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.	

JPMORGAN CHASE BANK, N.A.'S REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION

Chain Bridge knew the risk when it asked JPMC to recall the $456 million Blue Flame wire. It took stock of the regulatory, capital, and reputational concerns associated with giving its client access to a half-billion-dollar wire it had cause to question. And, intending to return the wire from the moment the funds arrived, Chain Bridge orchestrated that result—doing "what [it] ha[d] to do." Indemnification was never part of Chain Bridge's calculus.

Chain Bridge now tells a different story, seeking indemnification from JPMC for doing precisely what Chain Bridge asked it to do—"issue a recall for the wire." That demand is as audacious as it is legally meritless. And the accusations in Chain Bridge's brief of "mischaracterizations" and "misleading and selective" statements serve only to distract from the actual record. The evidence refutes Chain Bridge's assertions, and JPMC is entitled to summary judgment on the third-party complaint.

ARGUMENT

I. CHAIN BRIDGE'S INDEMNIFICATION CLAIM FAILS

As JPMC has explained, Chain Bridge's indemnification claim fails for three independent reasons. *See* JPMC Mem. in Supp. of Mot. for Summ. J. 13-26 (JPMC MSJ) (Dkt. 113); *see also* JPMC Mem. in Opp. to Chain Bridge's Mot. for Summ. J. 10-20 (JPMC Opp.) (Dkt. 145). First, U.C.C. § 4A-211(f) does not apply where, as here, a receiving bank instigates a wire's reversal. Second, the parties' agreement overrides any indemnification obligation that might otherwise apply under § 4A-211(f). Third, Chain Bridge cannot establish causation.

As to the latter two reasons, Chain Bridge takes aim at those with easily refuted assertions about what the record shows. So JPMC begins there—on the narrower, record-based grounds to reject Chain Bridge's claim—and concludes with the statutory issue.

A. The Parties Agreed To Return The Wire Without Any Indemnity Obligation

Even assuming § 4A-211(f) applied here (it does not), the parties' "agreement" on the terms of the wire's return overrode any supposed implied indemnification obligation under the statute. *See* JPMC MSJ 21-24; *see also* JPMC Opp. 16-18. Chain Bridge protests that no such agreement existed, but the undisputed record shows the opposite.

1. Chain Bridge's actions and substantive concerns about the wire made clear to JPMC that Chain Bridge wanted the wire returned for its own reasons, and needed to reach agreement with JPMC on the terms for the wire's return. By any measure, for Chain Bridge this was no routine wire transfer. Its size alone, $456 million, was extraordinary—nearly half of Chain Bridge's total assets, and more than 100 times the size of the average Fedwire transfer in 2020. Ex. 1, Baxter Rep. ¶ 28. The financial consequences of something going wrong with the wire's return were thus significant—and franchise-threatening for Chain Bridge. *Id.* ¶ 40.

On this record, there is no genuine dispute that *Chain Bridge* took independent, unilateral actions to ensure the funds remained inaccessible to Blue Flame; *Chain Bridge* expressed major concerns about the wire—and, in particular, about its own client; and *Chain Bridge* advocated for the wire's return. *See, e.g.*, JPMC Statement of Undisputed Facts ¶¶ 6, 15, 17, 24, 29 (JPMC SUF) (Dkt. 113 at 3-12). So when *Chain Bridge* called JPMC and expressly asked that JPMC "issue a recall for the wire," JPMC agreed to do just that without undertaking any obligation to indemnify. It was readily apparent that Chain Bridge asked for and wanted JPMC to act and that no promise to indemnify, implied or express, was necessary, anticipated, or sought by Chain Bridge to facilitate that arrangement.

Chain Bridge's principals' call is the clearest, though certainly not the only, evidence of this fact. Less than 10 minutes after Chain Bridge asked JPMC to return the wire, Chain Bridge's principals discussed how that reversal would be implemented. The participants on the call were Chain Bridge's President, CEO, Director of Operations, and the operations technician responsible for processing wire transfers—a specialist with more than two decades' experience handling wire transfers. In relevant part, their conversation was as follows:

> **Operations Technician (Mojica-Guadron):** Are we getting an indemnity letter from Chase?
>
> **President (Evinger):** You're going to get a Service Bureau message through Fed line. … Just return it to the same place it came from. … So, you will be getting something from Chase imminently on Fed line. We asked for it to go back through Fed line. …
>
> **Director of Operations (Ribeiro):** Claudia, you mentioned the indemnity letter. Is that part of the procedures usually?
>
> **Operations Technician (Mojica-Guadron):** Normally, you want to get that from the other bank just because—and in this case because we credited the customer's account.
>
> **President (Evinger):** It's okay. Don't worry about it. … It is what it is. It's—
>
> **CEO (Brough):** David and I have been working on this with both the State of California and JPMorgan and this is what we have to do. …

Dkt. 113-24, CBB00002789 at 1:20-2:50.

