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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

*Plaintiff,*

and

STATE OF CONNECTICUT,

*Intervenor-Plaintiff*

v.

STATE OF NEW YORK, STATE OF FLORIDA,

STATE OF OREGON, COMMONWEALTH OF

VIRGINIA, and THE WESTERN UNION

TELEGRAPH COMPANY,

*Defendants*

INTERVENING COMPLAINT  
OF THE STATE OF CONNECTICUT

ROBERT K. KILLIAN

*Attorney General*

State of Connecticut

F. MICHAEL AHERN

*Assistant Attorney General*

*Attorneys for the*

*State of Connecticut*



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**INTERVENING COMPLAINT  
OF THE STATE OF CONNECTICUT**

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The State of Connecticut, intervenor-plaintiff, by Robert K. Killian, its Attorney General, brings this original action against the State of New York, the State of Florida, the State of Oregon, the Commonwealth of Virginia, and The Western Union Telegraph Company, defendants, and alleges as follows:

1. The plaintiff, the Commonwealth of Pennsylvania, the intervenor-plaintiff, the State of Connecticut, and the defendants, the State of New York, the State of Florida, the State of Oregon, and the Commonwealth of Virginia are States of the United States.

2. The defendant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 60 Hudson Street, New York, New York.

3. This is a civil controversy (a) between two or more States of the United States, and (b) between Western Union and States other than its State of incorporation, and is, therefore, within the original jurisdiction of the Supreme Court of the United States, under Article III, Section 2 of the Constitution of the United States, and of the United States Code, Title 28, Section 1251(a)(1) and (b)(3).

4. Western Union is joined as a party defendant because the subject-matter in controversy consists of moneys received by the company for telegraphic money orders, and the judgment prayed for will necessarily include an order directing the company to pay the amounts so received, or a portion or portions thereof, to one or more of the States named herein as parties, or to a State or States not named as parties.

5. New York, Florida, Oregon and Virginia are the only States named as defendants herein, because they are the only States which, according to intervenor-plaintiff's knowledge, are asserting rights which may be contrary to the claims of Connecticut.

6. Western Union is, and was during the period here involved, authorized to do business in most of the States of the United States and in the District of Columbia, and, prior to divestment of its international operations on September 20, 1963, it was also authorized to do business in certain foreign countries.

On or about October 7, 1943, Western Union merged with Postal-Telegraph, Inc. and operating and sales subsidiary companies, and, in so merging, Western Union assumed the obligations of Postal-Telegraph, Inc. and subsidiary companies. To the extent telegraphic money orders of the predecessor companies resulted in obligations which were assumed by Western Union and are involved in this action, such telegraphic money orders are herein treated as if they were originally Western Union telegraphic money orders.

7. In addition to its telegraphic message service, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

8. The company uses the term "sender" to designate the purchaser of a money order.

The term "sendee" is used hereinafter to designate the person to whom the money order directs the money to be paid.

The term "State of origin" or the term "place of origin" is used hereinafter to designate the State or place where the money order is purchased from Western Union and where is received from the sender the amount to be paid to the sendee.

The term "State of destination" or the term "place of destination" is used hereinafter to designate the State or place in which the money order directs the money to be paid to the sendee.

9. The procedure observed by Western Union in its telegraphic money order service is as follows:

a. The sender fills out a money order form at a Western Union sending office in the State or place of origin and gives it to the company's clerk, together with the money to be sent and the company's charges for sending it.

All of the terms and conditions set forth in the money order are part of Western Union's tariffs on file with I.C.C., and also when required by the laws of any State, are part of Western Union's tariffs on file with the regulatory body of such State.

The form has blank spaces to be filled in by the sender, showing the amount to be sent, the name and address of the sendee, and the sender's name and address. In most cases the sender fills in the blanks, but in many cases he fails to fill in the space for his address. The clerk fills in the blanks showing the address of the office of origin, the date and hour the money order is purchased, and the company's charges.

The money order states that it is subject to the conditions printed on the face and back thereof. One of the conditions on the back is the following:

"Domestic money orders will be cancelled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office . . ."

