EXHIBIT 98

CONFIDENTIAL UNDER PROTECTIVE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

BLUE FLAME MEDICAL LLC, Plaintiff, v. CHAIN BRIDGE BANK, N.A., JOHN J. BROUGH, and DAVID M. EVINGER, Defendants.	**Civil Action No. 1:20-cv-00658 (LMB/IDD)**
CHAIN BRIDGE BANK, N.A., Third-Party Plaintiff, v. JPMORGAN CHASE BANK, N.A., Third-Party Defendant.	

EXPERT REPORT OF THOMAS C. BAXTER, JR. ON BEHALF OF THIRD-PARTY DEFENDANT JPMORGAN CHASE BANK, N.A.

MARCH 12, 2021

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I. ASSIGNMENT

1. I have been engaged by Wilmer Cutler Pickering Hale and Dorr LLP (WilmerHale), counsel for Third-Party Defendant JPMorgan Chase Bank, N.A. (JPMC). I understand that WilmerHale selected me based upon my expertise in the area of financial services, including as a result of my experience with and knowledge of relevant laws, regulations, regulatory practices, and business practices of the banking industry, and in particular, the rights and obligations of parties to a funds transfer under Article 4A of the Uniform Commercial Code. I have been asked to apply my expertise – including, among other things, as an Advisor to the drafting committee that produced Article 4A – to the facts and circumstances of this case. Specifically, WilmerHale asked me to provide my views about the Expert Report of Charles H. Grice, dated February 12, 2021 (Grice Report), which addresses certain aspects of the rights and obligations between JPMC and defendant Chain Bridge Bank, N.A. (Chain Bridge) with respect to a particular transfer of funds (Wire Transfer).

2. In this Wire Transfer, the State of California issued a payment order that directed the transfer of the sum of $456,888,600 from the State's account at JPMC to Chain Bridge, for the account of a beneficiary described as Blue Flame Medical LLC (Blue Flame). JPMC executed the payment order over the Fedwire system shortly before noon ET on March 26, 2020, and Chain Bridge received the Wire Transfer but ultimately returned it.

3. In this Report, I will address the Grice Report, and in doing so, will also provide some contextual information about wire transfers generally and the Wire Transfer specifically.

4. As reflected in Appendix A, I am being compensated at the rate of $1,000 per hour.

5. I have not testified as an expert during the preceding four years, and my publications over the last ten years are listed in Appendix B.

6. To assist in my understanding of the facts and circumstances surrounding this matter, WilmerHale provided me with certain of the materials produced in discovery in this case; all of the documents that I relied on are referenced or cited below and are listed in Appendix C.

7. My work on the engagement is ongoing, and I reserve the right to supplement or amend this Report should new information become available. I am prepared to testify at trial on the topics addressed in this Report.

II. QUALIFICATIONS

8. I have an international reputation as a financial services expert, which results from more than four decades of work in the industry, including many publications and speaking engagements. I am currently retired, although I remain active in the financial services industry through teaching, writing, and acting occasionally as an expert or as an arbitrator/mediator. Currently, I am a Senior Fellow at New York University Law School, and serve as Vice Chairman of the Committee on International Monetary Law of the International Law Association. I am a member of the American Law Institute and the American Bar Association. I am also currently involved in a project sponsored by the Uniform Law Commission (ULC) to consider drafting a law to govern special deposits. I act as a Co-Reporter to that ULC group, together with one of my former Sullivan & Cromwell colleagues, Senior Partner Michael Wiseman. I also regularly guest lecture at a number of law schools, and have lectured about the global financial crisis at Harvard Law School, Cornell Law School, New York University Law School, and my alma mater, Georgetown University Law Center. While at Sullivan & Cromwell, I also gave an annual guest lecture at Yale Law School about representing a client before a federal regulatory agency. Before retiring from Sullivan & Cromwell in December of 2020, where I was Of Counsel, I provided legal advice to a variety of financial institutions,

including JPMC, regarding subjects ranging from governance and regulatory affairs to payments system issues. I worked at Sullivan & Cromwell from October 1, 2016 until December 31, 2020.

9. Before joining Sullivan & Cromwell, I worked for more than 36 years at the Federal Reserve. From March of 1995 until June of 2016, I served as General Counsel and Executive Vice President of the Federal Reserve Bank of New York (New York Fed). At the time of my retirement from the New York Fed (technically my retirement date is September 30, 2016 because of a mandatory three-month "cooling off" period), I had responsibility for all of the New York Fed's legal affairs, and, in addition, was the executive in charge of other, non-legal functions, including compliance, banking applications, the law enforcement unit (also known as the Federal Reserve Police), and the corporate secretary's function. Throughout this 21-year period, I served on the New York Fed's Management Committee, the highest executive committee of the New York Fed, and reported directly to the New York Fed's President and Chief Executive Officer. In addition, I served throughout this period as Deputy General Counsel of the Federal Open Market Committee, the Federal Reserve's monetary policy making body.

10. Before being appointed to the senior-level positions mentioned in the previous paragraph, I served in different positions within the New York Fed's legal function. I was promoted to an officer position at the New York Fed in 1984, after four years as a staff attorney. My tenure at the New York Fed began in August of 1980, following a one-year judicial clerkship with the Appellate Division of the New York Supreme Court, Third Judicial Department.

11. I graduated from the Georgetown University Law Center in May of 1979, and began my clerkship in late July of 1979 (after taking and passing the New York bar). I have been a member of the New York bar since March of 1980. Before law school, I attended the

University of Rochester in Rochester, New York, and graduated with a Bachelor of Arts degree in June of 1976.

12. The Federal Reserve, like many organizations, divides responsibility for various functions among its component parts. The New York Fed is the Federal Reserve Bank with responsibility for Fedwire, which is assigned to a division called the "Wholesale Product Office" (WPO). The WPO administers and operates Fedwire, which has a component that transfers funds and a component that transfers securities. As the chief legal officer of the New York Fed, I was the person responsible for legal advice given to the WPO from 1995 until 2016. This case concerns a wire transfer that was executed over Fedwire. In my Federal Reserve career, I handled many matters involving Fedwire and know well the rules, regulations, and banking practices that implicate Fedwire transfers of funds.

13. In the late 1980s, it was my work advising Fedwire operations that prompted the Federal Reserve to assign me as an Advisor to a project under the auspices of a body now known as the Uniform Law Commission, on a committee of opinion leaders that included, among others, business representatives and banking industry trade associations. The project was to draft and implement into state and federal law a statute addressing wire transfers, including but not limited to transfers over Fedwire. This statute is Article 4A of the Uniform Commercial Code. The statute governs wire transfers in the United States, and has been incorporated into the federal law that governs Fedwire through the Federal Reserve's Regulation J. Given my role as an Advisor to the drafting committee that produced what is now Article 4A, and my former official positions at the Federal Reserve, I am fully familiar with both Article 4A and Regulation J, as well as the Operating Circular covering transfers of funds over Fedwire, Operating Circular No. 6. Given my detailed knowledge of Article 4A and my role in drafting it, as well as my

official positions from 1984 through 2016, I was personally involved in all material discussions with respect to Fedwire, including discussions with banking institutions that were Fedwire participants, involving specific cases needing the attention of senior management.