When Chain Bridge's principals were on that phone call, they had no idea what JPMC's reversal message would say. But if Chain Bridge were correct that it is "customary" (Chain Bridge Mem. in Supp. of Mot. for Summ. J. 15 (CB MSJ) (Dkt. 123)) and "industry practice" (Ex. 2, Grice Indemnification Rep. ¶ 22) for reversal messages to include the text "No Indemnity," the bank's principals would have had every reason to believe that JPMC would include that text on a reversal message for this half-billion-dollar wire transfer. So one would expect Chain Bridge's principals to have asked JPMC for an indemnity letter—as the wire specialist advised. At minimum, one would expect a caveat from Chain Bridge's principals: "Just return [the wire], *unless the recall message includes the phrase 'No Indemnity.'*" Indeed, the principals would have directed that the wire specialist *not* process the wire's return unless and until she confirmed to an absolute certainty that the no-indemnity language was absent. But that is not what happened. No one at Chain Bridge demanded an indemnity letter in response to the wire specialist's comments, and nobody provided any caveat. The directive from the top of the organization was clear and unequivocal: "Just return [the wire] to the same place it came from," and "[d]on't worry about [the indemnity letter]. … [T]his is what we have to do."

Chain Bridge's complete comfort in reversing the wire before seeing JPMC's message—in fact, Chain Bridge's *insistence* on reversing the wire—underscores the agreement between Chain Bridge and JPMC for a wire reversal that did not include indemnity. As Chain Bridge's principals put it: "It is what it is," and "[t]his is what we have to do." Chain Bridge had decided to return the funds for its own reasons regardless of the consequences.

Chain Bridge insists that its principals waved away their specialist's indemnification concern because they knew the bank was already protected. *See* Chain Bridge Mem. in Opp. to JPMC's Mot. for Summ. J. 21 (CB Opp.) (Dkt. 141). But Chain Bridge does not point to any contemporaneous record evidence to support that post-hoc rationalization. Instead, Chain Bridge cites only its President's deposition testimony, where he said: "We didn't view there was a need for an indemnification based on the recall because the recall had that indemnification built in[.]" Dkt. 130-28, Evinger Dep. 261:14-16. That statement—Chain Bridge's so-called "unrebutted evidence" (CB Opp. 21)—beggars belief, not least because it is in clear conflict with the record. *See, e.g.*, *Kunik v. New York City Dep't of Educ.*, 436 F. Supp. 3d 684, 695 (S.D.N.Y. 2020) ("In the face of contemporaneous evidence in Plaintiff's own words, her self-serving comments from her deposition after the filing of this lawsuit cannot create an issue of fact[.]"), *aff'd*, 842 F. App'x 668 (2d Cir. 2021); *Watt v. Brink's Inc.*, 1997 WL 284805, at *1 (9th Cir. May 23, 1997) ("[a] defendant's inconsistent or implausible testimony" does not "necessarily preclude[] summary judgment").

Not once did a Chain Bridge employee mention the possibility of, much less the security of, any supposed "built[-]in" indemnification that Chain Bridge's President claimed, 10 months later in litigation, to have been relying on. To the contrary, the bank's wire specialist expressed the view that Chain Bridge *should* obtain an "indemnity letter" before proceeding. It bears emphasis that this was an unprecedented wire transfer for Chain Bridge, amounting to almost half of the bank's total assets. It both defies reason and contradicts the contemporaneous record evidence to believe that the Chain Bridge principals—in their minute-to-minute thinking about a franchise-threatening wire—were silently familiar enough with § 4A-211(f) that they had rock-solid confidence in its indemnification regime. Moreover, someone who knows they have the security of indemnification does not say, with resignation, "It is what it is," and "[t]his is what we have to do." The reason is plain: Chain Bridge had decided to return the wire, and knew and accepted that the parties' agreement on that return did not include an indemnity obligation.

And there is even more of the same evidence following this internal call. For example, at 1:54 p.m.—still *before* Chain Bridge had seen JPMC's reversal message because it had not yet been issued—Chain Bridge's CEO emailed numerous senior Chain Bridge personnel with the subject line, "Wire is being returned." Dkt. 113-37, CBB00000594 at 599. Again, Chain Bridge was unequivocal and expressed no caveats. Against this record, Chain Bridge's attempts at ridicule ring hollow. *See, e.g.*, CB Opp. 1 ("with a straight face"); *id.* 20 ("There is no support—literally *none*[.] … That never happened.").

