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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

IN RE BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	) Case No. 21-MD-02992 LAB-MSB
This Document Relates to All Actions	)

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VIDEO-RECORDED DEPOSITION OF JANE CLONINGER

Wednesday, June 11, 2025

San Francisco, California

Stenographically Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 7413877

A. Yes.

Q. Okay. During that time at Edgar, Dunn and Company, what was -- who were your clients? Not -- not the names, but, just generally, what kinds of companies were they? 09:47:04

A. I did a lot of work for the different payment brands. I did work for some processors, some startups, some -- some of the acquirers.

I -- I did work in the U.S. I did work in Europe and in Australia as well. 09:47:29

Q. Okay. Were you based in San Francisco the entire time?

A. Yes.

Q. Okay. And did you -- during your time at Edgar, Dunn and Company, did you do any work for any 09:47:37 card issuers?

A. I did.

Q. You did?

A. Mm-hmm.

Q. And just try to answer with a "yes" or 09:47:45 "no."

A. I'm sorry.

I -- yes.

Q. How many card issuers did you do work for, approximately? 09:47:55

A. I have no idea.
Q. Okay. Did you do any work with the -- for those card issuers on projects that involved EMV chips?
A. Yes. 09:48:04
Q. Okay. How many of those?
A. Again, I don't know. I mean, I did -- most of my work that -- in the U.S. for EMV wasn't directly with the card issuers. It was with the card brands. 09:48:18
And I did a lot of work for both of the card brands, the major card brands, Mastercard and Visa, on developing business cases and understanding the U.S. market and deployment plans, how they might work through this market to implement EMV. 09:48:39
Q. Okay. And we'll get the -- to that in a moment. But, first, in your work with the card issuers while you were at Edgar Dunn, did I understand you correctly to -- to say that your work with card issuers was a smaller part of your EMV work? 09:48:53
A. Yes. Most of -- well, my work in the U.S. in -- in -- so I worked with one -- at one major bank. It was a bank that had a focus on -- had a large government portfolio, a commercial card 09:49:12

A. Yes.

Q. Within each portfolio, did you do a separate business case for different products within the portfolio?

A. No. 09:51:48

Q. Okay. What is a "business case," as you use the term?

A. A business case is an analysis that looks at the costs of a new project, whatever those may be, and the benefits of doing it and calculates the 09:52:08 net incremental difference between the current process and whatever this new one will be and calculates a net present value and breakeven.

And it determ- -- makes a determination whether it makes economic sense to move forward. 09:52:31

Often, especially with EMV, it also looked at intangibles, things that couldn't be quantified.

Q. What types of intangibles?

A. Things like the -- the welfare of the consumer, what's best in -- you know, of the -- the 09:52:51 co- -- the user experience, security, safety, the payments, the -- the risk to the payment system of not having something that is secure, the trust that has to be there for payment cards.

Q. Okay. 09:53:11

So you mentioned a cost benefit analysis.
A. Mm-hmm.
Q. What were the types of costs that went into this analysis?
A. Well, the primary cost for an EMV business case is the cost of the new cards. So the -- the chips especially are the primary element. 09:53:18
There are also costs associated with things like updating consumer communications, updating systems. You have to update the authorization system, the customer service system, a number of system upgrades. 09:53:40
There are -- are tweaks. Modifications are needed to set different pa- -- the parameters differently. 09:53:54
And then updating and training the customer service reps that are dealing -- that both their system and their card management system has to be upgraded.
So there's a -- a number of -- of changes throughout the operational processes that have to be made. 09:54:06
Q. So when you were doing these business cases, the information about all of those costs that you mentioned, were you the one determining what 09:54:19

was -- the major focus was EMV.

Q. And -- and we were talking about business cases before we went off the record. What was the purpose of the business case? Like, once you delivered it to the -- the client, what did they do with it? 10:00:35

MS. C. CHAN: Objection.

THE WITNESS: They used -- some of it was used internally for helping them make decisions about how they were going to approach the different markets. In Canada, it went immediately to the board, and the board decided to go to EMV, so it was an immediate decision to start migration to EMV. 10:00:47

In the U.S., it was more -- a lot of prep than helping them think through the issues and set their timing. And then updating -- we updated the business case several times before they finally decided to come out with their -- their mandates and the liability shift. 10:01:16

BY MS. Y. CHAN: 10:01:31

Q. What kinds of updates?

A. We just started over from the beginning, updated every assumption and recalculated the business case.

Q. What prompted the need to update and start 10:01:39

over?

A. I'm not sure I know other than internally, they had decided they wanted an update because things change in the market.

