SUPREME COURT OF THE UNITED STATES

DELAWARE, *Plaintiff*

v. Nos. 22O145 & 22O146 (Consolidated)

ARKANSAS, *et al.*, *Defendants*

REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY

KEN PAXTON
Texas Attorney General
TODD LAWRENCE DISHER
Trial Counsel for Civil Litigation
PATRICK K. SWEETEN
Senior Counsel for Civil Litigation
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548 (MC 001)
Austin, Texas 78711

XAVIER BECERRA
California Attorney General
EDWARD C. DUMONT
Solicitor General
JONATHAN L. WOLFF
Chief Assistant Attorney General
DIANE S. SHAW
Senior Assistant Attorney General
AIMEE FEINBERG
Deputy Solicitor General
CRAIG D. RUST
Deputy Attorney General
CALIFORNIA DEPARTMENT OF JUSTICE
1300 I Street
Sacramento, California 95814

LESLIE RUTLEDGE
Arkansas Attorney General
NICHOLAS BRONNI*
Arkansas Solicitor General
OFFICE OF THE ARKANSAS ATTORNEY GENERAL
323 Center Street
Little Rock, Arkansas 72201
(501) 682-6302
nicholas.bronni@arkansasag.gov
**Counsel of Record*

JOSH L. KAUL
Wisconsin Attorney General
KARLA Z. KECKHAVER
Assistant Attorney General
WISCONSIN DEPARTMENT OF JUSTICE
P.O. Box 7857
Madison, Wisconsin 53707

[Complete Counsel Listing on Inside Cover]

LESLIE RUTLEDGE
Arkansas Attorney General

KEN PAXTON
Texas Attorney General

XAVIER BECERRA
California Attorney General

STEVE MARSHALL
Alabama Attorney General

MARK BRNOVICH
Arizona Attorney General

PHILLIP J. WEISER
Colorado Attorney General

ASHLEY MOODY
Florida Attorney General

LAWRENCE WASDEN
Idaho Attorney General

CURTIS T. HILL, JR.
Indiana Attorney General

TOM MILLER
Iowa Attorney General

DEREK SCHMIDT
Kansas Attorney General

ANDY BESHEAR
Kentucky Attorney General

JEFF LANDRY
Louisiana Attorney General

BRIAN FROSH
Maryland Attorney General

DANA NESSEL
Michigan Attorney General

TIM FOX
Montana Attorney General

DOUG PETERSON
Nebraska Attorney General

AARON D. FORD
Nevada Attorney General

WAYNE STENEHJEM
North Dakota Attorney General

DAVE YOST
Ohio Attorney General

MIKE HUNTER
Oklahoma Attorney General

ELLEN F. ROSENBLUM
Oregon Attorney General

ALAN WILSON
South Carolina Attorney General

SEAN REYES
Utah Attorney General

MARK HERRING
Virginia Attorney General

BOB FERGUSON
Washington Attorney General

PATRICK MORRISEY
West Virginia Attorney General

BRIDGET HILL
Wyoming Attorney General

Counsel for Defendant States in Case No. 22O146

JOSH L. KAUL
Wisconsin Attorney General

Counsel for Wisconsin in Case No. 22O145

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INTRODUCTION

Congress enacted the FDA because it found that unclaimed-property law had become inequitable and a burden on interstate commerce. In their two prior briefs, Defendant States have explained how this case presents that same inequity Congress intended to fix in 1974: The proceeds from unclaimed MoneyGram Retail Money Orders and Agent Check Money Orders escheat pursuant to Congress's remedial plan to distribute that money to the States in which those instruments were purchased—*i.e.*, where the owner is likely to reside. But MoneyGram Agent Checks and Teller's Checks escheat to only one State, Delaware, even though those instruments share the same relevant characteristics as money orders (and traveler's checks, for that matter).

Rather than explain how this situation comports with Congress's plan—let alone equity—Delaware argues that the Special Master should wholly ignore the FDA's stated purposes, which Congress enacted into law and codified as 12 U.S.C. § 2501. That ask, while incredible, is in fact consistent with Delaware's fundamental misunderstanding that the "question of what property is covered by the FDA . . . is not a determination illuminated by, or even addressed by, unclaimed property law." Del. Resp. Br., Doc. No. 97 at 32. In other words, Delaware admits that its argument depends on ignoring unclaimed-property law while reading an unclaimed-property statute.

This disregard for the FDA's plain text and context permeates Delaware's response. For example, instead of explaining why certain types of MoneyGram Official Checks do not meet the FDA's definition of "money order"—which even Delaware's authorities agree is a broad term—Delaware attempts to improperly narrow that definition. Worse still, Delaware's proposed definition is based not on the characteristics of money orders in the market when Congress enacted the FDA but on the characteristics of the products that MoneyGram today chooses, for its own business reasons, to market as MoneyGram "Money Orders." Such self-definition cannot justify departing from Congress's remedial plan.

Delaware's other arguments are susceptible to similar criticisms. Whether or not MoneyGram Official Checks are money orders, they at the very least fall within § 2503's coverage of "other similar written instrument[s] (other than a third party bank check) on which a banking or financial organization or a business association is directly liable." To fall within the FDA's

coverage of "other similar written instrument[s]," Official Checks need only to share relevant characteristics with money orders and traveler's checks—namely that they are prepaid, cash-equivalent instruments for transmitting money to a named payee, for which records regarding their purchasers are not typically maintained. It is beside the point that MoneyGram Agent Checks and Teller's Checks are not identical to MoneyGram Retail Money Orders, Agent Check Money Orders, or any other type of money order. That the FDA covers such diverse items as both money orders and traveler's checks proves this point.

Again ignoring the text and context of the FDA, Delaware asks the Special Master to cast aside the technical meaning of "directly liable" that the term had acquired in unclaimed-property law in the years leading up to the FDA's enactment. But the context leaves no doubt that Congress used "directly liable" as an established term of art with that technical meaning. And when it comes to arguing that certain Official Checks fall within the FDA's exclusion of "third party bank check[s]," Delaware continues to promote an understanding of this term that its own expert refuted.

Because Defendant States have established that the FDA's escheatment rules apply to MoneyGram Agent Checks and Teller's Checks in addition to MoneyGram Agent Check Money Orders and Retail Money Orders—and because none of Delaware's arguments in response persuasively account for the FDA's text or context—the Special Master should recommend that the Court grant Defendant States' motion for summary judgment and deny Delaware's concurrently filed motion.

ARGUMENT

Delaware attempts to couch some of its arguments about the appropriate legal standard under 12 U.S.C. § 2503 in factual terms. But all of the "facts that might affect the outcome" of the § 2503 inquiry come from the documents produced and the testimony offered by MoneyGram in this matter. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Therefore, regarding this inquiry there is not even "metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). And because those undisputed material facts show that Defendant States are "'entitled to a judgment as a matter of law,'" granting them "summary judgment is appropriate" regarding Delaware's liability to them under the FDA. *Alabama v. North Carolina*, 560 U.S. 330, 344 (2010) (quoting Fed. R. Civ. P. 56(a)).