2. Chain Bridge's remaining arguments are also easily refuted. The first—that the only "agreement" between the parties consisted of Fedwire service messages (CB Opp. 10)—

misunderstands the U.C.C.'s definition of "agreement." As JPMC has explained (*see* JPMC MSJ 21-22; JPMC Opp. 17), the U.C.C. defines "agreement" as "the bargain of the parties in fact, as found in their language *or* inferred from other circumstances, including course of performance, course of dealing, or usage of trade." U.C.C. § 1-201(b)(3) (emphasis added). Ignoring the point, Chain Bridge incorrectly insists that the parties must "*expressly* agree" (CB Opp. 18 (emphasis added)). And neither text nor logic justifies Chain Bridge's contention that the Court should confine its analysis of "the bargain of the parties in fact" to the two administrative messages, particularly when the record abounds with other relevant communications and actions.

Second, Chain Bridge asserts that, because there is always an "agreement of the parties" in a reversal situation, JPMC's position is that "every such agreement must affirmatively state the cancelling sender's obligation to indemnify" (CB Opp. 21). Not so. JPMC's position is textual, simple, and narrow: that the word "agreement," as used in § 4A-211(f), be given the meaning the U.C.C. ascribes to it. That requires courts to determine whether "the bargain of the parties in fact" "provided" "otherwise." U.C.C. §§ 1-201(b)(3), 4A-211(f). Here, for the reasons discussed, it did.

B. JPMC Was Not The Cause Of Any Damages On Blue Flame's U.C.C. Claims

There is no dispute that Chain Bridge must show "but for" and proximate cause to prevail on its indemnification claim. *See* JPMC MSJ 24-25; CB Opp. 21-23. This means a jury would need to find on this record that—absent JPMC's involvement—Chain Bridge would have given Blue Flame unfettered access to the $456 million within enough time for Blue Flame to complete the deal with California. The record forecloses that possibility; no reasonable jury could make that finding. *See, e.g.*, *Washington v. Washington Metro. Area Transit Auth.*, 2006 WL 6093866, at *2 (E.D. Va. Dec. 8, 2006) ("Although causation is usually a factual question, a court may resolve the proximate cause issue on summary judgment when undisputed facts are susceptible of only one inference."), *aff'd*, 229 F. App'x 271 (4th Cir. 2007).

First, the facts show that Chain Bridge feared it would violate the Bank Secrecy Act by giving Blue Flame access to the funds. Chain Bridge never would have risked non-compliance with, as Chain Bridge's CEO called it, "the paramount regulation that you are supposed to comply with," even if Chain Bridge thought the U.C.C. might require it to make the funds available. Ex. 3, Brough Dep. 73:5-9; *id.* at 74:14-15 (calling Regulation J "more a plumbing mechanism"). Nothing that Chain Bridge could have learned within the days, or even weeks, following its receipt of the wire would have abated its BSA concerns. California had already confirmed with Chain Bridge that the wire was legitimate. *See* Dkt. 113-28, CBB00000707 at 0:19-0:26; Dkt. 113-29, CBB00002543 at 0:01-0:04. As Chain Bridge's CEO testified, "what was unanswered … was whether the State of California had done an adequate job of vetting their counterparty prior to wiring the money." Ex. 3, Brough Dep. 229:1-6. Specifically, among other "Bank Secrecy Act and customer due diligence questions that had not been answered" were that "the account had been opened just the day before," "Blue Flame was founded three days before," and "the wire was for $456 million" (*id.* 208:8-19)—an amount "nowhere near" the "average wire size" Blue Flame had previously identified ("about 5 million") (*id.* 353:1-18). None of those stood to change. So by Chain Bridge's explanation it had no choice but to protect itself by continuing to withhold the funds.

Moreover, Chain Bridge's internal wire transfer policy compelled the return of funds. *See* Dkt. 113-11, CBB00004294 at 4298. It defies the plain text of the relevant provision—"the wire will be returned" (*id.*)—to say that its purpose was to "remind bank employees that they have the right, but not the obligation, to return funds in certain circumstances" (CB Opp. 23).

The earlier sentence of the policy, which Chain Bridge quotes to support its point about discretion, refers to circumstances not present here—*i.e.*, "'a discrepancy between the beneficiary account number and the beneficiary name'" (*id.* (quoting Dkt. 113-11, CBB00004294 at 4298)). The circumstances here instead raised a substantive "question as to the beneficiary's right to the funds" (Dkt. 113-11, CBB00004294 at 4298), in which case the policy provides a mandatory directive—return the wire. Chain Bridge's expert agreed that "banks generally adhere to their policies," and one reason for doing so is "to ensure that they comply with BSA/AML laws." Ex. 4, Grice Dep. 472:6-19. There is nothing suggesting that Chain Bridge would have deviated from the provision of its wire transfer policy requiring the return of the $456 million wire.