14. In addition, in the late 1980s I represented the United States on a working group of the United Nations Committee on International Trade Law (UNCITRAL), when it developed the Model Law on Credit Transfers. This Model Law was heavily influenced by Article 4A. In 1993, two New York Fed colleagues and I wrote a book that addresses the UNCITRAL Model Law and how the Model Law was influenced by Article 4A.[1]

15. Throughout my career as a practicing lawyer, and by reason of my former official positions at the Federal Reserve, I have stayed current on funds transfer matters, and have authored many articles concerning this subject matter. For example, I am one of several co-authors of the American Bar Association's publication *Funds Transfers*, which is now in its third edition.[2] And, shortly after Article 4A was introduced, I participated as an author in a series of articles that was published by *Business Lawyer*[3], concerning discrete topics that were addressed by the statute. Key opinion leaders on the drafting committee wrote this series of *Business Lawyer* articles. In my most recent publication related to funds transfers, titled *Unintended Consequences* and published in *Banking Perspectives*[4], I address implications arising from the fraudulent wire transfer that victimized Bangladesh's Central Bank in 2016, which is the largest

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1 E. Patrikis, T. Baxter, & R. Bhala, *Wire Transfers: A Guide to U.S. and International Law Governing Funds Transfers* (Probus Publishing 1993).

2 T. Baxter, S. Heller, G. Cavanagh & L. Forman, *The ABCs of the UCC Article 4A: Funds Transfers* (3rd ed. ABA 2014) (*Funds Transfers*).

3 T. Baxter & R. Bhala, *The Interrelationship of Article 4A with Other Law*, 45 Bus. Law. (Special Issue) 1485 (1990).

4 T. Baxter, *Unintended Consequences? SWIFT's Customer Security Programme Could Lead to Derisking, Although That Isn't Its Intent*, 6 Banking Persps. 79 (2018).

publicly reported fraud by wire transfer. I worked closely on this notorious wire transfer case shortly before I retired from the Federal Reserve, and addressed in public correspondence certain aspects of the fraud in response to Congressional inquiries. The article surveys some of the public details regarding how the fraud occurred, industry actions to enhance the security of wire transfers after the fraud was revealed, and also a potential unintended consequence of newly enhanced security.

III. SUMMARY OF THIS REBUTTAL TO THE GRICE REPORT

16. I do not know Mr. Grice personally, but understand from reading his report that he asserts expertise in "industry standards and practices concerning wire transfers and recalls", and he advances two core opinions: (a) that JPMC requested, and Chain Bridge agreed to, "a standard wire-transfer cancellation"; and (b) that JPMC's purported cancellation request worked as an admission of liability to Chain Bridge under Section 4A-211(f).[5] I disagree with both opinions.

17. Mr. Grice and I differ in the way we view the interactions between JPMC and Chain Bridge. Chain Bridge convinced JPMC to go along with a reversal of the Wire Transfer, and not vice versa, and therefore JPMC owes no indemnity obligation. In my view, while both banks collectively understood that reversal was an "option" in the situation, it was an option that Chain Bridge had clear and compelling incentives to pursue on its own accord. In coming to this view, I take careful note of the affirmative and unusual steps taken by Chain Bridge – with extensive involvement at the bank's highest executive level – to scrutinize the Wire Transfer and eventually to reverse it. Moreover, as discussed below, based on my expertise and the statutory

[5] Grice Report ¶¶ 3, 16, 21-23.

text, Mr. Grice's opinion would still be incorrect even if the reversal of the Wire Transfer had been a joint decision by Chain Bridge and JPMC.

18. I also do not concur with Mr. Grice's view that JPMC became automatically liable to indemnify Chain Bridge because JPMC did not state "NO INDEMNITY" in its Fedwire administrative message to Chain Bridge.

19. There are three principal reasons why JPMC has no indemnity obligation. First, speaking as one of the architects of Article 4A, indemnification under Section 4A-211(f) contemplates a scenario where the sender is seeking cancellation from the receiving bank (which might be the beneficiary's bank), and the receiving bank complies as an accommodation to the sender. Indeed, the language of Section 4A-211(f) makes clear that it applies only "if the *receiving bank . . . agrees to cancellation* . . . of the order *by the sender*[.]"[6] But that is the opposite of what happened here – Chain Bridge, the beneficiary's bank, directed the reversal, which JPMC, the sender, accommodated – and Section 4A-211(f) is therefore inapplicable. As noted, Section 4A-211(f) would also be inapplicable even if the reversal of the Wire Transfer had been a joint decision by Chain Bridge and JPMC. After all, the reversal in a joint decision scenario would not be initiated "by the sender," as required by Section 4A-211(f).[7]

20. Second, as the language of Section 4A-211(f) makes clear, indemnity applies "[u]nless otherwise provided in an agreement of the parties . . . ."[8] In other words, indemnity applies only in the absence of an agreement. Here, the banks had an agreement as to how to proceed and it did not include an indemnity, as reflected by their discussions and course of conduct. In an exceptional case like this, I look to the record for the substance of what the

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6 U.C.C. § 4A-211(f) (emphasis added).

7 *Id.*

8 *Id.*

bankers agreed to, and that includes the recordings of the conversations between the bankers.[9] Section 4A-211(f) was not intended to provide for *ipso facto* liability under the circumstances here, where the beneficiary's bank was not relying on the sender to communicate the exceptional circumstances requiring reversal. Based upon my expertise, the agreement of the banks involved in the Wire Transfer did *not* include any indemnity.

21. Third, the drafters intended for the indemnification provision to only apply to "loss and expenses . . . incurred . . . as a result of the cancellation. . . ."[10] Section 4A-211(f) was never intended to provide for indemnification relating to actions taken by a beneficiary's bank for other reasons, such as to comply with other obligations – here, in particular, Bank Secrecy Act (BSA) / anti-money laundering (AML) and know-your-customer obligations, as well as capital concerns. Assuming any "loss and expenses" to Chain Bridge, in my view, they would be caused by other actions taken by Chain Bridge to mitigate its own various concerns or by California's decision not to reissue a wire transfer to Blue Flame.

