



No. 22O145, Original

In the Supreme Court of the United States

STATE OF DELAWARE, PLAINTIFF,

v.

COMMONWEALTH OF PENNSYLVANIA AND
STATE OF WISCONSIN, DEFENDANTS.

**BRIEF OF THE STATE OF WISCONSIN
AND MOTION FOR LEAVE TO FILE
COUNTERCLAIM**

BRAD D. SCHIMEL
Attorney General

MISHA TSEYTLIN
Solicitor General
Counsel of Record

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE
17 West Main Street
Madison, WI 53703
tseytlinm@doj.state.wi.us
(608) 267-9323

DANIEL P. LENNINGTON
Deputy Solicitor General

Attorneys for the State of Wisconsin

TABLE OF CONTENTS

INTRODUCTION1

STATEMENT2

ARGUMENT8

 I. Delaware Has Seriously Harmed Wisconsin’s Sovereign Interests 9

 II. Wisconsin Has No Alternative Forum In Which To Vindicate Its Rights 12

 III. Wisconsin Respectfully Submits That The Threshold Question Of Whether Official Checks Are Covered By The Federal Act Should Be Adjudicated “Promptly” 13

CONCLUSION15

MOTION FOR LEAVE TO FILE
 COUNTERCLAIMA-1

COUNTERCLAIMB-1

TABLE OF AUTHORITIES

Cases

<i>California ex rel. State Lands Comm'n v. United States</i> , 457 U.S. 273 (1982).....	13
<i>Delaware v. New York</i> , 507 U.S. 490 (1993).....	1, 2, 12
<i>Mississippi v. Louisiana</i> , 506 U.S. 73 (1992).....	8, 9, 12
<i>Nebraska v. Wyoming</i> , 507 U.S. 584 (1993).....	14
<i>New Hampshire v. Maine</i> , 532 U.S. 742 (2001).....	13
<i>Ohio v. Kentucky</i> , 410 U.S. 641 (1973).....	13
<i>Pennsylvania v. New York</i> , 407 U.S. 206 (1972).....	<i>passim</i>
<i>Texas v. New Jersey</i> , 379 U.S. 674 (1965).....	2, 3, 12
<i>United States v. Alaska</i> , 501 U.S. 1248 (1991).....	14
<i>United States v. Louisiana</i> , 363 U.S. 1 (1960).....	14

<i>Wyoming v. Oklahoma</i> , 488 U.S. 921 (1988).....	13
<i>Wyoming v. Oklahoma</i> , 502 U.S. 437 (1992).....	12

Statutes

12 U.S.C. § 2501	1, 4, 11
12 U.S.C. § 2503	<i>passim</i>
28 U.S.C. § 1251	1
Pub. L. No. 93-495, tit. VI, 88 Stat. 1500 (1974).....	3
Wash. Rev. Code Ann. § 63.29.010	11
Wis. Stat. § 177.04	2, 5
Wis. Stat. § 177.17	5

Constitutional Provisions

U.S. Const. art. III, § 2, cl. 2	1
--	---

Rules

Fed. R. Civ. P. 45.....	14
Sup. Ct. R. 17.2	14

Other Sources

<i>Black's Law Dictionary</i> (10th ed. 2014)	2, 9
S. Rep. No. 93-505 (1973).....	4

Stephen M. Shaprio et al., <i>Supreme Court Practice</i> (10th ed. 2013)	15
U.C.C. Forms and Materials, § 3.3 Form 4, Author's Comment, U.L.A. (2015).....	2, 9, 10

INTRODUCTION

Congress has provided that when a “money order, traveler’s check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable” is abandoned, the State where the instrument was purchased can claim the money. 12 U.S.C. § 2503. In enacting this law, Congress overruled this Court’s decision in *Pennsylvania v. New York*, 407 U.S. 206 (1972), which held that where there is no record of the purchaser’s address, the State of incorporation of the firm issuing the money order has authority to claim the funds from an abandoned money order. See *Delaware v. New York*, 507 U.S. 490, 510 (1993) (acknowledging overruling of *Pennsylvania*). Congress made this decision because it concluded, consistent with the *Pennsylvania* dissenting opinion, that permitting the State of incorporation to take these funds would result in an unjustified windfall for that State. See S. Rep. No. 93-505, at 4 (1973); 12 U.S.C. § 2501.

