

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA **FILED**
IN AND FOR THE COUNTY OF MARICOPA 2-24-10 4:03 PM
MICHAEL K. JEANES, Clerk
By B. Navarro
Deputy

IN THE MATTER OF:

WESTERN UNION FINANCIAL SERVICES, INC.

Case No: CRIM. MISC.

**ORDER APPROVING
SETTLEMENT AND
APPOINTING MONITOR**

The State of Arizona *ex rel.* TERRY GODDARD, Attorney General (“State”), and WESTERN UNION FINANCIAL SERVICES, INC. (“Western Union”), having applied for the appointment of a Monitor, and whereas:

1) The State and Western Union have agreed that the public interest would be served by their entering a Settlement Agreement (“Agreement”).¹ One of the terms of that Agreement is the appointment of a Monitor.

2) The Agreement calls for payments by Western Union to the State and for an independent Monitor with substantial duties relating to evaluating and improving Western Union’s anti-money laundering efforts.

3) The duties the Agreement assigns to the Monitor require the engagement and supervision of substantial personnel, and creation by the Court of a Monitor account that permits the payment of the Monitor’s necessary expenses from that account under the Agreement.

4) The Monitor’s duties under the Agreement and Western Union’s duties to the State under the Agreement call for substantial information exchange. The Court finds that the transaction data that Western Union is required to produce in Paragraph 17 of the Agreement and in Paragraph 32.5 of the Monitor Engagement Letter implementing the

¹ Capitalized terms used in this Order have the meaning defined in the Agreement.

Agreement, which includes full transaction data relating to all person-to-person transactions sent to or from authorized delegate/Agent locations within the Southwest Border Area from January 1, 2005, to the present and throughout the term of the Monitor's Engagement involving transactions in amounts of \$500 or more, is reasonable in scope because:

a) it is reasonably necessary for the Monitor and the State to understand the context of present transaction data and to know what effect the Monitor's Recommendations are having or that other additional or different Recommendations would be likely to have;

b) the same materials and transaction data are relevant to the investigation of money laundering for the same reason, because the success of Western Union's Undertaking, including the Monitor's Program, is part of the investigation of Western Union;

c) the Monitor may provide data to representatives of the Southwest Border states to allow the Monitor to elicit information from the states necessary for the Monitor to determine what Recommendations are appropriate;

d) the State must have access to comprehensive data to determine whether Western Union is in full compliance with the border-wide duties imposed on Western Union by the Agreement.

5) This Court has authority to enter this Order under Ariz. Const. art. VI, § 24, the Rules of Civil Procedure, A.R.S. §§ 12-123, and A.R.S. § 13-2314.

GOOD CAUSE APPEARING, IT IS ORDERED:

APPOINTMENT OF MONITOR

That Marcy Forman, or such corporate entity that she may choose to create for this purpose, is appointed as Monitor, with direction and authority to accomplish the following:

- 1) open and maintain an account for the receipt of payments from Western Union via the Clerk of the Court and for the payment and accounting for all Monitor expenses;
- 2) assemble and direct any personnel reasonably necessary to assist in the proper discharge of the Monitor's duties;
- 3) determine whether Western Union is in compliance with the terms of the Agreement and its implementing Monitor Engagement Letter and submit an Implementation Plan, periodic reports and a final evaluation in a Final Report, all pursuant to the terms of the Agreement and Monitor Engagement Letter;
- 4) include in each report a detailed financial accounting of all of the Monitor's activities and expenses to date and of all Western Union expenses that the Monitor has determined were made to implement the Program Recommendations or to enhance the Program, as described in Paragraph 23.1.2 of the Agreement;
- 5) cooperate with reasonable requests for information or assistance from any Southwest Border Area law enforcement agency, from the Arizona Department of Financial Institutions, or from Western Union consistent with the Monitor Engagement Letter.