I. All of MoneyGram's Official Check products fall within the FDA's broad term "money order."

Because all MoneyGram Official Checks are "money order[s]" under the FDA, that law's escheatment rules apply to MoneyGram Agent Checks and Teller's checks, in addition to MoneyGram Agent Check Money Orders. *See* Defs. Opening Br., Doc. No. 89 at 21–25. Sources contemporaneous with the FDA's enactment in 1974 broadly defined "money order" as a prepaid draft issued by a post office, bank, or other entity used by the purchaser to transmit money to a named payee. *See* Defs. Opening Br. 21–22; Defs. Resp. Br., Doc. No. 100 at 2–3; *see also* Del. Resp. Br. 11 n.4. Modern sources define "money order" with similar breadth. *See* U.C.C. § 3-104 cmt. 4 (Am. Law Inst. & Unif. Law Comm'n 2017) (noting that money orders "are sold both by banks and non-banks" and "vary in form"); *see* App. 881–82 (Gillette Rep. ¶¶ 11–13) (discussing both personal and bank money orders, defining them simply as "prepaid draft[s], or payment order[s], that the seller provides to a purchaser in a specified amount that is typically imprinted on the face"). Given that broad definition of the term "money order," all of MoneyGram's Official Checks fit comfortably within the FDA. *See* Defs. Opening Br. 22–25; Defs. Resp. Br. 2–10.

None of Delaware's arguments for narrowing that term is persuasive. These arguments ignore the Supreme Court's insistence that broad statutory terms should be given appropriately broad interpretations. When Congress has "adopt[ed] a statutory term" that is "broad enough" to "encompass all forms" of a problem, the Court will interpret that term broadly, at least "[i]n the absence of any indication in the statutory text that Congress intended" to narrow that term. *DePierre v. United States*, 564 U.S. 70, 85 (2011). Because Congress chose to use a flexible term ("money order") in the FDA, the Court will interpret that term flexibly.

Delaware's contrary understanding of the statutory term "money order" rests on the flawed premise that MoneyGram's decisions today about how to design and label its money-order products establish what Congress meant in 1974 when it included the term "money order" in the FDA. *See* Del. Opening Br., Doc. No. 79 at 16–22; Defs. Resp. Br. 2–10. Delaware's reliance on MoneyGram's proprietary decisions is contrary to the "fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute." *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) (quotation marks and ellipses

omitted) (quoting *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018)). There is no reason to presume that MoneyGram's product choices today affect the definition of a 45-year-old statutory term.

Besides, Delaware does not explain why the purported distinctions that it identifies (between MoneyGram Retail Money Orders and Agent Check Money Orders on the one hand, and other types of MoneyGram Official Checks on the other) place certain Official Checks beyond the reach of the statutory term "money order." *See* Del. Resp. Br. 11–13. Defendant States addressed most of these points in their brief opposing Delaware's motion for summary judgment. *See* Defs. Resp. Br. 4–10, 15. To these repeated points, Delaware now adds that because "MoneyGram Official Checks [presumably referring to MoneyGram Agent Checks and Teller's Checks] are signed by a financial institution employee rather than the purchaser," they are not money orders. Del. Resp. Br. 13. But Delaware offers no authority for the proposition that money orders, by definition, must not be signed by a financial-institution employee. Nor could it—the U.C.C. expressly comprehends that a money order can also be a teller's check, which would be signed by a financial-institution employee. *See* U.C.C. § 3-104(h) & cmt. 4.

It does not undermine the consensus definition of "money order" to point out that cashier's checks or teller's checks "would fall squarely into" that definition. Del. Resp. Br. 10. The U.C.C. recognizes that money orders "vary in form and their form determines how they are treated in Article 3." U.C.C. § 3-104 cmt. 4. It also requires that, if money orders take the form of teller's checks, then the rules for teller's checks apply; the same principle would govern money orders that take the form of cashier's checks. *See id.* § 3-104(g) & cmt. 4. But that does not mean all money orders and all cashier's checks may "be used interchangeably in transactions." Del. Resp. Br. 10; *see id.* at 14–15, 39 (making similar arguments). An instrument that qualifies as a cashier's check, teller's check, or any other U.C.C.-defined instrument does not lose that qualification by virtue of also falling within the umbrella term "money order." *See* U.C.C. § 3-104(f) ("An instrument may be a check even though it is described on its face by another term, such as 'money order.'"); *see also* Del. Resp. Br. 11 n.4 (discussing an American Bankers Association publication that distinguishes between "*personal* money order[s]" and money orders that are "an official instrument of the bank"). Like other authorities, the U.C.C. acknowledges the elasticity of the term "money order."

Delaware is also wrong that reading the term "money order" to include all Official Checks would render the FDA's reference to traveler's checks or any other part of the FDA superfluous. *See* Del. Resp. Br. 8–10. Crucially here, Delaware misunderstands the definition of "traveler's check." Traveler's checks are indeed prepaid instruments used by the purchaser to transmit money to a named payee. *See* U.C.C. § 3-104(*i*) (defining "traveler's check"). But not all traveler's checks are drafts. The U.C.C. makes clear that traveler's checks "may be in the form of *a note or draft*." *Id.* § 3-104 cmt. 4 (emphasis added); *see* Richard A. Lord, 22 *Williston on Contracts* § 60.3 (4th ed. Nov. 2018 update) ("Like money orders, traveler's checks are issued both by banks and other entities. However, unlike money orders, they may be in the form of a note or draft."). So notes that resemble, but are not, traveler's checks could fall within the "other similar written instrument" provision but not the definition of "money order."

Notwithstanding Delaware's unpersuasive attempts to narrow the term "money order" as used by Congress in the FDA, the Special Master should conclude that all MoneyGram Official Checks fall within that term.

II. Alternatively, MoneyGram Agent Checks and Teller's Checks fall within the FDA's catchall "other similar written instrument" provision.

Regardless of whether all Official Checks are "money order[s]," the FDA's reach does not end with the definition of "money order." MoneyGram Agent Checks and Teller's Checks undoubtedly share the same relevant characteristics as money orders (most notably, MoneyGram Agent Check Money Orders) and traveler's checks for the purposes of the FDA.

The FDA applies to any "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." 12 U.S.C. § 2503. Delaware makes three key mistakes in seeking to avoid the "other similar written instrument" provision. First, Delaware misunderstands the characteristics of MoneyGram Agent Checks and Teller's Checks that make them "other similar written instrument[s]" to which the FDA applies, just like MoneyGram Agent Check Money Orders. *See* Del. Resp. Br. 38–46. Second, Delaware disregards the contemporaneous evidence demonstrating that Congress used the term "directly liable" to invoke established principles from unclaimed-property law. *See id.* at 16–38. Finally, Delaware continues to advocate for an interpretation of "third party bank check" that even its own

retained expert on the field of payment systems did not find convincing. *See id.* at 46–53. Whether or not MoneyGram Agent Checks and Teller's Checks are "money order[s]," they are at a minimum "other similar written instrument[s]" to which the FDA's escheatment rules apply.