IV. BACKGROUND ON ARTICLE 4A AND REGULATION J, AND THE WIRE TRANSFER

22. Before turning to the specifics of my report, let me provide some background contextual information about Article 4A and Regulation J, based upon my work as an Advisor to the drafting committee and my former official position at the New York Fed. The specific arguments advanced by Mr. Grice need to be evaluated in a larger context, which takes into

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9 As discussed further below, in a telling recording of a Chain Bridge internal discussion about the nature of an agreement between JPMC and Chain Bridge, a Chain Bridge employee asks a direct question about an "indemnity letter". CBB00002789. The employee is told – by either the President or CEO of Chain Bridge (the record is not clear which) – "[D]on't worry about it", and that the Wire Transfer reversal "is what we have to do." *Id.*

10 U.C.C. § 4A-211(f).

account the architecture of Article 4A as well as the unique facts and circumstances of the subject Wire Transfer.

23. As the Prefatory Note to Article 4A[11] makes clear, the statute was drafted to cover what the Note characterizes as a "wholesale wire transfer".[12] This was the "primary focus" of the drafting committee, and the reference distinguished these "wholesale" payments that were overwhelmingly between businesses and financial institutions from "retail" payments that involved consumers.[13]

24. The Prefatory Note to Article 4A also identifies some of the other important policy objectives of the statute. Because the amounts being transferred over the large-value systems[14] were considered large by Article 4A's drafters, it was important that the payment orders being executed were kept secure. Article 4A contains detailed and flexible procedures for incenting the parties to have adequate security.[15] The procedures were perceived to be necessary to enable transfers to be executed electronically, by computers, that would process transfers securely on the same day and at low cost. For all of these policy reasons, Article 4A contains provisions designed to foster the policy objectives by facilitating the straight-through processing of payments by computers (hence the name, wire transfers), and in most situations, without any need for human intervention.

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[11] The Prefatory Note is a part of the official version of the Uniform Commercial Code, and was thoroughly considered by the drafting committee that produced Article 4A. It lays out important architectural details that, in my view, are relevant to the Wire Transfer.

[12] U.C.C. § 4A prefatory note.

[13] *Id.*

[14] The same two transfer systems operate today (Fedwire and CHIPS) as operated when Article 4A was drafted.

[15] *See* U.C.C. § 4A-202 & cmts.

25. This did not mean there is no place for humans in wire transfer processing. There are instances in wire transfer processing where human involvement may occur, as it did in this case.

26. But it bears emphasis that, as of the time of Article 4A's drafting and still today, the vast majority of wire transfers are processed by computers and are not reviewed by humans.

27. Finally, it is important to understand the effect of a wire transfer reversal on the relationship between the originator (the State of California) and the beneficiary (Blue Flame). In many situations, a wire transfer is made to discharge an underlying indebtedness between the originator and the beneficiary. If a wire transfer is reversed or not completed, the originator gets its "money back" and the underlying obligation (if there is one) between the originator and beneficiary is restored.[16]

28. With those features of Article 4A's architecture in mind, let us start with some obvious details about the Wire Transfer. The Wire Transfer in this case is of an extraordinary size – nearly $457 million. During 2020, the average Fedwire transfer was $4.57 million.[17] The subject Wire Transfer was 100 times the size of the average Fedwire transfer during 2020. The amount is extraordinary, and I spent the bulk of my career at the Federal Reserve, where I saw a number of large wire transfers. This is large by any measure.

[16] For a description of the so-called "money back guarantee", see *Funds Transfers*, *supra* note 2, at 41-44.

[17] The Federal Reserve publishes all sorts of statistics about transfers over Fedwire. This $4.57 million figure is the average transfer done over the course of 2020. *Fedwire® Funds Service - Annual Statistics*, The Federal Reserve, https://www frbservices.org/resources/financial-services/wires/volume-value-stats/annual-stats html. You can also assess the average transfer over any individual month. *Fedwire® Funds Service - Monthly Statistics*, The Federal Reserve, https://www.frbservices.org/resources/financial-services/wires/volume-value-stats/monthly-stats html.

29. The Wire Transfer received substantial attention at both JPMC, including because the bank's machines flagged it as anomalous[18], and at Chain Bridge. Fortunately, as discussed further below, the bankers – from both Chain Bridge and JPMC – paid close attention.

30. When the Wire Transfer was reversed, the status quo ante was restored between the State of California and Blue Flame.[19] In assisting the State and, as discussed below, accommodating Chain Bridge with the Wire Transfer reversal, JPMC understood the effect of its actions would be to get California its money back; JPMC received the money back from Chain Bridge and re-credited California's account at JPMC.[20]

31. To view the situation through the eyes of an Article 4A drafter, the status quo was restored in the late afternoon of March 26 to what it was just before noon, and while the "underlying obligation" (if there was one) may have been suspended for several hours during the afternoon when the Wire Transfer was in process, by the end of the day, after the reversal of the Wire Transfer, California's "underlying indebtedness" (if it existed) was fully restored. If the purpose of the Wire Transfer was to discharge an underlying hypothetical indebtedness, and the Wire Transfer is reversed such that the underlying indebtedness is reinstated, the litigation by Blue Flame against Chain Bridge does not make any sense. The drafters' intent as to Article 4A was not to allow Blue Flame to recover from Chain Bridge the supposed debt owed by the State of California. If there was no such debt, requiring Chain Bridge to pay Blue Flame is even more

18 *See, e.g.*, Korpal Dep. 43:18-44:6.

19 A Wire Transfer reversal has an effect on all parties to the funds transfer, and effectively eliminates all of the rights and obligations that would have existed but for the reversal. This is a key reason why reversal implicates the Article 4A architecture.

20 Rakesh Korpal, JPMC's corporate designee, succinctly described this in his deposition testimony when he said, "The recall request was delivered to Chain Bridge Bank. Chain Bridge Bank then returned the funds to JPMorgan Chase. JPMorgan Chase then returned the funds to the State of California . . . at about 4 p m. Eastern." Korpal Dep. 81:8-22.

absurd. Such a result is completely foreign to Article 4A's architecture. I know this because I am one of the architects.

32. In any event, even if Blue Flame has a basis to seek recovery from Chain Bridge, it does not mean that Chain Bridge has an indemnification claim against JPMC; Chain Bridge's liability to Blue Flame is a separate inquiry from indemnification under Section 4A-211(f).

V. THE REVERSAL OF THIS WIRE TRANSFER WAS NOT ROUTINE, AND CHAIN BRIDGE WAS INCENTIVIZED TO REVERSE IT

33. The environment for wire transfers today has more risk than it did when Article 4A was drafted in the late 1980s. In 2018, a prominent group of payments experts, the Payments Market Practice Group (PMPG), observed "[h]ighly publicized cases of cyber-attacks on banks' local infrastructures", and warned that cyber threats "have triggered a clear call to action to the industry to further strengthen its cyber defenses".[21] The fraud perpetrated in 2016 against the Central Bank of Bangladesh led the industry to focus increasing attention on what to do if an unauthorized transfer has occurred. One recommended response has been to devote increased attention to the process of reversal, and to create standardized guidelines for seeking the reversal of wire transfers that are believed to be either fraudulent or unauthorized.[22]

34. A related report from the PMPG takes notice of the special importance for standardized communication in reversing wire transfers that have been accepted by a beneficiary's bank.[23] This report notes what is probably obvious. "Timely action is of the essence in this situation as research has shown that funds normally will be moved [by a

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21 Payments Market Practice Group, *Market Practice Guidelines for the Cancellation of Suspected Fraudulent Transactions and Handling of Compliance/Regulatory Inquiries* 3 (SWIFT 2d ed., 2018), https://www.swift.com/swift-resource/138921/download (PMPG Cancellation Report).