That the Monitor shall prepare and serve such reports as are required by the Monitor Engagement Letter, as agreed to between the State and Western Union in the Agreement, or as required by the Court. Before filing any such reports with the Court, the Monitor

shall submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

That within ten days after being served with notice of the filing of a report, any party may serve written objections thereto or requests that all or portions of the report be filed under seal upon the other parties. Application to the Court for action upon the report and upon objections thereto or requests relating to sealing shall be by motion and upon notice as prescribed in Rule 6(c), Ariz. R. Civ. P.

TERMS OF ENGAGEMENT

As particularizations of the above five obligations:

- 1) Monitor's Account
 - a. The Monitor shall open an account at a financial institution that does business in Arizona (the "Monitor's Account") through which the Monitor will conduct all Monitor business.
 - b. The Clerk of the Court will transfer funds into the Monitor's Account as directed by the Court, starting with an immediate deposit of \$1,500,000 for start-up expenses and replenished thereafter based on the Monitor's periodic reports.
 - c. The Monitor shall have exclusive control over the Monitor's Account, and shall be responsible for the expenditure and auditing of the Monitor's Account as the Monitor uses those funds to carry out this Court's orders.
 - d. The Monitor shall file with the Court every six months a detailed financial accounting of all of the Monitor's activities and expenses to date, including an inventory of all property purchased, rented, or leased with Monitor's Account funds.
 - e. The Monitor shall, as needed, apply to the Court for subsequent orders replenishing the Monitor's Account. In each such application, the Monitor shall request

such additional monies as the Monitor projects will be needed before the Monitor's next application, if any.

2) Employment terms

The Monitor shall take charge of the Monitor operation in general for the entire period of the Monitor's Engagement, as described in the Agreement, and, in particular:

a. The Monitor shall have the authority to employ or contract for the services of personnel, including but not limited to legal counsel, consultants, investigators, and experts, that the Monitor deems reasonably necessary to assist in the proper discharge of the Monitor's duties as specified in the Monitor Engagement Letter. While the Monitor must provide Western Union and the State an opportunity to perform routine conflicts checks on individuals or entities the Monitor proposes to engage, if neither asserts a reasonable belief that a conflict exists within two weeks, the Monitor may proceed to engage that person.

b. The Monitor shall have authority to set reasonable compensation and expenses of the persons engaged by the Monitor. The Monitor may consult with the parties or any other person on hiring, but retains ultimate control of hiring, subject to the terms of the Agreement and the Monitor Engagement Letter. While the Court expects the Monitor and the persons engaged by the Monitor to provide services on a schedule similar to that of a senior Maricopa County employee with regard to hours, sick leave, and vacation days, it is within the reasonable discretion of the Monitor to engage people on a part time or hourly basis, as well.

c. The Monitor and any persons hired or engaged by the Monitor shall be paid through the Monitor's Account, as with all other Monitor expenses. The Monitor may hire or engage personnel at their respective typical hourly rates or a reasonable fee determined by the Monitor.

d. The Court approves the Monitor's annual compensation of \$300,000 per year, from which the Monitor shall pay any health care, health or life insurance, and other employee-related benefits.

e. The Monitor and Monitor's staff are entitled to reimbursement from the Monitor's Account for travel expenses at no higher rate than in accordance with federal employee travel reimbursement policies.

f. The Monitor shall serve until the expiration of the Monitor's Engagement as described in the Agreement, or until relieved by the Court after an evidentiary hearing. If the Monitor chooses to resign prior to such expiration, the Monitor shall provide sixty (60) days written notice to the parties and the Court to provide time to retain a replacement.

g. At the conclusion of the Monitor's Engagement, any equipment or other property purchased by the Monitor shall become the property of the State and the Monitor shall arrange to have it all delivered to the State's representative with a current version of the inventory that the Monitor has periodically produced to the Court.

SETTLEMENT AGREEMENT

IT IS FURTHER ORDERED accepting and approving the Agreement in all respects, including, but not limited to, and accepting Western Union's waivers in Paragraphs 11 and 12 therein.