A. Official Checks are "other similar written instrument[s]."

Defendant States' prior briefs explain the relevant similarities between money orders, traveler's checks, and all MoneyGram Official Checks: They are all prepaid instruments used to transmit funds to a named payee that are considered in the market to be cash equivalents or "as good as cash." *See* Defs. Opening Br. 26–29; Defs. Resp. Br. 11–13. Additionally, the books and records of MoneyGram do not show the last-known addresses of the purchasers of Official Checks. *See* Defs. Opening Br. 6–16, 26–27; Defs. Resp. Br. 12–13. Delaware's contrary arguments attempt to demonstrate a lack of similarity by showing that Official Checks are not identical to money orders. "Similarity is not identity," however, but only the "resemblance between different things." *United States v. Raynor*, 302 U.S. 540, 547 (1938); *see* Defs. Resp. Br. 11–12. Compared to money orders and traveler's checks, Official Checks are "other similar written instrument[s]" to which the FDA applies, even if they are not identical to those enumerated instruments. 12 U.S.C. § 2503.

As an initial matter, Delaware suggests that there is a factual dispute about whether Official Checks are similar to money orders and traveler's checks. *See* Del. Resp. Br. 38–39. But Delaware's argument focuses instead on the appropriate standard for interpreting the statutory term "other similar written instrument." *Id.* at 40–45. Whenever a case asks "the court to define the statutory standard," that is "a question of law." *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 356 (1991). Interpreting the scope of the term "other similar written instrument" does not require the Special Master to resolve any factual disputes.

1. Delaware cannot demonstrate why Official Checks fall outside the "other similar written instrument" provision.

Moving on to the term's scope, Delaware faults Defendant States for emphasizing the prepaid nature of both money orders and traveler's checks. Del. Resp. Br. 40–43. But even Delaware agrees that money orders, traveler's checks, and Official Checks are prepaid instruments for transmitting funds. Del. Resp. Br. 40. And as Defendant States explained in their response to

Delaware's summary-judgment motion, the term "other similar written instrument" captures instruments that share the common characteristics of the enumerated items, money orders and traveler's checks. *See* Defs. Resp. Br. 11–12 (discussing *Rousey v. Jacoway*, 544 U.S. 320, 329, 331–32 (2005)).

The focus of the analysis on the common characteristics of money orders and traveler's checks demonstrates the most fundamental flaw in Delaware's attempt to show that MoneyGram Agent Checks and Teller's Checks are not "other similar written instrument[s]." All of Delaware's arguments in this portion of its brief focus exclusively on the supposed distinctions between money orders and the Official Checks at issue, Agent Checks and Teller's Checks. *See* Del. Resp. Br. 38–46. Delaware's arguments entirely ignore the other category of instruments enumerated in the FDA—traveler's checks. Delaware never attempts to examine what characteristics traveler's checks and money orders share, nor whether MoneyGram Agent Checks and Teller's Checks also share those characteristics. Because, as Defendant States have previously explained, all of MoneyGram's Official Check products have the relevant characteristics shared by both money orders and traveler's checks, Delaware fails to place MoneyGram Agent Checks and Teller's Checks beyond the reach of the "other similar written instrument" provision.

Those common characteristics of money orders, traveler's checks, and Official Checks are that they all are prepaid instruments used for transmitting funds. *See* Defs. Resp. Br. 11–12; *see also Center Video Indus. Co. v. Roadway Package Sys.*, 90 F.3d 185, 189–90 (7th Cir. 1996) (interpreting contract that covered "cash, a cashier's check, a certified check, a money order, or a similar instrument" to apply to "institutionally guaranteed instrument *where money has already been paid or set aside*, securing the instrument" (emphasis added)). In other words, the key shared characteristic of money orders and traveler's checks is that their prepaid nature makes them marketable as cash equivalents. *See Center Video*, 90 F.3d at 190 ("An ordinary check, on the other hand, is 'payable on demand' only if the account drawn upon has sufficient funds to cover the amount of the check at the time of demand."); *see also Imports, Etc., Ltd. v. ABF Freight Sys.*, 162 F.3d 528, 530 (8th Cir. 1998) (discussing how prepaid instruments function, including that a "customer provides payment to the bank for [a] cashier's check at the time the bank issues the check"); *Citicorp v. Interbank Card Ass'n*, 478 F. Supp. 756, 760 (S.D.N.Y. 1979) (referring to traveler's checks as "the virtual equivalent of money" (*i.e.*, cash), in part because they are prepaid); William D. Hawkland,

American Travelers Checks, 15 Buff. L. Rev. 501, 501 (1966) (recounting 19th-century creation of "a new instrument"—the traveler's check—"that would have the convenience and marketability of cash and the safety of the letter of credit and bank draft").

Official Checks also share this key characteristic with money orders and traveler's checks. *See* Defs. Opening Br. 26–29; Defs. Resp. Br. 12–13. In fact, MoneyGram's corporate representative testified that the phrase "as good as cash," when spoken of money orders, refers to their prepaid nature. App. 1085 (Yingst Dep. 51:2–7). And Delaware does not dispute that MoneyGram Official Checks are prepaid. *See* Del. Resp. Br. 40–43. Delaware even concedes that one type of Official Check, an Agent Check Money Order, is a money order, yet fails to attempt to distinguish Agent Check Money Orders from the other types of Official Checks that remain in dispute. *See* Del. Opening Br. 22; Defs. Resp. Br. 15–17. Official Checks are thus similar to money orders and traveler's checks within the meaning of the FDA.

Delaware incorrectly claims that this conclusion would lead to untenable results. *See* Del. Resp. Br. 40–41. When Congress enacted the FDA, it intended to encompass instruments like money orders and traveler's checks, *i.e.*, instruments that are prepaid; for which the issuer is unlikely to collect address information; and for which escheatment to the State of the seller's incorporation leads to inequitable results. *See* Defs. Opening Br. 6–7, 26–27; Defs. Resp. Br. 12. Official Checks fit that description. In any event, Delaware overstates the reach of a correct interpretation of the "other similar written instrument" provision. "[A]ll prepaid instruments" would not fall within the FDA. Del. Resp. Br. 41. For example, although gift cards are prepaid, they are not made out to a named payee like money orders and traveler's checks. They would therefore not be "other similar written instrument[s]" subject to the FDA. Delaware also contends that Defendant States' interpretation of the FDA would mean the statute applies to a number of prepaid instruments, including cashier's checks, teller's checks, and certified checks. Del. Resp. Br. 40–41. The question whether the FDA applies to all of those instruments, and all the institutions that issue them, is not before the Special Master here and need not be decided. Such a decision would require a detailed analysis based on the specific characteristics of those products and how they function in the marketplace.

