EXHIBIT 91

CONFIDENTIAL

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

EXPERT REPORT OF CHARLES H. GRICE

February 12, 2021

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I. BACKGROUND AND ASSIGNMENT

1. I have been retained by Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP, on behalf of Defendant/Third-Party Plaintiff Chain Bridge Bank, N.A. ("Chain Bridge"), and Defendants John J. Brough, and David M. Evinger, in connection with the case captioned *Blue Flame Medical LLC v. Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger,* No. 1:20-cv-00658 (E.D.V.A.).

2. Plaintiff Blue Flame Medical LLC ("Blue Flame Medical") brings claims related to a wire transfer of $456,888,600 originated on March 26, 2020 by the State of California ("the California Wire Transfer"), through its bank, JPMorgan Chase Bank, N.A. ("JPMorgan"), to Chain Bridge for the benefit of Blue Flame Medical, and that wire's subsequent return the same day.[1] Defendant Chain Bridge brings third-party claims against JPMorgan for indemnification under Uniform Commercial Code ("U.C.C.") § 4A-211(f) and for other equitable relief.

3. I have been asked to apply my expertise in industry standards and practices concerning wire transfers and recalls to assess whether JPMorgan's request that Chain Bridge return the California Wire Transfer was, under the surrounding circumstances, a "cancellation" as bankers in this industry understand and apply that term found in U.C.C. § 4A-211(f), thus triggering JPMorgan's liability to Chain Bridge for any losses or expenses that Chain Bridge incurs as a result of the cancellation. As explained below, I conclude that JPMorgan's request that Chain Bridge return the California Wire Transfer was a "cancellation."

4. All opinions expressed in this report are my own. I am not an attorney and offer no legal opinions. In preparing this report, I relied upon my education, experience, and knowledge of

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[1] Complaint, *Blue Flame Medical, LLC v. Chain Bridge Bank, N.A., John J. Brough, and David Evinger*, Civil Action No. 20 Civ. 00658, filed June 12, 2020, ¶¶ 1-3 and 61.

industry standards and practices relating to funds transfers; documents produced in discovery and deposition testimony; and publicly-available data and documents. I am being compensated at a rate of $850 per hour for my independent review and analysis provided in this case. This compensation is not contingent on the nature of my findings or the outcome of this litigation.

5. For the sake of convenience and efficiency, I incorporate by reference into this report the "Qualifications" and "Background" sections of my separate report served in this matter also dated February 12, 2021, as well as Appendices A, B, and C to that report.

II. COMMUNICATIONS AND FEDWIRE MESSAGES BETWEEN JPMORGAN AND CHAIN BRIDGE DEMONSTRATE THAT JPMORGAN REQUESTED, AND CHAIN BRIDGE AGREED TO, A STANDARD WIRE TRANSFER CANCELLATION

6. The incoming California Wire Transfer arrived at Chain Bridge Bank via Fedwire at 11:55 a.m. on March 26.[2] That Fedwire message identified the sending bank as JPMORGAN CHASE, and the receiving bank as CHAIN BRIDGE BK. The amount stated was $456,888,600. Fedwire messages generally include a Type/Subtype Code corresponding to the nature of the message. This Fedwire's Type/Subtype was "1000," reflecting type code "10" (a funds transfer) and subtype code "00" (a basic value transfer).[3] The Fedwire message also had unique Input Message Accountability Data (IMAD) and Output Message Accountability Data (OMAD) numbers.[4]

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2 Fedwire Funds Processor Message, March 26, 2020 at 11:55 a.m., CBB00002779.

3 Fedwire, Fedwire Funds Service, *Format Reference Guide*, p. 14 (November 19, 2011), available at https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.445.7645&rep=rep1&type=pdf, accessed February 10, 2021.

4 Fedwire, Fedwire Funds Service, *Format Reference Guide*, pp. 1, 13 (November 19, 2011), available at https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.445.7645&rep=rep1&type=pdf, accessed February 10, 2021.