As to other money orders, the period fixed in the money order is 5 days or 10 days.

b. A receipt is given to the sender.

c. The company's clerk at the office of origin then sends a telegraphic inter-office message to its paying office nearest the sendee's address shown in the money order, directing the paying office to pay the money to the sendee.

The money received at the sending office for the money order is not sent to the paying office, but remains at the sending office and is intermingled with moneys collected there for telegrams and other receipts. The intermingled moneys are used for the purpose of paying any incoming money orders and other authorized expenditures of the sending office. Accumulation of surplus cash, if any, is deposited in a local bank account in the name of Western Union. Accumulation of excess funds, if any, in the local bank account is remitted to a Divisional Headquarters Cashier, who, in turn, remits to the company Treasurer.

d. In most cases, the sendee is notified by the paying office that a telegraphic money order has been received for the payment of money to him, and to call at the paying office, the address of which is given, to receive the money.

In some cases, where the sendee is otherwise aware of the money order, notice may not be sent to him. In some cases the company attempts to give such notice, but is unsuccessful in the attempt.

e. Upon identifying himself at the paying office, the sendee is given a negotiable company draft, which he may endorse and cash immediately at the company's office, or keep for future use.

In some instances, the sendee does not call for the draft, but, by request of the sender or sendee, it is sent to the sendee.

f. If the sendee cannot be located, or if, after notice, he fails to call for the draft, or if, for any other reason, the company is unable to issue a draft to the sendee, then, after 72 hours (or other period specified by the conditions of the money order), the money order is cancelled by the paying office notifying the sending office that payment has not been effected, and, under the conditions printed on the money order, refund to the sender is required. Once the money order is canceled because of the expiration of the specified period, the company will not later issue a draft to the sendee or otherwise recognize any right in the sendee under the money order.

g. The sending office then notifies the sender that payment to the sendee could not be effected, and that the company will make refund to the sender.

h. The sender may present himself at the sending office and receive a negotiable company draft, which he may endorse and cash immediately at the company's office, or keep for future use.

In some instances, the sender does not call for the draft, but at the sender's request, it is sent to him.

If the sender cashes the draft, it is paid from moneys collected at the sending office for telegrams, money orders and other receipts, and the clerk at that office takes credit for the amount so paid to the sender. In the event that this amount is not sufficient, the manager draws the amount necessary from the local bank account, and in turn, if that account is not sufficient, the manager receives a check from the divisional headquarters cashier to meet such deficit.



i. Where the company has issued a draft, either to the sendee for the amount of the money order, or to the sender for the refund, and the draft is not immediately cashed, the Company holds the amount to be paid until the draft is presented by the payee or his transferee, and, upon such presentation, pays the amount of the draft.

10. Usually, the purpose of the money order has been accomplished; the sendee has received a draft and has cashed it.

11. In those instances in which the sendee has received a draft, but the draft has not been presented for payment, Western Union presently holds the moneys, awaiting presentation of the draft.

12. In those instances in which Western Union has been unable to deliver a draft to the sendee, the company has canceled the money order, and where it has been able to do so, has made refund to the sender.

13. Usually, the refund has been accomplished; the sender has received a draft for the refund and has cashed it.

14. In those instances in which the sender has received a draft for the refund, but the draft has not been presented for payment, Western Union presently holds the money, awaiting presentation of the draft.

15. In those instances in which the money order has been canceled, but Western Union has been unable to deliver a draft to the sender for the refund, Western Union presently holds the money awaiting the sender's request for the refund.

16. In 1966, at the suggestion of New York and Pennsylvania, Western Union made a survey of more than

17,000 money orders purchased in 1943, 1948, 1953 and 1958, as to which Western Union still held the money received by it for money orders, such four years, at five year intervals, being chosen as sampling periods.

The said survey showed that as to 78.1% of the aggregate amount of the money orders examined, the company had not been able to effect payment and the money orders had been canceled, but that the company had not been able to make refund to the senders or to deliver drafts to them.