FUNDS

IT IS FURTHER ORDERED that Western Union shall:

1) Transfer \$21,000,000 to the fund established pursuant to A.R.S. § 13-2314.01 for the benefit of the Arizona Attorney General's Office, Arizona Department of Public Safety, and Phoenix Police Department for expenditure for investigations and prosecutions of money laundering in the Southwest Border Area, and related expenses as

permitted by A.R.S. § 13-2314.01, commencing on the first banking day of the first calendar month after it signs this Agreement with an initial payment of \$3,000,000 and continuing monthly installments of \$3,000,000 until the full amount has been paid, except in the event of the filing of an action or prosecution after a breach, as described in the Agreement;

2) Commit \$23,000,000 for the non-law enforcement expenses of Western Union's Undertaking, as described in the Agreement, and promptly transfer \$4,000,000 of that amount to the Clerk of the Court for use in paying the expenses of the Monitor as directed by the Court.

IT IS FURTHER ORDERED that the Clerk of the Court shall create a separate interest bearing account for this \$4,000,000 and shall add the interest to the account as it accrues. In the event that any money remains in this fund at the time of the termination of the Monitor's Engagement, the Clerk will transfer the balance to the fund established pursuant to A.R.S. § 13-2314.01 for the benefit of the Financial Crimes Task Force.

TURN OVER TO MONITOR AND STATES

IT IS FURTHER ORDERED that Western Union, upon service of this Order upon them, shall deliver to the Monitor or the Monitor's duly authorized agent, and to the State, the materials described in Paragraph 17.1 of the Agreement and the data described in Paragraphs 32.4 and 32.5 of the Monitor Engagement Letter implementing the Agreement, which includes full transaction data relating to all person-to-person transactions sent to or from authorized delegate/Agent locations within the Southwest Border Area from January 1, 2005, to the present and throughout the term of the Monitor's Engagement involving transactions in amounts of \$500 or more.

IT IS FURTHER ORDERED that Western Union, upon the written request of any Participating State, as that term is defined in Paragraph 23.2.2 of the Agreement, shall

deliver to that state such materials described in Paragraph 17.1 of the Agreement, which includes full transaction data relating to all person-to-person transactions sent to or from authorized delegate/Agent locations within the Southwest Border Area, or such additional areas of the Participating State as that state requests in writing, from January 1, 2005, to the present and throughout the term of the Monitor Engagement involving transactions in amounts of \$500 or more, as may pertain to that requesting state.

IT IS FURTHER ORDERED that Western Union shall supply the transaction data to the State and to the Participating States in the manner described in Paragraph 32.6 of the Monitor Engagement Letter, Exhibit B to the Agreement, if and to the extent indicated by the conditions stated in the Monitor Engagement Letter.

INFORMATION SHARING

In order to preserve the privacy of the data and information involved:

1) All transaction data or investigative information that is received pursuant to this Order by an agency represented on the Executive Board may be shared with another law enforcement or prosecutive agency only if such other law enforcement or prosecutive agency agrees to keep such transaction data or investigative information confidential to the maximum extent permissible under law.

2) No agency represented on the Executive Board shall disclose such transaction data or investigative information pursuant to a request by a non-law enforcement person or entity other than the Monitor if that agency obtained the information or material pursuant to an agreement that it would be kept in confidence to the extent permissible by the applicable state laws or unless disclosure is required by a court of competent jurisdiction.

3) To the extent permitted by the respective public records laws applicable to any agency represented on the Executive Board, information produced pursuant to this

Order that is exchanged between the Monitor and such agencies, or among such agencies, will be considered by the Monitor and by the agencies to be law enforcement investigatory materials and/or otherwise confidential and exempt from disclosure under the applicable public records laws.

4) Subject to the above, information about the finances of the Monitor shall be made public to the maximum extent permitted by law, unless release of the information could compromise ongoing law enforcement investigations, law enforcement sources, law enforcement methods, or the safety of law enforcement personnel.

INDEMNIFICATION

IT IS FURTHER ORDERED approving the indemnification agreement between Western Union and the Monitor.