22 *Id.* at 4.

23 Payments Market Practice Group, *Recovery of Suspected Fraudulent Transactions* (SWIFT, 2019), https://www.swift.com/swift-resource/229376/download (PMPG Recovery Report).

beneficiary] within 72 hours or less. The faster the bank chain can react, the greater the likelihood of recovery."[24]

35. Both PMPG Reports describe the paradigm case of a cancellation, which is consistent with my knowledge and experience: where the sending bank, the "debtor agent" (i.e., the originator's bank), seeks to induce action by the beneficiary's bank, the "creditor agent", in returning funds.[25] As I will describe, the situation here is critically different.

36. It is worth pausing to emphasize the size of the Wire Transfer here: In my experience, there is no "typical" request for reversal with respect to a near half-billion dollar wire after the beneficiary's bank has accepted. One specific attribute of a reversal of this size relates to banker discretion. Unlike forward processing, which is intended to be done by machines, the process for reversal after the beneficiary's bank has accepted calls for an exercise of banker discretion – a human judgment. A comment to Article 4A observes that, even with an indemnity, the "beneficiary's bank may be reluctant to alienate its customer, the beneficiary, by denying the customer the funds."[26] With respect to the Wire Transfer, there is nothing more unusual than a $457 million wire transfer. A more routine reversal request would involve a transfer in an average amount, say $5 million, where a debtor (originator) realizes after the fact that it has made an unauthorized payment, or perhaps has become the victim of a fraud. In the more ordinary situation, a debtor/originator's bank might well render assistance on the debtor/originator's behalf, and seek reversal from the beneficiary's bank. As the PMPG Recovery Report illustrates, this is the typical situation where the "debtor agent" (i.e., the originator's bank) has information not available to the beneficiary's bank and may seek

[24] *Id.* at 3.

[25] *See, e.g.*, PMPG Recovery Report at 3; PMPG Cancellation Report at 5.

[26] U.C.C. § 4A-211 cmt. 5.

cooperation from the "creditor agent" (the beneficiary's bank) and incent such cooperation from the beneficiary's bank with an indemnity.[27] This case is not of that type.

37. Here, both JPMC and Chain Bridge were concerned about the subject Wire Transfer. Their collective concern arose from their own respective internal processes, which identified the Wire Transfer as highly suspicious before the State of California realized what was happening. This suspicion relates to what the Chain Bridge and JPMC bankers were thinking at the time, on March 26, up until the reversal. In my view, the bankers were considering, in essence, if the Wire Transfer was "unauthorized" or a "mistake".[28] At the time, the bankers were not adjudicating the issue of whether the Wire Transfer was either of those things (i.e., "unauthorized" or a "mistake"), but rather, they were making a judgment that the facts and circumstances were sufficiently exceptional that there were clear and substantiated doubts. And the bankers' thinking and actions at the time of the Wire Transfer is relevant because, as I have previously explained, the PMPG has identified that there will be times when a party that has made a transfer will realize, after the fact, that "the underlying justification for the payment was a *scam* (romance, inheritance, investment fraud, etc.)."[29] And here, senior executives of Chain Bridge used the word "scam" to describe what they saw in the Wire Transfer and the facts and circumstances surrounding it.[30]

38. For Chain Bridge, there was a mountain of reasons for concern, and there was alarm all the way up to the highest officers of the bank. Extensively involved in this Wire Transfer were the President, the Chief Executive Officer, and the Chairman of Chain Bridge's

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27 *See* PMPG Recovery Report, *supra* note 23, at 5-6.

28 *See* U.C.C. § 4A-211(c)(2).

29 *See* PMPG Recovery Report, *supra* note 23, at 3 (emphasis added).

30 Brough Dep. 282:22-283:5 (reflecting on what type of "scam" this might have been); *see also* Evinger Dep. 204:17-208:5 (testimony about a "scam"); *see also infra* note 48.

board of directors. This level of executive involvement, while in my view extraordinary for a wire transfer, was no surprise to me given the risks that Chain Bridge faced.

39. The risk situation for Chain Bridge in this extraordinary situation is not like other beneficiary banks handling more common reversal requests. Unlike the more common requests, here there were powerful incentives propelling Chain Bridge to reverse the Wire Transfer. I will explain these incentives.

40. First, there is the Wire Transfer's size. This individual Wire Transfer represented about 50% of all the bank's assets; a simple error in handling a wire transfer of this size, for a small community bank like Chain Bridge, could easily deplete the bank's capital and cause it to fail. To put it simply, this Wire Transfer was franchise-threatening for Chain Bridge.

41. Second, Chain Bridge placed a "hold" on the funds before ever speaking to JPMC and did not make them available to the newly opened account, Blue Flame.[31] A Chain Bridge decision to hold[32] the funds could arguably have deprived Blue Flame of liquidity. This can lead to litigation between the bank imposing the hold and the adversely affected bank customer. Here, the Wire Transfer was reversed instead, which Chain Bridge may have believed relieved it of exposure to any potential claim for lost liquidity because there would be no credit balance.

42. Third, Chain Bridge's own wire transfer policy required that the Wire Transfer be returned. The policy provides: "If there is any question as to the beneficiary's right to the funds,

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[31] CBB00000728 (email from David Evinger of Chain Bridge instructing Jennifer Lincoln of Chain Bridge, "Place HOLD on funds" at 12:07 p m. on March 26); Evinger Dep. 232:2-236:14; Brough Dep. 76:12-77:18, 196:12-198:4 . Banks use different ways to implement a "hold" on the proceeds of a wire transfer. Some may post the credit to a suspense account, and others, like Chain Bridge, reflect the credit as a "memo post". *See* Evinger Dep. 260:7-11. The important point for this discussion is that the customer does not have liquidity – it does not have access to the funds. *See* Brough Dep. 196:19-197:11.