As to the other 21.9% of the amount of the money orders examined, drafts had been issued either to sendees or to senders. The survey did not show what portion of the 21.9% represented money orders as to which drafts had been delivered to the sendees, and what portion represented money orders as to which drafts had not been delivered to the sendees, but to the senders for refunds.

17. The present proceeding relates to moneys presently held by Western Union on account of money orders purchased from the company on or before December 31, 1962.

18. In excess of \$1,500,000.00 is still held by Western Union on account of money orders purchased from the company on or before December 31, 1962.

19. On information and belief, of the said sum, approximately \$100,000.00 is held by Western Union on account of money orders purchased from it in Connecticut.

20. The said sum of approximately \$100,000.00 has been unclaimed for more than seven years by the persons thereto entitled.

21. On information and belief, the said sum of \$100,000.00 is subject to escheat or custodial taking by the

State of Connecticut under the provisions of its laws. (Conn. Gen. Stats., § 3-56a, et seq.).

22. In an action instituted in 1953 by the Commonwealth of Pennsylvania against Western Union, and affirmed in *Gottlieb, Escheator v. Western Union Telegraph Company*, 400 Pa. 337, it was held that Pennsylvania, as the State of origin of money orders as to which moneys held by Western Union were unclaimed for seven years, was entitled to the escheat or custody of such moneys. Upon appeal to the U. S. Supreme Court, the judgment of the Pennsylvania Court was reversed in *Western Union Telegraph Company v. Pa.*, 368 U.S. 71, because of the potential claims of other States to the same intangibles, and because the Pennsylvania judgment could not protect Western Union from such potential claims of other States.

23. The intervenor-plaintiff is informed that Florida asserts that under its laws, it is entitled to the custody of such money if Florida was the state of destination of the money orders. As to money orders of which Connecticut was the State of origin and Florida was the State of destination, there is a controversy between Connecticut and Florida.

24. The intervenor-plaintiff is informed that Oregon asserts that under its laws, the sendee of a money order is the donee beneficiary or creditor beneficiary of the money order even though no drafts were issued, and that as to money orders to a sendee in Oregon, it is the State entitled to the custody of such moneys. As to money orders of which Connecticut was the State of origin and Oregon was the State of destination, there is, therefore, a controversy between Connecticut and Oregon.

25. The intervenor-plaintiff is informed that Virginia claims that where a draft was issued to a sendee in Virginia, that State is entitled to the custody of such moneys. As to

money orders of which Connecticut was the State of origin, and drafts were issued to sendees in Virginia, there is, therefore, a controversy between Connecticut and Virginia.

26. The intervenor-plaintiff is informed that under the New York Abandoned Property Law, Sec. 1309, as amended in 1969, New York claims all moneys arising from money orders purchased from January 1, 1930 to January 1, 1958, without reference to any fact other than the purchase of the money order during such period. Neither the State of origin, the State of destination, nor the State in which a draft was issued, is recognized by New York as having any claim to such moneys. Under the said statute, New York also claims as to money orders purchased from Western Union on or after January 1, 1958, (a) where the last known address of the purchaser is in New York, whether or not a draft has been issued; (b) where no address is shown on the records of Western Union and a draft was issued in New York; and (c) if no address is shown on the records of Western Union and no draft was issued.

By reason of New York's claim as to money orders purchased before January 1, 1958, there is, therefore, a controversy between New York and Connecticut as to money orders purchased in Connecticut.

By reason of New York's claim as to money orders purchased on or after January 1, 1958, in those cases where the address of the purchaser is not shown on Western Union's records, but the State of origin is shown on such records as being in Connecticut, there is a controversy between New York and Connecticut.

27. Western Union's books and records show the State or place of origin of every money order, as well as the State or place of destination of every money order. In many cases,

its books and records do not show the address of the sender; likewise, in many cases, its books and records do not show the address of the sendee; and in many cases, its books and records do not show the address of the payee of the draft issued by the Company.

28. No judgment of a Connecticut Court could be binding upon any other claimant State unless such other State were a party to the proceeding in the Connecticut court, and a Connecticut court cannot make any other State a party, without the consent of the latter State. If Connecticut were to intervene in a proceeding in a court of another State and obtain judgment, such judgment would not bind any other claimant States which did not intervene.