Second, aside from Chain Bridge's incentives, the actions taken by the bank are inconsistent with the notion that it would have ever provided the funds to Blue Flame. Before the reversal was completed on the afternoon of March 26, Chain Bridge already had decided to sever its ties with Blue Flame. Dkt. 113-36, CBB0000748; Dkt. 113-18, CBB0000919 at 919; Dkt. 113-37, CBB00000594 at 598. As Chain Bridge's CEO testified, the "numerous red flags … that had popped up on this transaction" caused Chain Bridge to close Blue Flame's accounts. Ex. 3, Brough Dep. 325:16-19. Indeed, when Chain Bridge's President and CEO met with one of Blue Flame's principals on March 26, they instructed him "not to send the wire back into another account at Chain Bridge" and "to find a bank that could handle it[.]" Dkt. 113-30, CBB00004453 at 4458. Those comments and actions cannot square with Chain Bridge's post-hoc speculation (*see* CB Opp. 22-23) that it might at some point have allowed Blue Flame to access the money regardless of JPMC's conduct. This could never have happened because Chain Bridge rushed to close all of Blue Flame's accounts on March 26.

Finally, Chain Bridge itself admits that it would have continued holding the funds until *at least* March 27, "the day after the wire was received." CB Opp. 22-23. But the complaint against Chain Bridge alleges that Blue Flame "need[ed] to *immediately* wire a portion of the purchase amount to an equipment manufacturer in New Jersey to secure inventory for the first shipment due to California." Compl. (Dkt. 1) ¶ 56 (emphasis added); *see also* Dkt. 145-7, CBB00001385 (Blue Flame attempting to coordinate outbound wire transfer to supplier at 12:14 p.m. on March 26); Ex. 5, CBB00001514 at 1514 (Blue Flame principal informing Chain Bridge on March 25 that "we definitely need same day" outbound wire transfers). Thus, Blue Flame's damages (if any) would have resulted from Chain Bridge's decision to withhold the funds even temporarily, during the period when Blue Flame purportedly needed to wire money out, regardless of any involvement from JPMC. Under Blue Flame's theory of damages, even March 27 would have been too late.

On the record here, no reasonable jury could find that Chain Bridge would have given $456 million to Blue Flame were it not for JPMC's conduct. Chain Bridge's inability to establish causation dooms its claim.

C. Indemnification Under U.C.C. § 4A-211(f) Does Not Apply

There is another, more fundamental reason why Chain Bridge's indemnification claim fails. Section 4A-211(f) does not apply.

1. Chain Bridge does not dispute what JPMC has repeatedly explained: § 4A-211(f) provides for indemnification only where there is a "cancellation … by the sender" and "the receiving bank … agrees to" that "cancellation." U.C.C. § 4A-211(f); *see* JPMC MSJ 14-16; JPMC Opp. 10-11. Instead, trying to absolve itself from responsibility for its own actions, Chain Bridge focuses on hyper-technical arguments—namely, that the reversal of "*every*" wire "results

from" a sender's cancellation, and, as a receiving bank, Chain Bridge was "powerless" to do what JPMC says it did. CB Opp. 14. Chain Bridge is wrong.

Article 4A recognizes that a receiving bank, just like a sending bank, can effect the reversal of a wire transfer—whether it is in the form of "cancellation" under § 4A-211, "rejection" under § 4A-210, or otherwise. *See* JPMC Opp. 12 (citing U.C.C. § 4A-210; *id.* § 4A-105 cmt. 2; *id.* § 4A-106). Focusing on § 4A-211(a), Chain Bridge accuses JPMC of using "ellipses" to "obscure" the "critical point"—per Chain Bridge, that § 4A-211(a) "states that *every* cancellation of a payment order results from '[a] communication *of the sender* of a payment order … transmitted *to the receiving bank*.'" CB Opp. 14 (alteration in original). But § 4A-211(a) says no such thing; indeed, that provision does not contain the slightest intimation that "*every* cancellation" (*id.*) results from a sender. And in any event, JPMC's reliance on § 4A-211(a) (and § 4A-210(a)) simply conveyed that reversals can be effectuated orally (JPMC MSJ 16)—which Chain Bridge does not dispute. As for § 4A-210(a), Chain Bridge insists (CB Opp. 14 n.3) that it is irrelevant because it uses the term "rejection," and not "cancellation." But Chain Bridge picks form over substance. *See* JPMC Opp. 11-12. Substantively, what happened here is this: The wire was reversed. Whatever the technical term, there can be no question that a receiving bank can effect a reversal of funds—as Chain Bridge did.[1]

More fundamentally, Chain Bridge's contention that, as the receiving bank, it was "powerless" to reverse the wire (CB Opp. 14) is simply incorrect. By using Fedwire, Chain Bridge could have reversed the wire without first receiving JPMC's reversal message. *See* Dkt.

