrument to the desired holder. But the typical user of the personal money order is unlikely to be aware of this course. Moreover, the rather unorthodox appearance of the resulting instrument would not inspire confidence among prospective holders.

A stop order alters the legal relationships between drawer and holder in a number of ways. In the case of the forged drawer's signature, the holder in due course has no remedy against the purchaser who stops payment; since the purchaser has not signed the

order, he cannot be liable on it.[78] Hence, the holder is relegated to his action against the forger. If, on the other hand, the drawer signed the instrument but failed to write in the payee's name, he is liable to a holder in due course,[79] against whom theft and loss are not valid defenses.[80] Finally, where payment is stopped on an instrument bearing a forged endorsement rather than a forged drawer's signature, the endorsee will bear the loss unless he can recover from

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[78] The rule of the NIL § 15 [N.Y. NIL § 34 (McKinney 1943)], that nondelivery of an uncompleted, signed instrument is a defense against even a holder in due course, which might have been available to the money order drawer, is rejected by UCC § 3415. *See generally* Note, *The Uniform Commercial Code: Effect on the Law of Negotiable Instruments in New York,* 30 BROOKLYN L. REV. 204, 213, 245-46 (1964). *See also* UCC §§ 3-401, 4-403.

[79] There remains the question whether check cashing services like those involved in *Garden-First Nat'l* and *Rose* are holders in due course of personal money orders. UCC §§ 3-302(1) and 3-304(4)(d), read together, deem a holder who "has notice of any improper completion" not to be a holder in due course. It may be argued that, since personal money orders are more likely to be lost while in a partially completed state than personal checks, the holder should be charged with greater responsibility for ascertaining validity and true ownership when cashing a money order than is required upon taking a personal check. Realistically, however, it is unlikely that many holders or payees would bring suit against a money order purchaser. The relatively small sums for which most orders are drawn scarcely justify the time and expense of legal action against the drawer. Suits against the issuing banks, however, may be more worthwhile, not only because the banks are far more likely to be solvent, but because a legally established right of action under certain circumstances may enable a plaintiff such as the check cashing service in *Garden-Chase* to recover the amounts of a number of money orders against one defendant in a single suit.

[80] UCC § 3-305. Theft is a valid defense against those who are not holders in due course. UCC § 3-306(d).

the forger; the endorsee cannot claim the status of a holder in due course, for the absence of a valid endorsement prevents due negotiation.[81]

The incidence of attempts to negotiate stolen or lost personal money orders would undoubtedly decrease if courts were to follow the course suggested by the Appellate Division in the *Garden-First Nat'l* case, permitting the stopping of payment on these instruments. Once it became known that personal money orders were not bank obligations, check cashing services and merchants would be more reluctant to give cash for them.[82] Where payment was stopped, the thief or finder would also be unable to receive payment at the issuing bank. Consequently, the utility of personal money orders would be restricted to the purposes for which they were created: to provide check like instruments for the payment of small debts by persons who do not maintain checking accounts.

D. *Negligence*

The drawer of a money order who fails to complete the instrument at the time of purchase may not be able to protect himself completely upon discovery of theft or loss merely by stopping payment. Section 3-406 of the Code provides:

> Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in

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[81] UCC §§ 3-202, 3-404.

[82] Check cashing services apparently refuse to cash ordinary, personal checks as a matter of policy.

> due course or against a drawee or other payor who pays the instrument in good faith . . . .[83]

Since the amount is recorded on the money order at the time of purchase, this section could be invoked only as to negligence permitting the insertion of a payee's name or an unauthorized signature. The purchaser is presumed to know the risks of leaving his money order incomplete; frequently, a printed message on the order itself or the record copy advises him to fill out the order at the time of purchase. His failure to complete it promptly might therefore be considered negligence under section 3-406. But this conclusion seems overly harsh, in view of the unique form and purposes of the money order. Although the purchaser who fails to fill out a money order may not be entirely blameless, his fault does not seem commensurate with that of the drawer of a check who leaves his signature stamp lying around the office[84] or who entrusts signed blank checks to an irresponsible person.[85] On the other hand, the classic formula that, as between two innocent people, a loss should fall on the one who made it possible[86] may in some cases justify holding the drawer of a money order liable for inordinate carelessness.

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[83] UCC § 3-406. Comment 2 points out that: "By drawing the instrument and 'setting it afloat upon a sea of strangers' the maker or drawer voluntarily enters into a relation with later holders which justifies his responsibility."

[84] *See* UCC § 3-406, Comment 7.

[85] *See* cases cited note 76 *supra.*

[86] *See, e.g.*, Concordia Lutheran Evangelical Church v. United States Cas. Co., 115 A.2d 307 (D.C. Mun. Ct. App. 1955) (holding the drawee bank not liable for cashing stolen, signed checks).

If the purchaser's failure to complete the money order is deemed to be negligence within the meaning of section 3-406, this finding has the same effect on the rights of the holder in due course that negligence on the part of the drawer of a personal check has on the holder of that type of instrument.[87] However, the effect of section 3-406 on the liability of the drawee of a personal money order is difficult to determine. In the case of a personal check, the section relieves the drawee of responsibility for paying a check bearing a forged drawer's signature.[88] But the issuer of a personal money order has no duty to verify the drawer's signature. Consequently, the section can only be relevant in the context of the issuer's failure to obey a stop payment order. Conceivably, the bank might seek to avoid liability to the drawer by asserting the purchaser's negligence in creating the situation which required payment to be stopped. However, the Code section only precludes the negligent drawer from relying on *alteration* or *lack of authority*. There is no reason to suppose it was meant to attenuate the Code policy favoring the drawer's right to stop payment. That right should be preserved as a protection against loss from stolen or misplaced personal money orders

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[87] The UCC is somewhat unclear on this issue. It might act to give holders in due course a right of action against the purchaser, even when he had not signed the instrument prior to its loss or theft. Assuming that the holder has been, refused payment by the bank because of a stop order, he might bring suit on the instrument, invoking § 3-406 to estop the purchaser from claiming that the signature thereon—that of a finder or thief—is unauthorized.

[88] UCC § 3-304(1)(a).

regardless of the purchaser's fault in permitting the loss to occur.

E. *Staleness*

While the Code places no time limit on the negotiability of a bank obligation such as a cashier's check, section 4-404 relieves the drawee of its obligation to pay an ordinary check six months after "its date."[89] The date of a personal check is, of course, the date it is drawn. The life of a personal money order, on the other hand, could be measured from either the date of issuance—indicated on bank records, though not on the face of the order—or the date written in by the drawee. Arguably, the bank may, under section 4-404, refuse to honor a money order which is presented for payment more than six months after issuance, regardless of the date entered on the order itself. The commentary to section 4-404 is silent as to whether "its date" refers to the date of issuance or the date entered on the instrument. The comments do indicate, however, that section 4-404 was designed to serve the *customer's* interests by giving the bank the option to consult him before paying a stale check.[90] Since the issuing bank rarely records the money order purchaser's name and address,[91] it cannot contact him; hence the purpose underlying the Code section would not be furthered by its application to money orders. It might nevertheless be desirable to permit the bank to refuse payment after a reasonable time has elapsed from the date of issuance, in order to remove the burden of

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[89] *See* UCC § 4-404 & Comment; *cf.* UCC § 3-114.

[90] *See* UCC § 4-404, Comment.

[91] *See* note 68 *supra* and accompanying text.

keeping a perpetual record of every uncollected personal money order it issues.

The possible discrepancy between the date of issuance and the date on the money order could easily be resolved by universal adoption of the practice—already followed by some issuing banks—of stamping the order with the date of issuance. There is no apparent reason why the date must be entered by the purchaser. Requiring purchasers to use the money order within six months would cause them no real hardship, since they customarily obtain such instruments for a definite purpose and contemplate using them within a short time.

II. TELLER'S CHECKS

A. *General Characteristics*

Teller's checks are drawn by savings banks and savings and loan associations on commercial banks with which they maintain checking accounts. Like personal money orders, teller's checks are used for the safe and convenient transfer of funds by people who have no checking accounts, or for transactions in which the use of a personal check is undesirable or impractical. However, they differ from money orders in a number of ways. Teller's checks are infrequently purchased with cash; rather, they are usually issued against funds in the customer's savings account. Moreover, they are often used by persons who maintain checking accounts as a means of transferring funds from savings accounts.[92]

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[92] Many banks impose no limit on the amount for which their teller's checks may be issued, unlike personal money orders, which usually have a specified maximum value. As transactions

Some of the problems presented by personal money orders have no parallel in the case of teller's checks. Thus, since it is complete at the time it is issued by the savings bank, the teller's check involves no unusual problems of loss, theft, forgery or negligence. However, great uncertainty shrouds the process of stopping payment on these instruments. Can the savings bank which issues the check order the drawee to stop payment? Can the purchaser compel the issuing bank to stop payment? If not, can he threaten the drawee with liability if it pays the check after having received notice of his claim? Finally, if payment is stopped, which of the purchaser's claims may be asserted by the drawer in defending a suit on the instrument?

The answers to these questions must be sought in the Code. But the process of explicating the relevant Code provisions is a difficult one, for the purchaser is not the drawer of the instrument. Rather, he is a remitter—a person who purchases a draft or check drawn by another party and submits it for payment of his own debt.[93] The legal status of the remitter developed early in the law merchant; although he was not the payee of the instrument, he was considered its owner, and generally had the right to recover the face value from the drawer if he did not deliver the

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in which teller's checks are used often involve quite substantial funds, litigation over these instruments is likely to occur more frequently than over personal money orders.

[93] Purchasers of personal money orders are sometimes referred to as remitters, both by commentators and by the issuing banks, *see* MONEY ORDER SERVICES 18, but this designation is inaccurate in terms of the technical definition of "remitter."

instrument[94] or if the payee refused to accept it.[95] The Uniform Commercial Code, like the Uniform Negotiable Instruments Law before it,[96] contains no specific reference to the rights of the remitter, and the Code descriptions of "drawer," "maker," or "holder" do not apply to the remitter.[97] Consequently, many of his rights will be governed by prior law,[98] and this fact compounds the difficulty of determining the rights of parties to a teller's check.[99]

Two recent New York decisions have dealt with some of the questions raised by teller's checks. Unfortunately, they failed to consider all the relevant Code sections. Hence, they are a source of confusion rather than an aid to analysis.

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[94] *See* Moore, *The Right of the Remitter of a Bill or Note,* 20 COLUM. L. REV. 748, 751-53 (1920).

[95] W. BRITTON, BILLS AND NOTES 179 (2d ed. 1961). *See generally id.* at 177-81. For the several legal theories on which this right of recovery could be supported *see* Beutel, *Rights of Remitters and Other Owners Not Within the Tenor of Negotiable Instruments,* 12 MINN. L. REV. 584, 587-99 (1928).

[96] W. BRITTON, *supra* note 95, at 178.

[97] *See* UCC §§ 3-104, 4-104(1)(e). The remitter is not a holder because the instrument is not "issued or endorsed to him or his order or to bearer or in blank." UCC § 1-201(20).

[98] UCC § 1-103. For a recent example of a remitter's rights in, and recovery on, an instrument, *see* Burke v. Mission Bay Yacht Sales, 214 Cal. App. 2d 723, 29 Cal. Rptr. 685 (Dist. Ct. App. 1963).

[99] *See generally* Comment, *The Rights of a Remitter of a Negotiable Instrument,* 8 B.C. IND. & COM L. REV. 260 (1967).

B. *The New York Cases*

In *Malphrus v. Home Savings Bank*,[100] the purchaser gave the plaintiff a teller's check, drawn by her savings bank, in part payment for a secondhand automobile. For unspecified reasons, the purchaser caused the bank to stop payment, and the payee sued the bank upon its refusal to honor the instrument. Although the bank asserted that, as a "customer," it had a right to stop payment under section 4-403 of the Code, the court granted summary judgment for the payee. The plaintiff had relied upon the credit of the savings bank and accepted its check "as in the nature of cash . . . on the same basis as certified checks."[101] Under section 3-802, the payee lost his right against the purchaser when he accepted a bank instrument in payment of the debt. Hence the payee would be left with no remedies under the Code if the bank were free to refuse payment. The bank's right to stop payment under section 4-403, the court concluded, should be limited to situations in which it is an "actual party" to the underlying transaction.

The *Malphrus* decision was deemed controlling in the subsequent case of *Ruskin v. Central Federal Savings & Loan Ass'n.*[102] In that case, the purchaser of a teller's check requested the savings and loan association to stop payment; the facts recited in the opinion do not suggest what defenses could have been raised

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[100] 44 Misc. 2d 705, 254 N.Y.S.2d 980 (Albany County Ct. 1965).

[101] *Id.* at 706, 254 N.Y.S.2d at 982.

[102] 3 UCC REPORTING SERVICE 151 (N.Y. Sup. Ct. 1966).

against the payee.[103] The bank acceded to the request and, when subsequently sued on the instrument by the payee, interpleaded the purchaser as a defendant. Despite the purchaser's presence on the interpleader, the court granted summary judgment for the payee against the bank. It held that the check was accepted "in the nature of cash" and, like a certified check, could not be countermanded.[104] As in *Malphrus,* the court considered this result to be compelled by the discharge of the purchaser under section 3-802. Any claims the purchaser might have against the payee, it concluded, should be adjudicated in a separate suit.

The premise of the *Malphrus* and *Ruskin* decisions—that section 3-802 discharges the remitter of a teller's check—is sound. Section 3-802 provides for the discharge of the underlying obligation whenever a bank is "drawer, maker or acceptor" of the instrument given in payment. Although it might be argued that savings banks are not "banks" within the meaning of this section,[105] the Code provides no basis for limiting

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[103] The defendant stated that the depositor-purchaser "had lost confidence in the transaction and had been hasty in her actions and unclear in her mind, having only recently been widowed." *Id.*

[104] *Id.* at 152.

[105] The functions, characteristics, and statutory regulation of savings banks and savings and loan associations provide significant grounds for distinguishing such institutions from commercial banks. These differences were emphasized in pre-UCC law. *See, e.g.,* People v. Franklin Nat'l Bank, 200 Misc. 557, 566-67, 105 N.Y.S.2d 81, 91-92 (Sup. Ct. 1951) (dictum), *rev'd,* 221 App. Div. 757, 118 N.Y.S.2d 210, *modified,* 305 N.Y, 453, 113 N.E.2d 796 (1953), *rev'd*, 347 U.S. 373 (1954); Matter of Lofmark, 131 Misc. 188, 193-95, 226 N.Y.S. 415, 425-26 (Sur. Ct. 1928) (dictum); 8 A. MICHIE, BANKS AND BANKING 2 (1945). Some courts

the term in this manner.[106] It seems evident that the public has as much faith in instruments issued by savings banks as it does in those given by commercial banks. Hence, the remitter of a savings bank obligation should be discharged under section 3-802.

The discharge of the underlying obligation, however, is no reason for denying the drawer bank's power to stop payment. Even if payment is stopped, the drawer remains liable on the instrument. Consequently, the *Malphrus* and *Ruskin* decisions must be rejected insofar as they rely upon the anomaly of permitting payment to be stopped even though the purchaser's obligation has been discharged.

Whether a bank which issues a teller's check has a right to stop payment presents a straightforward question of Code interpretation. Prior to the Code, there was considerable dispute over the right of a drawer bank to stop payment on its own draft. The majority view recognized the bank's right to stop,[107] specifically including the right of a savings bank to stop payment on a teller's check at the purchaser's

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even denied that savings banks were "banks" at all. *See, e.g.,* Andrew v. American Sav. Bank, 217 Iowa 447, 252 N.W. 245 (1934); Bulakowski v. Philadelphia Sav. Fund Soc'y, 270 Pa. 538, 113 A. 553 (1921). It is questionable, however, whether the differences afford any basis for drawing legal distinctions between the instruments issued by commercial and savings institutions. For the general characteristics of savings banks *see* 8 A. MICHIE, *supra,* at 2-7; H. RUSSELL, SAVINGS AND LOAN ASSOCIATIONS 1-22 (2d ed. 1960).

[106] Under the UCC, "'Bank' means any person engaged in the business of banking." UCC § 1-201(4).

[107] *See* Annot., 107 A.L.R. 1463, 1465 (1937).

request;[108] a minority of jurisdictions, including New York,[109] considered the purchase of a bank draft to be an executed contract not subject to rescission,[110] or classified the draft with cashier's and certified checks.[111] However, this dissension was conclusively settled by the Code. Under section 4-403, a customer may stop payment on any instrument payable for his account,[112] and "customer" is defined to include "a bank carrying an account with another bank" by section 4-104(1)(e).[113]

It seems clear, then, that the bank which issues a teller's check has the right to stop payment. In most instances, however, it is the purchaser rather than the drawer bank which has an interest in stopping

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[108] *See* Polotsky v. Artisans Sav. Bank, 37 Del. 151, 188 A. 63 (1936) (dictum).

[109] *See* Annot., 107 A.L.R. 1463, 1467 (1937).

[110] *See* International Firearms Co. v. Kingston Trust Co., 6 N.Y.2d 406, 411, 160 N.E.2d 656, 658, 189 N.Y.S.2d 911, 914 (1959) (dictum).

[111] *See* Kohler v. First Nat'l Bank, 157 Wash. 417, 289 P. 47 (1930). In a recent case, however, the New York Court of Appeals recognized the effectiveness of a stop order on a bank draft, but indicated that under the particular facts of the controversy there had been an implied promise by the drawer to refrain from affirmatively interfering with the drawee's performance in honoring the instrument This analysis suggests that the basis of the minority rule may be a promise implied in fact, rather than a rule of law that a bank may not stop payment on its draft. Gonzalez v. Industrial Bank, 12 N.Y.2d 33, 186 N.E.2d 410, 234 N.Y.S.2d 210, *modified,* 12 N.Y.2d 835, 187 N.E.2d 465, 236 N.Y.S.2d 611 (1962).

[112] UCC § 4-403(1) & Comment 4.

[113] *See Stopping Payments of Checks, 79* BANKING L.J. 185 (1962).

payment. The purchaser may attempt to persuade the drawer to invoke its power; in many cases it will succeed, for the savings bank will usually wish to please its depositor. If the purchaser fails in this endeavor, however, he cannot assert a right to stop payment under section 4-403; for he is not a "customer" of the drawee bank, which is charged with the payment of the item. Any power which the purchaser may have to compel the stopping of payment must instead be derived from his assertion of an adverse claim to the instrument.

C. *"Stopping Payment" Through the Assertion of an Adverse Claim*

1. *Adverse Claim and Jus Tertii at Common Law.* The ability or duty of a party who is obligated on an instrument to raise a defense based upon the rights of a third person is rooted in the common law doctrines of *jus tertii* and adverse claim. Under the rules of adverse claim, the third party—frequently, but not necessarily, a former holder or legal owner of the instrument—could force the obligor to delay payment by asserting an equitable claim to the instrument or the funds on which it was drawn.[114] Upon due notice to the obligor, payment on the instrument could be restrained until the claimant had a reasonable opportunity to secure judicial determination of his rights.[115] The banks thus faced a dilemma: they had to decide

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[114] For the varieties of circumstances in which such an equity may be claimed, and the rights of the claimants under them, *see* W. BRITTON, *supra* note 95, at 453-56.

[115] FARNSWORTH & HONNOLD, *supra* note 1, at 159; Comment, *Conflicting Rights, Duties and Liabilities of Interested Parties upon Assertion of Adverse Claims to Bank Deposits,* 51 YALE L.J. 986, 998 (1942).

the merits of adverse claims under the threat of double liability if they paid an instrument over a valid claim, and of an action for slander of credit if they refused to pay because of an invalid claim. To relieve banks of this responsibility, many states enacted measures—perpetuated by the Code—requiring notice of adverse claims to be accompanied by a court order restraining payment or a bond indemnifying the bank against loss.[116]

Under the common law restrictions on *jus tertii* defenses, the obligor on an instrument could not set up equities of third persons as a defense to a holder's action on the instrument.[117] There were a number of justifications for this doctrine. If the defendant obligor lost, he might nevertheless be held liable to the third party in a second action; and the successful plaintiff might also be subjected to suit by the third party, necessitating another litigation of the same issues.[118] On

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[116] *See* 2 T. PATON, DIGEST OF LEGAL OPINION 1657 (1942 & Supp.). For non-statutory remedies of the bank, *see* Comment, *Conflicting Rights, Duties and Liabilities of Interested Parties upon Assertion of Adverse Claims to Bank Deposits, supra* note 115, at 1004-07. The position of the Negotiable Instruments Law on the rights of an adverse claimant was unclear. While the Law did not expressly cover the issue, its definition of payment in due course, "made at or after the maturity of the instrument to the holder thereof in good faith *and without notice, that his title is defective*," NIL § 88 (emphasis added), suggested that if a bank were given sufficient evidence of the genuineness of an adverse claim it could not in due course pay out the claimed money to the depositor. *Cf.* UCC § 3-603.

