

CASE BACKGROUND

Delaware v. Pennsylvania and Wisconsin, U.S. Supreme Court Case No. 220145;
Arkansas, et al. v. Delaware, U.S. Supreme Court Case No. 220146 (consolidated).

Unclaimed Property

Personal property that is neglected and abandoned by its owner over an extended period of time becomes reportable into the custodial care of state unclaimed property administrators. Unclaimed property laws, considered to be one of the earliest forms of consumer protection laws, have been enacted by all 50 states and the District of Columbia. Pennsylvania enacted its first unclaimed property law over 150 years ago, following the Civil War, providing for the escheatment of abandoned individual bank accounts to be reclaimed by the owners.

Unclaimed property laws are intended to protect, preserve and safeguard abandoned property until reclaimed by its lawful owner. The statutory right of states to regulate the disbursement of the property of absentee owners, a form of police power, is derived from English common law doctrines of escheatment (as applied to real property) and *bona vacantia* (as applied to personal property). The primary objective of unclaimed property laws is to avoid the unjust enrichment of the private holder of abandoned property who would otherwise “get something for nothing,” and to safeguard the property until it can be reclaimed by its lawful owner.

Until the abandoned property is reclaimed by its owner, states are permitted to use the property for the common public benefit – typically to support general state governmental operations. For example, Pennsylvania receives, on average, \$350 million annually in unclaimed property, and annually transmits about \$200 million to the Commonwealth’s General Fund, accounting for approximately 0.5% of the final General Fund Budget.

By comparison, Delaware, with 1/13 the population of Pennsylvania, collects approximately \$500 million in unclaimed property each year. In fact, unclaimed property receipts are the third-largest source of revenue to Delaware’s General Fund, estimated to exceed 10 percent of its annual state budget.

Dispute with Delaware

Delaware’s outsized role in the collection of unclaimed property receipts is not only a consequence of aggressive collection efforts, but a result of federal judicial precedent. In an effort to resolve disputes between states involving unclaimed property without an identifiable owner, the U.S. Supreme Court issued a ruling that unclaimed property, without a record of the owner, should be reported to the holding company’s state of incorporation. *Pennsylvania v. New York*, 407 U.S. 206 (1972). With many

companies being incorporated in Delaware, the state benefits each time holder property records fail to list the property owner.

In 1973, reacting to the windfall to Delaware resulting from the *Pennsylvania v. New York* priority reporting decision, Congress passed the “Disposition of Abandoned Money Orders and Traveler’s Checks Act” (12 U.S.C. §§ 2501-03) (“Federal Disposition Act”). Originally introduced by Pennsylvania Congressman Hugh Scott, the federal legislation directed that an abandoned “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” of which the owner is unknown, shall be reportable to the state in which the instrument was purchased. 12 U.S.C. § 2503(1).

The current dispute with Delaware is based on this statutory provision – specifically, whether or not certain financial instruments marketed as “official checks” by MoneyGram are money orders or a “similar written instrument” under the Federal Disposition Act, and therefore should have been reported to the state of purchase, instead of being remitted to Delaware, where MoneyGram is incorporated.

Since 2015, MoneyGram has remitted funds associated with “official checks” sold in Pennsylvania by MoneyGram to the State of Delaware. The current value of Pennsylvania-issued MoneyGram official checks that are owed to the Commonwealth is estimated to be in excess of \$18.7 million. The total value of MoneyGram official checks purchased outside of Delaware and owed to other states is estimated to approach \$400 million.

Summary of Case History

- | | |
|-----------|--|
| 8/1/2014 | Pennsylvania Treasury retains an outside auditor to perform a compliance audit of MoneyGram to determine if uncashed “official checks” purchased in Pennsylvania were properly reported to Pennsylvania Treasury. |
| Mid-2015 | Pennsylvania Treasury contacts Delaware regarding the status of funds from MoneyGram checks issued in Pennsylvania. |
| 9/29/2015 | Letter from Delaware State Escheator to Pennsylvania Treasury (“Treasury”), stating Delaware’s view that it was rightfully in custody of the funds from the MoneyGram checks at issue. |
| 1/25/2016 | Letter from Treasury to Delaware State Escheator, demanding that the Delaware State Escheator and MoneyGram remit to Treasury the funds from MoneyGram checks purchased in Pennsylvania and cease submitting such funds to Delaware. |

2/3/2016 Letter from Delaware State Escheator, in which Delaware refused to take a position on whether the money from checks purchased in Pennsylvania are payable to Pennsylvania. The letter also rejected Treasury's offer to meet in person or by phone to discuss the matters.

2/9/2016 Letter from MoneyGram seeking an extension from Pennsylvania and Delaware of the deadline to report uncashed official checks purchased in Pennsylvania, or that it be permitted to report the uncashed checks to an acceptable third party.

2/18/2016 Letter from Treasury to Delaware insisting that Delaware take a position within seven days on whether the money from the Pennsylvania checks should be turned over into Treasury's custody.

2/26/2016 Pennsylvania Treasury files a complaint against Delaware and MoneyGram in the United States District Court for the Middle District of Pennsylvania seeking the return of uncashed MoneyGram "official checks" pursuant to the Federal Disposition Act.

4/27/2016 Wisconsin files an identical complaint against Delaware and MoneyGram in the United States District Court for the Western District of Wisconsin.

5/26/2016 Delaware petitions the U.S. Supreme Court to file a complaint against both Pennsylvania and Wisconsin in the Court's Original Jurisdiction.

6/9/2016 Arkansas, on behalf of multiple states, moves to file a comparable complaint against Delaware in the Supreme Court. Since Pennsylvania filed its initial complaint against Delaware, a total of 29 additional states have joined the litigation.

10/3/2016 Supreme Court grants leave to file the various complaints and counterclaims by the parties and consolidates the cases.

3/29/2017 Supreme Court appoints Judge Pierre N. Leval of New York as Special Master to submit a Report to the Court.

10/4/2021 The Final Report and Proposed Order of the Special Master Granting the Motion for Partial Summary Judgment by the Defendant States and Denying the Motion for Partial Summary Relief filed by Delaware is received and ordered filed by the Supreme Court.

2/22/2022 The Exceptions to the Special Master Report are scheduled for oral argument before the Supreme Court on Monday, October 3, 2022.