---

[1] That "rejections" are only effective if they occur before "acceptance" (*see* CB Opp. 14 n.3) is irrelevant. A "cancellation" is also constrained by "acceptance," except as provided in § 4A-211. The issue of acceptance concerns the legal effect of a rejection or cancellation—not whether a bank can, operationally, reject or cancel in the first place.

113-34, Fedwire® Funds Service Format Reference Guide 15 (November 19, 2011); Ex. 6, FedLine Training for Account Holders 39-40 (January 2002), https://tinyurl.com/2ehk6kpr (instructing receiving banks, "If you *receive* a funds transfer message and need to return it to the sender ABA, you can derive the reversal" and including template reversal message (emphasis in original)).

To be sure, an "important" "housekeeping and accounting matter" in reversing funds is to "tie[] the reversal to the original" wire because that eliminates any potential for human error in returning the funds to an originator. Dkt. 145-5, Baxter Rep. ¶ 46; *see also* Dkt. 145-6, Brough Dep. 296:18-20 (testifying that the requested reversal message was the "neater and tidier" form of returning the funds to California). Indeed, Chain Bridge's principals appeared well aware of the potential for such errors, imploring their wire-transfer specialist and her director: "You guys need to return the funds properly. … Make sure you return it carefully." Dkt. 113-24, CBB00002789 at 0:31-0:48. Industry practice thus calls for a receiving bank to issue a "reversal of transfer" upon receipt of a "request for reversal" by the sender to prevent clerical errors that could result in the funds being sent to someone other than the originator of a wire. *See* Dkt. 145-5, Baxter Rep. ¶ 46; Dkt. 145-6, Brough Dep. 296:18-20. But this practice does not in any way change the fact that, contrary to Chain Bridge's view, receiving banks can effectuate the reversal of wires and that they lose the benefit of indemnity when they do.

That Fedwire allows receiving banks to reverse funds absent any discussion with or input from the sender highlights the absurdity of Chain Bridge's interpretation of § 4A-211(f). If "*every* cancellation of a payment order results from" a sender (CB Opp. 14 (emphasis in original)), then § 4A-211(f) would entitle a receiving bank to indemnification when it returns funds without the sender's knowledge. Such a sender, suddenly saddled with the obligation to indemnify, would not even become aware of the wire's reversal until it automatically receives that reversal by operation of the Fedwire system. *See* U.C.C. § 4A-209 cmt. 8 ("In the case of a payment made by Fedwire acceptance cannot be prevented.").

JPMC's straightforward and sensible interpretation is that § 4A-211(f) would not allow such an indemnification claim to stand because the reversal of the funds would not be a "cancellation … by the sender" to which "the receiving bank … agree[d]." Rather, it would be a cancellation by the receiving bank. Chain Bridge's interpretation of § 4A-211(f), however, would go the other way. According to Chain Bridge's proposed rule, the receiving bank, the only party responsible for the reversal of the funds, would still be entitled to indemnification from the sending bank—the party that did not even know the reversal was coming. *See* CB Opp. 13-14. That absurd result underscores the flaw in Chain Bridge's interpretation of the statutory text.[2]

2. Chain Bridge's reliance on *Banca Commercial Italiana v. Northern Trust International Banking Corp.*, 160 F.3d 90 (2d Cir. 1998), does not help the bank's cause. *Banca* indicates that, absent an agreement to the contrary, "absolute liability" under § 4A-211(f) exists where "*the sender* cancels a payment order." 160 F.3d at 94 (emphasis added). That simply reflects the operation of the statute when its predicate condition is met (and there is no agreement

[2] The facts need not be as extreme to illustrate the flaw in Chain Bridge's interpretation. Take, for example, the case of a receiving bank that refuses to credit its beneficiary client—despite pleas from the originator and the sending bank that the funds be credited. Demanding instead that the funds be returned, the receiving bank asks the sending bank to issue a reversal message to ensure no mistakes are made in the process. The sender accommodates the request—having no way to compel the receiving bank to credit the funds and intending to help the originator get the funds to the beneficiary through some other means. Under Chain Bridge's read, those circumstances would still constitute a cancellation "by the sender" triggering an indemnification obligation under § 4A-211(f)—even though the sender pressed the receiving bank to credit the funds but was powerless to compel that outcome.

otherwise)—*i.e.*, a *sender* cancels. The § 4A-211 commentary stands for the same unexceptional proposition when referring to indemnification being "automatic[]" upon a *sender's* cancellation, § 4A-211(f) cmt. 5, contrary to what Chain Bridge suggests (CB Opp. 16-17). *Banca* does not suggest that receiving banks cannot effect cancellations and says nothing about the applicability of § 4A-211(f) to cases like this one—where the receiving bank requests and directs the reversal.