[117] J. BRANNAN, NEGOTIABLE INSTRUMENTS LAW 885 (7th ed. F. Beutel 1948). In no event could the obligor take advantage of a third party's equity if he had not been specifically notified of the latter's claim to the instrument. *Id.*

[118] *See* W. BRITTON, *supra* note 95, at 468-69.

the other hand, the obligor might escape liability altogether on the instrument if he prevailed in a defense based on the rights of a third party who did not thereafter lay claim to the instrument.[119] Common law authorities generally conceded, however, that the defense of *jus tertii* was available to the obligor when the claimant was either a party to the action, or would otherwise be bound by the result of the proceeding against the obligor.[120]

2. *The Code Solution.* Although the issue was temporarily obfuscated by the Negotiable Instruments Law,[121] the Uniform Commercial Code in a large measure restored the common law approach to *jus tertii* defenses. Under section 3-306(d), the obligor may raise the defense that the instrument was acquired by theft, or was restrictively endorsed, but "the

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[119] Note, *Jus Tertii Under Common Law and the N.I.L.,* 26 ST. JOHN'S L. REV. 135, 137 (1951).

[120] *See* J. BRANNAN, *supra* note 117, at 885; W. BRITTON, *supra* note 95, at 468-69; Note, *Jus Tertii Under Common Law and the N.I.L., supra* note 119.

[121] *See* Britton, *Defenses, Claims of Ownership and Equities—A Comparison of the Provisions of the Negotiable Instruments Law With Corresponding Provisions of Article 3 of the Proposed Commercial Code,* 7 HASTINGS L.J. 1, 23-24 (1955); Note, *Jus Tertii Under Common Law and the N.I.L., supra* note 119, at 142. At least one case under the NIL held that the defendant bank could utilize any defense that the purchaser of an instrument could have asserted against the plaintiff endorsee, Leo Syntax Auto Sales Inc. v. Peoples Bank & Sav. Co., 35 Ohio Op. 2d 330, 215 N.E.2d 68 (Ct. C.P. 1965); another, expressing regret that the third party had not been successfully interpleaded, still maintained that the defendant bank could avail itself of a *jus tertii* defense once it overcame the plaintiff's prima facie case. Nicholas v. Somerville Sav. Bank, 333 Mass. 488, 132 N.E.2d 158 (1956).

claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party." Under section 3-603 the obligor is not liable for payment with knowledge of an adverse claim unless the claimant has either supplied indemnity deemed adequate by the obligor or has secured an order of a court of competent jurisdiction enjoining payment. [122]

The Code procedure protects drawee banks from the necessity of deciding the merits of a customer's adverse claim at the peril of double liability. By ensuring that the adverse claimant is a party to any suit in which his rights are determined, the Code also prevents the relitigation of identical issues in subsequent actions. Finally, the Code minimizes the possibility that the successful plaintiff might be unjustly enriched if no subsequent action were brought against him by the adverse claimant.

3. *The Remitter as an Adverse Claimant.* The remitter might seek to prevent payment of the instrument by giving notice of his adverse claim—accompanied by the requisite indemnity or court order—to either the drawee or the drawer.[123] No matter which

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[122] UCC § 3-603(1); *see id.,* Comment 3; W. HAWKLAND, COMMERCIAL PAPER 96 (1965) ; *cf.* UCC § 3-803. For an analysis of the UCC's approach to the problem of the adverse claimant's rights under Article 3, *see* Comment, *Adverse Claims Under the Uniform Commercial Code: A Survey and Proposals*, 65 YALE L.J. 807, 810-16 (1956).

[123] Except in the relatively rare case involving a teller's check drawn for a substantial sum, it seems unlikely that the remitter would go through the burdensome procedure of providing indemnity or securing a court order.

bank is involved, however, the remitter's action raises difficult issues in the interpretation of section 3-603.

Section 3-603 provides that "the liability of any party is discharged" to the extent of its payment to the holder, unless the payor has received appropriate notice of the claim of another person to the instrument. A typical claim provided for in this section is that of a payee of a certified check who asserts that the instrument was obtained from him by fraud. In such a case, the drawee clearly has a pre-existing liability to the payee, which is discharged by payment in the absence of appropriate action by the payee. However, section 3-603 does not, by its terms, provide for the remitter's making of an adverse claim upon the drawee of a teller's check; even if the remitter's claim of ownership is valid, the drawee has no pre-existing liability to the remitter on the instrument. Nor does the language of section 3-603 literally encompass an adverse claim by the remitter on the drawer. A party's liability is discharged to the extent of "his payment." Yet, in the case of the teller's check, payment is made by the drawee rather than the drawer.

It is apparent that the drafters of section 3-603 did not envision the possibility of adverse claims to a teller's check. But it seems clear that the section was intended as a general solution to the threat of double liability faced by the payor of an instrument. Since that danger exists in the case of the teller's check, section 3-603 should be interpreted to encompass the remitter's adverse claim despite the inaptness of the language employed by the drafters.

The remitter's right to assert an adverse claim under section 3-603 would be an effective substitute for a right to stop payment in some but not all cases. By

following the procedure set forth in that section, the remitter could be assured of a hearing on his claim. But he could do so only in those cases in which he claimed *title* to the instrument—as where it was obtained from him by fraud, theft or forgery. Where he wishes to raise only defenses to the underlying obligation which do not bring into question the payee's ownership of the check, he is not protected as he would be if he were empowered to stop payment.

D. *Jus Tertii Defenses of the Drawer Bank*

Where payment is in fact stopped—either voluntarily[124] or through notice of adverse claim—the drawer faces the prospect of a suit on the instrument by the payee or holder. In the case of the payee who is not a holder in due course, the drawer may assert "the *claim* of any third person to the instrument . . . as a defense"[125] if that person defends the action for the drawer. The language of section 3-306(d) apparently encompasses only the assertion of the third person's claims of ownership, to the exclusion of mere contract defenses. That restriction prevailed at common law. [126] Moreover, the comment to section 3-306(d)[127] cites a number of examples, all of which involve claims of

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[124] Since the remitter has no right to stop, payment, the bank has no correlative duty to stop payment, and there is ordinarily no right of action on the purchaser's behalf when the bank fails to stop payment after accepting a stop payment order. However, if the remitter can show reliance to his detriment on the bank's acceptance of his request he may be able to recover on a promissory estoppel theory. *See* RESTATEMENT OF CONTRACTS § 90 (1932).

[125] UCC § 3-306(d) (emphasis added).

[126] *See* FARNSWORTH & HONNOLD, *supra* note 1, at 159.

[127] UCC § 3-306, Comment 5.

title. While the language of section 3-306(d) requires this result, restricting *jus tertii* to claims of ownership is unfortunate; there is an interest in avoiding a second litigation between parties who are before the court.[128]

Where the plaintiff in a suit on a teller's check is not the payee, he is likely to be someone who has given value for the instrument in good faith and without notice of any claim or defense, and will thus be a holder in due course. Where, however, the plaintiff is the payee, as in *Malphrus* and *Ruskin,* he may not have acquired that privileged status. The Code provides that the payee may be a holder in due course,[129] but to be so classified he must take the instrument "for value," and taking "for value" includes performance of the "agreed consideration."[130] It may be argued, therefore, that when there is a failure of consideration in the commercial transaction between the payee and the remitter, the payee has not taken "for value" and is not a holder in due course.[131]

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[128] *See* text accompanying note 118 *supra*; text following note 122 *supra.*

[129] In specifically including payees as possible holders in due course the UCC resolves a long-standing controversy. *See* UCC § 3-302, Comment 2.

[130] UCC § 3-303(9).

[131] In specifying that taking for value may include performance of the agreed consideration, UCC § 3-303 was evidently included to make clear that a mere executory promise given in return for a negotiable instrument does not make the promisor a holder in due course. *See id.,* Comment 3; 2 N.Y. LAW REVISION COMM'N, STUDY OF THE UNIFORM COMMERCIAL CODE, LEGIS. DOC. NO. 65, at 146-50 (1955). However, the commentaries do not indicate whether "performance of the agreed consideration" means only

If the payee is a holder in due course, under section 3-305 he takes the instrument free from "(1) all claims to it on the part of any person and (2) all defenses of any party to the instrument with whom the holder has not dealt" except for certain "real" defenses.[132] Unlike section 3-306(d), this, provision does not deal with the availability of third party claims. It is apparent, however, that *jus tertii* may not be asserted against the holder in due course. The purpose of section 3-305 is to insulate the holder in due course from all claims to recover the instrument. Should the holder in due course seek to enforce another party's liability on the instrument, however, that party is permitted to assert *defenses,* if he is a party with whom the holder has dealt. To permit an obligor who has not dealt with the holder (the drawer of a teller's check) to assert the defense of a party with whom the holder has dealt (the remitter) would elevate that defense to the status of an affirmative claim. Indeed, to do so would place the

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that some consideration be given, or whether it is intended that, a "failure of consideration" would preclude a taking "for value." The latter view is supported by the statement of Professor Beutel that the UCC preserves the NIL conception that whether there has been a taking "for value" "resolves itself into a question of simple contract law." *See* 2 N.Y. LAW REVISION COMM'N, *supra* at 147.

[132] The "real" defenses listed by § 3-305(2) are: infancy, incapacity, duress, illegality of the transaction, fraud in the execution of the instrument, discharge in insolvency and any other discharge of which the holder has notice when he takes the instrument.

holder in due course in virtually the same position as one who does not hold in due course.[133]

The restrictions which the Code imposes on the range of *jus tertii* defenses available to the drawer bank severely limit the efficacy of stopping payment on a teller's check. Even if he can persuade or compel the drawer to stop payment, the remitter will be able to assert only his proprietary claims to the instrument, in defending the holder's action against the drawer.[134] And he cannot assert even these, if the party suing on the instrument is a holder in due course. The restrictions compelled by the Code provisions seem somewhat incongruous; if the remitter had employed a personal money order or ordinary check, he would have been able to assert all available defenses against the payee, even if the payee was a holder in due course. Because the uses and users of teller's checks are typically similar to those of personal money orders, it might appear that the remitter's rights on the instrument should parallel the rights of a money order purchaser. Yet in one respect the remitter is in a better position: his liability on the underlying transaction is discharged when he uses a bank instrument. Inability to assert all his claims and

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[133] To construe "defense" in § 3-305 as including claims is not objectionable, although interpreting "claim" in § 3-306 to include mere defenses would be. Thus, the real "defenses" listed in § 3-306 have long been recognized to give rise to claims of ownership; yet they are classed as defenses nonetheless.

[134] Although the bank does retain the defense of theft, even if the remitter is not a party, UCC § 3-306(d), litigation over stolen teller's checks is unlikely to occur frequently, as the instruments are completely filled out when issued.

defenses in the holder's action against the drawer is the price he pays in return.[135]

III. CONCLUSION

The utility of both personal money orders and teller's checks may be impaired if the confusion displayed by recent decisions is perpetuated. It is to be hoped that in future adjudications involving personal money orders and teller's checks the courts will be more attentive to the interplay between relevant provisions of the Uniform Commercial Code and to policy considerations suggested by the nature and normal usage of each instrument. The payee or holder is typically a merchant; not only is he in a stronger bargaining position than the purchaser, but he is ordinarily better able to ascertain and comprehend the legal implications of accepting the money order or teller's check. Thus, in accepting a personal money order, a merchant such as a check cashing service will be wary of the possibility that the instrument has been wrongfully acquired, or that payment has been stopped, if it bears the risk of such an occurrence. And the merchant who takes a personal money order can readily make performance of his obligation conditional on acceptance of the order by the drawee bank. Similarly,

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[135] Under this analysis, the payee in *Malphrus* would still have, prevailed, because the bank was unable to set up the purchaser's defenses as *jus tertii.* Correspondingly, the outcome in *Ruskin* may have been altered: the remitter was before the court as an interpleaded defendant and if his claims constituted claims of ownership, they could have been raised in accordance with UCC § 3-306(d). The court should have determined whether plaintiff was a holder in due course and, if not, should have adjudicated all the issues involved in the controversy, eliminating the necessity of a second lawsuit.

the holder of a teller's check can easily insist on payment by an instrument which cannot be countermanded or can have the check certified if it fears a stopping of payment. Since the payees and holders of these instruments will be likely to protect their interests once they become aware of the possibility of a stop order, courts should not hesitate to infer a power to countermand whenever the Code permits such implication. By pursuing this course, the courts would fulfill the expectations of the typical purchaser, who assumes that payment may be stopped, and would permit these instruments to function as useful substitutes for personal checks.

WILLIAM D. HAWKLAND, *AMERICAN TRAVELERS CHECKS*, 84 BANKING L.J. 377 (1967)

AMERICAN TRAVELERS CHECKS[†]

By William D. Hawkland[*]

I. INTRODUCTION

Prior to 1891 travelers usually provided themselves with funds by carrying cash or using individual bank drafts or letters of credit. None of these methods proved completely satisfactory. Cash is marketable and convenient but lacks safety: money lost or stolen is usually gone forever. Bank drafts and letters of credit are safe but lack marketability and involve inconvenience. One holding such instruments often suffers delays occasioned by verification and acceptance, and these items usually cannot be spent for merchandise or services but must be "cashed" at some financial institution or special place.

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[†] The substance of this article was presented at the VII Congress of Comparative Law, Uppsala, Sweden in August, 1966.

[*] Dean and Professor of Law, State University of New York at Buffalo, School of Law. The author acknowledges with gratitude the research assistance provided by Mr. Marshall L. Cohen. The author also wishes to record his indebtedness to Mr. Jerry J. Cusumano of the legal department of The American Express Co. for his assistance in ascertaining the practices of the travelers check industry.

Early in 1891 the President of the American Express Company made a trip to Europe and learned first hand about the inconveniences involved in the use of letters of credit and bank drafts. At the same time he knew that carrying cash was not the answer to the traveler's financial problems. He came home convinced that a new instrument was needed; one that would have the convenience and marketability of cash and the safety of the letter of credit and bank draft. The travelers check was created to satisfy this need.[1]

Although the travelers check has been used for three-quarters of a century, it is still regarded in American legal circles as something of an anomaly and its precise legal characteristics have not yet been determined. This surprising situation is due in large part to the fact that cases involving these instruments rarely come before the courts, because their issuers consistently have pursued a policy of promoting saleability and marketability by sustaining losses in doubtful cases.[2] When litigation has occurred, the courts have had difficulty determining the applicable law, largely because the Uniform Negotiable Instruments Law (hereinafter N.I.L.), the only general legislation covering commercial paper prior to the recent promulgation of the Uniform Commercial Code (hereinafter U.C.C.), fit the travelers check so uneasily that it was not even clear that coverage was intended for it. Paucity of litigation and uncertainty as to the

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[1] For a description of the development of travelers checks, see "Travelers Cheque—Reference Guide," issued by American Express Co., pp. 5-6 (1945).

[2] See Peoples Sav. Bank v. American Surety Co., 15 F. Supp. 911, 913 (W.D. Mich. 1936); see also, Note, *Negotiability of Travelers Checks*, 47 Yale L.J. 470 (1938).

applicability of the N.I.L. forced many American courts to decide travelers check cases without the benefit of common law or statutory rules. This area of the law, therefore, has been characterized by *ad hoc* decisions usually sufficient for the matter at hand but too narrow or too ill-conceived to provide general guidance.

It is believed that the U.C.C., now enacted in more than forty of the fifty American states, provides a satisfactory body of law to resolve cases of travelers checks and that its provisions are applicable to these cases.[3] This paper will review the legal problems which have arisen in connection with travelers checks, state how the courts and the industry have handled these problems, and indicate how they will be handled under the U.C.C.

Before launching into the legal problems which have arisen in connection with travelers checks, it is only fair to observe that problems are the exception and not the rule. That is to say, the percentage of travelers checks that run into legal difficulties is almost infinitesimal. But even the minute percentage when applied to the huge volume of travelers checks now

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[3] There is no doubt that the draftsmen of the U.C.C. intended Article 3 on Commercial Paper to encompass travelers checks. The broad language of Article 3 makes this plain, and, additionally, travelers checks are specifically mentioned in one official comment. See official comment 4 to § 3-104 ("Travelers checks in the usual form, for instance, are negotiable instruments *under this Article* when they have been completed by the identifying signature.") (Emphasis added.)

being written[4] results in a sufficient number of troublesome cases for the law to take serious note of these exceptions. Proper perspective, however, is achieved only by considering the normal, non-problem situation before investigating areas of trouble.

II. THE NORMAL TRAVELERS CHECK TRANSACTION

The travelers check is an instrument signed by a designated officer of the issuing company ordering the company to pay on demand at any office or banking correspondent of the company the amount in dollars or foreign currency equivalent indicated by the denomination of the check. It contains a serial number and four blank spaces: one for the signature of the purchaser; a second for the countersignature of the purchaser; a third for the cashing date; and a fourth for the name of the payee.

The American Express Travelers Cheque follows this form:

[4] Total travelers check sales in 1964 amounted to $4,060,000,000. Of this amount, the American Express Company issued checks in the amount of $2,680,000,000, or 66% of industry sales. See Dominick & Dominick, Research Letter concerning the American Express Co., dated February 4, 1965, at page 4.

U.S. Dollar Travelers Cheque

J000-000-000

When Countersigned Below with

This Signature

_____ _____19 ____

Before cashing write here
city and date

AMERICAN EXPRESS COMPANY
At Its Paying Agencies

Pay this Cheque from our
Balance to the order of _____ $20.00

In United States — In All Other Countries

TWENTY DOLLARS — -At Current Buying Rate-

For Bankers' Cheques on
New York

Countersign here in Presence of Person Cashing

_____ Olaf Ravndal
Treasurer

The check is printed on special safety paper which bears a watermarked design and is impregnated with small disks of varying shades called "planchettes." The paper is sensitive and difficult to duplicate, thereby reducing the chances of counterfeiting or altering a check.

After the checks are prepared by the issuer, they are sent to agents throughout the world for sale. Selling agents consist of banks, express offices and establishments connected with finance and travel. They are numerous.

* * *

HENRY J. BAILEY, *THE LAW OF BANK CHECKS* (4th ed. 1969)

CHAPTER ONE

GENERAL PRINCIPLES

§ **1.1. Origin and history of bank checks.** Bank checks[1] first came into comparatively general use in England about the year 1780.

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§ **13.7. Stopping payment of cashier's check.** A cashier's check is a draft or bill of exchange drawn by a bank on itself and is accepted by the act of issuance. In general, a cashier's check is not subject to countermand at the instance of the payee or the person who procures the issuance thereof.[43]

In some instances, courts have permitted the issuing bank to resist payment at the request of the payee or purchaser. Thus several courts have permitted the payee to stop payment after he had indorsed a cashier's check in payment of gambling losses.[44] It has also been indicated that a bank may refuse to pay a cashier's check, at the request of the purchaser, where the instrument is in the hands of one who is not a holder

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[1] The term "bank check" as used in this volume is, unless the context specifies otherwise, interchangeable with the term "check" and does not necessarily denote a direct bank obligation, such as a cashier's check, certified check, or bank draft.

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[43] Walker v. Sellers (1918) 201 Ala. 189, 77 So. 715; Drinkall v. Movius State Bank (1901) 11 N.D. 10, 88 N.W. 724, 39 B.L.J. 444; Scott v. Seaboard Securities Co. (1927) 143 Wash. 514, 255 P. 660,44 B.L.J. 743.