Delaware has violated this unambiguous congressional directive and Wisconsin’s sovereign rights by taking custody of funds from a particular money order product purchased in Wisconsin: Official Checks. Delaware’s Bill of Complaint and Wisconsin’s Counterclaim therefore present an important dispute between the States, which only this Court has jurisdiction to resolve, see U.S. Const. art. III, § 2, cl. 2, 28 U.S.C. § 1251(a), see, e.g.,

Pennsylvania, 407 U.S. 206, *Delaware*, 507 U.S. 490, *Texas v. New Jersey*, 379 U.S. 674 (1965): whether an Official Check is a “money order, traveler’s check, or other similar written instrument.” 12 U.S.C. § 2503. Declining to resolve this dispute would permit Delaware to retain millions of dollars that rightfully belong to Wisconsin, an amount that will continue to increase every year.

STATEMENT

1. A money order is a “negotiable draft issued by an authorized entity (such as a bank, telegraph company, post office, etc.) to a purchaser, in lieu of a check, to be used to pay a debt or otherwise transmit funds on the credit of the issuer.” *Money order*, *Black’s Law Dictionary* (10th ed. 2014). Money orders are not typically sold directly by the issuer (e.g., MoneyGram or Western Union). U.C.C. Forms and Materials, § 3.3 Form 4, Author’s Comment, U.L.A. (2015). Instead, they are usually sold by the issuer’s agents, “such as currency exchanges, check cashers, grocery stores, convenience stores, [and] banks.” *Id.* “Money orders are unlikely to bounce due to insufficient funds, since a money order is drawn on a bank’s or other financial institution’s funds rather than on an individual’s bank account.” *Id.* When a money order is not presented for payment within a period of time, it is presumed abandoned. *See, e.g.*, Wis. Stat. § 177.04(2).

2. This Court addressed the authority of States to take custody of funds from abandoned money orders in *Pennsylvania v. New York*, 407 U.S. 206 (1972). In that case, this Court determined that the proper approach was the common-law rule developed in *Texas v. New Jersey*, 379 U.S. 674 (1965): “if [the creditor’s] address does not appear on the debtor’s books . . . , then the State of the debtor’s incorporation may take custody of the funds.” *Pennsylvania*, 407 U.S. at 210. This meant that, except in the rare case where a State could prove that the creditor resided within its borders, the State in which the issuer was incorporated could seize the funds. *Id.* at 214–15. As the *Pennsylvania* dissent explained, the unfair result of this rule, as applied to money orders, is that “the obligation of the debtor will be converted into an asset of the debtor’s State of domicile to the exclusion of the creditors’ States.” *Id.* at 218 (Powell, J., dissenting).

Congress promptly overruled *Pennsylvania* by enacting Title 12, Chapter 26 of the United States Code, entitled “Disposition of Abandoned Money Orders and Traveler’s Checks” (the “Federal Act”), Pub. L. No. 93-495, tit. VI, 88 Stat. 1500, 1525 (1974) (codified at 12 U.S.C. §§ 2501–2503). As relevant to this case, the Federal Act established a simple rule for unclaimed money orders where the State of purchase is identifiable: “[w]here any sum is payable on a money order, traveler’s check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable,” the State

where the instrument was purchased "shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum[.]" 12 U.S.C. § 2503(1). Simply put, the State where the money order was purchased is entitled to take custody of the funds from an abandoned money order, to the extent it has authority to do so under its state law.

The Federal Act's legislative findings explain, as reported by the Senate Committee on Banking, that this measure was adopted to avoid granting "a windfall for a few States in which the laws for corporate organization are most attractive." S. Rep. No. 93-505, at 4 (1973). Specifically, Congress found that "business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments" and that "a substantial majority of such purchasers reside in the States where such instruments are purchased." 12 U.S.C. §§ 2501(1) & (2). In light of that business reality, Congress declared that "as a matter of equity among the several States," the State where the purchaser resides should be entitled to the proceeds of any abandoned instruments, adding that it is a "burden on interstate commerce" to permit escheatment to States other than the place of purchase. *Id.* §§ 2501(3) & (4).

