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 REPLY BRIEF IN FURTHER SUPPORT OF MOTION FOR LEAVE TO FILE BILL OF THIRD PARTY COMPLAINT

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I. INTRODUCTION

Not only *should* MoneyGram Payment Systems, Inc. be a party to this suit, but it *must* be a party to ensure complete and constitutional disposition of all claims. In arguing to the contrary, MoneyGram's response in opposition to Pennsylvania's Motion for Leave to File Bill of Third Party Complaint ignores the express letter of the Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. §§ 2501-03, and misapprehends the principles of *Western Union Telegraph Company v. Pennsylvania*, 368 U.S. 71 (1961). Further, MoneyGram fails to acknowledge the full scope of prospective relief Pennsylvania seeks with its proposed Bill of Third Party Complaint. In consequence, Pennsylvania's pending Motion should be granted.

II. ARGUMENT

A. Under the Disposition of Abandoned Money Orders and Traveler's Checks Act, Pennsylvania's right to payment may only be from MoneyGram under Pennsylvania state law.

In its counterclaims to Delaware's Bill of Complaint, and in its proposed claims in the Bill of Third Party Complaint, Pennsylvania's primary vehicle for relief is Section 2503 of the Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. § 2503. Section 2503 is somewhat unique in that while it is a federal law, it relies on state law to complete its function. Specifically, as is relevant, paragraph (1) of Section 2503 permits a given state to take custody of

certain funds only to the extent permitted under that state's own laws:

> Where 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—
>
> (1) if the books and records of such banking or financial organization or business association show the State in which such money order, traveler's check, or similar written instrument was purchased, that State 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) (emphasis added); *see also Travelers Express Co. v. Minnesota*, 664 F.2d 691, 692 (8th Cir. 1981) ("The federal statute, 12 U.S.C. § 2503 (1976), authorizes each state to take custody of sums payable on unclaimed money orders to the extent of the state's power under its own laws.").

Against the above, if Pennsylvania's primary theory prevails, then Pennsylvania's right to payment flows *exclusively* through Pennsylvania law by command of paragraph (1) of Section 2503.[1] And critically for

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[1] Pennsylvania has also alleged a right of direct payment from Delaware under Section 2503 and under federal common law. At this preliminary stage of the case, however, how this Court will interpret the various federal and state laws at issue is unknown.

purposes of the pending Motion to add MoneyGram to this dispute, Pennsylvania law commands that MoneyGram, as the statutory "holder" of the sums at issue, bears the exclusive burden to report *and remit* the abandoned intangible property at issue. 72 P.S. §§ 1301.1 (definition of "holder"); 1301.2 (intangible property subject to Commonwealth's custody); 1301.11 (duty of holder to report abandoned property); 1301.13(a) (duty of holder to remit to the custody of the Commonwealth abandoned property); 1301.24 (Commonwealth's right to pursue recovery for failure to deliver abandoned property).[2]

Pennsylvania law does not describe a right to recover from a co-sovereign state like Delaware to whom a holder has wrongfully disposed property. As such, if Pennsylvania prevails in the present dispute and MoneyGram is not a party, the Court may not be able to order complete relief because the "holder" under Pennsylvania law will not be subject to the Court's final order.[3] Stated otherwise, the Court may not be

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Thus, whether Pennsylvania has a right of direct payment from Delaware, as opposed to directly from MoneyGram, is in dispute.

[2] "'Holder' shall mean a person obligated to hold for the account of or deliver or pay to the owner property which is subject to this article and shall include any person in possession of property subject to this article belonging to another, or who is a trustee in case of a trust, or is indebted to another on an obligation subject to this article and the agent or legal representative of the person obligated, the person in possession, the trustee or the debtor." 72 P.S. § 1301.1.

[3] The Court "may not" be able to afford relief depending on how the Court interprets the relevant federal law. *See* note 1.

able to fully follow Section 2503(1) and command payment to Pennsylvania because a necessary party under the Pennsylvania statutory regime, which regime is a critical part of Section 2503, is not before the Court.[4]

MoneyGram's counters to the above are seemingly twofold: (1) it has already escheated the sums at issue and thus the Due Process Clause forbids subjecting it to suit, and (2) its presence will require the Court to handle issues of first impression under state law. *See* MoneyGram br. 7-13. Neither argument is compelling upon further examination.