[44] Nielsen v. Planters Trust & Sav. Bank (1935) 183 La. 645, 164 So. 613, 53 B.L.J. 128; Manufacturers, etc. Bank v. Twelfth Street Bank (1929) 223 Mo. App. 191, 16 S.W.2d 104, 46 B.L.J. 493; Preston v. First State Bank (Tex. Civ. App., 1961) 344 S.W.2d 724, 78 B.L.J. 622.

in due course.[45] Moreover, it has been indicated that the payee may have payment stopped if the cashier's check is deposited for collection and the depositary bank (which has become insolvent in the meantime) is not a holder in due course.[46] And it has been held that a bank issuing a cashier's check in exchange for a worthless check might properly refuse payment because of failure of consideration, where the cashier's check was still in the hands of the original payee who was not a holder in due course.[47] Payment may also be stopped on a treasurer's check issued for an ordinary check which the bank had certified in error after overlooking a stop order thereon, where the treasurer's check is still in the hands of the original payee and issued without consideration.[48] But a bank which settled for a

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[45] Deones v. Zeches (1942) 212 Minn. 260, 3 N.W.2d 432, 59 B.L.J. 624; Leo Syntax Auto Sales, Inc. v. Peoples Bank & Savings Co. (1965) 6 Ohio Misc. 231, 215 N.E.2d 68.

[46] Wolf v. Title Guarantee & Trust Co. (1937) 251 App. Div. 354, 296 N.Y.S. 800, 54 B.L.J. 688.

[47] Dakota Transfer & Storage Co. v. Merchants Nat. Bank & Trust Co. (N.D., 1957) 86 N.W.2d 639, 75 B.L.J. 595.

But see Rosenthal v. First Nat. City Bank (1961) 13 App.Div.2d 100, 213 N.Y.S.2d 513, 78 B.L.J. 714 where a bank was held obligated on a cashier's check issued by mistake because it would suffer no loss. In that case, the cashier's check was issued in exchange for an "on us" check against which payment had been stopped, the bank employee who issued the cashier's check having inadvertently overlooked the stop order. The court held the bank might not stop the cashier's check but indicated that the bank should suffer no loss as it might safely pay the other check notwithstanding the stop order, which contained an exculpatory clause.

[48] Wright v. Trust Co. of Georgia (1963) 108 Ga. App. 783, 134 S.E.2d 457, 81 B.L.J. 264, 311.

check with a cashier's check and then discovered that the first check had been forged may not stop payment, as against another bank that was holder in due course of the forged check.[49]

* * *

§ 13.9. Stopping payment of bank or personal money order. It has been held that a personal money order issued by a bank but not signed by the bank and blank as to date, payee and the name of the purchaser, is analogous to an ordinary check and not a cashier's check. The bank could properly refuse payment of such a personal money order after the purchaser had reported losing it since the bank had not signed the money order and was therefor not liable thereon.[59] This decision, by an appellate court, represents the "latest word" and appears to overrule several contrary decisions by lower courts.[60] However, it has been held that payment may not be stopped on a "bank money order."[61]

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[49] Citizens Bank v. National Bank of Commerce (C.A. Okla., 1964) 334 F.2d 257, 82 B.L.J. 168 (U.C.C. applicable).

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[59] Garden Check Cashing Service v. First National City Bank (1966) 25 App.Div.2d 137, 267 N.Y.S.2d 698, aff'd without opinion per curiam (1966) 18 N.Y.2d 941, 223 N.E.2d 566, 277 N.Y.S.2d 141.

[60] See Chapter 1 § 1.7, supra.

[61] Cross v. Exchange Bank Co. (1960) 110 Ohio App. 219, 168 N.E.2d 910, 77 B.L.J. 1059. See also United States v. Milton (C.A. Ohio, 1967) 382 F.2d 976. In First Nat. Bank of Mineola v. Farmers & Merchants State Bank (Tex. Civ. App., 1967) 417 S.W.2d 317, 85 B.L.J. 606, it was stated that a bank money order

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is similar to a cashier's check. In none of the decisions listed in this footnote was the form of the instrument disclosed, not the information as to how it had been "signed" by the issuing bank.

BARKLEY CLARK & ALPHONSE M. SQUILLANTE, *THE LAW OF BANK DEPOSITS, COLLECTIONS AND CREDIT CARDS* (1970)

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* * *

Stopping Payment of Certified Checks, Cashier's Checks, Bank Drafts and Money Orders. The customer has no absolute right to stop payment of a check after it has been certified (§§4-303(1)(a) and 4-403(1)), "and this is true no matter who procures the certification."[39] Since certification in general substitutes the drawee bank's liability for that of the drawer (§3-411(1)), the drawer-drawee contract, with its attendant right to stop payment, is broken with respect to that item.

Yet the Code provides the drawer of a certified check with machinery which may serve as an effective substitute in limited cases for the right to stop payment. Suppose Buyer as drawer wants to stop payment on a certified check because he feels that delivery to Seller was only conditional and that the condition has been broken. Although the bank does not have to honor the stop payment order standing by itself, the drawer of the check constitutes an "adverse claimant" who may notify the bank of the conditional delivery and stop payment on the check either by (1) indemnifying the bank, to the banks satisfaction, for any loss it may incur as a result of paying the item, or (2) getting a court

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[39] §4-403, Comment 5; *Maintenance Service Inc. v. Royal National Bank of New York,* 4 U.C.C. Rep. Serv. 788 (N.Y. Sup. Ct. 1987).

to enjoin payment. §3-603(1). If the bank feels adequately indemnified, or is enjoined by the court, payment of the item will preclude discharge of the bank from liability to the drawer. Since the adequacy of the indemnity is to be determined by the bank alone, this action by the drawer would seem to be of limited benefit. On the other hand, it is likely that a court would limit the bank's judgment by some objective standard; if the drawer indemnified the bank in the amount of the item plus a generous allowance for potential attorney's fees, the bank might be wise to refuse payment.

If the bank, with notice of the drawer's adverse claim to the certified check plus indemnity or injunction, refuses payment, it will be sued on its certification by the payee. In such a suit the bank cannot itself raise the defense of conditional delivery available to the drawer ("jus tertii"); instead, the bank must get the drawer into the action, by interpleader or otherwise, to defend against the payee. If the drawer himself litigates, his defense is available to the bank to block the suit by the payee, assuming the payee is not a holder in the course. §3-306(d). The only claims of the drawer which can be asserted by the bank itself are theft or the defense that payment would be inconsistent with the terms of a restrictive endorsement. In this regard, §§3-603(1) and 3-306(d) of the Code should be looked at as a package when the drawer attempts to stop payment of a certified check on such a ground.

The use of §§3-603(1) and 3-306(d) by the payee of a certified check is greatly limited, however, because it does not extend to *defenses* such as Seller's failure of consideration. The payee is only able to stop payment under §3-603 if it asserts a conflicting claim of

ownership, as in the conditional delivery case. See §3-306, Comment 5. Since most stop payment cases involve simple personal defenses such as failure of consideration, the right to stop payment on a certified check is not greatly enhanced by the special Code machinery. For example, if Buyer pays for a new car with a certified check and then seeks to stop payment because the car is defective, §§3-603(1) and 3-306(d) are of no avail because Buyer has only a *defense*, not a claim of ownership to the check.

A cashier's check, as an instrument drawn by a commercial bank on itself, is normally considered the primary promissory obligation of the issuing bank such that payment cannot be stopped by either purchaser or issuer. In fact, the Code provides that a draft drawn on the drawer is "effective as a note." §3-118(a). Bank money orders are also obligations executed by the bank itself, in the nature of promissory notes with the bank as maker. As such, they would not seem to be subject to a stop payment order under §4-403. To put the matter another way, to the extent that such instruments are considered "promises" rather than "orders," they are not revocable under the Code. Whether a bank draft drawn by one bank on another and payable to a third party purchaser is subject to a stop order is not completely clear under the Code. On the one hand, a bank draft could be viewed as an "order" revocable by the drawer under §4-403; such a bank carrying an account with another bank is a "customer" under §4-104(1)(e) of the Code. On the other hand, a bank draft has been construed as a completed "sale of credit" by the drawer bank to its customer not

countermandable by either.[40] A combination of the language in §§4-104(1)(e) and 4-403, however, would seem to authorize at least the drawer bank's right, although probably not the purchaser's, to stop payment on a bank draft.

Nevertheless, two recent New York cases have held that neither the purchaser ("remitter") of a bank draft nor the issuing bank has a right to stop payment. In both cases the specific instrument was a "teller's check" drawn by a savings bank on its account at a commercial bank. Both cases treat the sale of a bank draft as absolute payment by the purchaser to the payee such that the remitter is discharged on the underlying transaction under §3-802(1)(a) of the Code.[41] Since the payee relied on the draft as absolute payment, and since the teller's checks were in the nature of cash, payment could not be stopped under §4-403.[42] But these two decisions do seem somewhat inconsistent with §4-403, which grants the right of any "customer," including one bank with an account at another bank, to stop payment. Discharge of the *payee* on the underlying obligation under §3-802 should not affect the *drawer's* right to stop payment under §4-403. However, although the drawer of a bank draft should have the right to stop the payment, nothing

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[40] See *International Firearms Co. v. Kingston Trust Co.*, 6 N.Y.2d 406, 160 N.E. 2d 656 (1959)

[41] That section provides for discharge of the underlying obligation whenever a bank is "drawer, maker or acceptor" of the instrument given in payment.

[42] *Malphrus v. Home Savings Bank,* 44 Misc.2d 705, 254 N.Y.S.2d 980 (Albany County Ct. 1965), 2 U.C.C. Rep. Serv. 373; *Ruskin v. Central Fed. Say. & Loan* Ass'n, 3 U.C.C. Rep. Serv. 150 (N.Y. Sup. Ct. 1966).

under the Code gives that right to the remitter of the draft, and in both cases it was the remitter who urged the bank to stop payment.

The remitters in the two cases were successful in getting their banks to stop payment on the teller's checks, and the suits involved the payees against the bank. The court in both cases could have buttressed its conclusion by invoking §3-306(d) of the Code, which provides that any claim by the remitter was not available to the bank ("jus tertii") since the remitter was not himself an active party to the litigation.

Stopping payment on a personal money order presents the most difficult question of all. This instrument, issued by and drawn upon a commercial bank without indication of either purchaser or payee, is often used as a checking account substitute by the purchaser-remitter. Since the instrument could get into the hands of a finder who could easily fill in his own name as remitter and payee, the right to stop payment is even more crucial to the purchaser of a personal money order than to a man whose blank check is stolen. In the latter case, payment of a forged check can be reversed in an action against the drawee bank. §4-401(1). If the remitter of a personal money order fails to stop payment there can be no reversal since there has been no forgery.

The personal money order involves an underlying obligation of the issuing bank to pay the person whose name is subsequently inserted as payee; it is not a promise signed by the issuing bank itself. See §§3-104 (1)(a) and (d) and §3-401(1). Therefore it cannot constitute a cashier's check which the Code treats as a promissory note on which payment cannot be stopped. §3-118(a). Since a personal money order is more like a

personal check than a cashier's check, the remitter should permitted to stop payment under the Code, particularly in light of §3-118(a) which provides that "Where there is doubt whether the instrument is a draft or a note the holder may treat it as either." As an order drawn on a bank and payable on demand, the personal money order would seem to constitute a blank "check" under Articles 3 and 4 of the Code (§3-104(2)(b)), authorizing stop payment thereof by the remitter under §4-403. Although the Code does not squarely cover the money order case, the courts are moving in this direction.[43]

The difficulty with equating a personal money order and a personal check for stop payment purposes is that §4-403 grants the right to stop payment only to the bank's "customer." Because "customer" is defined as a person maintaining an "account" with the bank, the purchaser of a personal money order may not qualify, since no continuing deposit relationship need be involved. A personal money order also differs from a check in that there is no signature on the money order and payment by the bank to a thief would be proper under §4-401 of the Code, insofar as there could be no forgery of the drawer's signature. Courts may be well disposed to read the term "customer" broadly in this

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[43] For an important pre-Code case relying on the Code and allowing stop payment of a personal money order on such a theory, see *Garden Check Cashing Serv., Inc. v. First Nat'l City Bank*, 25 A.D.2d 137, 267 N.Y.S.2d 698, 3 U.C.C. Rep. Serv. 355, *aff'd mem.* 18 N.Y.2d 941, 277 N.Y.S.2d 141, 223 N.E.2d 566 (1966). Lower courts in New York have come to the same conclusion under the Code. *Lupowitz v. New York Bank For Savings*, 5 U.C.C. Rep. Serv. 851 (N.Y. Civ. Ct. 1968); *McLaughlin v. Franklin Society Federal Savings & Loan Assn.*, 6 U.C.C. Rep. Serv. 1183 (N.Y. Civ. 1969).

particular situation, in light of the personal money order's function as an economic substitute for the personal check, on which payment may always be stopped under §4-403.[44] Furthermore, as stated above, stopping payment is even more important to the remitter of a lost personal money order than to a man whose signature has been forged on his personal check. If a court cannot find a stop payment right for a remitter under §4-403, this same right might be imported through §1-103 on the theory that §4-403 does not purport to deal with remitters of personal money orders.[45]

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[44] For a recent example of a court so holding, see the *Lupowitz* case, cited in n.43 *supra.*

[45] The same problem arises with respect to the remitter of a bank draft. If the remitter happens to maintain a regular account with the issuing bank, is he therefore a "customer" with respect to any bank draft on which he desires to stop payment? The Code does not provide a ready answer to this question. Using a functional test, it could be argued that payment cannot be stopped by the purchaser of a bank draft, at least if the purchaser does not otherwise carry an account with the bank; the bank draft is not normally used as a check substitute by the public. The *Malphrus* and *Ruskin* cases come to this result for slightly different reasons.

To the extent that the purchaser of a teller's check or bank draft or the remitter of a personal money order cannot stop payment under the Code, they might in some limited cases have a substitute for the stop payment right, by indemnifying and notifying the drawee and drawer of their adverse claim to the draft or money order under the §3-603 codification of the rights of an adverse claimant. The difficulty is that §3-603 does not by its terms protect the remitter in the same way it protects the drawer of a certified check. Compare the previous discussion of adverse claims as they relate to stopping payment on certified checks.

For a general discussion of bank collection problems presented by personal money orders, see Bailey, *Bank Personal Money*

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Orders as Bank Obligations, 81 Banking L.J. 669 (1964); Note, *Personal Money Order and Teller's Checks: Mavericks Under the UCC*, 67 Colum. L. Rev. 524 (1967); and Comment, *The Rights of a Remitter of a Negotiable Instrument*, 8 B.C. Ind. & Conn. L. Rev. 260 (1967).

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,
and
STATES OF CONNECTICUT, CALIFORNIA, and INDIANA
Intervening Plaintiffs,
v.
STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,
Defendants,
and the
STATE OF ARIZONA
Intervening Defendant.

MOTION OF AMERICAN EXPRESS COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

American Express Company ("Amexco") respectfully moves this Court for leave to file the accompanying brief as *amicus curiae*. The Attorneys General of the States of Arizona, California, Connecticut, Florida, Indiana, Oregon, Pennsylvania and Virginia, and the General Counsel for the defendant Western Union Telegraph Company ("Western Union") have

consented to the filing of this brief. The Attorney General of the State of New York has refused such consent.

Statement of Interest

Amexco, one of the largest issuers of travelers checks and commercial money orders in the nation, has supported since the beginning of this proceeding,[1] and for a number of years prior thereto, the promulgation of a single rule respecting the escheat of abandoned property which could be applied with fairness and ease to the widest possible range of commercial instruments for the transfer of money. The Special Master granted Amexco's motion for leave to file its brief *amicus curiae* in the proceedings before him, but noted at a conference on November 12, 1970:

> ". . . American Express could not ask for answers to its peculiar problems in the [instant case], except insofar as the rules applicable to telegraphic money orders would, by implication, apply to travelers checks. However, he stated that he though it appropriate to consider the American Express travelers checks and any other similar instruments, insofar as the disposition of unclaimed funds from such transactions shed light on a proper disposition of unclaimed funds arising from Western Union telegraphic money orders." *Report*, p. 4.

For the reasons stated below this Court should grant Amexco's motion for leave to file the accompanying brief as *amicus curiae*.

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[1] *Report of the Special Master dated November, 1971* ("*Report*"), pp. 4-5.

I. Adoption of the Report of the Special Master without modification will result in serious injustices to issuers of commercial instruments and to the states involved.

Amexco urges that the conclusions and suggested decree of the Special Master be rejected by this Court because (1) they restrict the range of effect of the decision to telegraphic money orders issued by Western Union, (2) they portend future litigation in this Court respecting other forms of instruments where specific addresses of the purchasers are not kept as a matter of business practice, such as travelers checks and commercial money orders, (3) they may promote needless changes in corporate domiciles of issuers of commercial instruments to avoid the impact of escheat laws and (4) they result in a distortion of the principles of *Texas* v. *New Jersey*, 379 U.S. 674 (1965).

In its brief to the Special Master, Amexco urged the adoption of an escheat rule based upon the factually sound presumption that the residence of the sender of the telegraphic money order will be deemed to be in the state of origin of the transaction, until proved otherwise. The Special Master erroneously refused to consider this rule on its merits because he believed that its adoption would be inconsistent with the constitutional principles underlying *Pennoyer* v. *Neff*, 95 U.S. 714 (1877). This Court should have the opportunity to examine Amexco's objections to the *Report* and consider fully the impact of such a potentially limiting decision.

II. Amexco's financial interest in the decision of this case is substantial.

Amexco's immediate financial interest in the outcome of this case can be highlighted in monetary

terms. Prior to the decision in *Texas* v. *New Jersey* in 1965, Amexco paid New York the entire proceeds (with two exceptions[2]) of its travelers checks and money orders deemed abandoned under New York's Abandoned Property Law,[3] regardless of the laws of the place where such instruments were sold. After that decision, Amexco began withholding from New York the proceeds of all travelers checks sold in any other state which had an applicable escheat statute. As a result, Amexco has withheld the sum of $2,221,200[4] representing proceeds of travelers checks deemed abandoned after 15 years pending a decision as to whether the state where the instrument was sold or New York, the state of Amexco's domicile, is entitled to the fund. With respect to the proceeds of travelers checks sold in New York and in any state which has no applicable statute, Amexco has continued to pay such funds to the State of New York.

In addition, Amexco began withholding from New York the proceeds of certain money orders deemed abandoned after 7 years. In 1969 when New York amended Section 1309 of its Abandoned Property Law to adopt the place of sale or purchase test for money

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[2] Proceeds from abandoned instruments sold in New York and Pennsylvania were not paid to New York because of litigation against Amexco in these states.

[3] N.Y. Abandoned Property Law, § 1309 (McKinney's 1969).

[4] This amount, which represents the proceeds of abandoned travelers checks sold in approximately 30 states (computed as of the latest available date), is subject to increase as additional travelers checks become abandoned each year and is subject to decrease as checks outstanding more than 15 years are cashed and redeemed by Amexco.

orders sold on and after January 1, 1958[5], Amexco began paying the states, such as California, which had an applicable statute (see Appendix A), the proceeds of money orders sold within their borders on and after January 1, 1958.

III. Amexco is uniquely situated to advocate a fair and practical approach to the problem of which states should be allowed to escheat abandoned commercial instruments.

As one of the largest issuers of travelers checks and money orders in the world, Amexco has had many years of practical experience with abandoned property laws. In *Texas* v. *New Jersey, supra*, this Court in an analogous situation granted the Life Insurance Association of America ("Association") permission to file its brief *amicus curiae* in this Court, and it appears from reading the Association's brief that the Association made a significant contribution to the ultimate decision. Amexco respectfully submits that it, like the Association in *Texas* v. *New Jersey,* can make a useful contribution to the decision in the instant case.

In summary, Amexco submits that this Court should grant Amexco's motion in order to consider its arguments in favor of adopting the rule advocated by the Commonwealth of Pennsylvania to the effect that the residence of the sender of a Western Union money order will be deemed to be in the state of purchase of that service, until proved otherwise by another state.

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[5] N.Y. Abandoned Property Law. § 1309(3); (McKinney's 1970) as amended by L. 1969 c. 1114, § 3, effective May 27, 1969. This statute was amended again in 1970 by L. 1970, c. 706, eff. May 12, 1970.

The adoption of this rule will make this Court's decision apply with equity to the widest range of commercial instruments. Not only is the rule Amexco supports in accord with the underlying rationale of *Texas* v. *New Jersey,* but it will be fair to all the states, easy to administer and compatible with modern concepts of escheat jurisdiction.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,
and
STATES OF CONNECTICUT, CALIFORNIA, and INDIANA
Intervening Plaintiffs,
v.
STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,
Defendants,
and the
STATE OF ARIZONA
Intervening Defendant.

