

OCT 28 2016

Nos. 22O145 & 22O146, Original (Consolidated)

In the Supreme Court of the United States

DELAWARE,

Plaintiff,

v.

PENNSYLVANIA AND WISCONSIN,

Defendants.

ARKANSAS, *et al.*,

Plaintiffs,

v.

DELAWARE,

Defendant.

On Bill of Complaint in Original Action

**PENNSYLVANIA'S ANSWER AND COUNTERCLAIMS
TO DELAWARE'S BILL OF COMPLAINT**

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Dated: October 28, 2016

ANSWER

Defendant Commonwealth of Pennsylvania answers Plaintiff State of Delaware's Bill of Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.

9. Admitted in part; denied it part. Pennsylvania admits the first and second sentences of Paragraph 9. Pennsylvania denies the third sentence of Paragraph 9 in part. Pennsylvania admits that MoneyGram provides services regarding an instrument that it nominates as an "Official Check"; Pennsylvania denies that "Official Checks" or "Official Check services" have a uniform definition or meaning.

10. Pennsylvania lacks knowledge or information sufficient to form a belief about the truth of this allegation.

11. Denied. Pennsylvania denies that "Official Checks" or "Official Check services" have a uniform definition or meaning. Pennsylvania further denies that MoneyGram Official Checks are not money orders,

traveler's checks, or other similar written instruments under the Disposition of Abandoned Money Orders and Traveler's Checks Act.

12. Denied. Pennsylvania specifically denies that "Official Checks" have a uniform definition or meaning, which uniform definition and meaning are the predicate for each of the allegations set forth in Paragraph 12, and, as such, they are denied.

13. Denied. Pennsylvania specifically denies that "Official Checks" have a uniform definition or meaning, which uniform definition and meaning are the predicate for each of the allegations set forth in Paragraph 13, and, as such, they are denied.

14. Denied.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Pennsylvania lacks knowledge or information sufficient to form a belief about the truth of this allegation.

20. Denied.

21. Denied.

22. Denied. Pennsylvania further denies that Delaware is entitled to any of the relief set forth in Paragraphs A-D of the prayer for relief.

COUNTERCLAIMS

For its counterclaims against Plaintiff State of Delaware, Defendant Commonwealth of Pennsylvania alleges as follows:

23. Pennsylvania seeks to take custody of sums erroneously submitted to Delaware by MoneyGram Payment Systems, Inc. in violation of the Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. §§ 2501-03.

24. In the alternative, Pennsylvania seeks modification of the secondary federal common law rule set forth in *Texas v. New Jersey*, 379 U.S. 674 (1965).

I. Jurisdiction

25. This civil action involves a dispute between two states, hence the Court has original and exclusive subject matter jurisdiction under 28 U.S.C. § 1251(a).

II. Parties

26. Counterclaim Plaintiff the Commonwealth of Pennsylvania is a state of the United States.

27. Counterclaim Defendant the State of Delaware is a state of the United States.

28. Non-party MoneyGram Payment Systems, Inc. is a business incorporated in Delaware and has its principal place of business in Texas. MoneyGram Payment Systems is a wholly owned subsidiary of MoneyGram International, Inc.

III. Facts

A. MoneyGram Money Orders and Official Checks

29. MoneyGram sells money orders and what it markets as “official checks.”

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

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

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

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

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

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

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

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

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

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

40. As to place of sale, MoneyGram money orders are generally sold in traditional retail locations, e.g., drug stores; whereas, MoneyGram official checks are generally sold at financial institutions, e.g., banks.

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

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

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

44. Money orders, traveler's checks, and MoneyGram official checks are all purchased instruments.

45. The scenario for issuing a money order, a traveler's check, or a MoneyGram official check is unlike the scenario for issuing a personal check to a third party: in the former the value for the instrument is immediately taken from the customer's custody, whereas in the latter the value remains in the

customer's custody until the instrument is presented for payment at a financial institution.

46. Money orders, traveler's checks, and MoneyGram official checks are similar written instruments.

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

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

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

50. If a MoneyGram official check is never presented for payment, MoneyGram never releases the value of the official check.

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

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

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

53. Pennsylvania's Disposition of Abandoned and Unclaimed Property Act (the "Pennsylvania Unclaimed

Property Act”), 72 P.S. § 1301.1 *et seq.*, defines which property is subject to placement with, or deposit in, the Pennsylvania Treasury, and subject to the custody and control of Pennsylvania through the Pennsylvania Treasurer.

54. The Pennsylvania Unclaimed Property Act defines a “financial institution,” in relevant part, as “any issuer of travelers checks, money orders, or similar monetary obligations or commitments[.]” 72 P.S. § 1301.1.

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

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

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

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

59. All statutorily abandoned property under the Pennsylvania Unclaimed Property Act is subject to the custody and control of the Commonwealth. 72 P.S. § 1301.11(a).

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

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

62. As a result of the audit, the Treasury Department learned MoneyGram sent to Delaware the sum of \$10,293,869.50, which represents the value paid for 151,022 official checks issued in Pennsylvania but never cashed in the period 2000 through 2009 (hereafter, "the Pennsylvania Checks").