3. Wisconsin has “power under its own laws to escheat or take custody of” unclaimed money order funds purchased within the State. 12 U.S.C. § 2503(1). Under Wisconsin’s Uniform Disposition Of Unclaimed Property Act, “any sum payable on a money order or similar other written instrument, other than a 3rd-party bank check, that has been outstanding for more than 7 years after its issuance is presumed abandoned.” Wis. Stat. § 177.04(2). Any person holding a money order or similar instrument that is “presumed abandoned and subject to custody as unclaimed property” must file a report with the Wisconsin Secretary of Revenue (the “Secretary”), and then “pay or deliver to the [Secretary] all abandoned property.” Wis. Stat. §§ 177.17(1) & (4). Sums payable on abandoned instruments are subject to Wisconsin’s custody if the records of the issuer show that the instrument was purchased in Wisconsin. Wis. Stat. § 177.04(4)(a).

4. This case involves the State of Delaware’s taking custody of funds from certain abandoned money order products issued by MoneyGram Payment Systems, Inc., a business incorporated in Delaware. Wis. Claim ¶¶ 1, 5.¹

MoneyGram issues money order products through its agents. Wis. Claim ¶ 8. The agents, pursuant to

¹ Citations in this brief are to Wisconsin’s proposed counterclaim, filed along with this brief. *See infra* B-1.

contractual agreements with MoneyGram, sell money orders to purchasers and pay MoneyGram. Wis. Claim ¶¶ 8, 13. MoneyGram is the issuer of the money order, directly liable on each money order, and the amount is drawn upon MoneyGram's account when presented for payment. Wis. Claim ¶ 9. Neither MoneyGram nor its agents generally retain documentation of the purchasers' name or address. Wis. Claim ¶ 10.

MoneyGram offers two types of money order products relevant here. First, MoneyGram issues small denomination money orders through agents such as retail stores, grocery stores, and pharmacies. Wis. Claim ¶ 12. Second, MoneyGram issues larger denomination money orders through agents such as certain financial institutions. Wis. Claim ¶ 12. MoneyGram markets these higher dollar value money orders as "Official Checks." Wis. Claim ¶ 12. While MoneyGram has different contractual arrangements with its various agents—in terms of when the agents pay MoneyGram, who earns interest on the money, and the like—these instruments all have the commercial features of a money order. Wis. Claim ¶ 13.

MoneyGram treats funds from abandoned low denomination money orders and abandoned Official Checks sold in Wisconsin differently. With regard to abandoned small denomination money orders, MoneyGram abides by the Federal Act and Wisconsin law, and transfers the funds to Wisconsin. However,

with regard to abandoned Official Checks, MoneyGram transfers the unclaimed funds to Delaware's treasury, in violation of the Federal Act and Wisconsin law. Wis. Claim ¶¶ 29, 30.

5. Wisconsin has determined that Delaware has seized over \$13,000,000 from abandoned Official Checks purchased in Wisconsin. Wis. Claim ¶ 29. Delaware was aware of this practice in 2011, yet still required MoneyGram to continue making payments to Delaware on unclaimed Official Checks purchased in Wisconsin. Delaware promised to indemnify MoneyGram for any claims resulting from this practice. Wis. Claim ¶ 30.

Wisconsin attempted to resolve this dispute with Delaware and MoneyGram, sending them letters in July 2015 asking for these sums to be refunded to Wisconsin. MoneyGram responded to the letter by explaining that it had already remitted the money to Delaware pursuant to Delaware's instructions. Wis. Claim ¶31. Delaware stated that it was reviewing supporting documentation, but has still not resolved this issue. Wis. Claim ¶31.

On April 27, 2016, Wisconsin filed a lawsuit against Delaware and MoneyGram in the United States District Court for the Western District of Wisconsin, alleging violations of the Federal Act and Wisconsin law. Complaint, Wis. Dep't of Revenue v. Del. State Escheator David Gregor, et al., No. 16-cv-281 (W.D. Wis. April 27, 2016), ECF No. 1. The

Commonwealth of Pennsylvania has a similar lawsuit against Delaware and MoneyGram pending in Middle District of Pennsylvania. Complaint, Treasury Dep't of the Commonwealth, et al. v. Gregor, et al., No. 16-cv-351 (M.D. Penn. Feb. 26, 2016), ECF No. 1.