BRIEF AMICUS CURIAE OF AMERICAN EXPRESS COMPANY

Summary of Argument

American Express Company ("Amexco") respectfully submits that the Court should reject the conclusions and recommended decree as set forth in the Report of the Special Master dated November, 1971 ("*Report*") because they are based upon a misapplication of constitutional law to escheat jurisdiction and upon a misconception of the principles underlying *Texas* v. *New*

Jersey, 379 U.S. 674 (1965). The Court should adopt the state of purchase rule advocated by the Commonwealth of Pennsylvania because (1) it is in accord with *Texas* v. *New Jersey* and *Western Union Telegraph Co.* v. *Pennsylvania*, 368 U.S. 71 (1961); (2) it can be applied equitably to a wide range of commercial instruments and (3) it is fair to all the states, easy to administer and in accord with modern concepts of escheat jurisdiction.

General Statement

Amexco is concerned that because the Western Union Telegraph Company ("Western Union") telegraphic money order service has certain features peculiar only to it, a rule could evolve from the instant case which could lead to further and wasteful litigation among the states and could be injurious to both their interests and the interests of Amexco and other issuers of commercial instruments. Therefore the salient features of Amexco's travelers check and money order services are compared below with the telegraphic money order service of Western Union.

A. *Western Union:*

This statement assumes for the purpose of illustration that the purchaser of the service (the sender) wants to send money from a place in State A to a person (the payee) in State B. The sender goes to a Western Union office in State A, fills out an application and gives it to the company clerk together with the money to be sent and the charges for sending it. Although the application has spaces for the sender's and the payee's names and addresses, in many cases the sender omits his address and the precise street address of the payee. *See Report,* Findings of Fact No. 7, p. 9; Stipulation of Facts, pp. 4-5. The sender gets a receipt and

a telegraphic message is transmitted to the company's office in State B nearest to the payee directing that office to pay the money order to the payee. No instrument is issued during any part of the above-described step in the transaction. The payee is then notified by the State B office and, upon properly identifying himself, is given a negotiable draft which he can either endorse and cash at once or keep for use in the future. If, within 72 hours, the payee cannot be located for delivery of the notice or fails to call for the draft, the office of destination in State B notifies the sending office in State A. The sending office then attempts to notify the sender of the failure to deliver and, if successful in locating the sender, makes a refund to him by means of a negotiable draft which may be either cashed immediately or kept for use in the future.[1] Stipulation of Facts, p. 6; *Report*, p. 7. If the sending office is unsuccessful in locating the sender, the funds are held by Western Union to be disposed of ultimately as abandoned property.

B. ***American Express Company:***

Amexco's travelers check and money order services present a much simpler situation (involving fewer relevant jurisdictions for escheat purposes) than the Western Union service. Since by its nature a travelers check[2] is designed for use in the future, there is no payee when Amexco or its selling agent (most of which are banks) delivers the instrument to the purchaser. In the case of a travelers check, Amexco or its selling agent usually requires the purchaser to fill out an

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[1] *See Western Union Telegraph Co.* v. *Pennsylvania*, *supra.*

[2] Amexco's travelers checks are issued in denominations of $10, $20, $50, $100 and $500.

application form which Amexco keeps for three years. In many cases the purchaser does not insert his address in the space provided on the application. However, Amexco or the selling agent inserts the serial numbers of the checks on the application at the time of sale and since Amexco has a computer record of the office or agent to which all its checks have been distributed for sale, Amexco knows, as the application forms are returned, the place of sale of its travelers checks.

When a commercial money order is sold, Amexco or its selling agent inserts the amount involved on the money order form and hands it to the purchaser, who fills in the payee's name at his convenience. Consequently, Amexco has no record of the name or address of the payee; nor of the purchaser as well.[3] However, the serial number of each money order distributed by Amexco is listed on a sales report which the selling agent completes by inserting the amount involved at the time of sale. This report is then returned to Amexco on a weekly or other regular basis with the net proceeds of the agent's money order sales.

Thus, from the information taken from the forms and reports[4] above mentioned and transcribed onto computer tapes, Amexco can readily determine the state in which each travelers check and money order is sold.

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[3] *See* footnote 10, p. 27 of the Stipulation of Facts.

[4] Amexco's paper records are ultimately destroyed in accordance with the Company's record retention and disposal procedures.

ARGUMENT

I. This Court Should Adopt the Rebuttable Presumption That Where no Specific Address is Available, the Residence of the Purchaser of a Money Order or Other Instrument for the Transmission of Money Will be Deemed to be in the State of Purchase of the Service as Shown by the Books and Records of the Issuer of such instrument, Until Proved Otherwise.

The Special Master Erred in Foreclosing Factual Consideration of the Purchase-Residence Presumption.

The only question presented by this case is "which State has jurisdiction to take title to certain abandoned intangible personal property through escheat". *Texas* v. *New Jersey*, *supra*, 675.

Amexco asserts that the best answer to this question is to adopt the last known address or residence rule of *Texas* v. *New Jersey* and the presumption that the residence of the purchaser of a check, draft or money order or other instrument for the transmission of money will be deemed to be in the state of purchase of the instrument or service involved. Although the Special Master concedes that the domicile of the purchaser and the place or office of purchase will, "[F]requently, perhaps usually", coincide, *Report*, p. 18, he rejects the presumption and the state of purchase rule based thereon because he sees the choice of such rule as cutting off the individual owner's rights in the property. As he stated on page 18 of the *Report:*

> "The principle [sic] difficulty with this solution is that it gives rise to a serious question as to the legality of cutting off or impairing an

> individual's property rights by an *in rem* proceeding in the state of origin. *This is stretching the reasoning of Texas* v. *New Jersey to a perhaps unreasonable limit.*" (Emphasis added)

Again in footnote number 14 on pages 19 and 20 of the *Report,* he states:

> "Pennsylvania alleges in a Supplemental Memorandum at pages 1 and 2 that the issue of constitutionality is not involved in the present proceeding. *The Special Master believes that the validity of the taking from the viewpoint of the former owners* must *be a factor in choosing among possible takers.*" (Emphasis added)

The Special Master rejected the state of purchase rule because he confused the requirement of due notice to the owner of the property with the issue of which state has the right to escheat the property involved. This confusion is evident in the following statement from pages 15 and 16 of the *Report:*

> "It can be argued that since in custodial taking only the right to hold and use the money will be shifted from Western Union to a State the interests of the prior owners are not affected. Even in the case of mere custodial taking the property interests of the claimants are vitally affected. Possession is a very real element of ownership. *Moreover, this is the time, if ever, that they will receive notice and an opportunity to be heard. After a custodial taking there is no indication that a Stake will undertake further proceedings and therefore the owners will practically be divested of their interests.*" (Emphasis added)

A reading of the statutes listed in Appendix A annexed hereto, wherein notice by publication to the owners is required whenever the states invoke their escheat laws, makes it abundantly clear that the position taken by the Special Master is erroneous.

Contrary to the Special Master's conclusion, this case does not involve the cutting off of property rights of the individual owner in such a manner as to invoke the rule of *Pennoyer* v. *Neff,* 95 U.S. 714 (1877). *Cf. Connecticut Mutual Life Insurance Co. et al*. v. *Moore, Comptroller of the State of New York*, 333 U.S. 541, 547 (1947). **The issue for decision here is only which state has *the superior power* to invoke its escheat laws.** As the Supreme Court said in *Texas* v. *New Jersey*, *supra*, on this very question:

> "We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply and in the long run will be the most generally acceptable to all the States." 379 U.S. 674, 683.

See Western Union v. *Pennsylvania*, *supra*.

Having raised a constitutional issue where none existed, the Special Master erred in foreclosing consideration of the state of purchase rule on its merits. In fact, the effect of the Special Master's decision is to distribute escheats to the state of corporate domicile which has no rational connection with the residence of the owner. Thus, the result of his recommended decision is to make it all the more certain as a practical matter that the owner, who is more than likely to

reside in some other state, will miss seeing publication of the notice of escheat when the state of corporate domicile proceeds to take possession of the individual items in the fund.

Since federal constitutional considerations are not involved in this case, Amexco urges this Court to adopt the state of purchase rule supported by the Commonwealth of Pennsylvania and most of the other states in this proceeding. This rule is that the residence of the purchaser of a money order or travelers check will be deemed to be in the state of purchase of the instrument or service as shown by the books and records of the issuer or supplier of the instrument or service, until proved otherwise.

II. Adoption of the Purchase-Residence Presumption is Factually Sound and in Accord with Texas v. New Jersey.

In *Texas* v. *New Jersey*, *supra*, this Court held that the right to escheat intangible obligations of the types involved in that case should be accorded to the state of the creditor's last known address as shown by the debtor's books and records. The rationale of the Court's decision, in its own words, was "to distribute escheats among the States in the proportion of the commercial activities of their residents" 379 U.S. 674, 681. The Court then went on to hold that where there is no address on the books and records of the debtor, the state of corporate domicile of the debtor could escheat the property, and that it could also escheat the property if the state of the last known address did not have an applicable escheat statute. In both the latter situations, the escheating state would be allowed to keep the property until some other state came forward with proof that it had a superior right to escheat; i.e.,

proof that the last known address of the creditor was within its borders and that its law made provision for escheat of such property.

In *Texas* v. *New Jersey*, the likelihood that the debtor would not have the addresses of the creditors of such items as corporate dividend checks, employee paychecks and refunds of payroll deductions and checks payable to suppliers of goods and services (the type of intangible personal property involved in that case) was practically nil. Accordingly, this Court could anticipate that the effect of its decision would be that the state of last known address would have the superior right to escheat most of the property involved in that case and that the state of corporate domicile would escheat only a very small proportion of such property in those relatively few instances where a last known address was not available or where the state of last known address did not have an applicable escheat law. Amexco is concerned that because a last known address for a significant proportion of Western Union money orders can be ascertained from the company's books and records (although with the expenditure of considerable time and money), this Court might apply the rule of *Texas* v. *New Jersey*, without the purchase-residence presumption, on the theory that the state of corporate domicile would only be empowered to escheat those Western Union money orders where no address was furnished by the sender. *Infra*, p. 16. But Amexco desires to emphasize to the Court that there are also many situations where the use of addresses is not a necessary concomitant to the relationship between the parties and accordingly addresses are not kept as a matter of business practice. These range from Western Union telegraphic money orders and Amexco's travelers checks, where a substantial

percentage of senders do not supply their addresses, to Amexco's money orders, to bus tokens, to refunds on tickets and to many other types of cash purchases, where no addresses at all are available. The gist of our argument is that by adopting the rebuttable presumption which Amexco is advocating, the Court can follow the primary rule of last known address of *Texas* v. *New Jersey* with fairness and can accomplish the important result in another large category of cases of distributing escheats among the states in proportion to the commercial activities of their residents.

As this Court recognized in *Texas* v. *New Jersey,* the rule of last known address is itself a legal presumption that the residence of the owner of the abandoned property is in the state of last known address. If it is reasonable to presume that the residence of the owner of the abandoned property of the kind involved in *Texas* v. *New Jersey* is in the state of last known address until proved otherwise, it is also reasonable to presume (as demonstrated below) that the residence of the owner of a telegraphic or commercial money order or travelers check is in the state where he purchased the instrument or service involved.

Since the issuers of travelers checks and money orders maintain computer records of the offices and agents to which their instruments are distributed and where they are sold, such issuers know the place of sale and therefore the state of sale of each of their travelers checks and money orders. Amexco submits that most people buy travelers checks and money orders locally, in the same area where they live and

work.[5] In the case of travelers checks, they are usually sold by or through banks and since it can be proved that people tend to bank where they reside,[6] it follows that the residence of purchasers of travelers checks will usually be in the state of purchase.

In the case of commercial money orders, Amexco submits that they are used for the most part to pay bills by persons who do not have checking accounts and therefore they are bought at outlets near the purchaser's home, or where he works or where he buys his groceries. Consequently, since the issuers of such instruments have records showing the place of purchase, the books and records of the issuer afford a

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[5] Amexco requested the parties to stipulate certain facts as to the purchasers of its travelers checks and money orders and it was prepared to submit evidence that people tend to buy these instruments where they reside. This request was objected to by one of the parties and therefore the proof was not included in the stipulation.

[6] A number of recent Federal Reserve Bank surveys support the conclusion that people tend to bank where they reside. R. Bowers, "Businesses, Households, and Their Banks", (Federal Reserve Bank of Philadelphia 1969) ; G. Kaufman, "Customers View Bank Markets and Services: A Survey of Elkhart, Indiana", (Federal Reserve Bank of Chicago 1967) ; G. Kaufman, "Business Firms and Households View Commercial Banks: A Survey of Appleton, Wisconsin", (Federal Reserve Bank of Chicago 1967) ; L. Stiles, "Businesses View Banking Services: A Survey of Cedar Rapids, Iowa" (Federal Reserve Bank of Chicago 1967) ; R. Gelder, G. Budzieka, "Banking Market Determination—The Case of Central Nassau County" (Federal Reserve Bank of New York 1970). The common denominator of these surveys is the proposition that "the demand for the services of commercial banks tends to be highly localized." Bowers, *supra. See United States* v. *Phillipsburg National Bank & Trust Co., et al.*, 399 U.S. 356 (1970).

means of determining the state of purchase of the individual travelers checks and money orders.

In the evidence submitted to the Special Master Western Union showed that out of 2,951 escheatable transactions surveyed for the year 1963, the address of the sender was given in 1,740 instances as the same state as the state in which the application originated; in 145 instances the address of the sender was given as being in a different state from where the application originated, and in the balance of 1,066 instances the sender's address was not given. In other words, of those instances where addresses were given, 93% resided in the state where the transaction originated. There is, therefore, a rational factual basis in the evidence submitted to the Court for the presumption that in the absence of proof to the contrary the state of residence of the purchaser of a Western Union money order is the same as the state where the service was sold.

Despite the fact that little proof has been offered and accepted in this proceeding as to who are the actual purchasers of Western Union money orders, Amexco submits that most personal services, from banking to groceries, are purchased locally, by residents of the particular state where the service is obtained and that from a pragmatic point of view the burden of proving the contrary should be on the person asserting the contrary. Furthermore, any exceptions to the presumption, as noted by the Special Master in footnote 7 on page 11 and on page 18 of the *Report,* are practically dispelled as *de minimis* by the Special Master himself since the *Report* concedes that the office of purchase and the domicile of the purchaser "[F]requently, perhaps usually," coincide. In any event, the

very purpose of a presumption is to economize factual investigation by presuming a fact to be true when there is a demonstrable basis for doing so. For example, in *Texas* v. *New Jersey*, this Court reasoned that since in a large number of abandoned dividend cases the corporate debtor's records reflected creditors' addresses, it could adopt the last known address test. The presumption that the residence of a dividend creditor accords with the last known address of such creditor appeared to the Court to be a reasonable one. Furthermore, the Court noted that exceptions to the presumption would undoubtedly cancel each other out:

> "And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified. It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception, and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out." 379 U.S. 674, 681.

Similarly, Amexco urges here that this Court should adopt the rebuttable presumption that the residence of the purchaser of a Western Union money order be deemed to be in the state of purchase. This presumption is in full accord with the last known address concept of *Texas* v. *New Jersey* and would, in addition, carry out with the greatest possible fidelity the mandate of that case to distribute escheats equitably

among the states. Furthermore, the presumption forms the basis for those statutes which have adopted Section 2(c) of the Revised Uniform Disposition of Unclaimed Property Act.[7] 9A U.L.A. (1967 Supp.). Section 2(c) provides the following test for escheat of commercial instruments:

> "(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, . . ."

In the Commissioner's Note on the criteria for the presumption of abandonment of the various categories of property specified in Sections 2(a) through 2(d) of the Uniform Act the following statement appears:

> "In each instance the jurisdictional test for presumption of abandonment within the enacting state bears direct relationship to events taking place within that state, e.g., deposits 'made in this state,' funds 'paid in this state,' written instruments 'issued in this state,' property removed from safe deposit boxes 'in this state.' These qualifications are explicitly included both for the legal reason that there must be a jurisdictional basis for the claiming of the

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[7] *See* Revised Uniform Disposition of Unclaimed Property Act drafted by the National Conference of Commissioners on Uniform State Laws and approved by it and recommended for enactment in all the states at its annual conference meeting at Montreal, Canada, July 30-August 5, 1966; approved by the American Bar Association at its meeting in Montreal, Canada, August 9, 1966.

> property within the state, and also for the practical reason that the presence of the events within the state means that the convenience of various parties in interest will be best served in this way."

The parties referred to are the purchasers of the instruments or services involved and the state of purchase. Implicit in the choice of such jurisdictional tests is the assumption that most of the purchasers will be residents of the state in which the purchases are made.

Finally, the states of California, Indiana, North Carolina and Pennsylvania have made the purchase-residence presumption explicit in the abandoned property laws of those states.[8]

Amexco respectfully submits that the statutory presumptions referred to above carry out the purpose underlying the rule in *Texas* v. *New Jersey* and have a rational basis in fact. Failure to adopt the purchase-residence presumption would have the effect of invalidating the laws of the plaintiff Pennsylvania, North Carolina and intervening plaintiffs California and Indiana and casting serious doubt as to the validity of the several state laws which embody § 2(c) of the Uniform Act. This Court should not invalidate such a large body of state legislation without extremely good cause for doing so, and none has been shown in this case.

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[8] California C.C.P. § 1511 (West Supp. 1970) ; Burns Anno. Ind. St. § 51-704(d) (Supp. 1970) ; North Carolina G.S. Ch. 116A § 116A-4.1(a) (1971) ; Pennsylvania, Act 74 (1971 New Laws p 371 (CCH 1971)).

III. The State of Purchase Rule is Fair to all the States, is Easy to Administer, and Accords With Modern Concepts of Escheat Jurisdiction.

The result in monetary teems of adopting the state of purchase rule is that escheats will be distributed in accordance with the commercial activities of presumed residents of the state in which the transaction originated. The state of purchase test also avoids the arbitrariness inherent in the adoption of the New York or corporate domicile rule which would, in effect, be the rule adopted for a substantial number of transactions if the *Report* is approved. That rule has no meaningful connection with the transaction involving the instrument presumed to be abandoned. In fact, the Court has recognized this important failing and has rejected the rule more than once because :

> "... in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself." *Texas* v. *New Jersey, supra,* 680.

Cf. Connecticut Mutual Life Insurance Co. v. *Moore*, supra. The corporate domicile rule must remain a secondary rule so long as there is a rational way of finding the residence of creditors. Thus, in order to achieve the greatest degree of fairness consistent with the complexities of this case, the Court should adopt

the state of purchase rule advocated by Pennsylvania.[9]

It should also be noted that the problem of windfalls to tourist states would be avoided by having the escheat jurisdiction allied as closely as possible to people's homes, not their vacation spots.

As to ease of administration, adoption of the state of purchase rule will result in the avoidance of wasteful litigation in the future and the monumental administrative burdens which will confront Amexco and other issuers in record keeping alone. As indicated above, Amexco has no way of knowing the addresses of the payees of its travelers checks and money orders and in the case of travelers checks it would be physically impossible to sort out the millions of application forms to find the names and addresses on those forms which represent checks still outstanding after the abandonment period had elapsed. And this assumes that the purchaser supplied an address in the first place. Adoption of the purchase-residence presumption would obviate the need for additional state record-keeping laws for escheat purposes which could be a severe burden on interstate commerce. *See In re Debs*, 158 U.S. 564 (1895). No other rule suggested in this case can achieve such ease of administration. In addition, the presumption would avoid the administrative morass likely to be encountered when dealing with such entities as Western Union which is the successor by consolidation or merger to 34 separate issuers of

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[9] Presumably, the state of corporate domicile of the debtor would still have secondary jurisdiction to escheat the property if there was no way of establishing from the books and records the state in which the transaction originated or if the state of purchase did not have an applicable escheat statute.

postal telegraphic money orders, each of which was incorporated in a different state. Stipulation, p. 3.

Finally, it should be noted that adoption of the state of purchase rule accords with the most modern and widely accepted concepts of escheat jurisdiction. Thirty-five states have adopted abandoned property laws which may be construed to include travelers checks and money orders within their scope, *see* Appendix A, and of those, sixteen states expressly employ the jurisdictional test of place of issue or sale. *See* Appendix B. This is the rule which Amexco is urging here and which is the test employed in Section 2(c) of the Revised Uniform Disposition of Unclaimed Property Act. The same test was also adopted by New York with respect to money orders sold on and after January 1, 1958. As noted above, four states—including the principal plaintiff here—have codified the purchase-residence presumption in their escheat statutes.