PAYMENTS

IT IS FURTHER ORDERED that the Monitor and all personnel hired or contracted with by the Monitor as herein authorized are entitled to reasonable compensation for the performance of duties pursuant to this order and for expenses incurred by them, as limited by the Monitor Engagement Letter and approved by the Court, which shall be paid out of the Monitor's Account established pursuant to this Order. The Monitor shall serve on the parties each request for replenishment of the Monitor's Account, with the first such request filed no more than sixty days after the date of this Order. The Monitor shall not increase the rates used as the base for such requests without prior approval of the Court.

DATED this 24th day of February, 2010.



THE HONORABLE TIM RYAN
MARICOPA COUNTY SUPERIOR COURT JUDGE

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest Feb. 24 20 10
MICHAEL K. JEANES, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa.

By Bnarrano Deputy

ORIGINAL and TWO COPIES lodged
this _____ day of February, 2010, with:

HON. TIM RYAN
Judge of the Superior Court
Phoenix, AZ 85003

COPY of the foregoing mailed this
__ day of February, 2010, to:

And upon signing and filing of the
Order, conformed copies were
mailed to the above in addition to the
following individuals:

Timothy Nelson
Office of the Attorney General
1275 W. Washington
Phoenix, Arizona 85007

Larry Hammond
Osborn Maledon, P.A.
2929 N. Central Avenue, Suite 2100
Phoenix, AZ 85012-2793

Monitor Marcy M. Forman _____

Indemnification Agreement

February 11, 2010

Marcy M. Forman
14322 Cartwright Way
North Potomac, MD 20878

Dear Ms. Forman:

As you know, Western Union Financial Services, Inc. ("Western Union"), and the State of Arizona ("Arizona") are currently involved in the negotiation of a Settlement Agreement, which contemplates your acting as an independent Monitor of Western Union's anti-money laundering program. As currently structured, the settlement also contemplates: (1) an agreement among Arizona, the State of California, the State of New Mexico, and the Office of the Attorney General for the State of Texas, which forms the Southwest Border Anti-Money Laundering Alliance ("Alliance") for the purpose of enhancing money laundering investigations and prosecutions in the Southwest Border Area ("Alliance Governing Agreement"); (2) an agreement between the Center for State Enforcement of Antitrust and Consumer Protection Laws, Inc., a Wisconsin nonprofit corporation (the "State Center"), and an Authorized Representative of the Executive Board of the Alliance, for the purpose of administering the funds of the Alliance ("State Center Agreement"); and (3) an agreement between the States of California, New Mexico, and Texas and Western Union for the purpose of implementing portions of the Settlement Agreement ("Multistate Cooperation Agreement"). The Settlement Agreement must be approved by the Maricopa County Superior Court.

In consideration of your agreement to act as Monitor under the terms of the Settlement Agreement and Monitor Engagement Letter (the "Letter"), Western Union agrees to defend, indemnify, and hold you harmless from and against any claims by third parties arising out of any of your acts or omissions in the course of your duties as Monitor. Further, Western Union agrees to defend, indemnify and hold harmless any person whom you may employ to assist you in the performance of your duties as Monitor from any claims by third parties arising out of such person's acts or omissions in the course of their duties assisting you as Monitor. "Third parties" refers to any person or entity who is not a party to the Settlement Agreement or any of the documents related to the Settlement Agreement, including the Alliance Governing Agreement, the State Center Agreement, and the Multistate Cooperation Agreement. The indemnification obligation set forth above includes the obligation to pay (a) reasonable attorneys' fees, court costs, expenses and the costs of appeal you or your colleagues may incur in defending a covered claim and (b) any money you or your colleagues may ultimately be ordered to pay resulting from a covered claim.

Finally, Western Union agrees to pay you your salary and/or other compensation due to you under the terms of the Letter should an injunction or other court order prevent you from performing your duties thereunder through no fault of your own.

Very truly yours,



David Schlapbach
Executive Vice President and General Counsel