Banca's mention of a "'depart[ure] from the common law'" (CB Opp. 17 (quoting 160 F.3d at 94)) is equally unhelpful to Chain Bridge. That case did not confront, to borrow Chain Bridge's phrase, the "metes and bounds" (CB Opp. 18 n.5) of § 4A-211(f) liability. Rather, the narrow question in *Banca* was which statute-of-limitations provision governs a § 4A-211(f) claim: a three-year statute of limitations for "'an action to recover upon a liability … created or imposed by statute,'" or a six-year statute of limitations for actions "'for which no limitation is specifically prescribed by law.'" 160 F.3d at 93-94. So the court examined whether § 4A-211(f) indemnification would exist apart from statute. It is both uncontroversial and unremarkable to say that it would not. Chain Bridge's leap from there—that § 4A-211(f) indemnification precludes consideration of common-law principles insofar as they might inform interpretations of the statutory text—is unsupported by the very case on which it relies.

Moreover, Chain Bridge's position on the role of the common law here defies both settled doctrine in statutory interpretation cases and the U.C.C.'s deliberate incorporation of common-law principles to the extent they are not inconsistent with statutory liabilities. Even where a statute deals with "a new type of business entity that has no exact precedent in the common law," courts are instructed to find "helpful guidance" from "the common law's definition" of familiar concepts. *Clackamas Gastroenterology Assocs., P. C. v. Wells*, 538 U.S. 440, 447-448 (2003) (looking to "the common law's definition of the master-servant relationship" in the Americans with Disabilities Act context); *see also Phelps v. C.T. Enters., Inc.*, 394 F.3d 213, 222 (4th Cir. 2005) (noting the Fourth Circuit's conclusion that "congressional silence" on the issue of whether an ERISA claimant could insist on a jury trial "'returned [the question] to the common law of trusts.'"). Here, the U.C.C. is far from silent. A core feature of its design is the *express* incorporation of common-law principles to the extent consistent with statutory text. *See* JPMC MSJ 15 (citing U.C.C. § 1-103(b) ("Unless displaced by the particular provisions of this Act, the principles of law and equity … supplement its provisions."); U.C.C. § 1-103(b) cmt. 2 ("The Uniform Commercial Code was drafted against the backdrop of existing bodies of law, including the common law and equity, and relies on those bodies of law to supplement it [sic] provisions in many important ways."); s*ee also, e.g.*, *Adkinson v. International Harvester Co*., 975 F.2d 208, 215 (5th Cir. 1992) ("[E]quitable principles of contribution and indemnity" "have not been displaced by" Mississippi's Uniform Commercial Code, but rather "supplement" the Code) (construing Mississippi's precise analog to U.C.C. § 1-103(b)).[3]

Here, as JPMC has explained, its reading of § 4A-211(f) accords with the purpose of indemnification at common law, which is premised on the principle that a party should be responsible for the consequences of its actions. *See* JPMC MSJ 15-16; *see also* JPMC Opp. 12-13. Chain Bridge should not be allowed to avoid those consequences here.

---

[3] Moreover, when *Banca* distinguishes § 4A-211(f) indemnification from common-law liabilities that could apply in such a situation, *Banca* lists "common law fraud" and "unjust enrichment," the point being that the statutory indemnification regime was designed to be distinct from those causes of action. 160 F.3d at 94. What *Banca* does not do is indicate that the common-law principles animating *indemnification* would not apply here, so long as they remain consistent with the plain text of the statutorily created liability.

3. As JPMC has explained (JPMC MSJ 17), JPMC's reversal message does not constitute a cancellation by JPMC and could not alter the legal significance of Evinger's oral cancellation request when he asked JPMC "to issue a recall for the wire." JPMC SUF ¶ 37 (quoting Dkt. 113-31, CBB00002544 at 0:04-0:09); Chain Bridge Statement of Undisputed Facts ¶ 9 (quoting Dkt. 130-63, CBB00002544) (CB SUF) (Dkt. 125 at 5-10). Chain Bridge's contention that "a reasonable jury could not find that Evinger's question to Korpal" was a cancellation (CB Opp. 14 n.4) lacks any support. In any event, even if there were doubt about the legal significance of Evinger's oral cancellation request standing alone, Chain Bridge's claim would still fail. The undisputed record makes clear that Chain Bridge, not JPMC, directed the reversal of the wire through its affirmative acts and because of its powerful incentives to reverse the funds. *See* JPMC MSJ 18-21; *see also* JPMC Opp. 14-15.[4]

Reprising a point Chain Bridge briefly advanced in its motion, the bank cites JPMC's administrative claim against California. *See* CB Opp. 15-16; *see also* CB MSJ 18 n.5; JPMC Opp. 15-16. That administrative claim provides Chain Bridge no help. First, the claim is contingent, which is why JPMC asked California to defer its consideration until further development in this litigation. The point is to preserve JPMC's rights in the event it is found liable for indemnification here. In that circumstance, a factfinder would have rejected the argument that Chain Bridge requested the reversal, and JPMC is free to pursue a legal theory that California is ultimately responsible.