[32] Chain Bridge's Chief Executive Officer, John Brough, explained: "If we had not received the request to return the wire, then I'm almost sure that we would have held the funds . . . ." Brough Dep. 223:4-6.

such as a discrepancy between name and account number, the wire will be returned".[33] In his report addressing the alleged indemnity, Mr. Grice inaccurately presents Chain Bridge as if its reversal of the Wire Transfer were induced by JPMC, not by Chain Bridge's own concerns. Yet, in his other report addressing BSA/AML concerns (Grice BSA Report), Mr. Grice presents Chain Bridge as exceedingly vigilant, and has Chain Bridge personnel raising questions about Blue Flame even before the Wire Transfer was received by Chain Bridge.[34] Mr. Grice says, after summarizing the circumstances that rendered Blue Flame suspicious, that "[t]hese circumstances, in my experience, would have given Chain Bridge reasonable doubt concerning whether Blue Flame Medical had a right to the payment sent by the State of California."[35] Note how closely this conclusion tracks Chain Bridge's wire transfer policy, which required the return of a wire transfer in these very circumstances. In my view, there is no question that Chain Bridge had overwhelming doubts about Blue Flame's right to these funds. Its Chief Executive Officer (Mr. Brough) believed "it's a scam" and so did the Chairman of the bank's board of directors (Peter Fitzgerald).[36] Chain Bridge itself had taken the remarkable step of contacting the State of California – which was not Chain Bridge's customer – and the Grice BSA Report observes that California officials were surprised when Chain Bridge told them "that Blue Flame Medical was a newly-formed entity with an account that had been opened the previous day by political operatives."[37]

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33 CBB00004294 at 4298.

34 *Compare* Grice Report ¶¶ 6-18 *with* Grice BSA Report ¶¶ 30-48.

35 Grice BSA Report ¶ 75.

36 Evinger Dep. 204:17-19. In addition, both the President (Mr. Evinger) and the Chief Executive Officer (Mr. Brough) did not "like the smell." Brough Dep. 122:20-123:2.

37 Grice BSA Report ¶ 47.

43. Fourth, Chain Bridge faced clear reputational risks – that it had opened the door of the banking system to a malefactor, or to a person who was trying to exploit a global pandemic. Further, the taxpayers of the State of California might have experienced a loss of $457 million, and a loss of this magnitude, in my experience, would undoubtedly cause public outcry with respect to those who allowed it to happen. All banks depend upon public confidence, and either prosper or fail on the strength or weakness of their reputations. But for a community bank, it is axiomatic that such a bank cannot succeed if it does not have the respect of the community that it serves. Chain Bridge could have suffered significant adverse reputational risk if the community it served came to see the bank as exploiting a global pandemic. Reputational risk has a price tag because it can drive away customers if not well managed.

44. In their dialog, both Chain Bridge and JPMC understood that reversal of the Wire Transfer represented one "option".[38] But it was Chain Bridge and not JPMC that became a vigorous advocate of the reversal option.[39] JPMC was "comfortable" with Chain Bridge holding the funds as long as the object of suspicion, Blue Flame, was not given availability. And, in my view, advocacy by Chain Bridge for reversal was consistent with Chain Bridge's interests in minimizing its risks.

45. This is not to say that the banks had no shared interests. The banks had common interests in protecting the payment system from abuse and the taxpayers of the State of California. A reversal could result from such shared interests, where each bank sees and understands the compelling need to protect the system and the taxpayers, and still not be the

[38] Brough Dep. 292:7-10; Evinger Dep. 262:18-263:2; Korpal Dep. 250:6-18.

[39] Korpal Dep. 249:14-250:18.

situation that results in indemnity – where the beneficiary's bank is acting in reliance on the circumstances communicated to it by the sender and accommodating the sender's concerns. After all, as discussed below, the reversal in such a joint-decision scenario would not be initiated "by the sender," as required by Section 4A-211.

46. But in this highly unusual factual context, Chain Bridge asked JPMC to send it a reversal request, and JPMC accommodated the request. There is an important technical detail that needed to be addressed in order to execute Chain Bridge's decision to reverse the Wire Transfer rather than to "hold" its proceeds. Based on my experience, in a Fedwire reversal situation like this, there is a need to reverse the accounting entries effected to accounts at the Federal Reserve; the Chain Bridge account at the Federal Reserve Bank of Richmond would be debited for the $457 million transfer and JPMC's account at the New York Fed would need to receive a corresponding credit. Tying the reversing entries to the original Wire Transfer is important as a housekeeping and accounting matter. These are not insignificant accounting entries, and the books and records of the respective Federal Reserve Banks need to be accurate about what is reflected. The administrative actions taken by JPMC not only tied the reversal to the original Wire Transfer, but the associated entries were necessary to execute another important element of Article 4A's architecture – and this was getting California its money back. JPMC's actions were thus a direct result of Chain Bridge's decision to cancel the Wire Transfer.

47. Finally, there is the decision by Chain Bridge to close the Blue Flame account.[40] This unilateral decision by Chain Bridge evidences just how uncomfortable Chain Bridge was with Blue Flame. Chain Bridge was so uncomfortable that it decided to sever the customer

[40] *See, e.g.*, Brough Dep. 325:5-19.

relationship entirely, and effectively to prevent Blue Flame from obtaining any credit to its account even if California or JPMC were comfortable with a subsequent payment.

48. The discussion that took place between JPMC and Chain Bridge of the reversal request arose out of highly specific and extraordinary facts. It led to an agreement between the banks that is emphatically different from the situation for wire transfer reversals in my own experience, and described in the PMPG Recovery and Cancellation Reports, where the sending bank is acting as the debtor (i.e., originator) agent, and seeking to induce action by the beneficiary's bank in returning funds. Here, Chain Bridge was pursuing its own interests to reverse the Wire Transfer, as well as the common interests in protecting the integrity of the payment system and the taxpayers of the State of California.

VI. THE GRICE REPORT MISUNDERSTANDS THE RULES CONCERNING REVERSALS AND THE APPLICABLE INDEMNIFICATION PRINCIPLES

49. Let me state plainly at the beginning of this section that I disagree with the ultimate conclusion expressed by Mr. Grice, that "Chain Bridge's agreement to JPMorgan's cancellation request . . . triggered JPMorgan's liability to Chain Bridge for any losses and expenses, including reasonable attorney's fees, incurred by Chain Bridge as a result of the cancellation."[41]

50. The reasons for my disagreement arise from the following: First, the purpose and intent of Section 4A-211(f) is to provide for indemnification where the sender requests that the beneficiary's bank reverse a funds transfer, based upon information communicated by the sender to the effect that a payment order is unauthorized or a mistake, which is not the case here. Second, even if Section 4A-211(f) could apply here, indemnification applies only in the absence

[41] Grice Report ¶ 23.

of an agreement between the parties. Here, there was an agreement between JPMC and Chain Bridge, through the parties' discussions and course of conduct, that did not include an indemnity. Third, Section 4A-211(f) was never intended to provide for indemnification relating to actions taken by a beneficiary's bank to comply with, as here, its BSA/AML and know-your-customer obligations or to mitigate other concerns of the beneficiary's bank, including capital concerns. Assuming any "loss and expenses" under Section 4A-211(f), they would be caused by actions taken by Chain Bridge to mitigate its own various concerns or by California's decision not to reissue a wire to Blue Flame.