In addition to trying to narrow Congress's broad language, Delaware also tries to distinguish Official Checks from money orders. It submits that

money orders are "not a guaranteed payment method." Del. Resp. Br. 40 (quoting App. 1170–71 (Yingst Dep. 149:15–150:4)). That is also true of all the Official Check products at issue. Delaware appears to be relying on MoneyGram's representation that its Teller's Checks are "good funds checks" or next-day availability items. But MoneyGram went on to specifically state that MoneyGram does not "provide a guarantee" for its Teller's Checks. App. 1163 (Yingst Dep. 142:11–12). Delaware also suggests that MoneyGram Official Checks, unlike money orders, are subject to next-day availability under certain federal regulations. Del. Resp. Br. 40. Even if those regulations apply, Delaware cannot explain why those regulations—which did not exist at the FDA's enactment—are relevant to interpreting the FDA. Defs. Resp. Br. 15. Beyond that, Delaware's argument does not address other types of Official Checks, like Agent Check Money Orders and Agent Checks, which are not next-day availability items. *Id.*

2. Congress's explicitly stated purposes for the FDA confirm that Official Checks are "other similar written instrument[s]."

Official Checks share another characteristic with money orders and traveler's checks: MoneyGram does not keep records regarding the last-known address of the purchaser for any of the Official Check products at issue—or its Retail Money Orders, for that matter.[1] *See* Defs. Opening Br. 27; Defs. Resp. Br. 13; *see also* 12 U.S.C. § 2501(1) (finding that "the books and records of banking and financial organizations and business associations" that issue money orders and traveler's checks "do not, as a matter of business practice, show the last known addresses of purchasers of such instruments"). According to Congress's explicit, statutory "declaration of purpose," *id.* § 2501, this finding in particular motivated the escheatment rules codified in § 2503. That explicit statutory purpose should inform the Special Master's determination of whether Official Checks are "other similar written instrument[s]."

[1] Delaware is incorrect when it states that MoneyGram does record such information if the purchaser buys over $3,000 of Retail Money Orders in one day. Del. Resp. Br. 44–45. The testimony cited to support Delaware's Statement of Fact ¶ 20 shows that MoneyGram requires its selling agent to record that information in such a circumstance, but that testimony does not show that the information is transmitted to MoneyGram. *See* App. 1091–92 (Yingst Dep. 57:22–58:9).

Delaware surprisingly argues for the Special Master to ignore Congress's explicitly declared purpose. *See* Del. Resp. Br. 43–46. Because § 2503 supposedly "does not incorporate" § 2501, *id.* at 43, Delaware says that Congress's "declaration of purpose" is irrelevant. But of course "[s]tatutory construction . . . is a holistic endeavor." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). And the same title of the same act of Congress enacted each of the FDA's three codified sections. *See* Act of Oct. 28, 1974, tit. VI, §§ 601–03, Pub. L. 93-495, 88 Stat. 1500, 1525–26. Ignoring the section of that act stating Congress's purposes—a section now codified as 12 U.S.C. § 2501—would be "unreasonable and erroneous." Antonin Scalia & Bryan A. Garner, *Reading Law* § 34, at 218 (2012); *see id.* (advocating for consideration of such purpose statements "in determining which of various permissible meanings the dispositive text bears"). Delaware's position would violate the long-established principle that when the legislature enacts an explicit declaration of purpose into law, such a declaration "may be referred to in order to assist in ascertaining the intent and meaning of" any terms that are "fairly susceptible of different constructions." *Price v. Forrest*, 173 U.S. 410, 427 (1899); *accord Beard v. Rowan*, 34 U.S. 301, 317 (1835); *see* 1 Joseph Story, *Commentaries on the Constitution of the United States* § 459, at 326 (The Lawbook Exchange, Ltd. photo. reprt. 2005) (2d ed. 1851) ("[T]he preamble of a statute is a key to open the mind of the makers, as to the mischiefs, which are to be remedied, and the objects, which are to be accomplished by the provisions of the statute.").

Additionally, none of the material cited by Delaware contradicts Congress's explicit declaration of purpose in § 2501. *See* Del. Resp. Br. 45. Delaware's 1973 Congressional Record citation contains an unenacted draft of the FDA that Senator Scott had printed in the record. But that draft itself contains a series of "whereas" clauses substantially identical to § 2501. *Compare, e.g.*, 12 U.S.C. § 2501(1), *with* 119 Cong. Rec. 17,046 (May 29, 1973) (introducing S. 1895, 93d Cong. (1973)) (first "whereas" clause in middle of third column); *see also id.* at 17,047 (noting that "in the case of travelers checks and commercial money orders . . . addresses do not generally exist"). Delaware's citation to the 1974 Congressional Record is just as damaging for its arguments. Discussing the bill that would ultimately become the FDA (S. 2705, 93d Cong. (1974)), Senator Sparkman remarked "that no records of purchasers' addresses [were] currently kept in the case of money orders and

traveler's checks." 120 Cong. Rec. 4,528 (Feb. 27, 1974). Thus, the legislative history provides no support for Delaware's attempt to divorce § 2501's declaration of purpose from § 2503's escheatment rules.

Delaware presents one other argument for responding to Congress's express finding that issuers of "money orders and traveler's checks do not, as a matter of business practice," maintain records that "show the last known addresses of purchasers of such instruments." 12 U.S.C. § 2501(1). Delaware simply says that Congress was wrong. *See* Del. Resp. Br. 44–46 & n.18. But the Court "never require[s] a legislature to articulate its reasons for enacting a statute," so Congress may take action "based on rational speculation unsupported by evidence or empirical data." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993) (reversing *Beach Commc'ns, Inc. v. FCC*, 965 F.2d 1103 (D.C. Cir. 1992)). Neither *Sable Communications* nor *Turner Broadcasting* announced a contrary rule. The Court in *Sable Communications* and the plurality in *Turner Broadcasting* reasoned that, "whatever deference is due legislative findings," such findings could "not foreclose [the Court's] independent judgment of the facts bearing on an issue of constitutional law." *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 129 (1989); *see Turner Broad. Sys. v. FCC*, 512 U.S. 622, 666 (1994) (plurality opinion). Delaware makes no similar constitutional claims.

In any event, whether the FDA's findings are consistent with the business practices of every issuer of money orders or traveler's checks across the Nation is beside the point. Congress was explicitly concerned that addresses were not being collected in connection with the sale of these instruments as a matter of regular business practice, which was leading to an inequitable windfall of unclaimed property to those businesses' State of incorporation. *See* 12 U.S.C. § 2501. Congress declared that the FDA was being enacted to remedy that situation. *Id.* Regardless of whether Western Union or American Express retain purchasers' last-known addresses—and Delaware has certainly not established that they do[2]—the relevant question here is whether *MoneyGram*

[2] Delaware wrongly asserts that "the Supreme Court has explicitly found that, in the case of money orders, the holder of the unclaimed property frequently has the addresses of the holders." Del. Resp. Br. 44. The Court in *Pennsylvania v. New York* stated only that "a substantial number of creditors' addresses *may* in fact be available *in this case*." 407 U.S. 206, 215 (1972) (emphasis added). It made no express holding that Western Union, much less any other issuer of money orders, creates and retains such records as a matter

regularly does. *See* Del. Resp. Br. 44. In its own brief, Delaware admits that MoneyGram does not track purchasers' addresses. *Id.* And even the assertion that MoneyGram tracks such information for purchases exceeding certain amounts is wrong. *See supra* note 1. The problem that gave rise to the statute is the general business practice described in the FDA, and that business practice is present here. *See* 12 U.S.C. § 2501.