On May 26, 2016, Delaware filed a Motion For Leave To File Bill Of Complaint regarding this dispute with Wisconsin and the Pennsylvania. Upon further review, Wisconsin agrees with Delaware that this Court has exclusive authority to settle this dispute. Accordingly, with this brief, Wisconsin has filed a Motion For Leave To File Counterclaim. See *infra* A-1. In addition, Wisconsin intends to move imminently to stay proceedings in the Western District of Wisconsin, pending resolution of this case before this Court.

ARGUMENT

In deciding whether to grant leave to file a bill of complaint in a lawsuit between two states, this Court considers two factors: (1) “the nature of the interest of the complaining State, focusing on the seriousness and dignity of the claim,” and (2) “the availability of an alternative forum in which the issue tendered may be resolved.” *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) (citations omitted). Applying these criteria, this Court should exercise its exclusive jurisdiction over this controversy between the States, by granting Delaware’s Motion For Leave To File Bill Of

Complaint and Wisconsin's Motion For Leave To File Counterclaim.

I. Delaware Has Seriously Harmed Wisconsin's Sovereign Interests

Delaware's practice of taking custody of funds from abandoned Official Checks purchased in Wisconsin "serious[ly]" undermines Wisconsin's sovereign rights, *Mississippi*, 506 U.S. at 77, because those funds belong to Wisconsin. That is because an Official Check is a "money order, traveler's check, or similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable" under the Federal Act. 12 U.S.C. § 2503.

An Official Check is a "money order" under the Federal Act. An Official Check, like any money order, is a "negotiable draft issued by an authorized entity . . . to a purchaser, in lieu of a check, to be used to pay a debt or otherwise transmit funds on the credit of the issuer." *Money order*, *Black's Law Dictionary* (10th Ed. 2014); Wis. Claim ¶¶ 9, 12. Like any typical money order, it is not sold directly by the issuer—i.e., MoneyGram—but by the issuer's agents, certain financial institutions. U.C.C. Forms and Materials, § 3.3 Form 4, Author's Comment, U.L.A. (2015); Wis. Claim ¶¶ 8, 12, 13. And when an Official Check is presented for payment by the holder, the payment is made from MoneyGram's own account, so it is "unlikely to bounce due to insufficient funds." U.C.C.

Forms and Materials, § 3.3 Form 4, Author's Comment, U.L.A. (2015); Wis. Claim ¶ 9. In short, an Official Check has all of the commercial features of a money order.

The differences that Delaware purports to identify between Official Checks and other money orders have no bearing on the question of whether such Official Checks qualify as “money order[s]” under the Federal Act. Delaware points out that MoneyGram does not “label” Official Checks as money orders, that MoneyGram has chosen to sell Official Checks only at certain “financial institutions,” that MoneyGram’s Official Checks can be sold at “larger dollar amounts” than MoneyGram’s lower denomination money orders, and that Official Checks are subject to certain unspecified “federal regulations” that are not applicable to MoneyGram’s lower denomination money orders. Del. Compl. ¶ 12. Even assuming the accuracy of these assertions, *arguendo*, Delaware has failed to identify a single feature that would remove MoneyGram’s Official Checks from within the commercial meaning of “money order.”

In any event, to the extent there are any relevant differences between MoneyGram’s Official Checks and other money orders, Official Checks would then qualify under the Federal Act’s “other similar written instrument” catch-all. 12 U.S.C. § 2503. This catch-all is designed to capture abandoned written instruments that, if seized by the issuer’s state of incorporation, would lead to the sort of windfall that

the dissent in *Pennsylvania* described. *Pennsylvania*, 407 U.S. at 218 (Powell, J., dissenting); see 12 U.S.C. § 2501. Official Checks fall within this category. Delaware has no greater relationship to a \$100 money order purchased in a Wisconsin convenience store than it does to \$1000 Official Check purchased at a Wisconsin bank. Indeed, the windfall to Delaware would be greater as to the \$1000 Official Check, given the larger amount of money involved.