Q. And with the updates, then the -- the output of the -- of the business model was different? 10:01:49

A. Similar, but different. Yes, it would have -- it was getting -- each time it got more positive. 10:02:01

Q. What do you mean by --

A. Mean --

Q. -- "positive"?

A. -- meaning that the benefits got stronger. And at the same time, the costs of chips were dropping. So the actual business case became more positive and -- and stronger case for moving to EMV. 10:02:12

Q. Okay. So to be clear, you were not the one making the decision about whether to convert any of these programs to EMV; correct? 10:02:33

A. Correct.

Q. Okay. And in the U.S., in the scenarios that you described where the business cases were updated, your clients did not respond to the first business case by immediately adopting EMV chips; is 10:02:43

that correct?

MS. C. CHAN: Objection.

THE WITNESS: I don't think they ever intended to respond at that time. But, yes, they did not -- no, they did not respond. 10:02:53

BY MS. Y. CHAN:

Q. Okay. Do you know what other considerations, in addition to the business case, went into the decision about whether to convert to EMV chip technology? 10:03:02

A. Well, I think a lot of the nonquantifiable parts of the equation were extremely important. It's very important for the payment system, for cards, to be us- -- to be used everywhere. Ubiquity is way -- the way we refer to it. And it's -- it 10:03:26 had gotten to the point in the U.S. that you couldn't -- people traveling from the U.S. to Europe couldn't use their cards because they were magstripe, and Europe had already conv- -- had already converted and were no longer accepting in 10:03:46 many places magstripe cards.

And -- for example, I was at a conference, it's a big conference every year in Paris. And a bunch of very senior executives in the payments industry were standing in line trying to get cards 10:03:59

positive business case where benefits exceeded costs?

A. That's not my testimony.

Q. Okay. Did any of the earlier business cases produce a positive business case where benefits exceeded costs? 10:06:03

A. I don't remember. I know they got stronger each time. But I don't remember the point in time in which they crossed over.

Q. Okay. In your experience doing business cases with clients, did your clients immediately adopt EMV chip technology as soon as the benefits were shown to exceed the costs? 10:06:19

MS. C. CHAN: Objection. Compound.

THE WITNESS: I think clients used the business case as one of many parts of their decision. That's my impression. 10:06:34

BY MS. Y. CHAN:

Q. Okay. When you were putting together your business cases -- and -- and how many did you do while you were at Edgar -- 10:06:48

A. I don't know.

Q. Approximately.

A. I have no idea.

Q. Okay. When you were putting together your 10:06:54

numbers that go into the business case.

Q. Okay.

A. It's -- it's the core part of the business case.

Q. And the models that come -- or the numbers that come out of the models, those differ for each issuer; correct? 10:10:45

A. They can vary on the size, the number of cards will define the costs, so yes.

Q. And what the business case looks like also differs for each issuer? 10:11:00

A. The elements are all the same, so they look very similar. But it -- it'll vary by scale.

Q. Right. The output differs?

A. Right. 10:11:18

Q. So you wouldn't take a -- a business case that you did for one card issuer and then go to a different one and say I already did the analysis, this applies to you?

A. No, never. 10:11:26

Q. At the completion of the business case, would there be a recommendation or some sort of proposal that went along with it?

A. There would be a delineation of what it meant to -- you know, to go forward, or this is not 10:11:46

a positive business case or this is a positive business case --

THE COURT REPORTER: This is not a?

THE WITNESS: Positive business case or it's not a positive business case. It makes sense to go forward. It -- it might not make sense to go forward. You need to weigh the costs here and the intangibles and make a decision. So we would be laying out the parameters and leaving the decision to the client. 10:11:58 10:12:14

BY MS. Y. CHAN:

Q. Okay. And just to try to keep your voice up.

So we talked about different models and different outputs for each issuer, but each issuer also has different portfolios; correct, different products? 10:12:24

A. Yes.

Q. Okay. And so, each of those products would also require their own model and business case? 10:12:34

A. No.

Q. Each portfolio would require its own model and business case?

A. We looked at all of credit together. So 10:12:42

losses. Is -- are those some of the -- sorry, some of the benefits -- let me start over.

We talked about the costs. So let's talk about the benefits. Are -- is the avoidance of fraud loss one of the benefits that goes into your business case? 10:15:37

A. It's the primary benefit.

Q. Okay. Where does that information come from when you're doing a business case?

A. Well, first, we have to look at historical fraud losses. And we're only interested in card-present counterfeit fraud because it's the only fraud that EMV addresses. So we would look at historical, and then look at -- and work with the clients to develop the fraud curves that they would expect on, kind of, a do nothing scenario. So stay with magstripe, this is what we expect. 10:15:45 10:16:06

And then we would look -- use that as a baseline and say based on what we know from other markets, as they converted, this is what happened to fraud. And it started declining at -- at a certain amount of intersection of -- of cards and merchants. And so, then we would develop various scenarios based on historical markets on data and vet those with the client. 10:16:24 10:16:47

Q. And that data about fraud loss attributable to card-present counterfeit fraud, is that data that was provided to you from the client?