By asking the Special Master to ignore the shared characteristics of money orders and traveler's checks that Congress expressly invoked as its motivation for the FDA, Delaware misunderstands why MoneyGram Agent Checks and Teller's Checks at least fall within the FDA's "other similar written instrument" provision.

B. MoneyGram is "directly liable" on its Official Checks.

The term "directly liable" has a well-developed technical meaning in unclaimed-property law. By using that term in the FDA, itself an unclaimed-property statute, Congress clearly invoked its technical meaning. But rather than apply it here, Delaware would interpret the FDA by reference to an unrelated statute that never uses the term "directly liable." The Special Master should reject Delaware's proposed interpretation.

1. "Directly liable" under the FDA refers to the party ultimately responsible for payment on an instrument.

The term "directly liable" has long been used in unclaimed-property laws to refer to the party that is ultimately responsible for the payment of an instrument. The term was first used in this manner in New York's Abandoned Property Law in the 1940s. That law—along with the 1954 Uniform Disposition of Unclaimed Property Act and the 1966 Revised Uniform Disposition of Unclaimed Property Act, both of which were modeled on New York's law—formed the background for Congress's enactment of the FDA. *See* Defs. Opening Br. 30–33; Defs. Resp. Br. 17–20. Delaware does not dispute that MoneyGram is directly liable on the Official Checks as the term was used in these background sources. It claims instead that the Special Master should

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of business practice. Nor do any of the exhibits cited by Delaware state that records identifying purchasers of money orders or traveler's checks are maintained until state law requires the proceeds from the sale of those money orders to be reported as unclaimed. *See* Del. Stmt. of Facts, Doc. No. 78 ¶¶ 17–19.

ignore these sources when construing the FDA. Del. Resp. Br. 16–28. But this argument fails to account for the history of the term "directly liable."

To begin with, the relevant language in the FDA—applying its priority rules to instruments "on which a banking or financial organization or a business association is directly liable"—is copied verbatim from the 1966 Uniform Act. *Compare* 12 U.S.C. § 2503, *with* App. 692 (Revised Uniform Disposition of Unclaimed Property Act § 2(c) (Unif. Law Comm'n 1966)). The FDA's definitions similarly mirror those in the 1966 Uniform Act. *Compare* 12 U.S.C. § 2502(1)–(3), *with* App. 691 (Revised Uniform Disposition of Unclaimed Property Act § 1(a)–(c)); *see* Defs. Opening Br. 31–32 & n.7. Or as one court has said, "[T]he three definitions in section 2502 adopt the language used to define these terms in section 1 of the Uniform Act." *Travelers Express Co. v. Minnesota*, 506 F. Supp. 1379, 1384 (D. Minn. 1981), *aff'd*, 664 F.2d 691 (8th Cir. 1981). Based on these identical definitions, that court concluded that the FDA was "plainly designed to interact with the Uniform Act." *Id.* That conclusion comports with the principle that courts presume, when a federal statute's language mirrors a model act, that Congress intended the statute to have the same meaning as the model act. *See Rubin v. United States*, 449 U.S. 424, 430 (1981) (discussing statute where Congress "enacted the definition from [a] uniform Act almost verbatim").

The legislative history of the FDA confirms that Congress intended to incorporate the settled meaning of "directly liable" from other unclaimed-property statutes. The Senate report describing the purpose of the FDA states that an entity selling a money order, traveler's check, or other similar written instrument "is directly liable *through its having sold said instrument*." S. Rep. No. 93-505, at 1 (1973) (emphasis added). According to Congress, it is the sale—and the seller's presumptive retention of control over "[t]he funds due . . . on these instruments," *id.*—that makes a party "directly liable" on an instrument. This is exactly how "directly liable" was interpreted in the unclaimed-property context prior to the FDA's enactment. *See, e.g.*, *Aband. Prop. Law, § 300, Subd. 1, Par. (c) & § 301*, 1946 N.Y. Op. Atty. Gen. No. 141, 1946 WL 49892, at *1–2 (Dec. 23, 1946) ("directly liable" party is entity that controls the funds from the sale of the instrument and is thus ultimately responsible for payment); *see also* Defs. Opening Br. 30–33; Defs. Resp. Br. 18–20. If Congress had intended for the term "directly liable" to mean something different when it copied that term verbatim from the 1966 Uniform Act, it would have said so. *See Rubin*, 449 U.S. at 430.

Congress's use of language identical to that in the 1966 Uniform Act also demonstrates that Delaware is wrong in claiming that "directly liable" means unconditionally liable. Del. Resp. Br. 17. Section 2(c) of the 1966 Uniform Act defines a number of instruments, including money orders and traveler's checks, as instruments on which a party is "directly liable" despite the fact that no party is unconditionally liable on them. *See* Defs. Opening Br. 37–38.

Delaware also errs in contending that the 1966 Uniform Act, by applying broadly to "drafts," differs from the FDA in ways in that are relevant to the concept of direct liability. Del. Resp. Br. 24–26. The "directly liable" language in both section 2(c) of the 1966 Uniform Act and 12 U.S.C. § 2503 serves the same purpose: to limit the application of those respective sections to instruments for which a certain type of entity—"a banking or financial organization or a business association"—is ultimately responsible for payment. Contrary to Delaware's view, the "directly liable" qualifier in these provisions is not superfluous. Del. Resp. Br. 25. If no bank, financial association, or business association is ultimately responsible for payment on a "draft" or other enumerated written instrument, then these provisions' rules would not apply.[3] The "directly liable" qualifier would, for example, place a personal check on which an *individual* is ultimately responsible for payment outside these provisions' rules.[4]

Finally, Delaware's effort to minimize the weight of the Uniform Acts lacks merit. Contrary to Delaware's claim, Del. Resp. Br. 19, model laws are accepted sources for illuminating the meaning of congressional enactments. *Cf., e.g.*, *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 444 (1978) (relying on Model Penal Code as a "source of guidance . . . to illuminate" the question

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[3] Delaware's further claim that "banks across the country would have to escheat unclaimed, unaddressed certificates of deposit" if the prior interpretations of "directly liable" were applied to the FDA is without merit. Del. Resp. Br. 26 n.12. A certificate of deposit is neither a "money order," nor a "traveler's check," nor any "other similar written instrument." 12 U.S.C. § 2503.