51. Section 4A-211 was drafted, as the words themselves and the Official Comment explains, to address the paradigm situation where a sending bank has executed the payment order of an originator and then the originator realizes that the order was "unauthorized" or a "mistake". The sending bank then, in the paradigm case, tries to assist the originator. If the payment order has been executed by the sending bank, and accepted thereafter by the beneficiary's bank, the sending bank may act on behalf of the originator, as the originator's agent, and communicate what it understands to be the circumstances to the beneficiary's bank. The beneficiary's bank, can, in the paradigm case, be receptive to reversal if it is persuaded that the circumstances suggest a payment order is unauthorized or a mistake, or alternatively, it can decide to take no action. But, in the paradigm case, the beneficiary's bank is acting on information communicated by the sending bank and with respect to facts and circumstances outside the beneficiary's bank's knowledge.

52. With that intent and paradigm situation in mind, it is no surprise that Section 4A-211(f) makes clear that it applies only "if the *receiving bank* . . . *agrees to cancellation* . . . of the

order *by the sender*."[42] The Official Comment underscores the point: "If the receiving bank *agrees to cancellation*, it is doing so *as an accommodation to the sender. . . .*"[43]

53. Here, the situation is the opposite. Chain Bridge reversed the Wire Transfer on the basis of information that it learned on its own initiative, and, as discussed above, in such circumstances where reversal restored the status quo between the originator (California) and the beneficiary (Blue Flame). To be sure, to make the reversal happen, JPMC's cooperation was needed to re-credit the account of California at JPMC, and it was necessary to move the associated $457 million credit from Chain Bridge's account at the Federal Reserve back to JPMC's account at the Federal Reserve. The banking operations needed in a reversal situation are operations that require consistent and careful action by all of the banks involved in the original wire transfer. But this was a reversal directed by Chain Bridge. It bears emphasis that, even if this were a joint decision, indemnification under Section 4A-211(f) would not follow because the reversal would not have been initiated "by the sender."

54. The Federal Reserve's Operating Circular No. 6 authorizes the use of administrative messages to seek reversal or cancellation of payments made via Fedwire.[44] The Operating Circular makes clear that "[w]hether such a Message would be effective to cancel or amend a payment order received by that Funds Participant is governed by section 4A-211 of Article 4A."[45] So, the Operating Circular authorizes the use of an administrative message to communicate a reversal request. The effect of the communicated reversal request is determined by Section 4A-211. The Operating Circular does *not* address the rights or liabilities of the

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42 U.C.C. § 4A-211(f) (emphasis added).

43 *Id.* cmt. 5 (emphasis added).

44 FED. RSRV., OPERATING CIRCULAR 6 ¶ 13.1 (2021).

45 *Id.* ¶ 13.3.

parties. Of course, as the Grice Report notes, the communication between the parties may include the words, "NO INDEMNITY". The Operating Circular cautions that the use of these two words "may" have an effect on liability – the use of those two words could eliminate a liability[46], but only *if* "the Funds Participant may be liable under section 4A-211 of Article 4A".[47]

55. This brings us again to Section 4A-211. Let me state, once again, that the drafters did not intend Section 4A-211 to be interpreted in isolation. To the contrary, the Official Comment ties its specific provisions back into the overall architecture of Article 4A. In my opinion, as discussed above, there is no doubt that the subject Wire Transfer was, and remains, unusual. This was a $457 million transfer to an account, in the midst of a global pandemic, where the transfer was nearly half the assets of the beneficiary's bank, and made on behalf of the taxpayers of the State of California, to purchase from a "lobbyist" medical equipment, which would be acquired from China, with respect to a supply business in which the account party had no professional competency.[48] I have seen many wire transfers in my career, and many of those have been suspicious and some even fraudulent. I have *never* seen a wire transfer with so many red flags flying.[49] In the real world, this Wire Transfer cried out for, and it received, close human attention from the commercial banks through which it passed.

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46 Let me observe that this provides a simple way for a debtor's agent to disclaim what might be a significant indemnity obligation. But it is not the only way, especially if the agreement of the banks does not involve any indemnity in the first instance. There is no need to disclaim an indemnity that does not exist.

47 FED. RSRV., OPERATING CIRCULAR 6 ¶ 13.4 (2021).

48 Brough Dep. 251:16-19, 282:2-6; Evinger Dep. 157:14-22, 166:4-7. Chain Bridge's Chief Executive Officer reported that one of the Blue Flame principals stated that, after the Wire Transfer, "you're not going to be able to get in touch with me." Brough Dep. 347:10-15. And, if that were not alarming, this principal also said, "This is my payday." *Id.* 348:1-22.

49 Rakesh Korpal felt similarly that "[t]here were a number of red flags associated with [the Wire Transfer]." Korpal Dep. 67:10-22.

56. During the drafting of Article 4A, we understood that there might be a need to vary Section 4A-211 by agreement, or by applying common law principles or other applicable law in certain places. In the article that I wrote more than 30 years ago, I observed that Section 4A-211 was one specific place in Article 4A where unusual facts would likely be presented and principles of equity – restitution and constructive trust – might need to be used, along with the ability of banks to vary the section by agreement, to supplement Article 4A.[50]

57. Section 4A-211(f) is thus predicated on the absence of an agreement between the sending bank and the beneficiary's bank.[51]

58. But here, in my view, there was an agreement between the two commercial banks, reached through their discussions and course of conduct. The agreement did *not* include an indemnity.

59. The substance of Chain Bridge's agreement is described in the deposition testimony of its executives. In their testimony, it is clear that reversing the Wire Transfer was an "option"[52], and another option for Chain Bridge was to keep the Wire Transfer but to continue to "hold" the funds so they would not be available to Blue Flame.[53] The most senior personnel of Chain Bridge considered these conflicting options, and in the end, decided to reverse the Wire

50 Baxter & Bhala, *The Interrelationship of Article 4A With Other Law*, *supra* note 3, at 1501-02.

51 U.C.C. § 4A-211(f) ("Unless otherwise provided in an agreement of the parties . . .").

52 Evinger Dep. 262:18-263:2.

53 As Chain Bridge recognized, JPMC "was comfortable with . . . Chain Bridge . . . holding the money . . . ." Evinger Dep. 263:3-7. It is also clear that Chain Bridge exercised what it understood to be Chain Bridge's "option" to hold the funds, and made that decision before soliciting JPMC to send an administrative message seeking reversal of the Wire Transfer. Evinger Dep. 233:8-19.

Transfer and asked JPMC to send along a reversal request.[54] In my view, this judgment was entirely proper – it was the right thing to do. And the record shows that JPMC personnel concurred with the Chain Bridge executives because of JPMC's concern for its customer, the State of California.[55] From JPMC's perspective, which I share, this was also the right thing to do.