Conclusion

The practical effect of adopting the *Report's* suggested decree will be to elevate the corporate domicile rule to primary status with respect to a substantial portion of Western Union money orders and, perhaps, all Amexco travelers checks and money orders. As pointed out above, the corporate domicile rule is purely arbitrary in terms of the actual residence of the owners of abandoned commercial instruments. Furthermore, the corporate domicile rule will be more difficult to administer and will be unfair to the vast majority of states.

The sounder course for this Court is to adopt the rebuttable presumption that the residence of a purchaser of a money order will be deemed to be in the state where the money order was purchased. This

presumption is both factually sound and legally compatible with the principles of *Texas* v. *New Jersey*.

For the foregoing reasons, Amexco respectfully urges that this Court hold that the state of purchase be accorded primary jurisdiction to escheat proceeds from commercial instruments for the transmission of money which have been deemed abandoned under the laws of the state of purchase of such instruments.

Respectfully submitted,

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January 27, 1972

APPENDIX A

Alabama—Act 63, Laws 1971, House Bill 68, First Special Session

Arizona—A.R.S. § 44-351-378 (1967)

California—C.C.P. § 1500 et seq. (West Supp. 1970)

Connecticut—C.6.5.A. §§ 3-56a et seq. (1969)

Delaware—House Bill 468, 1971 New Laws, p. 357

Florida--F.S.A. § 717.01-.30 (1969)

Idaho—I.C. §§ 14-501-532 (Supp. 1969)

Illinois—S.H.A. Ch. 141 §§ 101-146 (1964)

Indiana—Burns Anno. Ind. St. §§ 51-701-743 (Supp. 1970)

Iowa—I.C.A. §§ 556.1-.29 (Supp. 1970)

Kentucky—K.R.S. §§ 393.010-.990 (1970)

Louisiana—LSA-R.S. 9:151-156 (1965)

Maryland—Anno. Code of Md., Art. 95C, §§ 1-26 (Supp. 1969)

Massachusetts—Anno. Laws of Mass., ch. 200A, § 1-17 (1969)

Michigan—M.C.L.A. §§ 567.11-.76 (1967)

Minnesota—M.S.A. §§ 345.31-.60 (Supp. 1970)

Montana—R.C.M. §§ 67-2201-2230 (1970)

Nebraska—Laws of Nebraska, Vol. 2, Ch. 611 (1969)

New Hampshire—R.S.A. 471-A :1-28 (1968)

New Jersey—N.J.S.A. 2A :37-11—37-44 (Supp. 1970)

New Mexico—N.M.S.A. §§ 22-22-1—22-29 (Supp. 1969)

New York—N.Y. Abandoned Property Law, § 1309 (McKinney's Supp. 1970)

North Carolina--G.S. Ch. 116A (1971)

Oklahoma—60 Okl. St. Ann. §§ 651-687 (Supp. 1970)

Oregon—O.R.S. §§ 98.302-.436 (1969)

Pennsylvania—Act 74 (1971 New Laws pp. 368 et seq. (CCH 1971))

Rhode Island—G.L. § 33-21-11—21-40 (1969)

South Carolina—House Bill 1057, ratification no. 562, Laws 1971

Texas—Vernon's Ann. Civ. St. Art. 3272a (1968)

Utah—U.C.A. §§ 78-44-1—44-29 (Supp. 1969)

Vermont—7A V.S.A. §§ 27-1208—1236 (1967)

Virginia—Code of Virginia §§ 55-210.1-.210.29 (1969)

Washington—RCWA 63.28.070-63.28.920 (1966)

West Virginia—W.Va. Code §§ 36-8-1—36-8-31 (Supp. 1970)

Wisconsin—W.S.A. §§ 177.01-.30 (Supp. 1970)

APPENDIX B

Alabama—Act 63, Laws 1971

California—C.C.P. § 1513(c) (West Supp. 1970)

Indiana—Burns Anno. Ind. St. § 51-704(d) (Supp. 1970)

Iowa—I.C.A. § 556.2 3. (Supp. 1970)

Maryland—Anno. Code of Md., Art. 95C, § 2(c) (1969)

Minnesota—M.S.A. § 345.32(c) (Supp. 1970)

Montana—R.C.M. § 67-2202(c) (1970)

Nebraska—Laws of Nebraska, Vol. 2, Ch. 611, § 2(c) (1969)

New Mexico—N.M.S.A. § 22-22-3C (Supp. 1969)

North Carolina—G.S. § 116A-4.1

Oregon—O.R.S. § 98.306(3) (1969)

Pennsylvania—Act 74 § 3(2) (iii) (1971 New Laws p. 371 (CCH 1971))

Rhode Island—G.L. § 33-21-12(c) (1969)

South Carolina—House Bill 1057 § 14(B)(3), Laws 1971

West Virginia—W.Va. Code § 36-8-2(c) (Supp. 1970)

Wisconsin—W.S.A. § 177.02(3) (Supp. 1970)

IN THE
SUPREME COURT OF THE UNITED STATES

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,
and
STATES OF CONNECTICUT, CALIFORNIA, and INDIANA
Intervening Plaintiffs,
v.
STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,
Defendants,
and the
STATE OF ARIZONA
Intervening Defendant.

REPORT OF JOHN F. DAVIS, SPECIAL MASTER

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

HISTORY OF THIS PROCEEDING

This case involves a dispute between the States as to which has the right to escheat, or take custody of, unclaimed monies which were originally paid to the Western Union Telegraph Company for transmission by wire, and which could neither be delivered according to instructions nor returned to the senders.

The suit was instituted by Pennsylvania by the filing on March 13, 1970, of a motion for leave to file a complaint against New York, Florida, Oregon, Virginia and Western Union. Specifically, Pennsylvania's complaint alleged that on or before December 31, 1962, approximately $1,500,000.00 of telegraphic money orders for which payment had been made to Western Union were not paid to the intended recipients nor returned to the senders and, of that amount, approximately $100.000.00 originated in Pennsylvania offices of Western Union.[1] Pennsylvania asserted the right under its statute governing the disposition of property unclaimed for seven years to escheat, or take custody of, that $100,000.00, but complained that conflicting claims were being made by the other States named as defendants. Pennsylvania asked for a judgment as to which State has the right to take the unclaimed funds and for a temporary injunction against the payment of the funds by Western Union or the taking of them by the defendants, pending the disposition of the case.

The motion for leave to file the complaint was granted on June 15, 1970 (398 U.S. 956), and the defendants were given 60 days to answer. All of the

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[1] Before its merger with Western Union in 1943, Postal Telegraph, Inc., a Delaware Corporation, had offered a telegraphic money order service similar to Western Union's. Western Union inherited Postal's obligations under those contracts. None of the parties question that unpaid orders issued by Postal stand in the same posture as those sold by Western Union itself. In this report no attempt will be made to distinguish those transactions and references to Western Union orders may be taken as including Postal Telegraph orders.

defendants filed answers[2] and the state of Connecticut on August 6, 1970, filed a motion to intervene as a party plaintiff. That motion was granted on October 12, 1970, and the court further appointed the undersigned Special Master in the proceedings (400 U.S. 811).[3]

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[2] New York has represented that no payments would be sued for pending the disposition of this case (New York Answer, page 4). The Court has taken no action on the plea for an injunction. On the final disposition of the matter there would appear to be no need for injunctive relief thereafter and the Special Master recommends that no action on the plea for an injunction is necessary. If this Court believes that disposition of the request is necessary to tidy things up, the Special Master recommends that the injunction be denied as unnecessary.

[3] The order appointing the Special Master provided as follows:

> It is hereby ordered that John F. Davis, Esquire, of Washington, D.C., be and he is heresy, appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The master is directed to submit such reports as he may deem appropriate.
>
> The compensation of the Special Master, the allowances to him, the compensation paid to his technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses shall be charged against and be borne by the parties in such proportion as the Court hereafter may direct.
>
> It is further ordered that if the position of Special Master in this case becomes vacant during a recess of Court, the Chief Justice shall have the authority to make a new designation which shall have the same effect as if originally made by the Court herein.

Thereafter, the States of California and Indiana filed motions to intervene as plaintiffs and Arizona moved to intervene as a defendant. By orders of November 23, 1970, and January 25, 1971 (400 U.S. 924, 1019), the Court referred these motions to the Special Master. In a report filed in February, 1971, the Special Master recommended that these motions be granted and the Court so ordered on March 1, 1971 (401 U.S. 931).[4]

At the request of the Special Master, the parties met in Washington, D.C. on November 12, 1970, to chart the course of the proceedings. It was agreed that an attempt would be made to arrive at a stipulation of agreed facts in order to obviate the necessity of taking evidence. Thereafter, various of the parties met without the presence of the Special Master and all agreed to a statement of facts of 28 pages and 27 exhibits, it being understood that such agreement did not concede the relevance or materiality of the facts recited nor limit any of the parties with respect to the offer of additional evidence.

With the permission of the Special Master, the American Express Company attended the November conference and represented orally that its problems with respect to uncashed travelers checks raised common questions with the issues before the Special Master. American Express suggested that a single rule, which would apply to it as well as to Western Union telegraph money orders, was desirable. The Special Master stated that he thought that American Express could not ask for answers to its peculiar problems in

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[4] On May 3, 1971, New Jersey filed a *brief amicus* supporting the position of Pennsylvania.

the case before him, except insofar as the rules applicable to telegraphic money orders would, by implication, apply to travelers checks. However, he stated that he thought it appropriate to consider the American Express travelers checks and any other similar instruments, insofar as the disposition of unclaimed funds from such transactions shed light on a proper disposition of unclaimed funds arising from Western Union telegraphic money orders. The Special Master stated that if American Express wanted its factual situation and its legal arguments to be considered, it should submit such matters as *amicus curiae* either with the consent of all of the parties, if they should all agree, or on motion, if any party objected. New York thereafter refused to consent and American Express filed a motion for leave to file a statement and brief as *amicus curiae.* This motion also was opposed by New York. The Special Master now grants the motion of American Express for leave to file its statement and brief with him as *amicus curiae* and will consider the factual statement and the brief insofar as they may have any bearing on the issues before him.

Pursuant to a schedule proposed by the Special Master, the parties have submitted briefs and, on June 22, 1971, convened in the District of Columbia for oral argument. A complete set of the briefs filed with the Special Master and a copy of the transcript of the oral argument is being lodged with the Clerk of the Court in order that he may preserve them with the records of the case if he so desires. The records of the Court seem an appropriate place for the retention of these documents for further reference. The Special Master has no continuing commitment to the case and it might prove inconvenient to all concerned to rely upon his files.

At the commencement of the session convened before the Special Master to hear oral argument, Pennsylvania suggested that the stipulation of facts be supplemented with additional data which it had previously circulated among the parties. This material consisted of a letter from Western Union's Minnesota auditor summarizing the escheatable items from 1963 transactions as shown on the Western Union books, with illustrative samples designed to show the kind of addresses given by persons buying telegraphic money orders. New York refused to consent to the addition of the material to the stipulation and Pennsylvania thereupon offered the material in evidence through the testimony of counsel for Western Union. New York again objected on grounds of irrelevance and immateriality and suggested that the witness lacked knowledge to authenticate the material. The Special Master accepted the evidence, subject to further consideration as to its relevance and the manner of its submission. To dispose of this matter at once, the Special Master here notes that there is a serious question as to whether the evidence was properly authenticated since the witness had no personal knowledge of the records. It is not necessary to pass on that issue since the information contained does not appear to be in the least helpful in deciding the case and should be rejected as immaterial. The Special Master has not relied upon it in any degree in reaching his conclusions. However, a copy of the material will be lodged with the Clerk of the Court so that if the Court disagrees with the decision of the Special Master in this matter, it may consider the material offered either as an offer of proof or in such other manner as the Court determines.

FINDINGS OF FACT

There is no dispute among the parties as to the underlying facts, though there are some ambiguities which the parties have not resolved. The Special Master makes the following findings:

1. Western Union is a New York corporation, the principal place of business of which is in New York where it maintains its executive offices, keeps its general books of account and holds meetings of its directors and management.

2. Western Union carries on business in each of the States of the United States and specifically has carried on the telegraphic money order business described below in each of the States involved in this case. Its interstate business is regulated by the Federal Communications Commission and its intrastate business is generally regulated by state regulatory commissions.

3. The procedures followed in providing the telegraphic money order service are as follows:

a. A person wishing to send money by wire fills out an application form in a Western Union office. The form contains blanks to be filled in showing the sender's name and address, the payee's name and address and the amount of money to be sent. The sender gives the completed form together with the principal amount of money to be sent and the handling charges to a clerk at the office of origin.

b. The clerk at the office of origin sends a telegraphic message to the Western Union office nearest the payee's address as shown on the form, which message directs the payment of the amount designated.

c. The office at the point of destination notifies the payee and asks him to call at the office. In some cases the destination address is merely "Will Call" or "Care of Western Union," in which case the money is merely held awaiting the appearance of the payee.

d. If the payee appears at the office within 72 hours of the time of receipt of the message in the paying office and properly identifies himself, he is either paid in cash or given a negotiable money order draft.

e. If, within 72 hours, the payee cannot be located or for any reason fails or refuses to receive the draft or the cash, the telegraphic money order is cancelled by the paying office and the office of origin is notified so that it can refund the principal amount to the sender.

f. The office of origin thereupon attempts to notify the sender and asks him to call at the office. If the office is successful in locating the sender, the principle amount is repaid to him by a negotiable draft.

4. The funds which the States are seeking to escheat or to take into custody, arise in one of four ways:

a. The draft which has been delivered to the payee is never presented for payment.

b. After the order has been cancelled, either because the payee cannot be found or because he fails to accept payment, the attempt to refund the money to the sender also fails because he cannot be located or because he fails to accept the refund.

c. As a variation of the last possibility, the sender may be issued a refund draft which is never presented for payment.

d. Finally there are instances where, through error, either the payee or the sender is paid less than is due him.

5. Western Union has been offering the telegraphic money order service for more than 50 years. The volume of such business now amounts to as much as $10,000,000 a year. Pennsylvania alleges that the unclaimed funds as of December 31, 1962. amounted to $1,500,000 (Pennsylvania Complaint, page 12). This figure is not admitted by the answers of New York (New York Answer, page 2) or Western Union (Western Union Answer, page 3). Florida and Virginia admit the figure for the purposes of the litigation (Florida Answer, page 2; Virginia Answer, page 3). Oregon neither admits nor denies the figure (Oregon Answer, page 2). The stipulation of facts shows that Western Union carries on its books $1,184,000 as a liability reserve on unpaid orders (Stipulation, page 19) which is exclusive of $286,148.27 which has been paid to New York under its abandoned property law (Stipulation. page 19) and $1,160.40 similarly paid to Kentucky (Stipulation, page 19). Since the nature of the relief asked in this proceeding is a declaratory judgment rather than an order for specific payment, the Special Master believes that these figures give a sufficient basis for a judgment. There is no dispute that there are unclaimed funds in very material amounts, probably amounting to between $1,000,000 and $1,500,000.[5]

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[5] The average amount of the individual money orders is not specified, but in the exhibits attached to this Stipulation they appear to be generally of small size. The vast majority being from $1.00 to $25.00. One can safely assume that the likelihood of

6. The ledger records maintained by Western Union do not designate any person as creditor nor do they indicate the addresses of either the sender or the payee. They do show the amount involved in each transaction and the location of the office of origin and the office of destination. Also, these ledgers do not show whether the person to whom the money was to be paid could not be located or whether a draft issued to him or to the sender was never presented for payment. However, Exhibit 16 to the Stipulation indicates that the application forms with whatever information they contained as to the addresses have been retained in the records as far back as 1930 in some instances and are generally available since 1941 (Exhibit 16 to the Stipulation). The Western Union Comptroller's Office has estimated that the application forms cover 200,000 transactions (Stipulation, page 16) and that it would cost as high as $175,000 to reduce the information available to "reportable form" (Stipulation, page 17).

7. The Stipulation states "In most cases the sender fills in the blanks [in the application form], but in many cases he fails to fill in the space for his address" (Stipulation, pages 4 and 5.) Nowhere in the pleadings or in the Stipulation is there any more specific statement of how frequently this omission occurs, but it must be clear that not all of the unclaimed funds were received in transactions where the addresses were omitted.

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undelivered funds remaining unclaimed diminishes as the size of the transaction increases (Exhibit to Stipulation No. 20).

DISCUSSION

I. BACKGROUND OF THE CASE

In 1953, Pennsylvania commenced escheat proceedings against Western Union under its law permitting the escheat of property "within or subject to the control of the Commonwealth" if unclaimed for seven years (27 Purdon's Statutes, § 333) for sums of money paid in Western Union offices in Pennsylvania in cases where payment to the designated payees had not been accomplished and where refunds to the senders also failed. Pennsylvania was successful in obtaining a decree from the Pennsylvania Common Pleas Court for $39,857.74, which was affirmed by the Supreme Court of Pennsylvania in *Commonwealth v. Western Union Telegraph Co.*, 400 Penn. 337 (1960). On appeal, this Court reversed that judgment holding that it deprived Western Union of due process since the judgment could not protect Western Union against rival claims of other States. The Court noted that protection could be afforded against such claims in an original suit in this Court, where rival claimants could be made parties. *Western Union Telegraph Co. v. Commonwealth of Pennsylvania*, 368 U.S. 71.

Thereafter, this Court held in *Texas v. New Jersey*, 379 U.S. 674, that the primary right among rival States to escheat intangible property in the form of debts is in the State of the creditor's last known address as shown by the debtor's records. In instances where the records contain no address or in instances where the State where the creditor's address is situated has no law permitting escheat of the property, then the State of the corporate domicile of the debtor may take the property.

II. PENNSYLVANIA'S CLAIM

In this suit, Pennsylvania is seeking in an original action an adjudication on the issue which the Court previously held could not be resolved in the state courts and has named certain rival States as defendants. It relies not only on the escheat law (27 Purdon's Statutes, § 333) but also on the law permitting custodial taking (72 Purdon's Statutes, § 1310). The action relates to money orders purchased on or before December 31, 1962, and Pennsylvania in its complaint lays claim to all such funds where the transactions originated in Pennsylvania offices of Western Union. In its reply brief, and again in oral argument, Pennsylvania has receded from its original claim to the extent that it no longer claims amounts where drafts for payment have been issued and where the records of Western Union show some other State as the address of the payee of such drafts. (Penn. reply brief, pages 10-11 ; Transcript of oral argument, pages 11-12, 14).[6]

Pennsylvania's claim is based on its interpretation of *Texas v. New Jersey*, *379* U.S. 674, or perhaps, more accurately, a suggested modification of that ruling to meet the requirements of this particular type of transaction. Pennsylvania asserts that the Western Union records do not identify anyone as the creditor and that in many instances addresses are not given for the

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[6] Pennsylvania's position is not clear to the Special Master on the disposition of funds where a draft has been issued but where there still is no address in Western Union's records. I do not know whether in that case Pennsylvania would argue that the right to escheat remains in the State of origin of the money order or whether it moves to the State where the draft itself was issued, or possibly even goes to the domiciliary state of Western Union, namely New York.

sender of the money order and sometimes not for the payee. Under these circumstances Pennsylvania argues that a strict application of the *Texas v. New Jersey* rule would result in the escheat of the entire amount to New York, a result which it claims is inconsistent with the purpose of *Texas v. New Jersey*. On the other hand, the originating office is, Pennsylvania claims, presumptively in the same state as the residence of the sender so that to permit the State of origin to escheat would permit the creditor's home State to take in most cases and would result in an equitable distribution of the unclaimed funds.[7]

III. NEW YORK'S POSITION

New York asserts a claim conflicting with that of Pennsylvania and of all the other States (New York Answer, pages 4 and 5). This claim is asserted under the New York Abandoned Property Law, as amended in 1969 and 1970 ($2^1/_2$ McKinney's Consolidated Laws, § 1309). As to money orders issued prior to 1930, New York apparently makes no claim. As to money orders drawn between January 1, 1930. and January 1, 1958, New York claims, as the domiciliary State of Western Union, the right to all unclaimed monies paid to Western Union for telegraphic money orders. As to money orders drawn since January 1, 1958, New York claims the funds under the following circumstances:

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[7] It is to be noted that the Stipulation in *Western Union v. Pennsylvania* states "in numerous cases the sender or payee is a resident of a state other than the one from or to which the money order is sent." See Transcript of Record, p. 27, in *Western Union v. Pennsylvania*, No. 15, Oct. Term 1961. This statement is not included in the stipulation in this case, but it is obvious that it must be true.

a. If the address of the purchaser on the records of Western Union is in New York; or

b. If no address of the purchaser is shown on Western Union records; or

c. If the purchaser's last known address is located in a State not having a statute providing for escheat or custodial taking.