A. Yes.

Q. So you did not look at their overall fraud 10:16:57 loss data and do your own determination about what part of it could have been provided by a chip; correct?

A. We know -- it's well known and well accepted that what EMV addresses is only 10:17:10 card-present fraud, counterfeit fraud. So that's the only category of fraud that we looked at because nothing else is material.

Q. But when you looked at that fraud, it -- the information came from the client, you did not do 10:17:29 your own and analysis of whether there was fraud that would have been provided by a chip; correct?

A. We did our own analysis of how much fraud was going to be prevented by EMV. So I --

Q. Let me rephrase. 10:17:48

So when you're working with a client, let's say that -- let's start off with their overall universe of fraud loss, not all of that is card-present counterfeit fraud; correct?

A. Right. They have other types of fraud. 10:18:04

Q. Okay. And you only looked at the card-present counterfeit fraud; is that -- is that --

A. It's the only -- it's the only type of fraud that was relevant. 10:18:13

Q. Were you the one that identified from that universe of data which portions of that were attributable to card-present counterfeit fraud, or did someone at the client give you the information?

A. Someone at the client typically gave the information. They would have their fraud experts develop that. 10:18:25

Q. Okay. So their fraud experts would look at their overall universe of fraud loss and make their determination of what fraud they think a -- an EMV chip would have prevented; correct? 10:18:37

A. Correct. And then we would vet that -- they would vet that with -- in the U.S. they would vet that with their various issuers. We would vet it against industry information. So if we had questions, we'd push back. 10:18:50

Q. But just your starting point is working with data that they gave you?

A. Exactly.

Q. Okay. And you were not doing your own 10:19:05

analysis of clients' fraud loss data to determine what portion of that loss would have been avoided by an EMV chip; correct?

A. I am relying on the starting point is -- is the client's own internal data. 10:19:20

Q. Have you ever worked with any client on the actual implementation of EMV chip technology for a program?

A. No. It gets into the -- mostly the technical side of it, and I am not a technical -- 10:19:39 I'm a -- I'm a business strategy/product innovation kind of person.

Q. Okay. Is there a particular methodology that the business case model follows?

A. I know -- I mean, it follows business case 10:20:04 methodology that, you know, is typical for any kind of business case.

But there's no -- you can't go Google it up and come up with a methodology. That -- it -- it was something that we created to fit the 10:20:18 circumstances of the decision being made.

Q. Okay. It was created at Edgar Dunn?

A. Yes.

Q. Are you aware of whether any other companies or anyone else in the industry was using 10:20:30

Q. Okay. Did that work involve any EMV chips or card technology?
A. It was pre-EMV.
Q. Okay. And any -- no experience running a government benefits card program? 10:29:46
A. No.
Q. Did you have any experience with payment cards or payment card programs during the COVID-19 pandemic?
A. I was retired during the COVID-19 pandemic. 10:30:01
Q. So you -- you testified that you have been -- you've been deposed in six cases.
Were all of those as an expert witness?
A. Yes. 10:30:16
Q. How many other cases have you been retained as an expert for in which you did not testify?
A. I've been -- well, I had two others that I testified, not in deposition, but in mediation or arbitration. 10:30:32
In total, I've done 12 cases. So there were four, I guess. Is that right? There were six -- yeah, so four that I didn't testify at all.
Q. Okay. And we've talked about one of those 10:30:49

case?

A. That's correct.

Q. Okay. How many hours have you spent on this case?

A. I have no idea. 10:35:05

Q. How much have you been paid?

A. I have been paid -- I have some invoices outstanding, but it's probably -- with those, it's probably around $130,000. Something like that.

Q. Okay. And does any part of your 10:35:14 compensation depend on the outcome of this case?

A. No.

Q. For the invoices -- invoices that are outstanding, do you know why they're still outstanding? 10:35:27

A. Because I only sent them recently.

Q. When were you retained?

A. Oh, in the fall of '23, I think it was.

Q. Okay. And who contacted you about this case? 10:35:37

A. I'm not sure who the exact contact -- I'm not sure if it was Brian Danitz or if it was someone else and then he was the person that I ended up talking to.

[redacted]

[redacted]

Q. Is there anything that you were asked to consider at any point that did not make it into one of your reports? 10:36:10

MS. C. CHAN: Objection. Vague. Confusing.