7. In Section IV.D.3 of my separate report served in this matter today, I discuss Chain Bridge's communications with Rakesh Korpal and Tim Coffey of JPMorgan following receipt of the California Wire Transfer. On the first of those calls, at 12:31 p.m., Mr. Coffey told Chain Bridge that JPMorgan had "concerns of fraud."[5] A little over ten minutes later, at 12:44 p.m., Mr. Korpal informed Mr. Brough and Mr. Evinger that JPMorgan's "Global Security Investigation Team is coming back to me and saying that this does not look right either."[6] Following those communications, on a subsequent call at or around 1:35 p.m., Mr. Evinger of Chain Bridge asked Mr. Korpal if there was "any way for JPMorgan to issue a recall for the wire, so that while you intervene in this you have the funds and feel more comfortable."[7] Mr. Korpal replied that "I feel comfortable that you are holding the money right now."[8] Mr. Korpal further acknowledged that he "can issue a recall," however, and asked Chain Bridge for "a few more minutes."[9]

8. In my experience, communication among financial institutions involved in a potentially suspicious wire transfer is commonplace. Because a wire transfer's sending bank is the institution that would issue any cancellation request, Mr. Evinger's question to Mr. Korpal about to the possibility of a wire recall reflects customary discussion among a receiving and sending bank preceding a cancellation request.

9. Minutes later, Mr. Coffey of JPMorgan called Mr. Brough and Mr. Evinger of Chain Bridge again.[10] Mr. Coffey stated: "We're going to be recalling those funds, okay? We have

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5 Call between Mariano Castagnello and Tim Coffey, March 26, 2020, 12:31 p m. ET, CBB00002784; *see* Deposition of Timothy Coffey (Rough), February 11, 2021, p.63:12 - 21.

6 Call between David Evinger, John Brough and Rakesh Korpal, March 26, 2020, 12:44 p.m. ET, CBB00002541-542.

7 Call between David Evinger, John Brough and Rakesh Korpal, March 26, 2020, 1:35 p.m. ET, CBB00002544.

8 Call between David Evinger, John Brough and Rakesh Korpal, March 26, 2020, 1:35 p.m. ET, CBB00002544.

9 Call between David Evinger, John Brough and Rakesh Korpal, March 26, 2020, 1:35 p.m. ET, CBB00002544.

10 Call between David Evinger, John Brough and Tim Coffey, March 26, 2020, 1:37 p.m. ET, CBB00002545.

enough concerns that we feel like we need to claw those funds back."[11] Based on my experience, Mr. Coffey's statement is correctly interpreted as a request by JPMorgan to cancel the California Wire Transfer. Mr. Coffey's statements that JPMorgan had decided to "recall[] those funds" and "claw those funds back" used words and phrases that, when associated with wire transfers, are synonymous with the word "cancel" in standard industry practice. Mr. Coffey's stated reason for JPMorgan's cancellation request was that "we feel like we need to claw those funds back."[12]

10. Mr. Coffey asked Mr. Brough and Mr. Evinger whether Chain Bridge "needed a recall message from us."[13] A recall message refers to a Fedwire service message that communicates a sending bank's wire-cancellation request to a receiving bank. Mr. Evinger replied to Mr. Coffey that Chain Bridge did, in fact, want an "official communication from JPMorgan to us to recall the funds."[14] Asking for written documentation of a sending bank's cancellation request is customary industry practice. Mr. Brough's testimony that a service message across Fedwire provides "proper documentation that [a] wire [i]s being recalled" is consistent with my understanding and experience that a recall message is good practice among banks that handle wire cancellations and amendments.[15]

11. At 2:05 p.m., JPMorgan sent Chain Bridge a Fedwire Funds Processor message.[16] That Fedwire message's Type/Subtype was "1001," reflecting type code "10" (a funds transfer)

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11 Call between David Evinger, John Brough and Tim Coffey, March 26, 2020, 1:37 p.m. ET, CBB00002545.