Finally, New York claims the right to such funds "where it is not feasible to determine the identity of the last known address of the creditor from the books of Western Union." This claim presumable covers situations where drafts have been issued, as well as situations where the sender did include his address on his application form, but where the expense of relating the records to the ledger entry is too great to justify the process.

The effect of New York's claims seems to be that it should be entitled to take custodially the entire sum total of these funds in transactions entered into since 1930, since New York relies on the stipulation that the names and addresses of the creditors are not in reportable form (Stipulation, page 16). New York emphasizes that under its statute it is merely taking custody of the items so that, presumably, if a State established addresses for purchasers of particular items arising from transactions since January 1, 1958, New York would surrender those items on proper escheat proceedings by a competing State (New York Brief, page 29).

IV. POSITION OF OTHER STATES

Connecticut (Conn. Brief, page 4), California (Brief and motion, page 1) and Indiana (Motion, pages 1 and 2) support the position taken in the Pennsylvania

complaint as does New Jersey in its *brief amicus* (Brief page 5). Oregon (Oregon Answer, paragraph 4) and Virginia (Virginia Brief, page 1) basically support Pennsylvania's position as modified in its reply brief and in oral argument to permit the address of the payee of an unpresented draft to control. Arizona (Arizona Motion, page 2) and Florida (Florida Answer, page 2) claim the funds when the address of the payee of the money order is in Arizona or Florida regardless of the address of the sender. This is asserted to result from their statutes which are modeled on the Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955.[8]

V. ANALYSIS OF RIVAL CLAIMS

In general terms, the parties have suggested three formulas to determine the State having the superior right to take these unclaimed monies now in the hands of Western Union.

(1) The ruling of this Court in *Texas v. New Jersey* should be applied literally so that where Western Union's records show an address for a creditor, the State in which that address falls may take the funds if it has a law providing for such taking; where there is no such

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[8] Florida apparently bases its argument on the inclusion of the word "payee" in the definition of "owner" in Section 1(f) of the Uniform Act. However, since the same subsection also includes the word "creditor" it does not seem helpful. Arguing on the basis of a different provision of the Act, Section 2(c), American Express argues that the state of issue or sale should be considered presumptively the residence of the creditor both in the case of travelers checks and telegraphic money orders (American Express Brief, *amicus curiae*, p. 22). American Express lists in Exhibit B to its brief *amicus* twelve States which it states has enacted this provision of the Uniform Act.

address or where the State has no such statute, the domiciliary State of the debtor may take the funds. This is basically New York's position,[9] though it does not treat *Texas v. United States* as retroactive and therefore claims all funds for orders purchased from 1930 to 1958 regardless of the address of the creditor and it also claims the right to take the unclaimed funds where the address of the creditor is contained in Western Union's records, but the connection of that address with a particular transaction is not "feasible."

(2) The ruling of the Court in *Texas v. New Jersey* should be interpreted, or modified, to select the State where the Western Union office originating the transaction is located. The underlying reason for this suggestion is that under New York's interpretation of *Texas v. New Jersey* all, or nearly all, of the funds would go to New York. The selection of the office of origin as determinative would result in a division of the funds roughly in proportion to the amount of business originating in each State. This solution can be brought within *Texas v. New Jersey* only by treating the office of origin as presumptively the residence of the creditor. With variations, this is the position of Pennsylvania, Connecticut, California, Indiana, Oregon and Virginia.[10]

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[9] New York's statute and claim are based on the address of the purchaser of the money order and New York treats the purchaser as the creditor.

[10] This rule would be varied when a draft in payment of a money order, or a draft covering a refund, had been issued but not presented for payment. The address of the payee of the draft or, in the absence of such address, the state where it was issued would govern.

(3) A third solution would treat the address of the person named as the payee of the money order as determinative on the theory that the payee, not the sender, is to be considered the creditor. This is the position of Florida and Arizona.

An action to escheat property is generally considered an *in rem* proceeding. *Standard Oil Co. v. New Jersey*, 341 U.S. 428. If the item is a tangible object, title or custody may be taken by a State when it can physically seize it, although due process requires appropriate notice to claimants and opportunity to be heard. See Andrews, *Situs of Intangibles,* 49 Y.L.J. 241. The situs of intangibles assets is more difficult and it appears that courts have come to different conclusions depending on the nature of the proceedings, such as attachment, garnishment, taxation, or escheat, and the nature of the asset itself, such as bonds, bank deposits, insurance policies, fiduciary accounts, or other debts. See Report of the Special Master, Hon. Walter A. Huxman, in *Texas v. New Jersey*, No. 13, Original, pages 23 to 29. See also *Severnoe Securities Co. v. London Lanchashire Ins. Co.*, 255 N.Y. 120, 174 N.W. 229 (1931). And indeed statutes dealing with escheat themselves distinguish between various types of obligation. *See, e.g.*, *Uniform Disposition of Unclaimed Property Act*, Uniform Laws Annotated, volume 9A.

In this case the nature of Western Union's obligation appears to the Special Master to be that of a common debt, [11] not dissimilar to the types of obligations

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[11] Connecticut bases its claim, which roughly coincides with that of Pennsylvania, on the theory that the obligation is in the nature of a fiduciary account (Conn. Brief, page 6). The Special

considered by this court in Texas against New Jersey.[12] As to the nature of the proceeding here involved, it may be that a legal distinction can be found between an escheat proceeding, which terminates the claim of former owners, and a proceeding merely to take custody of abandoned property, which will not affect the claim of adverse claimants. See *Standard Oil Co. of New Jersey v. New Jersey*, 341 U.S. 428. It can be argued that since in custodial taking only the right to hold and use the money will be shifted from Western Union to a State the interests of the prior owners are not affected. The Special Master cannot accept this argument. Even in the case of mere custodial taking the property interests of the claimants are vitally affected. Possession is a very real element of ownership. Moreover, this is the time, if ever, that they will receive notice and an opportunity to be heard. After a custodial taking, there is no indication that a State will undertake further proceedings and therefore the owners will practically be divested of their interests. The fact that these are small claims and that it cannot be anticipated that claimants will in any material number of cases assert their claims does not affect the legal situation. Therefore, it is the Special Master's

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Master has difficulty in accepting this analysis, but since Pennsylvania and the other States aligned with it reach the same conclusion on the basis that the relationship is that of debtor and creditor, it does not seem necessary to resolve this difference. Presumably Connecticut was impelled to press its position because of the language of its escheat statute.

[12] The items involved in *Texas v. New Jersey* included unpaid wages, amounts due for goods and services, royalty payments and dividends. See *Texas v. New Jersey*, 379 U.S. 674, 675, f.n. 4.

conclusion that the same formula should be followed for escheat and custodial taking.

In determining whether a departure from the formula set forth in *Texas v. New Jersey* is justified, the first step is to examine how an application of the formula to this factual situation would work in practice. Presumably a State seeking escheat has the burden of establishing the facts basic to its authority. Thus, in order for New York to take as the domiciliary state of the debtor, it would have to establish as to all escheatable items the absence from Western Union's records of an address for the creditor. It would not suffice under the ruling of *Texas v. New Jersey* to establish that it would be difficult or expensive to search the records for this information. The apparent agreement of all the parties that the ascertainment of the addresses is not "feasible" is probably based on the fact that Western Union's ledgers do not give the necessary information and that a search of 200,000 transactions with 300,000 ledger entries would be necessary at a cost of $175,000.00 (Stipulation, page 16).[13]

It is not possible from the stipulated facts to form a judgment as to what number of items said to have no creditors' addresses in the records are so listed because of the failure of the sender to include his address on the application form and how many are so listed because it is difficult from the records to associate an item with the underlying papers.

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[13] The Special Master makes no suggestion as to whether the cost of such a search must be borne by the State undertaking to escheat the unclaimed funds, or whether the cost can be imposed on Western Union under some sort of reporting requirement.

The Pennsylvania argument that the situation in this case varies fundamentally from that covered by Texas against New Jersey seems to have two bases.

First, Pennsylvania appears to argue that not only must the records show addresses of the parties to the transaction but they must identify one of the parties as the creditor. There is no question that Western Union's records are in terms of the "sender" and "sendee" of the order. When drafts had been issued, the records do not identify a "payee" or refer to him as a "creditor." Western Union and New York both analyze the contract as making the sender the creditor for money which cannot be refunded when the "sendee" cannot be found within the 72-hour limit and the contract has been cancelled. They consider the sendee as the creditor when a draft has been issued but not cashed. The Special Master agrees that this analysis is correct. Moreover, the Special Master does not read the ruling of this court in Texas against New Jersey as requiring such an identification in the records. If the records show an address which a State can establish as the address of a creditor, that should meet the test.

The second objection of Pennsylvania seems to be bottomed on the argument that when the Supreme Court referred to the records of the debtor, it meant formal ledgers or books of account and excluded such documents as the applications for money orders which are here involved. This is nowhere explicitly stated, but it can be deduced from Pennsylvania's failure to take into account the instances where the addresses of the parties are filled in on the application. Whether that be the interpretation of Pennsylvania or not, it is not acceptable to the Special Master. It is clear that the applications have been retained by Western Union

and are available for study and analysis. The Special Master finds that these applications are part of the records of Western Union within the meaning of *Texas v. New Jersey*. Otherwise the power to determine between the rival claimants for unclaimed monies would be delegated to the debtor which could enter the addresses upon its ledgers or not and thus affect the rights of the claimants.

As stated above, the underlying reasoning behind Pennsylvania's argument is that it would result in a more equitable distribution of the unclaimed funds. The principle difficulty with this solution is that it gives rise to a serious question as to the legality of cutting off or impairing an individual's property rights by an *in rem* proceeding in the state of origin. This is stretching the reasoning of *Texas v. New Jersey* to a perhaps unreasonable limit. We start from the proposition that the domicile of the creditor is a reasonable place to seize an intangible debt on the basis of the rule "mobilia sequntur personam." *Blodgett v. Silberman*, 277 U.S. 1, 9-10. In *Texas v. New Jersey* this rule was applied to permit the domicile of the creditor to be determined by the last known address as it appeared on the creditor's books. The court recognized that in some instances there might be variances between the company records and the actual address of the creditors but accepted the record addresses nevertheless since "any errors thus created . . . probably will tend to large extent, to cancel each other out." However, the Pennsylvania formula would rely on a factor which does not even purport to be an address of the creditor, but merely an office where he was physically present to buy a money order. Frequently, perhaps usually, this office and his domicile will coincide, but it is clear that money orders must frequently be

bought away from home. Consider, for example, the number of New Jersey and Connecticut residents who must buy telegraphic money orders in New York City or the number of Virginia and Maryland residents who must buy money orders in the District of Columbia. The Court's opinion in Texas against New Jersey specifically disclaims that its determination was based upon constitutional requirements. However, I do not conceive that this means that the holding of *Pennoyer v. Neff*, 95 U.S. 714, and its progeny is entirely abandoned and that the rights of owners of intangible property may have their property rights cut off or adversely affected by state action in an *in rem* proceeding in a forum having no continuing relationship to any of the parties to the proceedings. Rather, I assume that the court meant that in choosing among the theories presented in that case, there were no constitutional restrictions which dictated which of those theories could be accepted. The rivals there were Texas, where most of the transactions occurred and where the funds to pay the debts were held; the State of domicile of the debtor, that is, New Jersey; the principal place of business of the debtor, that is Pennsylvania; and the State of residence of the creditors as evidenced by their addresses on the debtor's books. Since the Court noted that it was under no constitutional compulsion to elect between these States, it can be assumed that insofar as constitutional power to take the property be escheat is concerned, it existed in any one of these jurisdictions.

However, it goes far beyond the holding in *Texas v. New Jersey* to assume such constitutional power merely because the office of origin it in a particular jurisdiction when there is no other indication of the address of the parties. All that this shows is that the

sender had been in that jurisdiction, perhaps only for an hour, perhaps for a day. Even though a stated address may not be a fool proof determination of residence it does constitute a conscious selection of a State by a party to the transaction whereas the office of origin might be only a matter of chance or convenience. Therefore, I cannot find in *Texas v. New Jersey* any real support for the constitutionality of a taking under the formula proposed by Pennsylvania.[14]

Even greater doubt exists with respect to Florida's proposal that the Western Union office where the order is to be paid should govern. When a draft has been issued to a payee, but not cashed, his address would certainly be an appropriate place to fix the right of escheat. But where the order has been cancelled under its terms because the payee has not appeared or accepted the funds, then the payee seems to have no further interest in their disposition while the sender has a contract right to a refund. To cut off this right by an *in rem* proceeding in the state of destination is even more difficult constitutionally than is Pennsylvania's suggestion.

These doubts as to the constitutionality of the alternative formulas for escheat support the conclusion that the simple and workable formula established by the court in *Texas v. New Jersey* should be followed with respect to telegraphic money orders which are here involved. As in the case of the obligations in that case, this rule presents an easily administered

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[14] Pennsylvania alleges in a Supplemental Memorandum at pages 1 and 2 that the issue of constitutionality is not involved in the present proceeding. The Special Master believes that the validity of the taking from the viewpoint of the former owners must be a factor in choosing among possible takers.

standard preventing multiple claims and giving all parties a fixed rule on which they can rely.

CONCLUSION

I accordingly conclude that the Court's formula set forth in *Texas v. New Jersey* for the escheat or custodial taking of intangible claims such as ordinary debts should be applied to unpaid telegraphic money orders. Any sum now held by Western Union unclaimed for the period of time prescribed by the applicable State statutes may be escheated or taken into custody by the State in which the records of Western Union placed the address of the creditor, whether that creditor be the payee of an unpaid draft, the sender of a money order entitled to a refund, or an individual whose claim has been underpaid through error. Still following the formula of *Texas v. New Jersey*, if no address is contained in the records of Western Union, or if the State in which the address of the creditor falls has no applicable escheat law, then the right to escheat or take custody shall be in the domiciliary State of the debtor, in this case, New York.

New York's claim that this formula should not be applied to escheats the time period for which expired prior to the date of this Court's judgment in *Texas v. New Jersey* is supported neither by argument nor reason. The Special Master recommends that the formula be applied to all the items involved in this case regardless of the date of the transactions out of which they arose.

Each of the States which is a party hereto, including intervenors, should bear in equal parts the costs of this suit, including the expenses of the Special Master and compensation to him to be fixed by the court. The

defendant, Western Union Telegraph Company, should not bear any part of the costs.

RECOMMENDED DECREE

In accord with my findings and conclusions, I recommend the entry of a decree in the following form:

It is now Ordered, Adjudged, and Decreed as follows:

Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of the defendant, Western Union Telegraph Co., is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant, Western Union Telegraph Company, to the extent of that State's power under its own laws, to escheat or take custodially.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Western Union Telegraph Company is subject to escheat of custodial taking only by New York, the State in which Western Union Co. was incorporated to the extent of New York's power under its own laws to escheat or take custodially, subject to the right of any other State to recover such property from New York upon proof that the last known address of the creditor was within that other State's borders.

3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Western Union Telegraph Company is in a State the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New York the State in which Western Union

Telegraph Company was incorporated, to the extent of New York's power under its own laws to escheat or to take custodially, subject to the right of the State of the last known address to recover the property from New York if and when the law of the State of the last known address makes provisions for escheat or custodial taking of such property.

Respectfully submitted,

JOHN F. DAVIS
Special Master

November, 1971

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,
v.
STATES OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

* * *

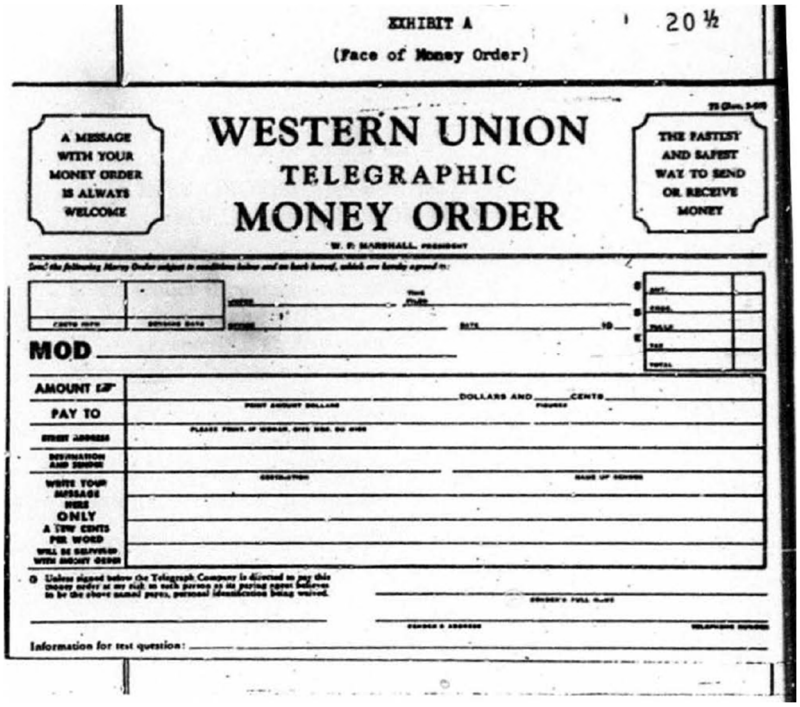


EXHIBIT A 20½
(Face of Money Order)

A MESSAGE WITH YOUR MONEY ORDER IS ALWAYS WELCOME

WESTERN UNION
TELEGRAPHIC
MONEY ORDER

THE FASTEST AND SAFEST WAY TO SEND OR RECEIVE MONEY

W. P. MARSHALL, PRESIDENT

MOD

AMOUNT $

DOLLARS AND CENTS

PAY TO

WRITE YOUR MESSAGE HERE ONLY A FEW CENTS PER WORD WILL BE DELIVERED WITH MONEY ORDER

Information for text question:

[Back of Money Order]

MONEY ORDERS ARE SUBJECT TO THE FOLLOWING CONDITIONS:

Domestic orders will be canceled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office (Ellis Island, N.Y., excepted). Orders payable at Ellis Island will be canceled after the expiration of five days.

In the case of a Foreign Order the Foreign equivalent of the sum named in the order will be paid at the

rate of exchange established by the Company or its agents on the date of the transfer.

In the case of a Foreign Order the equivalent, in the currency of the country of payment, of the sum named will be purchased promptly; and if for any reason payment cannot be effected, refund will be made by the Company and will be accepted by the depositor on the basis of the market value of such foreign currency in American funds, at New York, on the date when notice of cancelation is received there by the Company from abroad.

When the Company has no office at destination authorized to pay money, it shall not be liable for any default beyond its own lines, but shall be the agent of the sender, without liability, and without further notice, to contract on the sender's behalf with any other telegraph or cable line, bank or other medium, for the further transmission and final payment of this order.

In any event, the company shall not be liable for damages for delay, non-payment or underpayment of this money order, whether by reason of negligence on the part of its agents or servants or otherwise, beyond the sum of five hundred dollars, at which amount the right to have this money order promptly and correctly transmitted and promptly and fully paid is hereby valued, unless a greater value is stated in writing on the face of this application and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent thereof.

In the event that the company accepts a check, draft or other negotiable instrument tendered in payment of a money order, its obligation to effect payment of the money order shall be conditional and shall cease and determine in case such check, draft or other

negotiable instrument shall for any reason become uncollectible, and in any event the sender of this money order hereby agrees to hold the telegraph, company harmless from any loss or damage incurred by reason or on account of its having so accepted any check, draft or negotiable instrument tendered in payment of this order.

ALL MESSAGES INCLUDED IN MONEY ORDERS ARE SUBJECT TO THE FOLLOWING TERMS:

To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated message rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeated message and paid for as such, in consideration whereof it is agreed between the sender of the message and this company as follows:

1. The company shall net be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the unrepeated-message rate beyond the sum of five hundred dollars; nor for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the repeated-message rate beyond the sum of five thousand dollars, *unless specially valued;* nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in cipher or obscure messages.