If actions were brought in the various States against Western Union for the same moneys, the decisions of their courts, under their respective laws and conflicts of law rules, might be inconsistent.

29. As to 78.1% of the sum of approximately \$100,000.00 held by Western Union arising out of money orders of which Connecticut was the State of origin and as to which no drafts were issued, then Connecticut, the State of origin, claims such amounts, and the controversy is, therefore, between three states, (1) Connecticut as the State of origin, (2) the State of destination, if other than Connecticut, and (3) the State of New York, in which Western Union was incorporated.

As to the 21.9%

(1) if it be determined by this Court that issuance of a draft does not constitute payment of a money order or refund, but that the State of origin of the money orders for the said 21.9% is entitled to such moneys, then, Connecticut is entitled to such 21.9% of the \$100,000.00;

(2) if it be determined by this Court that issuance of a draft does not constitute payment of a money order or refund, but that the State of destination of the money orders is entitled to such moneys, then, conversely, where it was the State of destination, Connecticut is entitled.

30. If it be determined by this Court that the State of destination rather than the State of origin is the State entitled to the escheat or custody of the unclaimed moneys held by Western Union, then Connecticut would not be entitled to any part of the said sum of \$100,000.00, except where it was both the State of origin and the State of destination. However, under such a ruling, Connecticut would be entitled as the State of destination as to unclaimed moneys arising from money orders destined to Connecticut.

31. If it be determined by this Court that issuance of a draft constitutes absolute or conditional payment of a money order or a refund, then as to drafts issued to sendees or senders in Connecticut, Connecticut is entitled to the moneys held by Western Union for payment of the drafts.

32. Only by a judgment of this Court can it be determined which of the various States are entitled to the moneys held by Western Union, as above set forth.

33. Neither the intervenor-plaintiff, Connecticut, nor the defendant, Western Union, can be protected from irreparable injury and loss of property unless this Court grants the relief sought by this Complaint.

34. The plaintiff has no adequate remedy at law, and no remedy whatsoever in any other Court.

Wherefore, the plaintiff prays:

(1) That this Court take jurisdiction of the parties and subject matter herein;

(2) That this Court hear and determine the controversies herein, either by referring this case to a Special Master or Federal District Court to take evidence and make appropriate reports, or in such other manner as the Court deems fit;

(3) That a temporary injunction be issued restraining the defendant, the State of New York, and other States named as defendants herein from proceeding with any action now pending, or from instituting any action hereafter, to escheat and/or take custody of said property, pending further orders of this Court;

(4) That a temporary injunction be issued restraining the defendant, The Western Union Telegraph Company, from paying, delivering, or in any manner relinquishing, the said property to the defendant, the State of New York, or to any other State, pending further orders of this Court;

(5) That judgment be entered that the moneys held by Western Union are subject to the escheat or custody of one or more of the following States:

(a) The *State of origin* of the money orders, as shown by the books and records of Western Union;

(b) The *State of destination* of the money orders, as shown by the books and records of Western Union;

(c) The *State in which a draft has been issued* for the amount of the money order or the amount of the refund, as shown by the books and records of Western Union;

(d) The *State of last known address of the sender* of a money order, as shown by the books and records of Western Union;

(e) The *State of last known address of the sendee* of a money order, as shown by the books and records of Western Union;

(f) The *State of the last known address of the payee* of a draft, as shown by the books and records of Western Union;

(g) The *State of domicile of Western Union*;

(h) Any other State as to which the facts adduced established such right.

(6) That such judgment decree that no State other than the State or States designated under (5) above has the power of escheat or custody of, or the right to prosecute a claim of escheat or custody against, such property.

(7) That the intervenor-plaintiff, the State of Connecticut, have such other and further relief as this Court may deem just.

ROBERT K. KILLIAN

*Attorney General of Connecticut*

F. MICHAEL AHERN

*Assistant Attorney General*

Attorneys for Intervenor-Plaintiff  
The State of Connecticut  
30 Trinity Street  
Hartford, Conn.

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