12 Call between David Evinger, John Brough and Tim Coffey, March 26, 2020, 1:37 p.m. ET, CBB00002545.

13 Call between David Evinger, John Brough and Tim Coffey, March 26, 2020, 1:37 p.m. ET, CBB00002545.

14 Call between David Evinger, John Brough and Tim Coffey, March 26, 2020, 1:37 p.m. ET, CBB00002545.

15 Deposition of John Brough, February 2, 2021, p. 297:8 - 9.

16 Fedwire Funds Processor Message, March 26, 2020 at 2:05 p m., CBB00002780.

and subtype code "01" (request for reversal).[17] As described by Fedwire's guidance for the formatting of messages on its platform, subtype code "01" is what a bank uses to convey "A non-value request for reversal of a funds transfer originated on the current business day."[18] In addition, JPMorgan's Fedwire message asked Chain Bridge to "PLS RETURN FUNDS QUOTING OUR REF," and provided a unique reference number for JPMorgan under "Additional Information."[19]

12. JPMorgan's 2:05 p.m. Fedwire service message also included a "Previous Message Identifier" corresponding to the IMAD unique identifier of the 11:55 a.m. payment message, and stated the amount of the cancelled wire, $456,888,600.[20] It is customary practice, and consistent with Fedwire message-formatting guidance, for a wire-cancellation request to refer to the unique identifier and amount of the wire transfer that is being cancelled. In my opinion, JPMorgan's 2:05 p.m. Fedwire message is consistent with industry practice and message-formatting guidance for a standard wire cancellation request.

13. At 3:21 p.m., Chain Bridge honored JPMorgan's cancellation request by a Fedwire payment message.[21] That Fedwire message's Type/Subtype was "1002," reflecting type code "10" (a funds transfer) and subtype code "02" (reversal of transfer).[22] As described by Fedwire's guidance for the formatting of messages on its platform, subtype "02" is what a bank uses to

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17 Fedwire, Fedwire Funds Service, *Format Reference Guide*, p. 14 (November 19, 2011), available at https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.445.7645&rep=rep1&type=pdf, accessed February 10, 2021.

18 Fedwire, Fedwire Funds Service, *Format Reference Guide*, p. 14 (November 19, 2011), available at https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.445.7645&rep=rep1&type=pdf, accessed February 10, 2021.

19 Fedwire Funds Processor Message, March 26, 2020 at 2:05 p m., CBB00002780.

20 Fedwire Funds Processor Message, March 26, 2020 at 2:05 p m., CBB00002780; *see* Fedwire Funds Processor Message, March 26, 2020 at 11:55 a m., CBB00002779.

21 Fedwire Funds Processor Message, March 26, 2020 at 3:21 p m., CBB00002781.

22 Fedwire, Fedwire Funds Service, *Format Reference Guide*, p. 14 (November 19, 2011), available at https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.445.7645&rep=rep1&type=pdf, accessed February 10, 2021.

convey "A value reversal of a funds transfer received on the current business day."[23] Fedwire's message-formatting guidance continues that message subtype "02" "[m]ay be used in response to a subtype code '01' Request for Reversal."[24] Accordingly, and pursuant to industry practice and Fedwire guidance, a wire transfer's receiving bank would assign subtype code "02" to a Fedwire message in response to a cancellation request from the wire transfer's sending bank to communicate the same-day reversal of the wire transfer.

14. Chain Bridge's 3:21 p.m. Fedwire message also included a "Previous Message Identifier" corresponding to the IMAD unique identifier of the 11:55 a.m. payment message, and stated the amount of the cancelled wire, $456,888,600.[25] It is customary practice, and consistent with Fedwire message-formatting guidance, for a wire reversal to refer to the unique identifier and amount of the wire transfer that is being cancelled.

15. Finally, Chain Bridge's 3:21 p.m. Fedwire message populated the "F[inancial] I[nstitution ("FI")] to FI Information" section with the text "RTNG YR IMAD" "PER YOUR REQUEST."[26] I understand "RTNG YR" to be shorthand in Fedwire messaging for "returning your." The "FI to FI Information" section again included the IMAD unique identifier of the 11:55 a.m. payment message, along with the reference number that JPMorgan's 2:05 p.m. Fedwire

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[23] Fedwire, Fedwire Funds Service, *Format Reference Guide*, p. 14 (November 19, 2011), available at https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.445.7645&rep=rep1&type=pdf, accessed February 10, 2021.

[24] Fedwire, Fedwire Funds Service, *Format Reference Guide*, p. 14 (November 19, 2011), available at https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.445.7645&rep=rep1&type=pdf, accessed February 10, 2021.