THE WITNESS: Yeah, I don't -- I don't know how to -- I can't think of an answer to that, so... 10:36:22

BY MS. Y. CHAN:

Q. Sure.

Are there any topics or questions that you were asked to opine on that you did not address in your reports? 10:36:28

A. I don't think so, no.

Q. Okay. Are there any opinions that you have developed or offered at any point after you were retained that did not make it in -- into one of your reports? 10:36:42

A. I don't think so.

Q. Okay. Any opinions that you put in an initial draft, for example, that you then took out? 10:36:55

MS. C. CHAN: Objection.
THE WITNESS: I don't think so.
BY MS. Y. CHAN:
Q. Okay. Let me show you what we've premarked as Exhibits 1 and 2. These are your two reports in this case. 10:37:10
And did you draft these reports?
A. Yes, I drafted these reports.
Q. Okay. Did anyone help you?
A. Well, I drafted them and worked with my attorneys here to edit and refine and -- but everything is, you know, subject to my final approval. 10:37:25
Q. Yeah. Did anyone else other than the attorneys help you with the report? 10:37:39
A. No.
Q. Okay. Did anyone rewrite any portions of your reports?
A. No. I mean, my -- the edits would have rewritten pieces, but those I reviewed and made share I was totally comfortable with. 10:37:49
Q. Did any of those edits change the substance of your opinion?
A. No. They just helped it communicate better. 10:38:03

Q. Okay. Did any of those edits change the nature of the opinion?

A. No.

Q. Okay. Did any of those edits add a new opinion that you had not included in a prior draft? 10:38:09

A. I don't think so. I think we refined it also as we went through the process to reflect what we were learning through the other -- through the exchange of documents, so...

Q. And you also submitted two declarations in 10:38:28 con- -- in connection with the class certification briefing in this case.

Do you recall that? Not -- not the one --

A. I'm just looking at what you had, to see what you have here. 10:38:43

Yes, there was a -- a -- a -- a report for class certification.

Q. Okay. And did you draft those two declarations?

A. Yes. 10:38:51

Q. Did anyone help you with those?

A. The same as with these.

Q. Okay. Have you reviewed those recently?

A. I looked at them some in the last few days. 10:39:00

Q. Is there anything that you offered in those class cert declarations that you want to change now or that you now disagree with?
A. I don't think so.
Q. Okay. Have any of those opinions changed? 10:39:13
A. I don't think so, no.
Q. And did you review the two reports in front of you in pre- -- in preparation for today?
A. Yes.
Q. Did you see anything in there that you wanted to correct or change? 10:39:25
A. No.
Q. Okay. What else did you do in preparation for this deposition?
A. Oh, I read through some of the documents that are cited. I did a prep session with the attorneys on Monday. And just reviewed materials. 10:39:34
Q. Did you speak with anyone other than the attorneys in preparation for this deposition?
A. No. 10:40:01
Q. Did you speak with any of the other expert witnesses in this case?
A. No.
Q. Have you ever spoken with any of the other expert witnesses in this case? 10:40:07

Q. Okay. So when you -- when you had that initial conversation with him, did you tell him what kinds of opinions you thought he could contribute to the case?

A. No. 10:41:43

Q. Okay. Have you spoken with any of the Plaintiffs in this case?

A. No.

Q. Did you ever ask to speak with any of the Plaintiffs in this case? 10:41:51

A. No.

Q. Why not?

A. I didn't feel like I needed to.

Q. Did you review any of the Plaintiffs' files, any of their records? 10:42:00

MS. C. CHAN: Objection. Vague.

THE WITNESS: No. I mean, I've read the -- was it -- one of the documents that summarizes all of the Plaintiffs and their stories.

BY MS. Y. CHAN: 10:42:18

Q. The Complaint or one of the versions of the Complaint?

A. Yeah, that's probably what it is. It's a big...

Q. Yeah. It's probably the Complaint. 10:42:24

Did you review any of the class certification briefing in this case?

A. I don't think I've seen that. I've seen my pieces of it, but I haven't seen other pieces of it. 10:42:39

Q. Okay. So you read the Complaint and you -- you understand that the Plaintiffs have alleged that they experienced various transactions that they claim to be unauthorized; correct?

A. A lot of unauthorized ATM withdrawals, 10:42:54 yes.

Q. Did you ask to look at any of the transaction histories for the individuals who are alleging that they experienced those withdrawals?

A. No. 10:43:03

Q. Did you think that might be relevant to your opinion?

[redacted]

Q. Okay. Have you reviewed any of the other expert reports in this case?

A. No.

Q. Okay. 10:43:31

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CERTIFICATE OF REPORTER

I, Hanna Kim, a Certified Shorthand Reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, not in anywise interested in the outcome thereof.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, review of the transcript [X] was [ ] was not requested.

In witness whereof, I have hereunto subscribed my name.

Dated: June 25, 2025.

Hanna Kim CLR, CSR No. 13083