And an Official Check does not fall within the narrow exception for a “third party bank check.” 12 U.S.C. § 2503. The State of Washington’s Uniform Disposition Of Unclaimed Property Act (“UPA”)—which, so far as Wisconsin has been able to determine, is the only UPA defining “third party bank check”—provides: “[t]hird party bank check” means any instrument drawn against a customer’s account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.” Wash. Rev. Code Ann. § 63.29.010(17). An Official Check does not fit within this definition because, *inter alia*, only MoneyGram—as the issuer of the Official Check—is “liable” on a claim for payment. Wis. Claim ¶ 20. And MoneyGram is directly, not “secondarily,” liable. Wis. Claim ¶ 19.

In all, given that an Official Check falls within the meaning of “money order, traveler’s check, or other similar written instrument (other than a third party bank check),” 12 U.S.C. § 2503, Delaware’s actions

taking custody of funds from abandoned Official Checks purchased in Wisconsin violate the Federal Act. As such, Delaware has “serious[ly]” undermined, *Mississippi*, 506 U.S. at 77, Wisconsin’s sovereign right to “take custody of or assume title to abandoned personal property as *bona vacantia*.” *Delaware*, 507 U.S. at 497. At the minimum, this disagreement as to which sovereign is entitled to take custody over these disputed funds implicates sufficient sovereign interests to warrant this Court’s review. *See, e.g., Id.*; *Pennsylvania*, 407 U.S. 206; *Texas*, 379 U.S. 674.

II. Wisconsin Has No Alternative Forum In Which To Vindicate Its Rights

The second factor that this Court looks to in determining whether to exercise original jurisdiction is the availability of an alternative forum. *See Mississippi*, 506 U.S. at 77. In considering this factor, the Court examines whether any alternative body could provide “full relief” for the States. *Wyoming v. Oklahoma*, 502 U.S. 437, 452 (1992).

The parties agree that no such alternative forum exists in this dispute between sovereign States. “The Constitution provides [this Court] original jurisdiction, and Congress has made this provision *exclusive* as between these parties, two States.” *Id.* (emphasis added). Because there is no way for Wisconsin to litigate this dispute in an alternative forum, this factor militates strongly in favor of this Court granting Delaware’s Motion For Leave To File

Bill Of Complaint and Wisconsin's Motion For Leave To File Counterclaim. If this Court were to decline to review this dispute, this would result in Delaware obtaining the precise windfall that Congress sought to cure in the Federal Act: Delaware would keep millions of dollars of funds from abandoned Official Checks purchased in Wisconsin, and would seize more such funds each year. Wis. Claim ¶¶ 11, 29.

III. Wisconsin Respectfully Submits That The Threshold Question Of Whether Official Checks Are Covered By The Federal Act Should Be Adjudicated "Promptly"

This Court's "object in original cases is to have the parties, as promptly as possible, reach and argue the merits of the controversy presented," including resolving any threshold legal questions where "feasible," in order to avoid "needlessly add[ing] to the expense that the litigations must bear." *Ohio v. Kentucky*, 410 U.S. 641, 644 (1973). Consistent with this principle, this Court has regularly decided legal issues promptly, without resort to a special master. See, e.g., *California ex rel. State Lands Comm'n v. United States*, 457 U.S. 273, 278 (1982) ("No essential facts being in dispute, a special master was not appointed and the case was briefed and argued"); *New Hampshire v. Maine*, 532 U.S. 742 (2001) (deciding threshold judicial estoppel question without a special master); *Wyoming v. Oklahoma*, 488 U.S. 921 (1988) (adjudicating motion to dismiss without a special master); see also *United States v. Louisiana*, 363 U.S.

1, 12–13 (1960) (deciding based upon judicially noticeable documents).

