

JUN 23 2016

OFFICE OF THE CLERK

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

STATE OF DELAWARE,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA
AND STATE OF WISCONSIN,

Defendants.

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

MATTHEW P. DENN
Attorney General of Delaware

AARON R. GOLDSTEIN
State Solicitor
JENNIFER R. NOEL
CAROLINE LEE CROSS
Deputy Attorneys General
DEPARTMENT OF JUSTICE
STATE OF DELAWARE
Carvel State Office Building
820 N. French Street, SLC C600
Wilmington, DE 19801
(302) 577-8842

STEVEN S. ROSENTHAL*
MARC S. COHEN
TIFFANY R. MOSELEY
JOHN DAVID TALIAFERRO
LOEB & LOEB LLP
901 New York Avenue N.W.
3rd Floor East
Washington, DC 20001
(202) 618-5000
srosenthal@loeb.com

**Counsel of Record*

June 23, 2016

TABLE OF CONTENTS

	Page
ARGUMENT	1
1. All Parties Concur that the Present Dispute Warrants Exercise of the Court's Original Jurisdiction	2
2. If the Court Accepts Jurisdiction, the Court Should Appoint a Special Master to Con- duct the Necessary Proceedings	4
3. Consideration of Consolidation with the Ar- kansas Matter is Premature	5
CONCLUSION	5

TABLE OF AUTHORITIES

STATUTES

12 U.S.C. §§ 2501-2503	2
28 U.S.C. § 1251(a)	2, 3, 4

No. 145, Original

In The
Supreme Court of the United States

STATE OF DELAWARE,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA
AND STATE OF WISCONSIN,

Defendants.

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

The State of Delaware, in further support of its Motion for Leave to File Bill of Complaint, and in response to briefs filed by the Commonwealth of Pennsylvania and the State of Wisconsin, submits the following Reply Brief:

ARGUMENT

The Commonwealth of Pennsylvania and the State of Wisconsin concur in the State of Delaware's pending Motion For Leave to File Bill of Complaint to obtain a determination whether MoneyGram Payment

Systems, Inc.'s Official Checks are subject to the Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. §§ 2501-2503. In addition, the State of Wisconsin has filed a motion seeking leave to file counterclaims against the State of Delaware, and the Commonwealth of Pennsylvania has indicated that it too will seek leave to file counterclaims. Reserving the right to challenge the merits of those counterclaims, the State of Delaware agrees that the Court should grant jurisdiction over those counterclaims as part of this dispute. In reply to the State of Wisconsin's request for an expedited procedure, the State of Delaware believes that if the Court accepts jurisdiction over the matter, the Court should refer this case to a Special Master who may establish any necessary and appropriate procedures. Finally, with respect to the State of Wisconsin's request to consolidate the present dispute with the case recently filed against the State of Delaware by other States on June 9, 2016, the State of Delaware believes that request is premature.

1. All Parties Concur that the Present Dispute Warrants Exercise of the Court's Original Jurisdiction.

The Commonwealth of Pennsylvania ("Pennsylvania") and the State of Wisconsin ("Wisconsin") agree that the present interstate dispute is the type of dispute that should be heard by the Court pursuant to its exclusive and original jurisdiction in 28 U.S.C. § 1251(a). Brief of the State of Wisconsin and Motion for Leave to File Counterclaim ("Wisconsin Brief") at

8; Commonwealth of Pennsylvania's Brief in Response to State of Delaware's Motion for Leave to File Bill of Complaint ("Pennsylvania Brief") at 1. As a result, both Pennsylvania and Wisconsin consent to the filing of the Complaint. Additionally, Wisconsin has filed a motion for leave to file counterclaims against Delaware. Delaware believes that the Court should accept jurisdiction over those counterclaims pursuant to 28 U.S.C. § 1251(a). Pennsylvania has also indicated its intent to file a motion for leave to file counterclaims although it has not done so yet. If the counterclaims to be filed by Pennsylvania, like those of Wisconsin, seek a declaration that MoneyGram Payment Systems, Inc.'s ("MoneyGram") Official Checks should have escheated to it under the Disposition of Abandoned Money Orders and Traveler's Checks Act and seek the award of past damages, Delaware would consent to their filing. Delaware's Complaint, Wisconsin's Counterclaims, and Pennsylvania's anticipated Counterclaims all implicate a core sovereign function of the States and can only be resolved by the Court pursuant to its exclusive and original jurisdiction under 28 U.S.C. § 1251(a).

