

# UPdate Alert



LINKING ASSETS INC.

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## ■ Unclaimed Property Argued Before the Supreme Court for the First Time Since 1994

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On Monday, October 3, 2022, the Supreme Court of the United States (SCOTUS) heard oral arguments, on original jurisdiction related to the cases *DELAWARE V. PENNSYLVANIA AND WISCONSIN* and *ARKANSAS, ET AL. V. DELAWARE*. Fundamentally at issue is what comprises “official checks.” Are official checks an “other similar instrument” as noted, but not defined, in the Federal Disposition Act<sup>1</sup> (FDA)? Otherwise, do they essentially meet the criteria to be considered a money order?

These critical distinctions ultimately determine the protocols of where to escheat these official MoneyGram checks and alleviate MoneyGram being in the position where more than one state is claiming to have jurisdiction over the same property.

While the narrow issue of this case pivots on whether MoneyGram official checks fall within the category of “similar instruments” and are under the purview of the FDA. The broader issue is which State will be determined to have jurisdiction over the property and therefore, which State’s statutes will govern the property. As there are many variations in unclaimed property statutes and these statutes dictate the treatment of the property; hence, the disposition of the property can be different.

The interstate dispute is over hundreds of millions in funds related to official checks reported by MoneyGram and remitted as unclaimed property to Delaware. If the official checks are deemed “similar instruments,” under the FDA, then they would be escheated to the state where the instruments were sold. The FDA lays out “money orders and traveler’s checks do not, as a matter of business practice, show the last known addresses of purchasers of such instrument;” purchasers substantially live in the states of purchase; and the “cost of maintaining and retrieving addresses of purchasers of money orders and traveler’s checks is an additional burden on interstate commerce” as it has been determined “most purchasers reside in the State of purchase.”



The history of *DELAWARE V. PENNSYLVANIA AND WISCONSIN* is available on the SCOTUS blog website.<sup>2</sup> The court previously appointed a special master to delve into this. On July 23, 2021, the special master’s interim report with recommendations was published.<sup>3,4</sup>

<sup>1</sup> The Federal Disposition of Abandoned Money Orders and Traveler’s Checks Act (the “Federal Disposition Act”), 12 U.S.C.A. § 2501, et al., enacted in October 1974

<sup>2</sup> <https://www.scotusblog.com/case-files/cases/delaware-v-pennsylvania-and-wisconsin/>

<sup>3</sup>

[https://www.supremecourt.gov/DocketPDF/22/22O145/185482/20210802111321015\\_22-145%20First%20Interim%20Report.pdf](https://www.supremecourt.gov/DocketPDF/22/22O145/185482/20210802111321015_22-145%20First%20Interim%20Report.pdf)

<sup>4</sup> An executive summary of the report published by Alston & Bird makes for quicker reading.

State entitlement to escheat or take custody is laid out in section 2503 of the FDA.<sup>5</sup> It specifies that for sums payable on money orders, traveler’s checks, and other similar written instruments where the books and records indicate the State where the covered instruments were purchased, then “that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument.”

Jurisdiction to escheat or take custody of unclaimed property is laid out in the FDA. After which that State’s statute is applied.

Whereas, if the books and records of a liable company do not show the State where the covered instrument was purchased, then the State of the company’s principal place of business is “entitled to escheat or take custody of the sum payable on such money order, traveler’s check, or similar written instrument.” Further, included in the FDA are provisions on how to proceed if there is a situation where a State that would be first in line for the escheat of sums payable for covered instruments does not actually provide for escheat, if relevant.

While third party bank checks are expressly carved out of the FDA; conversely, money orders and traveler’s checks are explicitly included. It remains unclear what an “other similar instrument” is. If it is deemed to be included under the FDA, and the state of purchase is known, then the sums payable should have been escheated to the State of purchase.

There is a lot of money at stake here for States. Based on the impending SCOTUS ruling, there may be no changes needed and Delaware keeps the funds. Conversely, a redistribution of escheated sums could

be ordered. Undoubtedly, unclaimed property holders would like for the forthcoming ruling to add clarity and define what rules for escheatment should apply.

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<sup>5</sup> 12 U.S.C.A. § 2503