Whether an Official Check fits within the statutory phrase “money order, traveler’s check, or other similar written instrument,” 12 U.S.C. § 2503, is a straightforward, threshold legal issue, which should be adjudicated promptly. Most of the relevant characteristics of Official Checks—e.g., how they are purchased, who is liable upon presentment, etc.—are likely ascertainable from publicly available information, such as MoneyGram’s court filings in other cases. Indeed, Wisconsin hopes that all such features can be amenable to “stipulation of facts” between the parties. *See United States v. Alaska*, 501 U.S. 1248 (1991). To the extent limited third party discovery from MoneyGram is deemed necessary to uncover more information about Official Checks, such discovery can be conducted in short order. *See Sup. Ct. R. 17.2; Fed. R. Civ. P. 45; Stephen M. Shaprio et al., Supreme Court Practice* 652–53 (10th ed. 2013). Thereafter, whether Official Checks are covered by the Federal Act will likely be ripe for resolution through “brief[s] on] the legal issues,” *Alaska*, 501 U.S. 1248, or filings in the nature of cross-motions for summary judgment, *see Nebraska v. Wyoming*, 507 U.S. 584, 589 (1993).

“Rule 17.5 makes clear that the Court will determine the procedure after the motion for leave to file the complaint, supporting brief, and the brief in opposition are submitted.” Stephen M. Shaprio et al.,

Supreme Court Practice 649 (10th ed. 2013). Wisconsin thus respectfully suggests that the Court should issue an order requiring the parties to file a joint motion within 30 days proposing proceedings for resolving the legal question of whether Official Checks are covered by the Federal Act.²

CONCLUSION

Delaware's Motion For Leave To File Bill Of Complaint and Wisconsin's Motion For Leave To File Counterclaim should be granted. The Court should also enter an order requiring the parties to file a joint motion within 30 days proposing proceedings for resolving the issue of whether Official Checks qualify as "money order[s], traveler's check[s], or other similar written instrument[s] (other than a third party bank check)." 12 U.S.C. § 2503.

² Wisconsin has no objection to a special master being appointed for purposes of managing any discovery, if such appointment is determined to be beneficial to this Court. However, to the extent the discovery is limited in nature, or can be bypassed entirely by way of stipulation to all relevant fact, such a special master may well not prove necessary.

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General

MISHA TSEYTLIN
Solicitor General
Counsel of Record

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE
17 West Main Street
Madison, WI 53703
tseytlinm@doj.state.wi.us
(608) 267-9323

DANIEL P. LENNINGTON
Deputy Solicitor General

Attorneys for the State of Wisconsin

June 2016

In the Supreme Court of the United States

STATE OF DELAWARE, PLAINTIFF,

v.

COMMONWEALTH OF PENNSYLVANIA AND
STATE OF WISCONSIN, DEFENDANTS.

**MOTION FOR LEAVE TO FILE
COUNTERCLAIM**

The State of Wisconsin, by and through its Attorney General, moves for leave to file the accompanying counterclaim. The grounds for this Motion are set out in an accompanying brief.

BRAD D. SCHIMEL
Attorney General

MISHA TSEYTLIN
Solicitor General
Counsel of Record

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE
17 West Main Street
Madison, WI 53703
tseytlinm@doj.state.wi.us
(608) 267-9323

DANIEL P. LENNINGTON
Deputy Solicitor General

Attorneys for the State
of Wisconsin

June 2016

No. 22O145, Original

In the Supreme Court of the United States

STATE OF DELAWARE, PLAINTIFF AND
COUNTERDEFENDANT,

v.

COMMONWEALTH OF PENNSYLVANIA, DEFENDANT, AND
STATE OF WISCONSIN, DEFENDANT AND
COUNTERCLAIMANT.

COUNTERCLAIM

Pursuant to Federal Rules of Civil Procedure 8 and 13, the State of Wisconsin asserts the following counterclaim against the State of Delaware:

1. This is an action by the State of Wisconsin to recover money wrongfully paid by MoneyGram Payment Systems, Inc., to the State of Delaware, and wrongfully seized by Delaware, in violation of 12 U.S.C. § 2503(1) and Wisconsin's sovereign rights.

Parties

2. Wisconsin is a sovereign State of the United States of America.

B-2

3. Delaware is a sovereign State of the United States of America.

Jurisdiction

4. The Supreme Court of the United States has exclusive and original jurisdiction over controversies between two States under Article III, Section 2, Clause 2 of the United States Constitution and 28 U.S.C. § 1251(a).