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

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

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

66. Under the Pennsylvania Unclaimed Property Act, the last known address of the owner of each of the Pennsylvania Checks is presumed to be Pennsylvania.

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

and control of Pennsylvania via the Pennsylvania Treasury Department and the Pennsylvania Treasurer.

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

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

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

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

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

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

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

74. In support of his proposed legislation, Senator Scott entered into the official Senate Record an

explanatory memorandum. In the memorandum, Senator Scott explained that the *Pennsylvania* decision inequitably resulted in millions of dollars generated in all 50 states being remitted to but 1 state:

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

....

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

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

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

76. In relevant part under the Federal Disposition Act, “[w]here any sum is payable on a money order, traveler’s check, or similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable,” the state where the money order, traveler’s check, or similar written instrument was purchased “shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State’s power under its own laws to escheat or take custody of such sum[.]” 12 U.S.C. § 2503(1).

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

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

79. MoneyGram’s books and records show Pennsylvania as the state where the Pennsylvania Checks were purchased.

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

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

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

D. Pennsylvania's Demands for Payment

83. Pennsylvania in mid-2015 contacted representatives of Delaware regarding the sums payable on abandoned MoneyGram official checks issued in Pennsylvania.

84. By way of letter on September 29, 2015, Delaware indicated its "preliminary analysis" showed that Delaware was rightfully in custody of the sums payable on the MoneyGram official checks at issue.

85. After having heard nothing further from Delaware regarding a "final analysis," via letter dated January 25, 2016, Pennsylvania demanded that Delaware and MoneyGram remit to Pennsylvania the sums payable on the Pennsylvania Checks.

86. Pennsylvania included with the demand letter a spreadsheet showing each of the Pennsylvania Checks and showing the total amount payable on the Pennsylvania Checks: \$10,293,869.50.

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

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

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

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

91. Despite Pennsylvania's demands, through the present date, Delaware has refused to remit payment for the Pennsylvania Checks, initially taking the position that the MoneyGram official checks are "third party bank checks" and thus the sums payable on the Pennsylvania Checks are not subject to custody by the Pennsylvania Treasurer.

E. Federal Common Law

92. Delaware has taken the alternative position that the MoneyGram official checks are not instruments subject to the Federal Disposition Act at all, and are thus subject to Delaware's custody under the federal common law rules in *Texas v. New Jersey*, 379 U.S. 674 (1965).

93. *Texas* established a "primary" and "secondary" rule for interstate escheat priority regarding intangible property. Under the primary rule, the property escheats to the State of the creditor's last known address as shown by the debtor's books and records. *Id.* at 680-81. Under the secondary rule, if no address is known or the State of address does not have law providing for the escheat of such property, then the

property is escheated to the state of the holder's "corporate domicile." *Id.* at 682.

94. In adopting the rules in *Texas*, this Court noted that they were ones of "equity" under the circumstances, and not ones dictated by the Constitution, statutes, or precedent:

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.

Texas, 379 U.S. at 683.

95. The "ease of administration and of equity" identified by the Court in 1965 is no longer true today, and the common law escheat rules in *Texas* are no longer "the most generally acceptable to all States."

96. The escheat industry for Delaware now nets it approximately \$500 million each year; upon information and belief, the bulk of that money represents property escheated to Delaware from other states under the *Texas* secondary rule.

97. Escheated property is presently Delaware's third largest source of budget revenue.

98. As has been recently observed, "advances in technology make it easier and easier to identify and locate property owners," yet certain "[c]ash-strapped

States undoubtedly have a real interest in taking advantage of truly abandoned property to shore up state budgets.” *Taylor v. Yee*, 136 S. Ct. 929, 930 (2016) (Alito, J. and Thomas, J., concurring in denial of certiorari).

99. In light of, among other things, advances in technology since this Court established the secondary rule in 1965 (and since it was last meaningfully revisited in 1993, *see Delaware v. New York*, 507 U.S. 490, 498-99 (1993)), the common law rule on which Delaware relies to justify taking control of the sums payable on the Pennsylvania Checks is no longer warranted or equitable.

IV. Claims for Relief

Counterclaim I: Declaratory Judgment Act, 28 U.S.C. § 2201

100. Pennsylvania incorporates the foregoing paragraphs of the counterclaims as if fully set forth herein.

101. There exists an actual, immediate controversy between Pennsylvania and Delaware regarding whether MoneyGram official checks are subject to the custody and control of Pennsylvania or Delaware under the Federal Disposition Act and the Pennsylvania Unclaimed Property Act.

102. The interests of Pennsylvania and Delaware are adverse: Pennsylvania has demanded custodial care of the sums payable on the Pennsylvania Checks and demanded that future sums payable on abandoned MoneyGram official checks be remitted to the custodial

care of the Pennsylvania Treasurer; Delaware has refused to comply with Pennsylvania's demands.

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

104. A decision by this Court on the issues presented will render practical help to the parties in that a decision will determine which party is entitled to custody of which sums now and going forward.

105. Pennsylvania seeks a declaration that the MoneyGram official checks are "similar written instruments" under the Federal Disposition Act.