Second, there is no inconsistency between JPMC's position here and its position in the administrative claim. Of course California wanted its $456 million returned. But under the plain

---

[4] Moreover, as already explained, even if the record reflected a joint decision by Chain Bridge and JPMC to reverse the wire (it does not), indemnification would still not apply under § 4A-211(f)'s plain terms. *See* JPMC MSJ 21 n.4; JPMC Opp. 16 n.3.

text of § 4A-211(f), the indemnification issue here concerns the interactions and relationship between JPMC ("sender") and Chain Bridge ("receiving bank")—not California. *See* U.C.C. § 4A-211(f); *see also id.* § 4A-104 cmt. 1. And as between Chain Bridge and JPMC, the undisputed record shows the following facts and sequence: (1) Chain Bridge asked JPMC to issue a recall for the funds; (2) JPMC was comfortable with Chain Bridge holding the funds; and (3) JPMC would not have sent a reversal message absent Chain Bridge's request. Indeed, JPMC's corporate designee testified unequivocally: "We would not have issued the recall request because [Chain Bridge] said they were holding the funds." Dkt. 113-14, Korpal Dep. 284:22-285:2; *see also* JPMC Opp. 9 (quoting same); JPMC SUF ¶ 45. What California independently communicated to JPMC has no bearing on those undisputed facts.

II. Chain Bridge's Unjust-Enrichment Claim Fails

Chain Bridge cannot make up its mind about what claim it is advancing "in the alternative" (CB MSJ 23). Its own summary judgment brief pressed "'payment by mistake'" (*id.*)—a different claim from unjust enrichment as asserted in its complaint, but still a losing one (*see* JPMC Opp. 21-22). Chain Bridge now pivots back to unjust enrichment. *See* CB Opp. 23-24. Its retreat is unavailing because Chain Bridge's argument that JPMC "accept[ed]" or "ret[ained]" a "benefit" upon the wire's return, as required for unjust enrichment, is meritless. *Id.* 24.

A "benefit" means "the helpful or useful effect something has." *Benefit*, Black's Law Dictionary (11th ed. 2019); *id.* (also defining "benefit" as "[p]rofit or gain"). There is zero evidence in the record demonstrating that JPMC received any "helpful or useful effect," "[p]rofit," or "gain" by virtue of simply accepting the return of the wire. *Id.* How would JPMC disgorge such a "benefit"? Chain Bridge provides no answer because there is none. *See T. Musgrove Constr. Co. v. Young*, 840 S.E.2d 337, 341 (Va. 2020) ("The measure of recovery for unjust enrichment is limited to the benefit realized and retained by the defendant."). Indeed, by accepting the reversal of the funds, JPMC of course did not have any free-and-clear entitlement to $456 million; it was California's money, and thus JPMC incurred "a liability" to California for that amount. *E.g.*, *In re Hackman*, 534 B.R. 867, 878 (Bankr. E.D. Va. 2015) ("The Court does not see how [the bank] has been unjustly enriched here. Accepting the premise that [the embezzler] transferred the Plaintiffs' funds to an account at [the bank], [the bank] would have a liability to its depositor in the same amount."). Chain Bridge's assertion that JPMC obtained a benefit by accepting the wire must fail.

Chain Bridge's "retention" argument—premised on the assertion that "[t]here is no evidence that the funds are no longer JPMorgan's property, or that JPMorgan is otherwise unable to satisfy a judgment for Chain Bridge" (CB Opp. 24)—also fails both on the law and the facts. In *In re Hackman*, the plaintiffs lodged an unjust-enrichment claim against a bank for receiving and maintaining embezzled funds, asserting that the bank benefited "because its rate of return on the funds would have exceeded the amount of interest it paid to its depositor." 534 B.R. at 878. Rejecting that argument as a matter of law, the court held:

> [I]f the Plaintiffs' theory were correct, then banks would be exposed to these kinds of claims whenever one of their depositors is engaged in a legal dispute with a third party over money. Indeed, under the Plaintiffs' theory, even if the funds were deposited pursuant to a court order that the funds be held in escrow pending resolution of a dispute (say, in an interpleader case), the bank holding the funds could be held liable for unjust enrichment because it would be earning amounts on the escrowed funds in excess of the interest that accrues on the funds in the account. No bank would accept deposits under those circumstances.

Id. at 878-879; *Sarasota Avionics Int'l, Inc. v. Wells Fargo Bank, N.A.*, 984 F. Supp. 2d 1265, 1269 (M.D. Fla. 2013) (finding, in unjust-enrichment context, "no indication … that the [payor of checks deposited into a bank account] conferred a benefit upon [the bank]"). That holding applies with greater force here because Chain Bridge does not even advance a rate-of-return theory, but rather simply argues that "retention"—by itself—is sufficient for unjust enrichment.