Facts

5. MoneyGram Payment Systems, Inc. is a Delaware corporation. Its core business is to provide consumers and financial institutions with money transfer and payment services.

6. MoneyGram sells money order products through agents in Wisconsin.

7. A money order is a “negotiable draft issued by an authorized entity (such as a bank, telegraph company, post office, etc.) to a purchaser, in lieu of a check, to be used to pay a debt or otherwise transmit funds on the credit of the issuer.” *Money order*, *Black’s Law Dictionary* (10th ed. 2014). Money orders are not typically sold directly by the issuer to the purchaser. U.C.C. Forms and Materials, § 3.3 Form 4, Author’s Comment, U.L.A. (2015). Instead, money orders are usually sold by the issuer’s agents, “such as currency exchanges, check cashers, grocery stores,

convenience stores, [and] banks.” *Id.* “Money orders are unlikely to bounce due to insufficient funds, since a money order is drawn on a bank’s or other financial institution’s funds rather than on an individual’s bank account.” *Id.*

8. MoneyGram agents, pursuant to contractual agreements with MoneyGram, sell money order products to purchasers and pay MoneyGram.

9. MoneyGram is the issuer of the money order, directly liable on the money order, and the amount is drawn upon MoneyGram’s account when the money order is presented for payment.

10. Typically, neither MoneyGram nor its agents record the addresses of the purchasers.

11. A number of MoneyGram money orders are abandoned every year, meaning that those money orders are not presented for payment.

12. MoneyGram sells two kinds of relevant money-order products. First, MoneyGram sells small denomination money orders through agents such as retail stores, grocery stores, and pharmacies. Second, MoneyGram sells larger denomination money orders through agents such as certain financial institutions. MoneyGram markets these larger denomination money orders as “Official Checks.”

13. While MoneyGram has different contractual arrangements with its small denomination and Official Check agents—in terms of when the agents pay MoneyGram, who earns interest on the money, and the like—small denomination money orders and Official Checks all have the commercial features of money orders.

14. MoneyGram lists both small denomination money orders and Official Checks as “payment service obligations” on its books and treats both as liabilities on its financial statements.

15. Under Title 12, Chapter 26 of the United States Code, entitled “Disposition of Abandoned Money Orders and Traveler’s Checks” (the “Federal Act”), Pub. L. No. 93-495, tit. VI, 88 Stat. 1500, 1525 (1974) (codified at 12 U.S.C. §§ 2501–2503), “[w]here any sum is payable on a money order, traveler’s check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable,” then “the State in which [the instrument] was purchased . . . shall be entitled exclusively to escheat or take custody of the sum payable on such instrument.” 12 U.S.C. § 2503.

16. MoneyGram is a “banking or financial organization or a business association” under the Federal Act.

B-5

17. An Official Check is a "money order" under the Federal Act. Alternatively, an Official Check is an "other similar written instrument" under the Federal Act.

18. An Official Check is not a "third-party bank check" under the Federal Act.

19. MoneyGram is "directly liable" on an Official Checks under the Federal Act.

20. The financial-institution agents that sell Official Checks are not liable, either directly or secondarily, on Official Checks.

21. Wisconsin has adopted a version of the Uniform Disposition Of Unclaimed Property Act (the "Wisconsin Act"), Wis. Stat. ch. 177, which governs the reporting, payment, and delivery of abandoned property.

22. Under the Wisconsin Act, "any sum payable on a money order or similar other written instrument, other than a 3rd-party bank check, that has been outstanding for more than 7 years after its issuance is presumed abandoned." Wis. Stat. § 177.04(2).

23. Under the Wisconsin Act, any person holding a money order or similar instrument that is "presumed abandoned and subject to custody as unclaimed property" must file a report with the Wisconsin Secretary of Revenue (the "Secretary"),

and then “pay or deliver to the [Secretary] all abandoned property.” Wis. Stat. §§ 177.01(1), 177.17(1) & (4).

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

25. Under the Wisconsin Act, MoneyGram must report all abandoned property to the Secretary and to pay or to deliver to the Secretary the funds from abandoned Official Checks.

