



Unclaimed Property ADVISORY ■

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Supreme Court–Appointed Special Master Applies Place-of-Purchase Jurisdictional Rule to MoneyGram’s Unclaimed “Official Checks”

Delaware’s claims to uncashed “official checks” issued by MoneyGram and sold across the country were deemed invalid by the Supreme Court–appointed Special Master who considered motions for partial summary judgment filed by Delaware on one side of a long-running dispute and more than 20 other states on the other side. *Delaware v. Pennsylvania and Wisconsin; Arkansas, et al. v. Delaware*, Nos. 22O145 and 22O146 (Consolidated) DRAFT First Interim Report of the Special Master (May 20, 2021). The dispute concerns whether the instruments constitute “money orders” or “similar instruments,” in which case the federal Disposition of Abandoned Money Orders and Traveler’s Checks Act (FDA) would override the federal common-law rules established by the Supreme Court in 1965’s *Texas v. New Jersey* and reaffirmed later in *Pennsylvania v. New York* and *Delaware v. New York*. If the FDA applied, the uncashed official checks would be escheatable to the states where they were purchased; otherwise, the checks, for which MoneyGram collected no purchaser or payee address, would escheat in bulk to Delaware, which is MoneyGram’s domicile state.

The Special Master’s report constitutes a master class in statutory construction, proceeding from a review of the development of the federal common-law jurisdictional priority rules – with a focus on the two-pronged jurisdictional scheme articulated by the Supreme Court and the reasons for its adoption of rules that rejected a place-of-purchase or “transactional” rule – to interpretation of the FDA that fails to define either “money order” or “similar instrument” but applies a place-of-purchase reporting rule¹ to such instruments when they remain unclaimed. Presented with two disparate views of what these terms meant when the FDA was enacted in 1974, the Special Master sorted through various principles of statutory construction, dictionary definitions, and legislative history and corollary evidence to discern the intent of Treasury and Congress in the drafting and enactment of the FDA.

To Delaware’s undoubted dismay, the Special Master found persuasive none of the state’s arguments that the FDA does not apply to MoneyGram’s official checks, which were denominated either as agent checks or teller checks. In fact, he concluded that these instruments were prepaid drafts “used by a purchaser to safely transmit money to a named payee”; issued by MoneyGram, which is a financial institution or business association, on which MoneyGram was directly liable; and “are ‘money orders,’ or, at the very least, are Similar Instruments.” The Special Master observed that

¹ So long as the instrument issuer’s books and records show the state of purchase, and such state provides for the escheat of the money orders or similar instruments.

the distribution channels through which MoneyGram sold the instruments, and the fee arrangements to which they were subject, did not distinguish official checks from money orders because they are irrelevant to the “fundamental nature” of the instruments, contrary to Delaware’s assertion. As discussed in the “Congressional findings and declaration of purpose” section of the FDA, these instruments – like money orders – are sold without the collection of purchaser and payee data, and the Special Master concluded that purchasers of these instruments were also likely to reside in the state of purchase.

The Special Master noted that in order to constitute a “similar instrument” for FDA purposes, an instrument under review must satisfy three conditions:

- (1) The instruments must be “similar” to either a money order or traveler’s check – the master concluded this question could be decided on a motion for summary judgment since no material facts were in dispute and other courts have issued summary judgment based on similar comparative assessments.
- (2) The instruments may not be third-party checks – the master concluded that while this term was somewhat unclear, the best evidence of Treasury’s and Congress’s understanding of the term indicated that these are ordinary checks drawn on a checking account.
- (3) A banking or financial institution or business association must be “directly liable” for the payment obligation associated with the instrument – the master rejected Delaware’s analogy to the UCC’s “unconditionally liable” standard because Congress did not use that term, whereas the 1966 Uniform Unclaimed Property Act did use the term “directly liable,” which the drafters indicated meant “ultimately liable.”

Each of these conditions was met by the official checks in this case, according to the Special Master. The Special Master found the defendant states’ argument that the instruments were similar to a money order or traveler’s check compelling: “like money orders, [the instruments] are prepaid drafts issued by a financial or official entity, providing for payment of an exact sum of money to a named individual (making them useful as a convenient, secure method for one person to transmit funds to another).”

Two final issues are worthy of mention, though they did not impact the ultimate outcome. First, Delaware argued that *if* the official checks were deemed “similar instruments” under the FDA, 10 of the defendant states did not have laws that provide for their escheatment. The Special Master handily dispatched this argument as well, noting that states that had adopted the 1995 Uniform Unclaimed Property Act did reference “similar instruments” in other sections of their act even though the provision addressing money orders and travelers checks did not reference “similar instruments” – but the Uniform Act drafters commented that this provision was intended to track the FDA. Second, Pennsylvania argued that if the instruments were not deemed money orders or similar instruments for FDA purposes, then the Court should override the “secondary rule” under federal common law, which normally grants jurisdiction to escheat to the state of domicile of the holder if the address of the owner is unknown, and provide that if the holder does not know the purchaser or payee address for the prepaid financial instruments (as contrasted with all other property types), then the instruments should escheat to the place of purchase rather than the holder’s domicile state. The Special Master rejected this argument as moot, assuming the Supreme Court accepts the recommended ruling that the MoneyGram instruments are covered by the FDA. Pennsylvania’s attempt to run up this hill one more time² appears, for the moment, to have been stymied.

² Pennsylvania has now argued for a place-of-purchase jurisdictional rule in three separate U.S. Supreme Court escheat lawsuits: *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71 (1961); *Pennsylvania v. New York*, 407 U.S. 206 (1972); and the present case. In 1974, Pennsylvania Senator Hugh Scott sponsored the FDA in response to Pennsylvania’s loss in the Supreme Court two years earlier.

Assuming that the Court adopts the Special Master's recommended rulings, this "similar instrument" analytical framework may have broader import than the case might suggest. This is because financial institutions and other business associations will need to evaluate whether various instruments that they issue, which are not enumerated in the FDA or in state unclaimed property acts, may be subject to this alternative jurisdictional regime; if so, and such instruments remain unclaimed for a statutory dormancy period, they would henceforth be escheatable to the state of purchase rather than the state of last known address of the owner (if known) or to the holder's domicile state (if the owner address is unknown).

The Special Master bifurcated the jurisdictional questions from the damages calculation. If the Court adopts these recommendations, Delaware will proceed to a determination of the funds that it will be required to transfer to the other states associated with MoneyGram's long-standing practice of escheating owner/address-unknown official checks to its domicile state. Notably, MoneyGram is on the sidelines for these previously escheated funds and will not be forced to pay out of pocket to satisfy the states' claims against Delaware, consistent with Delaware's statutory obligation to indemnify a holder against claims made by another state to property remitted by the holder in good faith to Delaware.

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