60. This agreement between Chain Bridge and JPMC is relevant in light of the architecture of Article 4A, and particularly Section 4A-211(f). The agreement, through the parties' conduct, shows that the reversal was dependent on Chain Bridge acting on its own motion (and not, to borrow the expression used in the PMPG Recovery Report, on a motion by a "debtor agent").[56]

61. There is no dispute that Chain Bridge voluntarily decided to reverse the incoming Fedwire Wire Transfer, and it reached the decision on its own accord without JPMC causing or prompting Chain Bridge to take action. Let me place Chain Bridge's risk management decisions, discussed above, in further perspective.

62. First, if Chain Bridge did not reverse the Wire Transfer, it had no intention of giving Blue Flame an available credit of $457 million. So, it intended to deprive Blue Flame of liquidity, which arguably is one among a number of rights enjoyed by a demand deposit holder.

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[54] In his deposition, Chain Bridge's President never suggested he was trying to obtain an indemnity. He said that Chain Bridge asked JPMC for the administrative message because "[w]e viewed that and understand that to be the proper way to do a recall of the [Wire Transfer]." Evinger Dep. 265:20-21. The Chief Executive Officer of Chain Bridge suggested that it was for recordkeeping purposes: "We're getting proper documentation for the return of the wire." Brough Dep. 299:6-7. Finally, there is the recording of the internal discussion, where the senior executives tell an inquiring staff member that there is no need for an indemnity letter. CBB00002789.

[55] Korpal Dep. 277:20-278:3.

[56] *See generally* PMPG Recovery Report, *supra* note 23.

63. Second, Chain Bridge faced possible liability for ignoring the command of its own policy that required return of a wire transfer if there was any doubt about the beneficiary's right to payment. This is another exposure avoided through the reversal.

64. Third, if Chain Bridge did not reverse the Wire Transfer, it would need to take some kind of action to deal with the increase in cash on its balance sheet. Indeed, in discussing the possibility of the Wire Transfer on March 25, Chain Bridge's Chief Executive Officer stated, "[W]e can't hold that money on our balance sheet".[57] Having to deal with the increase on its balance sheet would raise issues with respect to investment discretion of a sizable principal amount (nearly half a billion dollars), and expose Chain Bridge to the risk that others would second guess any investment decision that it made.[58] This represents another risk that reversal avoided.

65. Fourth, if Chain Bridge did not reverse the Wire Transfer, it could appear as if the bank were in league with a party seeking to exploit a global pandemic. This is a reputational risk that Chain Bridge avoided by reversing the Wire Transfer, along with a complementary risk that arises from anti-money laundering laws and know-your-customer issues. As Mr. Grice himself acknowledges in his BSA Report, if Chain Bridge had retained and made available the $457 million for the account of Blue Flame – notwithstanding all the red flags involved – it could have faced civil or criminal liability under the BSA/AML regime.[59]

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57 Brough Dep. 104:15-19.

58 One issue would have concerned the entitlement to the funds that Chain Bridge was holding. If there were no debt from the State of California to Blue Flame, those funds would likely have been held in a constructive trust for the State of California, and the State would have arguments that it, as the constructive owner, is entitled to a reasonable return on the funds.

59 *See* Grice BSA Report ¶¶ 57, 105.

66. Fifth, the exceptional circumstances of keeping $457 million from the State of California would likely invite scrutiny by others interested in the disposition of taxpayer money, and they would be asking how this account came to be established. This kind of unwelcome interest by regulators and law enforcement often has a cost associated with it, and Chain Bridge would need to engage legal and compliance help.

67. Individually and together, these risk management factors created a powerful force that incented Chain Bridge to reach the conclusion to reverse the Wire Transfer and then execute that decision through coordinated action with JPMC.[60]

68. As discussed, based on my expertise and the statutory text, it is my view that indemnification under Section 4A-211(f) cannot apply here against JPMC. But even if applicable, Section 4A-211(f) includes the introductory clause allowing for indemnification "[u]nless otherwise provided in an agreement of the parties . . . ."[61] The "agreement"[62] visualized in Section 4A-211(f) is not necessarily a formal writing prepared by counsel, but may be based upon short telephone discussions and course of conduct between the bankers. Because the circumstances of a reversal are usually exigent, and remember the 72-hours "rule of thumb" referenced in the PMPG Recovery Report,[63] the best evidence of the "agreement" between the banks is often the words exchanged by, and/or course of conduct between, the bankers.

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60 Reversal required coordination because $457 million needed to move from Chain Bridge's Federal Reserve account to JPMC's Federal Reserve account, and because JPMC needed (when it received its Federal Reserve credit) to re-credit the account of the State of California. This is how the "money back" guarantee works, and it is noteworthy because this was not simply a "never mind"; real money moved during the 4-hour turnaround.

61 U.C.C § 4A-211(f).

62 Under the Uniform Commercial Code, an "agreement" means "the bargain of the parties in fact". U.C.C. § 1-201(3).

63 *See* PMPG Recovery Report at 3, *supra* note 23.

69. Here, the record is transparent as to what the bankers intended. Mr. Evinger expressly asked Mr. Korpal if there was "any way for JPMorgan to issue a recall for the wire."[64] Within two minutes of Mr. Evinger's request and at the direction of Mr. Korpal, Mr. Coffey called Mr. Evinger and indicated that JPMC would issue the requested recall.[65] As Mr. Korpal testified, he issued the administrative reversal message "based on the request from Chain Bridge Bank to recall the funds."[66] In this connection, Mr. Coffey's statements to Mr. Evinger and Mr. Brough and JPMC's sending of the administrative message over Fedwire accommodated what Chain Bridge asked for, and was also considerate of the parties' housekeeping and accounting needs. The message provided clarity about the accounting entries that would need to be effected by the Federal Reserve to transfer back Federal Reserve credit, and transparency that such entries were reversing the settlements done with respect to an earlier Fedwire transfer.

70. In some of the cases involving wire transfers, there may be good reason to rely on the indemnity provided under Section 4A-211(f). Often, a wire transfer involves parties in different countries and in different time zones, on occasion using different languages and having different legal systems. There is sometimes no ability, as there was here, to engage sentient humans in an intelligent telephonic discussion of an exceptional situation. Instead, the communication between the bankers is entirely through administrative messages transmitted over systems like Fedwire. In such cases, a sending bank, acting as the debtor's agent, may well have the incentive to transmit a written reversal request with indemnity. This is especially true when a sending bank has improperly executed an order that appeared to be issued by a customer, but was in fact a fraudulent instruction. When that happens, and such cases are more frequent today

64 CBB00002544.

65 CBB00002545; *see also* Coffey Dep. 125:10-13.

66 Korpal Dep. 79:14-19.

given the growing risks of cybercrime, it is sound practice to try to get the money back as soon as possible and not wait until you can speak to a human at the beneficiary's bank. In that situation, an indemnity may be needed to induce the beneficiary's bank to reverse the wire because the beneficiary's bank has no relevant knowledge of the circumstances underlying the request – which again, is not what happened here. And, as noted previously, the PMPG has opined that in a fraud situation your chances are maximized if you can retrieve a fraudulent transfer in no more than 72 hours.[67] Indeed, the Official Comment recognizes that – unlike in this extraordinary situation – often the beneficiary's bank is not well positioned to understand the facts and circumstances, and the comment acknowledges that "the beneficiary's bank may not have any way of knowing whether the requirements of subsection (c)[(2)] have been met or whether it will be able to recover from the beneficiary that received payment."[68]

71. Here, in contrast, Chain Bridge performed its own due diligence and formed the view, at the highest executive levels, that this was a "scam," and placed a "hold" (as discussed above) on availability – all before speaking with JPMC. And, finally, Chain Bridge closed Blue Flame's account. So, Chain Bridge did what it needed to do to protect itself, and in my view, it never sought an indemnity.