[4] While a business association may be "directly liable" on most checks it writes, not all such checks are necessarily "similar written instruments" subject to the FDA. Such checks may not be prepaid or "as good as cash," for example, and the business association's records may show the last-known address of the rightful owner of the property.

of the *mens rea* necessary for criminal Sherman Act violations); *United States v. Spatig*, 870 F.3d 1079, 1083 (9th Cir. 2017) (recognizing that Model Penal Code is "an accepted signpost" for construing federal statute). Moreover, by the time Congress adopted the FDA, many States had enacted laws based on either the 1954 or 1966 Acts.[5] And as Delaware recognizes, the Supreme Court referenced the 1966 Uniform Act in *Pennsylvania v. New York*, one of the very decisions Congress expressly abrogated in enacting the FDA. *Pennsylvania v. New York*, 407 U.S. 206, 215 n.8 (1972); *see Delaware v. New York*, 507 U.S. 490, 510 (1993) (noting that "Congress overrode *Pennsylvania* by passing a specific statute concerning abandoned money orders and traveler's checks," citing the FDA); *see also* Del. Resp. Br. 29. This confirms that Congress was well aware of the Uniform Acts when it copied their language verbatim into the FDA.

2. Direct liability under the FDA does not refer to concepts of unconditional liability under the U.C.C.

Instead of interpreting the FDA's term "directly liable" by reference to the sources from which Congress drew that term, Delaware argues that the term should be informed by the U.C.C.'s concept of unconditional liability. But the U.C.C. never uses the term "directly liable" to describe the concept of unconditional liability. And Delaware's own expert witness on this issue has never previously used the term in that manner. App. 976–77 (Mann Dep. 35:23–36:17). The U.C.C. in fact uses entirely different terminology to refer to the liability concepts Delaware describes. Defs. Opening Br. 35–36; Defs. Resp. Br. 20–21. There is no support in the text or the legislative history of the FDA for the proposition that Congress intended to define "directly liable" by reference to a text from another field of law that never even uses the term.

Notwithstanding the absence of the term "directly liable" in the U.C.C., Delaware claims that the U.C.C. is relevant because it casts light on the types of instruments covered by the FDA. Del. Resp. Br. 31–32. That is incorrect.

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[5] Delaware contends that "only 20" States had adopted a version of the Uniform Act by 1974. But the source on which it relies for this claim appears to indicate that 26 States had done so. *See* Supp. Taliaferro Decl., Doc. No. 99, Ex. LL at 135, 215 (second column listing "Laws"). That exhibit also does not include California and Idaho, two States that enacted the 1954 Uniform Act. *W. Union Tel. Co. v. Pennsylvania*, 368 U.S. 71, 79 n.5 (1961); App. 688 (Revised Uniform Disposition of Unclaimed Property Act at 3).

The U.C.C.'s liability scheme addresses the different questions of when and under what conditions parties are obligated to pay an instrument. Defs. Opening Br. 36. Delaware puzzlingly argues that the "question of what property is covered by the FDA . . . is not a determination illuminated by, or even addressed by, unclaimed property law." Del. Resp. Br. 32. But the very purpose of any unclaimed-property law like the FDA is to define what categories of property are subject to which escheatment rules. As explained above and in prior briefing, the unclaimed-property provisions on which the FDA was based define certain classes of unclaimed property based on whether a bank, financial organization, or business association is "directly liable" on the property. *See supra* Part II.B.1; *see also* Defs. Opening Br. 29–33. Those provisions are the relevant sources for interpreting the FDA.

"Directly liable" has no defined meaning in the U.C.C. So Delaware has no authority for its argument that "directly liable" was so well understood to mean "unconditionally liable" that Congress presumptively intended that meaning in the FDA. For this proposition, Delaware cites *Burrage v. United States*, 571 U.S. 204 (2014). But that case involved the question of how to interpret the generic term "results from" in the causation context. *Id.* at 210. Absent "textual or contextual indication to the contrary," *id.* at 212, the Court applied what it previously had described as "textbook tort law" to interpret that term to refer to but-for causation, *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 346–47 (2013); *see Burrage*, 571 U.S. at 212–14.

Burrage does not apply here, where both "textual" and "contextual indication[s]" contradict Delaware's interpretation of "directly liable" in the field of unclaimed-property law. Nor is there any generally accepted usage that would support the interpretation put forward by Delaware. Unlike the term at issue in *Burrage*, "directly liable" does not have a "textbook" definition in the field of payment systems. This is made clear by the fact that Delaware's expert, a professor at a prominent law school, admits he does not use that term in teaching courses on payment systems. App. 977 (Mann Dep. 36:6–17).

Delaware is also wrong in arguing that the historical interpretation of "directly liable" in other unclaimed-property statutes renders the word "directly" superfluous, and therefore that the Court should reject that proposed interpretation. Del. Resp. Br. 36–38. The FDA copied the term "directly liable" from statutes that interpreted the phrase to mean the party ultimately responsible for payment. *See* Defs. Opening Br 30–33; Defs. Resp. Br. 17–20.

Those two words together comprise a term of art. *Cf. Corning Glass Works v. Brennan*, 417 U.S. 188, 202 (1974) (describing a term of art as a "term [that] has a different and much more specific meaning in the language of" a particular field). And because the term was "obviously transplanted from another legal source . . . it brings the old soil with it"—*i.e.*, its previously understood meaning. *Hall v. Hall*, 138 S. Ct. 1118, 1128 (2018) (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)); *see* Scalia & Garner, *supra*, § 6 at 73 (addressing plain meaning of terms of art). Contrary to Delaware's arguments, this principle applies whenever Congress copies statutory language with a settled meaning; there is no requirement that the settled meaning be centuries old or derived from federal law. *See, e.g.*, *AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema, Inc.*, 508 F.3d 995, 1000–01 (11th Cir. 2007) (interpreting language in Federal Arbitration Act that "matched almost verbatim the language of" preexisting New York arbitration law, and treating "New York jurisprudence" as "part of the 'old soil' that accompanied the language that was transplanted"). Because the term "directly liable" is "a phrase of technical significance" in unclaimed-property law, it must "bear the meaning of [that] habitat." Frankfurter, *supra*, at 537.

Finally, Delaware's proposed interpretation of "directly liable" would require the Court to read the FDA in an unnatural way that is contrary to the statute's purpose. The FDA contains a broad catchall clause making it applicable not only to money orders and traveler's checks but also to "similar written instrument[s]." 12 U.S.C. § 2503. Yet Delaware asks the Court to require all "similar" instruments to contain a feature—unconditional liability—that Delaware concedes the enumerated items (money orders and traveler's checks) do not themselves possess. Del. Resp. Br. 35–36. Delaware's interpretation of "directly liable" would unnaturally limit the scope of the otherwise expansive catchall provision to (at most) four additional types of instruments. *See* Defs. Opening Br. 37–38; Defs. Resp. Br. 22. If Congress intended to do this, it would have simply enumerated the additional instruments it wanted to cover. But Congress did not do so, and for good reason; it would not advance the FDA's remedial purpose to dramatically narrow the scope of the statute in this manner.

For all of these reasons, the Court should reject Delaware's proposed interpretation of the FDA's use of "directly liable," and instead give that language the meaning it had in the unclaimed-property statutes from which it was copied.