2. In any event the company shall not be liable for damages for mistakes or delays in the transmission or delivery, or for the non-delivery, of any message, whether caused by the negligence of its servants or otherwise, beyond the sum of five thousand dollars, at

which amount each message is deemed to be valued, unless a greater value is stated in writing by the sender thereof at the time the message is tendered for transmission, and unless the repeated-message rate is paid or agreed to be paid, and an additional charge equal to one-tenth of one per cent of the amount by which such valuation shall exceed five thousand dollars.

3. The company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other company when necessary to reach its destination.

4. No responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices; and if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender.

5. The transferring of the money and the transmission of the message together constitute one transaction and the cancelation by either the sender or the company of the money order cancels also any obligation on the part of the company to deliver the message. The message will be delivered to the payee of the money order only as and when the money is paid.

6. The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing to the company within sixty days after the message is filed with the company for transmission; provided, however, that this condition shall not apply to claims for damages or overcharges within the purview of Section 415 of the Communications Act of 1934.

7. It is agreed that in any action by the company to recover the tolls for any message or messages the

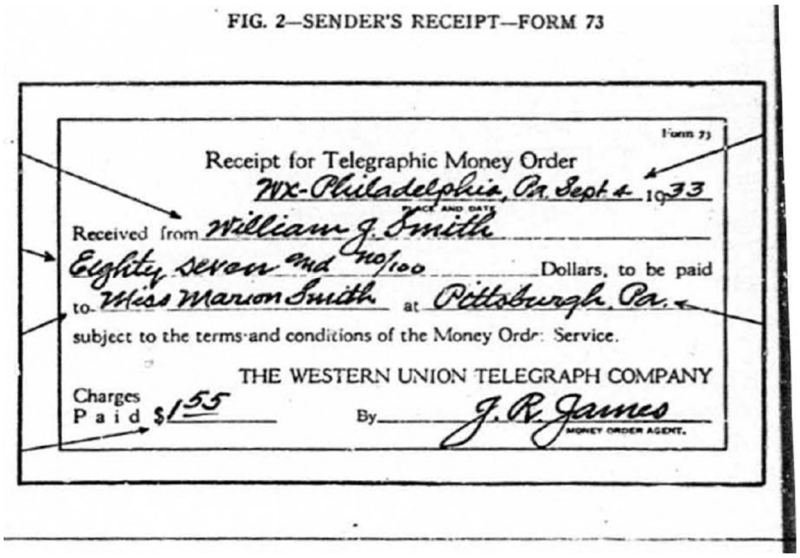
prompt and correct transmission and delivery thereof shall be presumed, subject to rebuttal by competent evidence.

8. No employee of the company is authorized to vary the foregoing.

The Western Union Telegraph Company
incorporated
R. B. White, President

PENNSYLVANIA V. *NEW YORK* COMPLAINT—EXHIBIT B

FIG. 2—SENDER'S RECEIPT—FORM 73



Form 73

Receipt for Telegraphic Money Order

WX-Philadelphia, Pa. Sept 4 1933
PLACE AND DATE

Received from William J. Smith

Eighty seven and no/100 Dollars, to be paid

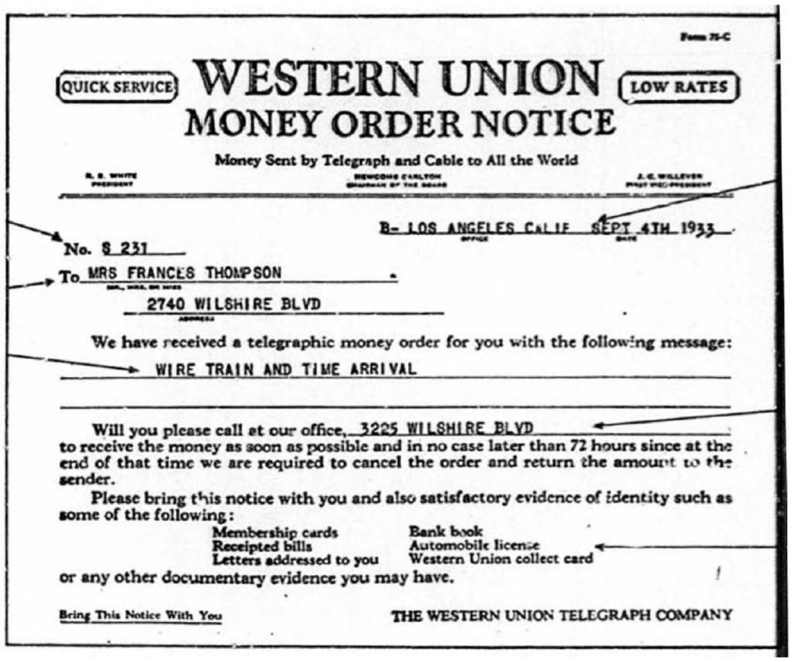
to Miss Marion Smith at Pittsburgh, Pa.

subject to the terms and conditions of the Money Order Service.

THE WESTERN UNION TELEGRAPH COMPANY

Charges Paid $1.55

By J. R. James
MONEY ORDER AGENT.



Form 75-C

QUICK SERVICE **WESTERN UNION** LOW RATES

MONEY ORDER NOTICE

Money Sent by Telegraph and Cable to All the World

B- LOS ANGELES CALIF SEPT 4TH 1933

No. S 231

To MRS FRANCES THOMPSON

2740 WILSHIRE BLVD

We have received a telegraphic money order for you with the following message:

WIRE TRAIN AND TIME ARRIVAL

Will you please call at our office, 3225 WILSHIRE BLVD to receive the money as soon as possible and in no case later than 72 hours since at the end of that time we are required to cancel the order and return the amount to the sender.

Please bring this notice with you and also satisfactory evidence of identity such as some of the following:

Membership cards	Bank book
Receipted bills	Automobile license
Letters addressed to you	Western Union collect card

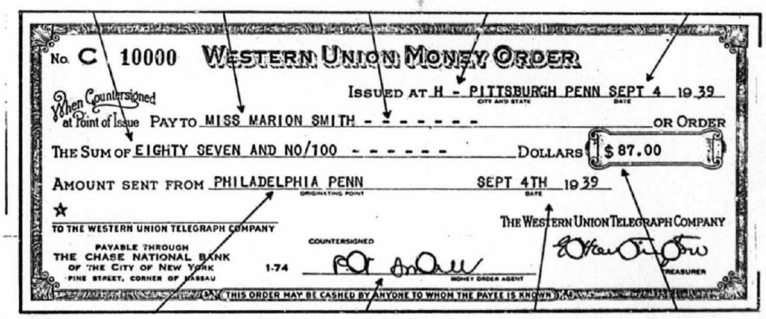
or any other documentary evidence you may have.

Bring This Notice With You

THE WESTERN UNION TELEGRAPH COMPANY

PENNSYLVANIA V. *NEW YORK* COMPLAINT—EXHIBIT D

FIG. 4—MONEY ORDER DRAFT—FORM 2738



★This line ordinarily to remain blank but may be used to show: (a) sender's name when order is payable to a firm; (b) name of payee and BNK point when passed through a forwarding bank; (c) description of refunded money orders; or (d) the words "Cashed for Columbus State Bank credit John Doe," etc.

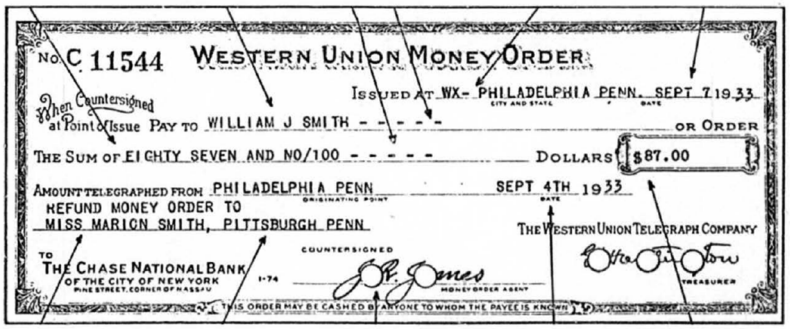
NOTE—Form 3300-C accompanies this draft when delivered or mailed.

EXHIBIT D

27

PENNSYLVANIA V. *NEW YORK* COMPLAINT—EXHIBIT E

FIG. 13—DRAFT COVERING REFUND OF AN ORDER—FORM 2738



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1970
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,
and
STATES OF CONNECTICUT, CALIFORNIA, and INDIANA
Intervening Plaintiffs,
v.
STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants,
and the
STATE OF ARIZONA
Intervening Defendant.

EXCEPTIONS OF PLAINTIFF, COMMONWEALTH OF PENNSYLVANIA, TO REPORT OF SPECIAL MASTER

SUMMARY OF ARGUMENT

The Special Master's Report asserts, as a Conclusion to his Findings of Fact and Discussion, that "the Court's formula set forth in *Texas v. New Jersey* (379 U.S. 674) for the escheat or custodial taking of intangible claims such as ordinary debts should be applied to unpaid telegraphic money orders".

The rule for ordinary debts cannot be assimilated to the unclaimed amounts of telegraphic money orders The company does not keep records of the last known address of the persons entitled to the money except to the extent that the telegraphic money order form provides a place for the purchaser's insertion of his address therein. The company does not require the purchaser to fill in his address, and in many cases the purchaser fails to do so.

In a money order transaction, Western Union receives a deposit in an office in the State where the money order is purchased, and assumes a duty to deliver a like amount elsewhere. If it cannot make delivery within 72 hours, the office in which it receives the money is directed to refund to the sender (purchaser) of the money order the amount he deposited there. No other state than the state of deposit and refund figures in the transaction where the money order is not carried out.

Texas v. New Jersey was an exercise by the Supreme Court of its constitutional power to determine controversies between States. In the exercise of that power, the Court was guided by considerations of fairness and equity among the States, and the rules there declared were so declared to accomplish the desired fairness and equity. In the present case only one State is involved under the money order transaction, the State of origin, which is also the State of refund. It is the only State giving the benefit of its economy and laws to the deposit and refund. To apply here the no address rule of *Texas v. New Jersey* without considering the purpose of the Court in that case to accomplish

fairness and equity among the States, would be to defeat such purpose here.

The rule required by the money order transaction where payment has not been effected nor refund made is that the State of origin of telegraphic money orders is the State entitled to the escheat or custody of unclaimed amounts of money orders, to the extent of that State's power under its own laws to escheat or take custody; if it cannot be determined from the books and records of the company which State is the State of origin, then the State of Western Union's domicile is entitled to the escheat or custody of the said intangibles, to the extent of that State's power under its own laws to escheat or take custody.

Pennoyer v. Neff, 95 U.S. 7l4, cited by the Special Master, is not involved in the present proceeding, the purpose of which is to determine which State has the primary right of escheat or custody of the unclaimed amounts of telegraphic money orders. No matter which State is held to have such primary right, it will be required, in proceedings exercising such right, to meet whatever requirements of *Pennoyer v. Neff* "and its progeny" are applicable to such proceedings. It is premature in the present action to consider what procedural requirements are imposed by *Pennoyer v. Neff*.

ARGUMENT

The Special Master has concluded that the no address formula set forth in *Texas v. New Jersey*, 379 U.S. 674, for the escheat or taking of intangible claims such as ordinary debts, should be applied to unpaid telegraphic money orders.

A reading of the opinion in *Texas v. New Jersey* indicates that the no address rule in that case should not be applied here.

In *Texas v. New Jersey*, the Court was guided by the aim of fairness and equity among the States, and it was felt that fairness and equity would be accomplished by the no address rule suggested by the Master in that case, because under the facts in that case, such rule would tend to distribute escheats among the States in the proportion of the commercial activities of their residents. It must be believed that if the Court had felt that under the facts in that case, the no address rule would not have tended to distribute escheats among the States in the proportion of the commercial activities of their residents, and had not met the aim of fairness and equity among the States, the said rule would not have been adopted.

In the present case, the company never makes entries on its records showing the address of the sender. The only place where the address of the sender may appear is on the money order application if the sender fills in the blank provided for such information, and the record shows that in many cases the sender does not fill in such blank. To hold that the no address rule ·of *Texas v. New Jersey* applies where the sender has not filled in this blank would be to give the moneys to New York, the State of Western Union's domicile. But, as said in *Texas v. New Jersey*, "in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor (domicile of the obligor), to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself."

In *Texas v. New Jersey*, the Court favored the rule which it adopted because by that rule "administration and application of escheat laws should be simplified". In the present case, the application of the no address rule, by itself, would require an examination of every money order application, one by one, to determine whether the sender has filled in the blank for his address. According to Western Union estimates, as set forth in the Stipulation, it would cost as much as $175,000.00 to make such examination and reduce the information obtained to reportable form. The total of the amounts involved in the present case is between $1,000,000.00 and $1,500,000.00.

It is unlikely that any one State would be entitled to escheat more than 10% of such total of $1,000,000.00 or $1,500,000.00, and if a State seeking the escheat or custody of the amount to which it might be entitled were compelled to expend such amount of $175,000.00 to recover an equivalent amount or less, this would be a deterrent to every State, except perhaps the State of Western Union's domicile. The result might be that the money would remain in the hands of Western Union, as has been the case until the present time.

Western Union does not seek to retain the fund, and has said in its brief filed with the Master that it would not oppose Pennsylvania's proposal which "appears to be fair, equitable and feasible. Its adoption would strongly promote ease of administration and would be well calculated to avoid onerous record keeping and new burdens upon commerce in telegraphic and 'express' money transfers".

The rule which Pennsylvania proposes is that the State of origin of a telegraphic money order be held to be the State entitled to the escheat or custody of the

unclaimed amounts of such money orders. The ledger records maintained by the company show the location of the office of origin in each case, and there would be no necessity of examining any telegraphic money order to obtain this information.

The adoption of the rule suggested by Pennsylvania does not mean a special rule for this one case. There are many situations in which the obligor does not keep records of the addresses of its creditors or obligees. Money orders sold over the counter, not only by Western Union, but also by American Express and other organizations, are sold without any record whatsoever of addresses of the purchaser or the person to whom the money order is sent. (See brief amicus curiae of American Express Company). As to such express money orders sold over the counter "the only information retained by the company on such money orders is the serial number, date and place of sale and amount". (Stipulation, par. 56 note 10) (Emphasis ours.)

Other familiar situations in which no information is obtained by the obligor as to identity or address of the "creditor" are the familiar "gift certificates", "trading stamps", "tokens" and "tickets" issued by transportation companies. These are but a few of the various kinds of transactions in which no record of the identity or address of the "creditor" is obtained or maintained by the obligor, and which, by reason of the ambulatory habits and nature of American life and business, frequently extend or cross over State lines.

Just as it was necessary in *Texas v. New Jersey*, in the interest of fairness and equity among the States, that rules be adopted to settle which State is allowed to escheat or take custody of intangibles of the kinds

as to which the identity of the creditor and his address might be ascertained from the books and records of the debtor, where it kept such records, so also, it is necessary that a rule or rules be adopted to settle which State shall be allowed to escheat or take custody of amounts due on intangibles arising from transactions of the kinds in which the debtor does not maintain such records.

It is, therefore, submitted that the following rule be adopted:

> "The state of origin of a telegraphic money order, as shown by the company's records, is the only State entitled to escheat or custody of unclaimed moneys arising from the money orders to the extent of that State's power under its own laws to escheat or to take custodially."

Or, that a more general rule be adopted reading as follows:

> "Where a transaction is of the type as to which the obliger does not make entries upon its books and records showing the address of the obligee, the State of origin of the transaction, as shown by the books and records of the obligor, is the only State entitled to the escheat or custody of the intangible arising from such transaction, to the extent of that State's power under its own laws to escheat or take custodially; or
>
> "Where the state of origin of the transaction is not shown on the obliger's books and records, the State of the obliger's incorporation is the State entitled to the escheat or custody of the intangible, to the extent of that State's power under its own laws to escheat or take custodially."

The Special Master has referred to *Pennoyer v. Neff*, 95 U.S. 714, as imposing certain procedural requirements upon the escheating State. Such procedural requirements must be met when an escheat or custodial action is instituted, but it is submitted that such matters have been prematurely considered in the present case by the Special Master.

Respectfully submitted,

J. SHANE CREAMER
Attorney General of Pennsylvania
JOSEPH H. RESNICK
Assistant Attorney General
Attorneys for Plaintiff Commonwealth of Pennsylvania

MICHAEL EDELMAN
Of Counsel

S. REP. NO. 93-505 (1973)

DISPOSITION OF ABANDONED MONEY ORDERS AND TRAVELER'S CHECKS

NOVEMBER 15, 1973.—Ordered to be printed

MR. ROBERT C. BYRD (for MR. SPARKMAN), from the Committee on Banking, Housing and Urban Affairs, submitted the following

REPORT

[To accompany S. 2705]

The Committee on Banking, Housing and Urban Affairs, having considered the same, reports favorably an original bill (S. 2705), to provide for the disposition of abandoned money orders and traveler's checks.

PURPOSE OF THE LEGISLATION

S. 2705 is designed to assure a more equitable distribution among the various States of the proceeds of abandoned money orders, travelers checks or other similar written instruments on which a banking organization, other financial institution, or other business organization, is directly liable through its having sold said instrument. Enactment of this legislation will equitably resolve a longstanding and much litigated conflict between the various States as to which State is entitled to the proceeds of the subject instruments.

There is in this country an annual increase in the use of travelers checks and money orders to facilitate various financial transactions. While the vast

majority of these instruments are promptly presented and paid, there are always a certain number of them which are never presented for payment. The funds due from the seller on these instruments remain in its hands until the instrument is ultimately presented for payment or until the passage of a period of time which under various State laws, is sufficient to require that these funds be turned over to the State government, pursuant to State statute.

Since there is an annual increase in the sale of money orders and travelers checks, it follows that each year, the amount of unclaimed funds continues to grow. As these amounts grow, it becomes more important to assure their equitable distribution among the various States.

Conflicting claims and the effect of a recent United States Supreme Court decision currently result in inhibiting such an equitable distribution. In order to resolve these conflicts and assure that each State receive its fair share of the proceeds of these instruments, legislation (S. 1895) was introduced by Senators Scott, Cranston, and Tower on May 29, 1973. In reporting to the Committee on this legislation, Chairman Burns of the Federal Reserve Board clearly summarized the current, situation and concluded that the legislation is desirable. The Committee also received a report from the Treasury Department in which it recommended certain clarifying amendments.

Chairman Burns' letter and the Treasury Department's letter to the Committee appear below:

CHAIRMAN OF THE BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., November 1, 1973.

Hon. JOHN SPARKMAN,

Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in response to your request for a report on S. 1895, a bill to regulate which State may escheat or take custody of certain intangible abandoned property. The Board recognizes that the bill is designed to resolve a long standing, and much litigated, question as to which State (among several having contracts with a particular item of abandoned property, such as, money orders, travelers' checks, and similar instruments for the transmission of money) has the superior right to escheat proceeds from such property by means of its abandoned property or escheat laws. The problem has been highlighted by two recent decisions of the U.S. Supreme Court in *Texas* v. *New Jersey*, 379 U.S. 674, 85 S. Ct. 626 (1965) and *Pennsylvania* v. *New York*, 407 U.S. 206, 92 S. Ct. 2075 (1972), U.S. *reh den* 409 U.S. 897, 93 S. Ct. 91 (1972).

In the former case, the Court was presented with the question of which of several States was entitled to escheat intangible property consisting of debts owed by the Sun Oil Co. and left unclaimed by creditors. In reaching its decision, the Court reasoned that:

> ". . . since a debt is property of the creditor, not of the debtor, fairness among the States requires that the right and power to escheat the debt should be accorded to the State of the

> creditor's last known address as shown by the debtor's books and records. . . . Adoption of such a rule involves a factual issue simple and easy to resolve, and leaves no legal issue to be decided. . . . The rule . . . will tend to distribute escheats among the States in the proportion of the commercial activities of their residents. And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified. . . . We therefore hold that each item of property in question in this case is subject to escheat only by the State of the last known address of the creditor, as shown by the debtor's books and records." *Id.*, at 680 682 (footnotes omitted).

The Court held further that if there is no record of a last known address, or if the record indicates a State does not provide for escheat of intangibles, then the State of the debtor's corporate domicile may take custody of the property "until some other State comes forward with proof that it has a superior right to escheat." *Id.*, at 682.

In the latter case, the State of Pennsylvania sought to escheat a portion of the proceeds from unclaimed Western Union money orders which had been purchased in Pennsylvania. The Court acknowledged that in this type of transaction ". . . Western Union does not regularly record the addresses of its money order creditors [and that] it is likely that the corporate domicile will receive a much larger share of the unclaimed funds here than in the case of other obligations, like bills for services rendered, where such records are kept as a matter of business practice." *Id.*, at 214.