72. Just like the drafters of Section 4A-211(f) did not envision the indemnification provision being applicable where, as here, the beneficiary's bank directed the reversal after its acceptance, an equally important point arises out of the language in Section 4A-211(f) that the indemnification applies only to "any loss and expenses . . . incurred by the [indemnified] bank as

[67] *See* PMPG Recovery Report at 3, *supra* note 23. Tim Coffey, a former JPMC employee, made this point in his deposition testimony. He said, "Time is everything with fraud. The quicker you act, the better chance you have of recovery of funds." Coffey Dep. 107:2-4. Here, the "round trip" of the subject Wire Transfer took a total of just over 4 hours.

[68] U.C.C. § 4A-211 cmt. 5.

a result of the cancellation. . . ."[69] The drafters never meant to provide for indemnification where a transfer is reversed to ensure the beneficiary bank complies with its own anti-money laundering and know-your-customer requirements or to mitigate other regulatory concerns. Assuming that Chain Bridge decided to take a series of actions with respect to the Wire Transfer and Blue Flame to discharge its legal obligations under BSA/AML laws and regulatory know-your-customer regulations, or to mitigate capital ratio concerns, these actions would not be within the contemplation of those who drafted the indemnity contained in Section 4A-211(f). Notably, in his BSA report, Mr. Grice opines (rightly so), that "Regulation J . . . is not understood by banks and their regulators as having eased decades of BSA/AML laws and regulations enacted both before and after Regulation J. To the contrary, it is understood within the banking industry that Regulation J must be applied consistent with the intent and purpose of BSA/AML regulations."[70]

73. Here, the record is clear that Chain Bridge had concerns that the Wire Transfer would run afoul of BSA/AML laws or know-your-customer regulations. Chain Bridge engaged its internal BSA team the day before the Wire Transfer[71], and Mr. Brough repeatedly testified that Chain Bridge's actions vis-à-vis the Wire Transfer were informed by decisions to comply with the BSA.[72] To the extent Chain Bridge's efforts "to avoid civil and criminal liability for facilitating illicit transactions"[73] within the meaning of the BSA resulted in damages to Blue Flame, the drafters of Article 4A never intended for those damages to be indemnified within the meaning of Section 4A-211(f). Once it was evident that Chain Bridge's actions were motivated

69 U.C.C. § 4A-211(f).

70 Grice BSA Report ¶ 62.

71 CBB00002798 (internal Chain Bridge call on March 25 at approximately 4:46 p m. ET, where Evinger says, "I'm going to have our BSA team look at some of this too").

72 Brough Dep. 72:16-22 (noting that the BSA "doesn't have any carve-outs . . . it applies to every single transaction that runs through the bank"); *id.* 65:21-66:1 ("this wire was very unusual, it was very out of pattern.").

73 *See* Grice BSA Report ¶ 57.

by concerns that the Wire Transfer would run afoul of the BSA, such compliance considerations reinforce my opinion that indemnification was not part of the parties' agreement in reversing the Wire Transfer.

74. A final note on the causation requirement within Section 4A-211(f). If Blue Flame has any right here, it is the right to pursue the State of California on the underlying obligation (assuming there is one) which was restored when the Wire Transfer could not be completed[74] and California received its "money back".[75] If there were any loss and expenses incurred, the loss and expenses would be caused either by California's decision not to reissue a wire to Blue Flame or by other actions taken by Chain Bridge – like reaching out to Blue Flame's contractual counterparty to reveal information about its customer, which in my view is unusual even in exceptional circumstances (by contrast, JPMC's contact was with its customer, the State of California).[76] Such loss and expenses also could be caused by Chain Bridge's unilateral decision to close the Blue Flame accounts, which JPMC had nothing whatsoever to do with (although closure might have been inspired by Chain Bridge's obligations under anti-money laundering laws or know-your-customer regulations).[77] Clearly, if Section 4A-211(f) somehow applies, the rule does not require JPMC to indemnify Chain Bridge for actions taken by Chain

[74] Article 4A instructs that a specific funds transfer, including the Wire Transfer, "is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order." U.C.C. § 4A-104(a). Note that the underlying obligation between the State of California and Blue Flame would have been discharged "but for" the cancellation of acceptance by Chain Bridge. U.C.C. §§ 4A-406(a); 4A-211(e).

[75] It is noteworthy that, when the State of California's underlying indebtedness to Blue Flame was restored, which happened when Chain Bridge reversed the Wire Transfer, the State of California did not direct another wire transfer of $457 million.

[76] The communications between Chain Bridge and the State of California are summarized in Mr. Evinger's deposition testimony. Evinger Dep. 225:2-226:17; 247:11-260:19. Apparently, the State was surprised in hearing from Chain Bridge that Blue Flame "was a brand-new account" and that Blue Flame itself was "formed just a few days ago." Evinger Dep. 282:8-19.

[77] Mr. Evinger explained that "[f]ollowing the conveyance that we – that we would be returning the wire, we also let [Blue Flame] know we would be closing out the Blue Flame account, and we would not be proceeding with any future transactions for Blue Flame." Evinger Dep. 277:9-13.

Bridge to comply with obligations that arise from laws other than Article 4A or other risk management concerns.

75. Let me conclude this Report with some final words about Section 4A-211. In my view, upon Chain Bridge's reversal of the Wire Transfer, the status quo between the State of California and Blue Flame was restored at the end of March 26 to whatever it was shortly before noon. As set forth above, Chain Bridge reversed the Wire Transfer, and Chain Bridge and JPMC then worked together, cooperatively and consistently and successfully, to get the State its money back. The Wire Transfer, while the subject matter of this litigation, became a nullity when it was cancelled. Cancellation eliminated the rights and obligations that would have otherwise existed for the parties to the Wire Transfer – the State of California, JPMC, Chain Bridge, and Blue Flame. What is left is some kind of relationship between the State of California and Blue Flame – perhaps a debt or perhaps something else – but clearly the status quo ante. To the extent Blue Flame has a valid claim (on which I express no opinion), it must look to the State of California and not to the defendant banks, which acted properly under Article 4A, and safeguarded the payment system and the taxpayers of the State of California.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 12, 2021

THOMAS C. BAXTER, JR.