It is undisputed that JPMC promptly returned the full $456 million to California on March 26. JPMC SUF ¶¶ 61-62; CB SUF ¶ 62. At summary judgment, Chain Bridge must litigate within the confines of the record, and it is one that contains no evidence of any benefit retained (or accepted) by JPMC as a result of the wire's reversal. Thus, all Chain Bridge can offer is the speculation that there is "no evidence" (CB Opp. 24) that the funds are no longer JPMC's "property." Again, that is insufficient as a matter of unjust-enrichment law, but it also reflects a basic misunderstanding of how summary judgment works. Chain Bridge has the burden to point to "specific facts or objective evidence"—not "mere allegations or inferences"—to support its claim. *E.g.*, *TecSec, Inc. v. Int'l Bus. Machs. Corp.*, 763 F. Supp. 2d 800, 805 (E.D. Va. 2011) (Brinkema, J.), *aff'd*, 466 F. App'x 882 (Fed. Cir. 2012). Chain Bridge cannot do so.

Underscoring the flaws in its unjust-enrichment theory, Chain Bridge cites no case law holding that "acceptance" or "retention" of an indebtedness qualifies as a "benefit" for purposes of unjust enrichment. The two cases it does cite are inapposite; they have nothing to do with unjust enrichment.[5]

---

[5] In *Terry v. Bank of America, N.A.*, the court held that the plaintiffs had failed to state a conversion claim against the bank because "the general rule is that once funds are deposited in a bank account, the funds become the property of the bank." 350 F. Supp. 2d 727, 730 (W.D. Va. 2004). In *Bernardini v. Central National Bank of Richmond*, the defendant bank had offset funds from a depositor's account to satisfy an indebtedness that the depositor owed to the bank and the depositor argued that certain of those funds were statutorily exempt from creditor claims. 290 S.E.2d 863, 864 (Va. 1982). Disagreeing with the depositor, the court observed the "general rule" that "moneys deposited immediately become the property of the bank, and the [bank] becomes the debtor of the depositor." *Id.* (citation omitted). Neither case has anything to do with unjust enrichment.

Finally, there is no inequity to rectify through unjust enrichment. Chain Bridge pressed the wire's reversal from start to finish. Chain Bridge benefited from the alleviation of its BSA and capital-requirement concerns. There was no universe in which Chain Bridge wanted to keep those funds at its bank. *See, e.g.*, Dkt. 113-30, CBB00004453 at 4458 (Evinger and Brough directing Blue Flame principal "not to send the wire back into another account at Chain Bridge" and "to find a bank that could handle it"). On these facts, the "restitutionary remedy" of unjust enrichment plainly does not lie. *Trident Prods. & Servs., LLC v. Canadian Soiless Wholesale, Ltd.*, 859 F. Supp. 2d 771, 782 (E.D. Va. 2012), *aff'd*, 505 F. App'x 242 (4th Cir. 2013).

CONCLUSION

The Court should grant JPMC's motion for summary judgment on all claims in Chain Bridge's third-party complaint.

Dated: May 27, 2021

Respectfully submitted,

WILMER CUTLER PICKERING HALE AND DORR LLP

/s/ Meredith K. Loretta
Meredith K. Loretta (92369)
Albinas J. Prizgintas (*pro hac vice*)
Whitney Russell (*pro hac vice*)
1875 Pennsylvania Avenue N.W.
Washington, DC 20006
Tel.: (202) 663-6981
Fax: (202) 663-6363
meredith.loretta@wilmerhale.com

Alan E. Schoenfeld (*pro hac vice*)
Marissa W. Medine (*pro hac vice*)
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Tel.: (212) 230-8800
Fax: (212) 230-8888
alan.schoenfeld@wilmerhale.com

Felicia Ellsworth (*pro hac vice*)
60 State Street
Boston, MA 02109
Tel.: (617) 526-6000
Fax: (617) 526-5000
felicia.ellsworth@wilmerhale.com

Margarita M. Botero (*pro hac vice*)
1225 17th Street, Suite 2600
Denver, CO 80202
Tel.: (720) 274-3135
Fax: (720) 274-3133
margarita.botero@wilmerhale.com

Attorneys for Third-Party Defendant JPMorgan Chase Bank, N.A.

CERTIFICATE OF SERVICE

I certify that on this 27th day of May, 2021, I electronically filed the foregoing using the Court's CM/ECF system, which will then send a notification of such filing to all counsel of record.

/s/ Meredith K. Loretta
Meredith K. Loretta
1875 Pennsylvania Avenue N.W.
Washington, DC 20006
Tel.: (202) 663-6981
Fax: (202) 663-6363
meredith.loretta@wilmerhale.com