C. No plausible interpretation of "third party bank check" applies to MoneyGram Official Checks.

Delaware acknowledges that all three experts in the field of payment-systems who testified in this case "agree[d] that the term ['third party bank check'] is not commonly used and did not have a universally accepted definition." Del. Resp. Br. 46. And Delaware's own retained expert testified regarding the application of the term "third party bank check" to the MoneyGram products at issue: "I didn't study any products that strike me as fitting with any ordinary sense of what those terms should mean." App. 1010 (Mann Dep. 155:18–25). As a result, it is not even clear that this case presents the question of how to interpret the term "third party bank check": Whatever it means, none of the payment-systems experts think that Official Checks are "third party bank check[s]." Despite this—and without citing any authority—Delaware states that a simple, "common-sense interpretation" of "third party bank check" leads to the opposite conclusion. Del. Resp. Br. 46; *see id.* at 46–53. But none of Delaware's arguments show that MoneyGram Official Checks fall within the FDA's exclusion of "third party bank check[s]." *See* Defs. Opening Br. 40–47; Defs. Resp. Br. 24–26.

There are only two plausible interpretations of the term "third party bank check," either: a check drawn by and on a bank that the original payee has indorsed to a third party; or a personal check. The only case to have used that term in any meaningful way supports the first interpretation. *See United States v. Thwaites Place Assocs.*, 548 F. Supp. 94 (S.D.N.Y. 1982). There a buyer tried to pay the U.S. marshal at a foreclosure sale with "bank checks payable to [a] third party payee and indorsed over by that payee to the Marshal." *Id.* at 96. The court referred to those instruments as "third party bank checks." *Id.* Contrary to Delaware's reading of *Thwaites Place*, Del. Resp. Br. 49 n.19, it was simply the fact that these checks were "payable to individuals or parties other than the United States Treasury or the United States Marshal" that made them "third party" bank checks. 548 F. Supp. at 96; *see id.* at 95 (referring to them as "third party bank checks" prior to indorsement to the marshal). And Delaware misunderstands the facts of the case when it suggests that the checks in question were "certified checks" rather than "bank checks." Indeed, part of the reason that the marshal refused to accept the buyer's third party bank checks was that they *were not certified checks*. *See id.* at 96 (contrasting "[t]he bank checks offered by" the buyer with the marshal's requirement that payment be made in "cash or certified check(s)").

Thwaites Place is evidence that the FDA's term "third party bank check" refers to a bank check that has been indorsed to a third party. Delaware resists this interpretation, however, on the ground that a "holder of an unclaimed bank check has no way of knowing whether or not it has been indorsed over to a third party," leaving it unable to tell whether any given "bank check" is a "third party bank check" until it is ultimately presented for payment. Del. Resp. Br. 47–49. But Delaware's objection to this interpretation does not confront the fact that it is the most straightforward reading of the plain text, based on common understandings of the phrase "third party check" and "bank check. *See* Defs. Opening Br. 41.

Interpreting the exclusion of "third party bank check[s]" to have a limited reach is consistent with the legislative history. Congress never intended this term to create a broad exclusion from the statute but only added it as a "technical correction[]" to the FDA's text at the Department of Treasury's request. S. Rep N. 93-505, at 6 (1973). Whatever Congress's purposes, the most natural interpretation of the phrase "third party bank check" is a check drawn on a bank by a bank that is then indorsed to someone other than the initial payee. And that interpretation is perfectly consistent with the purposes of the FDA. No party contends that this interpretation applies to MoneyGram Official Checks.

Alternatively, a "third party bank check" may simply be a personal check. Defendant States have already demonstrated that contemporaneous sources used the similar phrase "third party payment services" to refer to ordinary checking accounts. *See* Defs. Opening Br. 42–43; Defs. Resp. Br. 25–26. Delaware opposes this interpretation of "third party bank check" on the ground that Congress did not expressly reference these sources when it enacted the FDA. Del. Resp. Br. 50. But Congressional enactments are always interpreted as of their time of enactment. *Oliveira*, 139 S. Ct. at 539. And the evidence suggests that contemporaneous readers would have understood a "third party bank check" as a personal check. Here too, no party argues that Official Checks fit this definition.

Instead, Delaware returns to its claim that Official Checks are "third party bank check[s]" because they are "bank check[s] provided by a third party." Del. Resp. Br. 46. Delaware offers no authority for this definition. *See* Defs. Resp. Br. 24–25. Regardless, neither of the Official Check products at issue are "bank checks," *i.e.*, checks drawn by a bank on a bank. *See* Defs. Opening Br. 43–45; Defs. Resp. Br. 25. MoneyGram Agent Checks on their

face identify MoneyGram as the "drawer," making them not bank checks. *See* App. 341, 344 (Dep. Ex. 26 ¶ 2 & [Ex. A.]). Similarly, MoneyGram Teller's Checks state on their face that they are "issued by" MoneyGram. *See* App. 341, 348 (Dep. Ex. 26 ¶ 4 & [Ex. C]). And the U.C.C. makes clear that an "issuer" is the "drawer of an instrument." U.C.C. § 3-105(c). Thus the question is not whether MoneyGram's role "in the back-office processing" makes Official Checks not bank checks. *See* Del. Resp. Br. 52–53. Instead, the question is whether a check that identifies a nonbank drawer on its face can be a bank check at all. On this point, Delaware offers no argument—let alone any authority—suggesting that a check issued or codrawn by a nonbank can nevertheless constitute a bank check. Because MoneyGram Teller's Checks are drawn, at least in part, by a nonbank, they also are not bank checks.

III. The FDA requires escheatment of MoneyGram Official Checks to the State of purchase.

Because the FDA's escheatment rules apply, Defendant States are entitled to take custody of unclaimed Official Check funds if: (1) "the books and records of such banking or financial organization or business association show the State in which" the Official Check "was purchased"; and (2) the State of purchase has the "power under its own laws to escheat or take custody of" those funds. 12 U.S.C. § 2503(1). Delaware does not dispute the first condition and thus concedes it. *See* Defs. Opening Br. 47–48.

As to the second condition, Delaware reiterates a mistake from its opening brief, arguing that § 2503(1)'s phrase "to the extent of that State's power under its own laws to escheat or take custody of such sum" requires Defendant States to have laws containing the FDA's exact wording—"money order, traveler's check, or other similar written instrument." Del. Resp. Br. 61–64; *see* Del. Opening Br. 55–58. Delaware does not dispute that all Defendant States have laws that expressly empower them to escheat money orders and traveler's checks. Nor does Delaware contest that most Defendant States' laws also expressly authorize the escheatment of other similar written instruments. But Delaware argues that ten Defendant States do not have laws empowering them to escheat "similar written instruments" because that specific term does not appear in their unclaimed-property laws.

Delaware's reading of § 2503(1) is too narrow. That provision must be read broadly and in harmony with the Uniform Unclaimed Property Act. *See Travelers Express*, 506 F. Supp. at 1384 (noting that the FDA was "plainly

designed to interact with the Uniform Act" and "should be construed to function harmoniously with the Uniform Act in determining which of the several states has the superior claim to abandoned intangible property"). As already explained, *see* Defs. Resp. Br. 26–27, the ten Defendant States identified in Delaware's brief adopted the 1995 version of Uniform Unclaimed Property Act. The 1995 Act is broad in scope. "[A]ll intangible property is within the coverage of the Act." Uniform Unclaimed Property Act § 2 cmt. (Unif. Law Comm'n 1995) (the 1995 Act). Delaware ignores the breadth of the 1995 Act's provisions.