[25] Fedwire Funds Processor Message, March 26, 2020 at 3:21 p m., CBB00002781; *see* Fedwire Funds Processor Message, March 26, 2020 at 11:55 a m., CBB00002779.

[26] Fedwire Funds Processor Message, March 26, 2020 at 3:21 p m., CBB00002781.

message had requested be used in connection with the wire reversal.[27] This additional language and identification from Chain Bridge in response to JPMorgan's stated instructions is consistent with my understanding that this was a wire transfer cancellation undertaken at JPMorgan's request.

16. In sum, I have reviewed Chain Bridge's communications with JPMorgan following receipt of the California Wire Transfer over the Fedwire system at 11:55 a.m., as well as JPMorgan's 2:05 p.m. request-for-reversal Fedwire service message and Chain Bridge's 3:21 p.m. reversal-of-transfer Fedwire message. In my opinion, based on my more than 30 years working with financial institutions involved in funds transfers, compliance, supervisory exams, and operational challenges, JPMorgan's oral request to "recall" and "claw back" the California Wire Transfer and its request-for-reversal Fedwire message, along with Chain Bridge's responses to the same, constitute a standard wire-transfer cancellation request and an agreement to that request in accordance with industry standards.

17. In my experience, and consistent with customary industry practice, the question that Mr. Evinger posed to Mr. Korpal on their 1:35 p.m. call, about whether there was any way for JPMorgan to recall the wire while JPMorgan was intervening in the transaction, reflects a typical question that a receiving bank might pose to a sending bank about how the sending bank intends to handle, or wishes to proceed in handling, a potentially suspicious funds transfer originated by a customer of the sending bank amidst any accompanying investigation. In this industry, receiving banks asking such questions do not understand such inquiries to affect the nature of any cancellation request they ultimately receive from the sending bank, nor to undermine the sending bank's indemnification obligations associated with such cancellation requests. Based on my

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27 *Compare* Fedwire Funds Processor Message, March 26, 2020 at 3:21 p.m., CBB00002781, *with* Fedwire Funds Processor Message, March 26, 2020 at 2:05 p m., CBB00002780, *and* Fedwire Funds Processor Message, March 26, 2020 at 11:55 a m., CBB00002779.

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experience, it is my opinion that it would chill and undermine financial institutions' willingness to cooperate in the due diligence of potentially suspicious funds transfers if their discussions preceding a potential cancellation request might be understood to change receiving banks' and sending banks' industry-standard rights and obligations in connection with such a cancellation request. The resulting confusion and uncertainty surrounding a sending bank's indemnification obligations would redound to the detriment of the safety and soundness of the banking system.

18. I have considered JPMorgan's testimony, provided through Mr. Korpal, that JPMorgan recalled the wire only because of Mr. Evinger's request from Chain Bridge to recall the funds.[28] Putting to one side what actually motivated JPMorgan's decision to recall the wire, conversations such as the ones between Mr. Evinger and Mr. Korpal prior to JPMorgan's recall are the norm. According to industry practice and understanding, nothing about the substance and nature of such discussions has a bearing on the sending bank's obligations, post-recall, under Regulation J and U.C.C. Article 4A. Consistent with Regulation J and U.C.C. Article 4A, a sending bank has the discretion whether to issue a wire cancellation request, and cannot be compelled to do so by a receiving bank. And a receiving bank likewise cannot agree to a cancellation request unless the sending bank makes one. Mr. Coffey's oral cancellation request, JPMorgan's Fedwire service message cancelling the wire, and Chain Bridge's responsive Fedwire message and payment are all consistent with customary industry practice for a JPMorgan-initiated and requested wire cancellation.

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[28] *See* Deposition of Rakesh Korpal, February 9, 2021, p. 79:16 - 19.

III. UNDER INDUSTRY PRACTICE AND CUSTOM FOR APPLYING THE U.C.C., JPMORGAN'S CANCELLATION REQUEST RENDERED IT LIABLE FOR ANY LOSSES AND EXPENSES THAT CHAIN BRIDGE INCURS AS A RESULT OF THE CANCELLATION

19. JPMorgan (as the California Wire Transfer's sending bank) and Chain Bridge (as the California Wire Transfer's receiving bank) are subject to the provisions of the U.C.C. for sending and receiving wire transfers through the Fedwire system, including U.C.C. § 4A-211(f). In my experience, receiving banks that honor sending banks' requests to return a wire transfer do so based on the understanding that Section 4A-211(f) provides for the sending bank to indemnify the receiving bank that, "after accepting a payment order, agrees to cancellation or amendment of the order by the sender . . . whether or not cancellation or amendment is effective." That indemnification provision covers "any loss and expenses, including reasonable attorney's fees, incurred by the [receiving] bank as a result of the cancellation." *Id*.