106. In the alternative, Pennsylvania seeks a declaration that the MoneyGram official checks are "money orders" under the Federal Disposition Act.

107. Pennsylvania seeks a declaration that the MoneyGram official checks are not "third party bank checks."

108. Pennsylvania seeks a declaration that Delaware stands in violation of the Federal Disposition Act since Pennsylvania is the state "exclusively entitled" to custody of the sums payable on the Pennsylvania Checks.

109. Pennsylvania seeks a declaration that Delaware is liable to Pennsylvania for the sum of \$10,293,869.50, plus interest and fines.

110. Pennsylvania seeks a declaration that all future sums payable on abandoned MoneyGram official

checks that were purchased in Pennsylvania shall be remitted to the custodial care of Pennsylvania.

**Counterclaim II: Declaratory Judgment Act,
28 U.S.C. § 2201**

111. Pennsylvania incorporates the foregoing paragraphs of the counterclaims as if fully set forth herein.

112. There exists an actual, immediate controversy between Pennsylvania and Delaware regarding whether MoneyGram official checks are subject to the custody and control of Pennsylvania or Delaware under the secondary rule in *Texas v. New Jersey*.

113. The interests of Pennsylvania and Delaware are adverse: Pennsylvania has demanded custodial care of the sums payable on the Pennsylvania Checks and demanded that future sums payable on abandoned MoneyGram official checks be remitted to the custodial care of the Pennsylvania Treasurer; Delaware has refused to comply with Pennsylvania's demands.

114. A ruling by this Court that the secondary rule in *Texas* is no longer equitable will conclusively resolve the disputes between the parties.

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

116. Pennsylvania seeks a declaration that the secondary rule in *Texas* is no longer equitable and is therefore overruled.

117. Pennsylvania seeks a declaration that the secondary rule as applied to the MoneyGram official checks at issue should be the same as the rule established by Congress in the Federal Disposition Act; namely, that the sums payable on the abandoned Pennsylvania Checks are subject to the custody of the Pennsylvania Treasurer since the books and records of MoneyGram show Pennsylvania as the state where the checks were purchased.

118. Pennsylvania seeks a declaration that Delaware is liable to Plaintiff for the sum of \$10,293,869.50, plus interest and fines.

Counterclaim III: Violation of 12 U.S.C. § 2503

119. Pennsylvania incorporates the foregoing paragraphs of the counterclaims as if fully set forth herein.

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

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

122. Delaware has violated the Federal Disposition Act by unlawfully taking custody of the sums payable on the Pennsylvania Checks, since Pennsylvania has the exclusive right to take custody of the sums payable on the Pennsylvania Checks.

Prayer for Relief

WHEREFORE, Pennsylvania respectfully requests that the Court enter judgment as follows:

A. Dismissing Delaware's claims in the Bill of Complaint.

B. On Counterclaim One, entering judgment in favor of Pennsylvania and against Delaware and entering the following declarations:

- i. The MoneyGram official checks are "similar written instruments" under the Federal Disposition Act.
- ii. In the alternative, the MoneyGram official checks are "money orders" under the Federal Disposition Act.
- iii. MoneyGram official checks are not "third party bank checks."
- iv. Delaware stands in violation of the Federal Disposition Act since Pennsylvania is the state "exclusively entitled" to custody of the sums payable on the Pennsylvania Checks.
- v. Delaware is liable to Pennsylvania for the sum of \$10,293,869.50, plus interest and fines.

- vi. All future sums payable on abandoned MoneyGram official checks that were purchased in Pennsylvania shall be remitted to the Pennsylvania Treasurer.

C. On Counterclaim Two, entering judgment in favor of Pennsylvania and against Delaware and entering the following declarations:

- i. The secondary rule in *Texas v. New Jersey* is no longer equitable and is therefore overruled.
- ii. The secondary rule as applied to the MoneyGram official checks at issue should be the same as the rule established by Congress in the Federal Disposition Act; namely, that the sums payable on the abandoned Pennsylvania Checks are subject to the custody of the Pennsylvania Treasurer since the books and records of MoneyGram show Pennsylvania as the state where the checks were purchased.
- iii. Delaware is liable to Plaintiff for the sum of \$10,293,869.50, plus interest and fines.

D. On Counterclaim Three, entering judgment in favor of Pennsylvania and against Delaware and entering the following declarations:

- i. The MoneyGram official checks are “similar written instruments” under the Federal Disposition Act.
- ii. In the alternative, the MoneyGram official checks are “money orders” under the Federal Disposition Act.
- iii. MoneyGram official checks are not “third party bank checks.”
- iv. Delaware stands in violation of the Federal Disposition Act since Pennsylvania is the state “exclusively entitled” to custody of the sums payable on the Pennsylvania Checks.
- v. Delaware is liable to Pennsylvania for the sum of \$10,293,869.50, plus interest and fines.
- vi. All future sums payable on abandoned MoneyGram official checks that were purchased in Pennsylvania shall be remitted to the Pennsylvania Treasurer.

E. Granting Pennsylvania such other and further relief as the Court deems just and proper.

Respectfully submitted,

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