Delaware also ignores that those provisions were drafted to work in tandem with the FDA. In addition to the broadly worded definition of property, *id.* § 1(13), and the catch-all provision for when "[a]ll other property" is presumed abandoned, *id.* § 2(a)(15), the 1995 Act includes a take-custody provision that "states the rule adopted by Congress in 12 U.S.C. sections 2501 *et seq*." and incorporates "similar written instruments," *id.* § 4(7) & cmt. Along with disregarding this explicit reference to the FDA, Delaware also disregards the series of other take-custody provisions in the 1995 Act. *See id.* § 4(1)–(6). Given its comprehensive scope and its provision mirroring the FDA, the 1995 Act as adopted by these ten States provides ample basis for these States to escheat Official Checks, whether they are money orders or "similar written instruments."

Delaware argues that *Travelers Express Co. v. Minnesota* supports its argument. It does not. There Minnesota, as the State where Travelers Express was incorporated, sought to take custody of certain unclaimed sums payable on money orders sold by Travelers Express in States other than Minnesota. 506 F. Supp. at 1381. Delaware correctly points out that the money orders in question were "'not subject to [those States'] escheat' law." Del. Resp. Br. 64 (quoting *Travelers Express*, 506 F. Supp. at 1381). But the court provided no analysis regarding the language of those other States' unclaimed-property laws. Indeed, it suggested in dicta that those other States did "not have an unclaimed property law" at all. 506 F. Supp. at 1388.

The actual holding of *Travelers Express* supports the ten Defendant States singled out by Delaware. Travelers Express argued that Minnesota did not have the "power under its own laws to escheat" the money orders at issue because it had no "law expressly authorizing it to take custody of unclaimed money orders sold outside the State." *Id.* at 1384. To reject that argument, the court relied on the "omnibus provision" in the then-current version of the Uniform Unclaimed Property Act that was "designed to cover a very wide

range of intangible personal property." *Id.* at 1386. That provision led the court to conclude that Minnesota had a law authorizing it to take custody of those money orders. *Id.* at 1388–89.

Like Travelers Express, Delaware argues that Defendant States' unclaimed-property laws must have specific provisions allowing them to take custody of the property in question. But *Travelers Express* confirms that this is not so. The FDA functions in harmony with the 1995 Uniform Act, which includes numerous provisions written in broad, general language designed to cover all intangible property. These provisions and others in the 1995 Act adopted by the ten Defendant States singled out by Delaware provide more than enough power to take custody of MoneyGram Official Checks.

CONCLUSION

For these reasons and those stated in Defendant States' other briefs, Defendant States respectfully request that the Special Master recommend that the Court deny Delaware's concurrently filed motion for summary judgment and grant to Defendant States partial summary judgment declaring: their entitlement to sums payable on unclaimed and abandoned MoneyGram Official Checks purchased in Defendant States and unlawfully remitted to the State of Delaware; and their entitlement to future sums payable on unclaimed and abandoned MoneyGram Official Checks purchased in Defendant States.

As contemplated by the Special Master's July 24, 2017 order, Doc. No. 43 ¶ 6, Defendant States further request that the Special Master enter an order establishing a case schedule for the damages phase of this lawsuit.

March 29, 2019

Respectfully submitted,

KEN PAXTON
Texas Attorney General
TODD LAWRENCE DISHER
Trial Counsel for Civil Litigation
PATRICK K. SWEETEN
Senior Counsel for Civil Litigation
OFFICE OF THE TEXAS
ATTORNEY GENERAL
P.O. Box 12548 (MC 001)
Austin, Texas 78711

XAVIER BECERRA
California Attorney General
EDWARD C. DUMONT
Solicitor General
JONATHAN L. WOLFF
Chief Assistant Attorney General
DIANE S. SHAW
Senior Assistant Attorney General
AIMEE FEINBERG
Deputy Solicitor General
CRAIG D. RUST
Deputy Attorney General
CALIFORNIA DEPARTMENT OF
JUSTICE
1300 I Street
Sacramento, California 95814

LESLIE RUTLEDGE
Arkansas Attorney General
NICHOLAS BRONNI*
Arkansas Solicitor General
OFFICE OF THE ARKANSAS
ATTORNEY GENERAL
323 Center Street
Little Rock, Arkansas 72201
(501) 682-6302
nicholas.bronni@arkansasag.gov
**Counsel of Record*

JOSH L. KAUL
Wisconsin Attorney General
KARLA Z. KECKHAVER
Assistant Attorney General
WISCONSIN DEPARTMENT OF
JUSTICE
P.O. Box 7857
Madison, Wisconsin 53707

STEVE MARSHALL
Alabama Attorney General

MARK BRNOVICH
Arizona Attorney General

PHILLIP J. WEISER
Colorado Attorney General

ASHLEY MOODY
Florida Attorney General

LAWRENCE WASDEN
Idaho Attorney General

CURTIS T. HILL, JR.
Indiana Attorney General

TOM MILLER
Iowa Attorney General

DEREK SCHMIDT
Kansas Attorney General

ANDY BESHEAR
Kentucky Attorney General

JEFF LANDRY
Louisiana Attorney General

BRIAN FROSH
Maryland Attorney General

DANA NESSEL
Michigan Attorney General

TIM FOX
Montana Attorney General

DOUG PETERSON
Nebraska Attorney General

AARON D. FORD
Nevada Attorney General

WAYNE STENEHJEM
North Dakota Attorney General

DAVE YOST
Ohio Attorney General

MIKE HUNTER
Oklahoma Attorney General

ELLEN F. ROSENBLUM
Oregon Attorney General

ALAN WILSON
South Carolina Attorney General

SEAN REYES
Utah Attorney General

MARK HERRING
Virginia Attorney General

BOB FERGUSON
Washington Attorney General

PATRICK MORRISEY
West Virginia Attorney General

BRIDGET HILL
Wyoming Attorney General

CERTIFICATE OF SERVICE

Counsel of record for Defendant States in Case No. 22O146 certifies that on March 29, 2019, this document was served, as required by Case Management Order No. 5, on the following counsel:

Pennsylvania	Matthew Haverstick	mhaverstick@kleinbard.com
Pennsylvania	Joshua Voss	jvoss@kleinbard.com
Delaware	Steven Rosenthal	srosenthal@loeb.com
Delaware	Marc Cohen	mscohen@loeb.com
Delaware	Tiffany Moseley	tmoseley@loeb.com
Delaware	J.D. Taliaferro	jtaliaferro@loeb.com
Delaware	Aaron Goldstein	aaron.goldstein@state.de.us
Delaware	Caroline Cross	caroline.cross@state.de.us
Delaware	Jennifer Noel	jennifer.noel@state.de.us