20. Based on my experience in the industry, receiving banks that participate in the Fedwire system have the discretion to agree to sending banks' requests to cancel accepted funds transfers. As online banking has become an increasingly important part of the banking business, sophisticated Internet-enabled fraud, identity theft, money-laundering schemes, and other suspicious activity have made wire recalls and cancellations more commonplace in the industry.

21. Recalls and cancellations come with risk for receiving banks, especially after having accepted an incoming wire transfer (which effectively occurs automatically by operation of the Fedwire system). A receiving bank's post-acceptance return of a cancelled wire to a sending bank may result in, among other things, a beneficiary's challenge to the effectiveness of the cancellation or other circumstances associated with the receiving bank's return of the cancelled wire. In my experience, receiving banks therefore generally understand and rely on Section 4A-211(f) of the U.C.C. to protect them from any losses when they agree to comply with sending

banks' cancellation (i.e., recall) requests. In particular, receiving banks generally rely on this provision and understand that it causes a sending bank that makes a cancellation request to bear the risk that its cancellation will be deemed ineffective, lead to expensive litigation, or otherwise result in costs or expenses to the receiving bank. Absent such a safeguard, receiving banks would rarely, if ever, honor requests to cancel wire transfers that they have already accepted.

22. When a sending bank wishes to opt out of the U.C.C.'s indemnification obligation in connection with a wire-transfer cancellation request, it is industry practice that it do so explicitly and in writing prior to the receiving bank's decision to comply with a cancellation request. Specifically, a sending bank intending to opt out of the standard indemnification requirements will include the clear phrase "NO INDEMNITY," or similar phrasing, in the text of a Fedwire request to return a wire. Doing so provides a receiving bank with clear notice that it, rather than the sending bank, will bear any risk of loss associated with the sending bank's cancellation request should it choose to accept that request. This practice is consistent with paragraph 14.1 of the Federal Reserve Banks Operating Circular No. 6: Funds Transfers Through the Fedwire Funds Service, which was in effect on March 26, 2020 and which states that "[b]y requesting cancellation or amendment of a Payment Order, the sender may be liable under Section 4A-211 of Article 4A unless the request states 'NO INDEMNITY.'"[29] All else equal, a "no indemnity" qualifier on a wire-transfer cancellation request makes it more likely that a receiving bank will not agree to honor the cancellation.

23. I am unaware of any "No Indemnity" or similar disclaimer made by JPMorgan in connection with its request to cancel the California Wire Transfer. In particular, no such disclaimer

[29] Federal Reserve Banks Operating Circular No. 6, FUNDS TRANSFERS THROUGH THE FEDWIRE FUNDS SERVICE ¶¶ 1.1, 14.1 (December 20, 2019), available at https://www.frbservices.org/assets/resources/rules-regulations/122019-operating-circular-6.pdf, accessed February 5, 2021.

is found in JPMorgan's 2:05 p.m. Fedwire service message, which is where I would expect to see any such disclaimer under customary industry practice and the then-operative version of the Federal Reserve Banks Operating Circular No. 6.[30] It is therefore my opinion, based on my years of experience and knowledge of industry practice, that Chain Bridge's agreement to JPMorgan's cancellation request, whether or not that cancellation was effective, 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.

Submitted on February 12, 2021

Charles H. Grice

[30] Fedwire Funds Processor Message, March 26, 2020 at 2:05 p m., CBB00002780; Federal Reserve Banks Operating Circular No. 6, FUNDS TRANSFERS THROUGH THE FEDWIRE FUNDS SERVICE ¶14.1 (December 20, 2019), available at https://www.frbservices.org/assets/resources/rules-regulations/122019-operating-circular-6.pdf, accessed February 5, 2021.