Nevertheless, the Court affirmed the rule enunciated in *Texas* v. *New Jersey* and, accordingly, awarded the proceeds of the unclaimed money orders to the State in which Western Union had its corporate domicile—New York.

This decision when applied to similar transactions involving money orders or travelers' checks where the addresses of creditors are not usually recorded will result in a distribution of funds based solely upon the location of a debtor's corporate domicile. To correct this obvious inequity, the Board concurs with the purpose of the proposed legislation. The bill focuses not upon the State of the last known address of the creditor, but upon the State where the debtor-creditor relationship was established—the place of purchase of the instrument (which in most cases will be the residence of the creditor). The dissenting opinion of Mr. Justice Powell, Jr. in the *Pennsylvania* v. *New York* case (joined by Mr. Justice Blackmun and Mr. Justice Rehnquist) took a similar position and concluded that:

> "[t]his modification is preferable, first, because it preserves the equitable foundation of the *Texas* v. *New Jersey* rule. The State of the corporate debtor's domicile is denied a 'windfall'; the fund is divided in a proportion approximating the volume of transactions occurring in each State; and the integrity of the notion that these amounts represent assets of the individual purchasers or recipients of money orders is maintained. Secondly, the relevant information would be more easily obtainable. . . . " *Id.*, at 220.

The Board believes, however, that the proposed bill in its present form will not accomplish its intended

purpose. The language used in sec. 2(a), (b), and (c) of S. 1895 refers to the State where, such instruments were issued". At least with respect to travelers' checks, the distinction between their issuance and their purchase or sale is more real than apparent. Most commercial banks throughout the country do not *issue* travelers' checks; instead, the *sell* travelers' checks in their capacity as agent for an issuing company. (An exception to this is the Republic National Bank of Dallas, Dallas, Texas, which issues its own travelers' checks; but this business accounts for only 1 per cent of the total sales of such instruments in the United States.) On the other hand, there are five organizations supplying (issuing) most of the output of the travelers' check industry which has, today, annual United States sales of approximately $6 billion. The largest organization, American Express, accounts for about two-thirds of the industry total; two nonbanking subsidiaries of large bank holding companies each control almost 15 per cent of that total; and two other firms each have approximately 1 per cent thereof. Clearly, an organization that issues such instruments will not usually be the. organization that sells such instruments to the public. This fact emphasizes again the importance of the place where the instrument is ultimately purchased in order to determine the origin of the transaction. Accordingly, in order to avoid any possible ambiguity, the Board suggests that the appropriate portions of sec. 2 of the bill be amended by eliminating the word "issued" and substituting the word "purchased". By such a change, the bill will more effectively achieve its stated purpose.

In addition, the Board would like to express its views concerning portions of sec. 2(b) and (c) which, in part, state:

> "... where the books and records of such banking or financial organization or business association do not show the State or origin of the transaction wherein such money order, travelers check, or similar written instrument was issued, *the State in which, the banking or financial organization or business association is organized or incorporated* (italic supplied), or, in the case of a national banking association or other entity organized under Federal law, *the State of its principal place of business* (italic supplied) shall be entitled to escheat. . . ."

As sec. 2(b) and (3) are presently drafted, two different tests are proposed to be employed to determine which State is entitled to escheat—if the banking or financial organization or business association has been organized or incorporated under State law, that State is the place; on the other hand, if it is a national banking association or an entity organized under Federal law, the State of its principal place of business is the place. The Board believes that regardless of where or under what jurisdiction a banking or financial organization or business association is organized the test should be identical, namely, the State of its principal place of business. In its present language, the State of organization or incorporation of such banking or financial organization or business association would be determinative and this place would often have no connection whatsoever with the State of origin of the transaction. In fact, employment of the proposed test would result in a windfall for a few States in which the laws for corporate organization are most attractive. However, uniform application of the "principal place of business" test would prevent such a windfall and would assure a more equitable distribution of abandoned proceeds

of such instruments among the several States having a closer connection with the origin of the transaction. The Board would be happy to provide an appropriate amendment in accordance with our recommendations.

Sincerely yours,

(S) Arthur F. Burns.

ARTHUR F. BURNS.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., November 1, 1973.

Hon. JOHN SPARKMAN,

Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1895, "To regulate which State may escheat or take custody of certain intangible abandoned property."

The proposed legislation is intended to clarify and make more equitable the rules governing the disposition among the several states of the proceeds of abandoned traveler's checks, money orders and similar instruments for transmission of money.

The Supreme Court of the United States, in *Texas* v. *United States,* 379 U.S. 674 1965) and in *Pennsylvania* v. *New York,* 407 U.S. 206 (1972), held that the state of last known address is entitled to escheat the proceeds of a money order, and if there is no address, the state of corporate domicile of the issuer is entitled to escheat the proceeds. The bill would provide that where a bank, financial organization, or business association is directly liable on a money order, traveler's check, or similar instrument, and the records of the

issuing agency show the state in which the instrument was issued, that state of origin of the transaction may escheat, pursuant to its laws, the amount of the instrument. Where there is no record of the state of origin, the state in which the bank, financial organization or business association is organized may escheat the proceeds. The state in which the issuer is organized may also escheat the amount of the instrument if the state of origin does not have laws providing for escheat. The provisions of the bill would be applicable to instruments deemed abandoned on or after February 1, 1965.

The Department has no objection to legislation clarifying the escheat laws with regard to traveler's checks, money orders or similar instruments but we believe the language of the bill is broader than intended by the drafters. The introductory language of section 2 could be interpreted to cover third party payment bank checks since it refers to a "money order, traveler's check, or similar written instrument on which a bank or financial organization or business association is directly liable." It is recommended that this ambiguity be cured by defining these terms to exclude third party payment bank checks.

The Department would have no objection to the enactment of S. 1895 if clarified as suggested.

In view of your request for the expedition of this report, it has not been possible to obtain the customary clearance by the Office of Management and Budget prior to its submission.

Sincerely yours,

EDWARD C. SCHMULTS,

General Counsel.

In acting on this legislation, the Committee adopted the technical suggestions of the Federal Reserve Board as well as the Department of Treasury and others. The resulting Committee Bill contains all of these technical corrections and results in the establishment of a fair, clear rule for determining which State is entitled to the proceeds of abandoned travelers checks and money orders. The bill was reported without objections.

PROVISIONS OF THE LEGISLATION

The legislation provides that where any sum is payable on a money order, travelers 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, and the books and records of the obligor show the State in which that instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on that instrument, to the extent of that State's power so to do under its own laws.

If the obligor's books and records do not show the State in which the instrument was purchased, then the State where the obligor has its principal place of business shall be entitled to escheat or take custody of the sum payable on the instrument, to the extent of that State's power under its own law so to do, until another State shall demonstrate by written evidence that it is the State of purchase.

If 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 obligor has its principal place of business shall be entitled 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, 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.

The Act is applicable to sums payable on the various instruments deemed abandoned on or after February 1, 1965, except to such sums which have already been paid to a State prior to the date of enactment.

Thus, the legislation resolves existing and prospective conflicting claims by assuring that every State where such an instrument was sold has the opportunity to escheat or take custody of the proceeds of that instrument. This is far better than continuing to permit a relatively few States to claim these sums solely because the seller is domiciled in that State, even though the entire transaction took place in another State.

CORDON RULE

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection 4 of the rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

120 CONG. REC. 4528-4529 (1974)

CONGRESSIONAL RECORD—SENATE

February 27, 1974

DISPOSITION OF ABANDONED MONEY ORDERS AND TRAVELER'S CHECKS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of the unfinished business, S. 2705, which the clerk will state.

The legislative clerk read as follows:

Calendar No. 481, S. 2705, to provide for the disposition of abandoned money orders and traveler's checks.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SPARKMAN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SPARKMAN. Mr. President, this bill was originally introduced on May 29, 1973, by my distinguished colleagues Senator SCOTT, Senator TOWER, and Senator CRANSTON, and was referred to the Committee on Banking, Housing and Urban Affairs. We reported favorably a clean bill, S. 2705, after accepting some minor changes suggested by the Federal Reserve Board and the Department of the Treasury.

The purpose of the legislation is to clarify and make more equitable the rules governing the disposition of the proceeds of abandoned traveler's checks, money orders, and similar instruments for the transmission of money among the several States. Our intention is to resolve a longstanding and much litigated conflict among the various States as to which State is entitled to these proceeds.

The Supreme Court of the United States, in *Texas* v. *United States*, 379 U.S. 674 (1965) and in *Pennsylvania* v. *New York*, 407 U.S. 206 (1972), held that the State of last known address of the purchaser is entitled to escheat the proceeds of a money order, and if there is no address, the State of corporate domicile of the issuer is entitled to escheat the proceeds. It is worth pointing out that no records of purchasers' addresses are currently kept in the case of money orders and traveler's checks. From a practical standpoint, this means that unless a State wants to develop cumbersome and costly recordkeeping requirements, all of the money to which that State is otherwise entitled will go as windfall to one State, the corporate domicile of the issuer. At the moment, I am told there is more than $4.6 million being claimed by the corporate domicile States which equitably should be distributed among all 50 States.

In my opinion, S. 2705 offers a simple, yet equitable answer. Briefly, it provides that the last known address of the purchaser of traveler's checks and money orders shall be presumed to be in the State wherein such instruments were purchased. Thus, the State of sale—and not the State of corporate domicile—will be entitled to the proceeds of traveler's checks and money orders deemed abandoned under such State's escheat laws.

Some may ask, "How do we know that people purchase traveler's checks and money orders in the States where they reside?" This is a fair question and one that I myself raised earlier. First of all, not every purchaser will purchase these instruments in the State where he or she resides. However, we can say that most people will not inconvenience themselves by traveling great distances to purchase money orders and traveler's checks.

This was confirmed in a recent survey conducted by one of the major issuers. It was found that more than 90 percent of all traveler's checks and 95 percent of all money orders are issued in the State in which the purchaser resides. Second, the small number of residents in State X who cross over to State Y to purchase these instruments should be offset by the number of residents of State Y who cross over to State X for the same reason.

In sum, the legislation is intended to do equity while avoiding unnecessarily cumbersome recordkeeping requirements that would drive up the cost of these instruments to the consumer. We know that many low-income families use money orders instead of checking accounts to pay their bills, because they are readily available and because of their low cost. I believe that

S. 2705 will do the job without impairing the usefulness of these instruments.

I urge that S. 2705 be passed.

Mr. President, I ask unanimous consent that a detail explanation of the provisions of this bill be printed in the RECORD.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION OF BILL

The legislation provides that where any sum is payable on a money order, travelers 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. and the books and records of the obligor show the State in which that instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on that instrument, to the extent of that State's power so to do under its own laws.

If the obligor's books and records do not show the State in which the instrument was purchased, then the State where the obligor has its principal place of business shall be entitled to escheat or take custody of the sum payable on the instrument, to the extent of that State's power under its own law so to do, until another State shall demonstrate by written evidence that it is the State of purchase.

If 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 obligor has its principal place of business shall be entitled 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, 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.

This legislation is applicable to sums payable on the various instruments deemed abandoned on or after February 1, 1965, except to such sums which have already been paid to a State prior to the date of enactment.

Mr. TOWER. Mr. President, I agree with the statement of Senator SPARKMAN and would like to point out that there was no dissenting opinion from the Committee on Banking, Housing and Urban Affairs. This particular matter has been reviewed a number of times by the Supreme Court and they have, in essence, asked the Congress to settle this interstate controversy. May I quote from the 1965 decision, Texas against New Jersey, of the Supreme Court:

With respect to tangible property, real or personal, it has always been the unquestioned rule in all jurisdictions that only the State in which the property is located may escheat. But intangible property, such as a debt which a person is entitled to collect, is not physical matter which can be located on a map. The creditor may live in one State, the debtor in another, and matters may be further complicated if, as in the case before us, the debtor is a corporation which has connections with many States and each creditor is a person who may have had connections with several others and whose present address is unknown. Since the States separately are without constitutional power to provide a rule to settle this interstate controversy and since there is no applicable federal statute, it becomes

our responsibility in the exercise of our original jurisdiction to adopt a rule which will settle the question of which State will be allowed to escheat this intangible property.

That decision held that abandoned money orders should go to the State of the creditor's last known address.

However, this rule requires costly and time-consuming recordkeeping to determine the last known address of the purchaser. Under present recordkeeping procedures purchasers' addresses are either nonexistent or very difficult to obtain. Thus, in most instances of abandoned money orders and traveler's checks, the State of corporate domicile of the issuer is getting a windfall. The principal beneficiary of this present ruling is New York. This bill would provide that the State in which the purchase of the instrument was made is presumed to be the address of the purchaser. This information is easy to obtain, and it is clearly in line with the intent of the Supreme Court in its consideration of this problem.

The bill provides that it will apply to "sums payable on money orders, traveler's checks, and similar written instruments deemed abandoned on or after February 1, 1965, except to the extent that such sums have been paid over to a State prior to January 1, 1974."

The date of February 1, 1965. was not just pulled out of the air nor was it the result of a compromise, but rather is the date of the decision of the Supreme Court case, Texas against New Jersey. It is only proper and fitting that for the sake of good and consistent law that we make this law applicable to money orders deemed abandoned on or after February 1, 1965, so that there

is no hiatus or differential treatment in the interim period.

I believe that this is a fair and equitable bill. It is my hope that the Senate will pass the bill as it was reported by the committee and that any amendments proposed to it will be rejected.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TOWER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

119 CONG. REC. 17046-17047 (1973)

CONGRESSIONAL RECORD—SENATE

May 29, 1973

By Mr. SCOTT of Pennsylvania (for himself, Mr TOWER, and Mr. CRANSTON) (by request):

S. 1985 A bill to regulate which State may escheat or take custody of certain intangible abandoned property. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SCOTT of Pennsylvania. Mr. President, at the request of the Department of Justice of the Commonwealth of Pennsylvania, I am today introducing a bill relating to the interstate escheat of unclaimed property.

I ask unanimous consent to have the bill and an explanatory memorandum printed in the RECORD at this point.

There being no objection, the bill and memorandum were ordered to be printed in the RECORD, as follows:

S. 1895

A bill to regulate which State may escheat or take custody of certain intangible abandoned property

Whereas the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and travelers checks do not as a matter of business practice show the last known addresses of purchasers of such instruments, and

Whereas it has been determined that a substantial majority of such purchasers reside in the States where such instruments are issued or sold, and

Whereas the States wherein the purchasers of money orders and travelers checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment, and

Whereas it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto, and

Whereas the cost of maintaining and retrieving addresses of purchasers of money orders and travelers 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: Now, therefore,

Be it enacted by *the Senate and House of Representatives of the United States of America* in *Congress assembled,*

DEFINITIONS

SECTION 1. (a) "Banking Organization" means any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in the United States.

(b) "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.

(c) "Financial Organization" means any savings and loan association, building and loan association, credit union, or investment company, engaged in business in the United States.

STATE. ENTITLED TO ESCHEAT OR TAKE CUSTODY

SEC. 2. Where any sum is payable on a money order, travelers check, or similar written instrument on which a banking or financial organization or a business association is directly liable, and

(a) where the books and records of such banking or financial organization or business association show the State of origin of the transaction wherein such money order, travelers check or similar written instrument was issued, such State of origin of the transaction 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; or

(b) where the books and records of such banking or financial organization or business association do not show the State of origin of the transaction wherein such money order, travelers check, or similar written instrument was issued, the state in which the banking or financial organization or business association is organized or incorporated or, in the case of a national banking association or other entity organized under Federal law, the State of its principal place of business, shall be entitled to escheat or take custody of the sum payable on such money order, travelers 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 origin of such transaction; or

(c) where the books and records of such banking or financial organization or business association show the State or origin of the transaction wherein such

money order, travelers check, or similar written instrument was issued and the laws of the State of origin of the transaction 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 is organized or incorporated or, in the case of a national banking association or other entity organized under Federal law, the State of its principal place of business, shall be entitled to escheat or take custody of the sum payable on such money order, travelers 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 origin of the transaction to recover such sum from the State of organization, incorporation, or principal place of business if and when the law of the State of origin of the transaction makes provision for escheat or custodial taking of such sum.

EFFECTIVE DATE

SEC. 3. This act shall take effect on————————————and shall be applicable to sums payable on money orders, travelers checks, and similar written instruments deemed abandoned on or after February 1, 1965.

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MEMORANDUM IN SUPPORT OF PROPOSED FEDERAL DISPOSITION OF UNCLAIMED PROPERTY ACT OF 1973

The proposed Disposition of Unclaimed Property Act (the "Act") and this memorandum are submitted for consideration by Congress in response to an urgent need for clear, equitable and uniform rules governing the disposition among the several states of proceeds of abandoned travelers checks, money orders and similar

instruments for transmission of money. The sole purpose and function of this bill is to resolve a longstanding and much litigated conflict problem as to which state (among several having contacts with a particular item of abandoned property) has the superior right to escheat proceeds from such property by means of its abandoned property or escheat laws.

The problem to which this bill is directed has been highlighted and made more severe recently by the Supreme Court in *Pennsylvania v. New York*, 407 U.S. 206 (1972). In that case the Court refused to depart from the rule which it laid down in *Texas v. New Jersey*, 379 U.S. 674 (1965) that the state of last-known address was entitled to escheat the proceeds of Western Union telegraphic money orders deemed abandoned under its laws and that if there were no addresses, the state of corporate domicile (i.e. New York) was entitled to escheat such proceeds.

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.*

The proposed bill would solve the problem created by the Supreme Court's decision, not by a federal escheat

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* Recent surveys by a major issuer of travelers checks and money orders indicate that over 90% of the purchasers of its travelers checks reside in the state of purchase and that over 95% of the purchasers of its money orders reside in the state of purchase.

statute preempting the proper role of the states, but by the simple rule that the last-known address of the purchaser of travelers checks and money orders shall be presumed to be in the state of purchase of such instruments.

It should be pointed out that *Texas v. New Jersey*, *supra*, makes it clear that there are no constitutional impediments to enacting the remedial legislation contemplated by the proposed bill. As Justice Black said in that case:

"We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity." 379 U.S. at 683.

Thus, the proposed bill not only will promote the administration by the states of their own escheat laws (since issuers of travelers checks and money orders all have records of where their instruments are sold), but far more important, the bill will enable all of the states to obtain their equitable share in the abandoned proceeds of such instruments.

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. The bill will also allow future funds to flow

to the state of purchase without the need for complicated record-keeping laws and regulations which would be a serious burden both to issuers and sellers of travelers checks and money orders and to the state themselves.

26 U.S.C. § 6311 (1970)

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§ 6311. Payment by check or money order.

(a) Authority to receive.

It shall be lawful for the Secretary or his delegate to receive for internal revenue taxes, or in payment for internal revenue stamps, checks or money orders, to the extent and under the conditions provided in regulations prescribed by the Secretary or his delegate.

(b) Check or money order unpaid.

(1) Ultimate liability.

If a check or money order so received is not duly paid, the person by whom such check or money order has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check or money order had not been tendered.

(2) Liability of banks and others.

If any certified, treasurer's, or cashier's check or any money order so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of the bank or trust company on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of such assets in preference to any other claims whatsoever against such bank or issuer except the necessary costs and expenses of administration and the reimbursement

of the United States for the amount expended in the redemption of the circulating notes of such bank.

31 U.S.C. § 9303(c) (1988)

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§ 9303. Use of Government obligations instead of surety bonds.

* * *

(c) Using a Government obligation instead of a surety bond for security is the same as using--

(1) a personal or corporate surety bond;

(2) a certified check;

(3) a bank draft;

(4) a post office money order; or

(5) cash.

* * *

31 U.S.C. § 5325 (1988)

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§ 5325. Identification required to purchase certain monetary instruments

(a) **IN GENERAL.**--No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of **$3,000** or more unless--

(1) the individual has a transaction account with such financial institution and the financial institution--

(A) verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

(B) records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) the individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

(b) **REPORT TO SECRETARY UPON REQUEST.**--Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a)

shall be reported by such institution to the Secretary of the Treasury at the request of such Secretary.

(c) **TRANSACTION ACCOUNT DEFINED.**--For purposes of this section, the term "transaction account" has the meaning given to such term in section 19(b)(1)(C) of the Federal Reserve Act.