Pennsylvania filed an unopposed motion to suspend the action it brought against the Delaware State Escheator in the U.S. District Court for the Middle District of Pennsylvania. The motion was granted and the case was administratively suspended on May 23, 2016. Pennsylvania Brief at 8-9. On June 15, 2016, Wisconsin filed an unopposed motion to stay the action it brought

against the Delaware State Escheator in the U.S. District Court for the Western District of Wisconsin. The motion was granted and the case was administratively closed on June 21, 2016.

Given that all parties agree that the present dispute is properly before the Court pursuant to the Court's exclusive and original jurisdiction under 28 U.S.C. § 1251(a), that the granting of Delaware's Motion for Leave to File Bill of Complaint is appropriate and necessary to resolve an interstate dispute implicating the sovereignty of the involved States, and that the related district court cases are suspended, the Court should grant Delaware's pending Motion for Leave to File Bill of Complaint.

2. If the Court Accepts Jurisdiction, the Court Should Appoint a Special Master to Conduct the Necessary Proceedings.

If the Court grants Delaware's pending Motion for Leave to File Bill of Complaint and accepts jurisdiction over the present dispute, Delaware requests that the Court appoint a Special Master. Once the case is referred to the Special Master, the Special Master may establish the procedures necessary to conduct the case, including addressing Wisconsin's request for an expedited process. Wisconsin Brief at 13-15. Delaware does not agree with Wisconsin's assertion that the case is "amenable to 'stipulation of the facts' between the parties" or that the resolution of the case is "ripe for resolution through 'brief[s] on' the legal issues." *Id.* at 14. To the contrary, Delaware believes that fact and expert

discovery will be necessary; however, Delaware believes that disagreements over procedural issues are more appropriately resolved by the Special Master. Delaware respectfully submits that if the Court accepts jurisdiction in the present case that the Court follow its usual practice and appoint a Special Master to conduct discovery, gather evidence and prepare a report.

3. Consideration of Consolidation with the Arkansas Matter is Premature.

On June 9, 2016, the State of Arkansas and twenty other States filed a Motion for Leave to File Bill of Complaint against Delaware (“the Arkansas Matter”), seeking a declaration that Plaintiff States are entitled to receive the escheat of MoneyGram’s Official Checks under the Disposition of Abandoned Money Orders and Traveler’s Checks Act and seeking the award of past damages. Delaware is still reviewing the brief and complaint in the Arkansas Matter. Delaware will be responding to the Arkansas Matter in due course, and believes that consideration of consolidation of the present case with the Arkansas Matter should await Delaware’s Response to the Motion for Leave to File Bill of Complaint in the Arkansas Matter. A response to Wisconsin’s letter is, therefore, premature at this time.

CONCLUSION

The State of Delaware respectfully requests that its Motion for Leave to File Bill of Complaint be

granted and that the State of Wisconsin's pending, and the Commonwealth of Pennsylvania's above-anticipated, Motions for Leave to File Counterclaims be granted. Because this case presents disputed issues of material fact and of law, the State of Delaware requests that the Court appoint a Special Master with the customary powers to conduct proceedings and to issue a report.

Respectfully submitted,

MATTHEW P. DENN
Attorney General of Delaware

AARON R. GOLDSTEIN
State Solicitor

JENNIFER R. NOEL

CAROLINE LEE CROSS

Deputy Attorneys General

DEPARTMENT OF JUSTICE

STATE OF DELAWARE

Carvel State Office Building

820 N. French Street, SLC C600

Wilmington, DE 19801

(302) 577-8842

STEVEN S. ROSENTHAL*

MARC S. COHEN

TIFFANY R. MOSELEY

JOHN DAVID TALIAFERRO

LOEB & LOEB LLP

901 New York Avenue N.W.

3rd Floor East

Washington, DC 20001

(202) 618-5000

srosenthal@loeb.com

**Counsel of Record*

June 23, 2016