As to the former argument, *see* MoneyGram br. 7-8, while true under *Western Union* a private party cannot be obligated to twice escheat the same property without violating the 14th Amendment, 368 U.S. at 75, this Court did not say that a holder's disposal of abandoned property relieves it of any obligation to act. Indeed, the Court ultimately only said to relieve any due process concerns, multi-state disputes over the same property should be brought in a forum—this one—where all state claims could be resolved once-and-for all. *See id.* at 79.

Here, nothing Pennsylvania is asking runs afoul of the due process principles in *Western Union*. Pennsylvania is not asking that MoneyGram be twice obligated to pay the $10 million at issue; Pennsylvania well understands that that sum has already been

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[4] The Court's potential inability to fashion complete relief also makes MoneyGram a "required party" under Federal Rule of Civil Procedure 19(a)(1)(A), contrary to MoneyGram's argument. *See* MoneyGram br. 13-16.

remitted to Delaware. Instead, Pennsylvania is simply trying to follow the federal-state dynamic under Section 2503 by asking that its "exclusive" rights under federal law be honored according to the Pennsylvania state law process that designates MoneyGram, and not Delaware, as the obligated remitter.

In conjunction, Pennsylvania understands that for due process to be afforded to MoneyGram, the Pennsylvania statutory obligation cannot be imposed without MoneyGram being *first* repaid by Delaware the sum that was wrongfully escheated to Delaware. This payment can be readily compelled in the Court's final order in this matter, *if* MoneyGram is a party. It can be "readily" compelled because of the due process commands of the 14th Amendment that protect private holders of abandoned property and because Delaware law compels Delaware to make whole a private party obligated to pay another state funds that were previously escheated:

> If the holder pays or delivers property to the State Escheator in good faith and thereafter another person claims the property from the holder *or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property*, the State Escheator acting on behalf of the State, upon written notice of the claim, *shall defend the holder against the claim and indemnify the holder against any liability on the claim.*

12 Del. C. § 1203(c) (emphasis added). In sum, while MoneyGram is correct that it cannot be held twice liable for the same sum of money, it is not correct that due process forbids it from being before this Court in

this dispute. To the contrary, due process is only served when all parties at issue—the disputing state sovereigns and the private party "holder"—are at the same table for a global resolution of the escheat dispute.

Next, MoneyGram's other counter to being joined (regarding state law issues of first impression) fares no better. *See* MoneyGram br. 9-13. If this Court is called upon to resolve issues of state law first impression, those issues are implicated only because of the 14th Amendment principles outlined in *Western Union*. If the 14th Amendment permitted interstate disputes to be resolved in state court, the issues highlighted by MoneyGram could be avoided. But under this Court's proper assessment of the Due Process Clause, such state-court disposition of interstate disputes is not allowed. And in consequence of this precedent, ancillary state law issues arising in a multi-state dispute about escheat *must and can only* be resolved in this Court. Hence, if *Western Union* remains good law, MoneyGram's laments about first impression issues are without significance.

B. Because Pennsylvania is seeking prospective relief, MoneyGram is a required party.

Even if MoneyGram's presence were otherwise unnecessary since it has already remitted the funds at issue to Delaware, it would still be a required party because Pennsylvania is seeking forward-looking relief regarding yet-unremitted abandoned funds. Indeed, in the proposed Bill of Third Party Complaint, Pennsylvania is seeking judgment compelling MoneyGram to pay to the Commonwealth all present

and future abandoned sums for Pennsylvania-purchased official checks. *See* Bill of Third Party Complaint, Prayer for Relief ¶ A.vi ("On Third-Party Claim One, entering judgment in favor of Pennsylvania and against MoneyGram and entering the following declarations: .... All future sums payable on abandoned MoneyGram official checks that were purchased in Pennsylvania shall be remitted to the Pennsylvania Treasurer."). Upon information and belief, during the pendency of this suit, sums continue to become abandoned on MoneyGram official checks purchased in Pennsylvania; MoneyGram is required to remit those abandoned sums to either Pennsylvania or Delaware. The primary predicate for MoneyGram's resistance to its joinder in this case is that the funds at issue from past years have already been remitted to Delaware: That predicate has no value as to the presently accumulating abandoned sums. Accordingly, MoneyGram is a required party to ensure that those funds are remitted to the custody of the proper sovereign, or are, at a minimum, not disposed during the pendency of this dispute. In other words, MoneyGram is necessary to ensure that complete relief can be accorded. *Cf.* Fed.R.Civ.P. 19(a)(1)(A).

III. CONCLUSION

Pennsylvania's Motion for Leave to File Bill of Third Party Complaint should be granted.

Respectfully submitted,

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