26. Under the Federal Act and the Wisconsin Act, Wisconsin has the right to take custody the funds of abandoned Official Checks purchased in Wisconsin.

27. MoneyGram’s books and records show Wisconsin as the State where abandoned Official Checks were purchased.

28. The Wisconsin Act permits Wisconsin to take custody of the sums payable on abandoned MoneyGram Official Checks purchased in Wisconsin.

29. Wisconsin has discovered that Delaware has taken custody of more than \$13,000,000 in funds from abandoned MoneyGram Official Checks purchased in Wisconsin.

30. Wisconsin also discovered that Delaware had been on notice of this unlawful practice since at least 2011, yet still required MoneyGram to continue making payments to Delaware for the value of abandoned Official Checks that were purchased in Wisconsin. Delaware further agreed to indemnify MoneyGram for claims resulting from this practice and instructed MoneyGram to continue to remit funds from abandoned Official Checks to Delaware.

31. Wisconsin attempted to resolve this dispute with Delaware and MoneyGram by sending both parties letters in July 2015 asking for these sums to be refunded to Wisconsin. MoneyGram responded by explaining that it had already remitted the money to Delaware pursuant to Delaware's instructions. Delaware responded that it was reviewing the issue.

32. On April 27, 2016, Wisconsin filed a lawsuit against Delaware and MoneyGram in the United States District Court for the Western District of Wisconsin, alleging violations of the Federal Act and Wisconsin law. Complaint, Wis. Dep't of Revenue v. Del. State Escheator David Gregor, et al., No. 16-cv-281 (W.D. Wis. April 27, 2016), ECF No. 1. The Commonwealth of Pennsylvania has a similar lawsuit against Delaware and MoneyGram pending in Middle District of Pennsylvania. Complaint, Treasury Dep't of the Commonwealth, et al. v. Gregor, et al., No. 16-cv-351 (M.D. Penn. Feb. 26, 2016), ECF No. 1.

33. On May 26, 2016, Delaware filed a Motion For Leave To File Bill Of Complaint in this Court regarding this dispute with Wisconsin and Pennsylvania.

Counterclaims Against Delaware

34. Delaware has unlawfully taken custody of funds from abandoned Official Checks that were purchased in Wisconsin.

35. Delaware has violated Wisconsin's rights, as recognized in the Federal Act and the Wisconsin Act, to take custody of the sums payable on unclaimed funds from Official Checks purchased in Wisconsin.

36. At Delaware's direction, MoneyGram has likewise violated the Federal Act and the Wisconsin Act by failing to remit abandoned MoneyGram Official Checks to the Secretary.

37. Unless relief is granted by this Court, MoneyGram will continue its unlawful practice of remitting funds from abandoned Official Checks to Delaware instead of Wisconsin, resulting in additional substantial sovereign injury to Wisconsin.

38. Delaware refuses to comply with the Federal Act and the Wisconsin Act, despite requests from Wisconsin that it do so.

39. Wisconsin has no adequate remedy at law to enforce its rights and gain a complete remedy, except by invoking this Court's original and exclusive jurisdiction in this proceeding.

Relief

Wherefore, the State of Wisconsin respectfully requests that this Court:

- A. Declare the rights of Wisconsin with regard to unclaimed funds from Official Checks purchased in Wisconsin, which Delaware has wrongfully seized.
- B. Issue an Order commanding Delaware to cease taking custody of funds from abandoned Official Checks purchased in Wisconsin.
- C. Issue an Order commanding Delaware to pay Wisconsin damages in the amount of the unclaimed funds from abandoned Official Checks purchased in Wisconsin, which Delaware has wrongfully seized, as well as interest and all other damages.
- D. Issue an Order commanding Delaware to pay Wisconsin's costs and expenses, including attorney's fees.
- E. Grant any other relief as the Court determines is just and equitable.

B-10

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General

MISHA TSEYTLIN
Solicitor General
Counsel of Record

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE
17 West Main Street
Madison, WI 53703
tseytlinm@doj.state.wi.us
(608) 267-9323

DANIEL P. LENNINGTON
Deputy Solicitor General

Attorneys for the State of Wisconsin

June 2016

