UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BLUE FLAME MEDICAL LLC, . Civil Action No. 1:20cv658
.
Plaintiff, .
.
vs. . Alexandria, Virginia
. July 28, 2021
CHAIN BRIDGE BANK, N.A., . 2:34 p.m.
JOHN J. BROUGH, and .
DAVID M. EVINGER, .
.
Defendants, .
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CHAIN BRIDGE BANK, N.A., .
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Counterclaim Plaintiff, .
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vs. .
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BLUE FLAME MEDICAL LLC, .
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Counterclaim Defendant. .
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CHAIN BRIDGE BANK, N.A., .
.
Third-Party Plaintiff, .
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vs. .
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JPMORGAN CHASE BANK, N.A., .
.
Third-Party Defendant. .
.
. . . . X

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

(Pages 1 - 53)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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P R O C E E D I N G S

THE CLERK: The Court calls Civil Case Blue Flame Medical LLC versus Chain Bridge Bank, N.A., et al., Case No. 2020cv658. May I have appearances please, first for the plaintiff?

MR. WHITE: Good afternoon, Your Honor. Pete White for plaintiff, Blue Flame Medical. With me on my side of the room are Greg Ketcham-Colwill and Jason Mitchell from my office.

THE COURT: Good morning -- good afternoon, rather.

MR. WHITE: Good afternoon.

THE COURT: All right. For Chain Bridge?

MR. ORSECK: Good afternoon, Judge. I'm Gary Orseck from Robbins Russell for Chain Bridge and the individual defendants, and with me today are my colleagues, Matthew Madden, Donald Burke, Leslie Esbrook, Carolyn Forstein, and Zach Ferguson.

THE COURT: All right. And for JPMorgan?

MR. SCHOENFELD: Good afternoon, Your Honor. Alan Schoenfeld from Wilmer Cutler Pickering Hale & Dorr for JPMorgan Chase, and I'm joined by my colleagues --

THE COURT: You have to speak up louder.

MR. SCHOENFELD: Alan Schoenfeld from Wilmer Cutler Pickering Hale & Dorr for JPMorgan Chase, joined by my colleagues, Whitney Russell, Al Prizgintas, and Marissa Medine.

THE COURT: All right. We have multiple motions before the Court, and again, we've been through the record, so I don't need to hear a huge amount of argument, but I will start with the defendants Chase Bank -- I'm sorry, Chain Bridge Bank's argument.

It seems to me that the core issue in this case, which is before the Court on dueling summary judgment motions, is whether or not there is sufficient evidence in the record as it's been developed that there's any -- that any reasonable jury could possibly find that the plaintiff had any damages from what happened here.

MR. ORSECK: Thank you, Your Honor. I will address that. You're referring to Count 1, I believe, of the --

THE COURT: Well, Count 1 as well as the state law count.

MR. ORSECK: That's true. For two independently sufficient reasons, the plaintiff fails to adduce any jury submissible evidence that it could prove any damages in a jury trial. The first reason, which comes straight from the language of Section 404(a), is that it must adduce evidence of damages, quote, resulting from in this case Chain Bridge's refusal to pay.

The first reason it can't do that is that it's undisputed that the State of California made a decision not to move forward with this transaction as soon as the State

Treasurer's Office learned the true and basic facts about Blue Flame Medical. Those were that its principals and its entire organization had no experience in medical supply or, indeed, any supply, and instead were political operatives. California learned that when it spoke to Chain Bridge and, I believe, when it spoke to JPMorgan as well.

It also learned that, that Blue Flame had just been incorporated three days before and had just opened a bank account the day before. As soon as that happened, the State Treasurer's Office representative, Ms. Gonzalez, told Chain Bridge, "Please wait to credit this transfer until we can find out additional information." That's the transcript of her deposition, at page 50.

Forty minutes later, at 2 p.m., the State Treasurer's Office asked JPMorgan to recall the funds because California was not comfortable with the state's due diligence. That comes from the deposition of Mr. Korpal, who is JPMorgan's global head of security, at pages 21 and 22.

And then Ms. Gonzalez at 3:19 e-mailed JPMorgan and asked, this is Exhibit 66 of our motion, "Is it possible for JPMorgan to reach out to the Chain Bridge Bank and see where the wire recall process is in the process?"

And it is undisputed that once the wire was returned, Blue Flame Medical's representatives petitioned California to go ahead after all with the transaction, even though the money had been returned, and California rebuffed Blue Flame, stating explicitly that this is because you now have credibility issues, and we're not going to move forward.

It is undisputed that California had every right to terminate for convenience, that term was written right into the procurement order, which is Exhibit 7, which incorporated a standard document that said that California had a unilateral right to terminate for convenience if it was, quote, in the state's interest.

So the reason I mention this first reason that they cannot adduce damages is we don't have to wonder what the counterfactual world would look like. We know as a matter of fact that when California learned indisputably true facts about its counterparty, it pulled the plug and decided not to move forward.

So that means that Blue Flame cannot adduce evidence that its losses, if any, resulted from my clients' refusal to pay. It undoubtedly was caused by California's deciding not to go forward based on its learning of true facts. That is enough to dispose of the claims, as you put it, the state law claims and Count 404 because they can't show causation at all.

The second reason that is independently sufficient is that even if you put aside everything I just said, there is no jury submissible nonspeculative evidence on which a jury could conclude that Blue Flame Medical could have performed the contract in any event, and I'm going to give you the two main reasons for that.

The first is that our expert in medical procurement and supply asserted without contradiction or rebuttal that Blue Flame's promise to procure 100 million of four particular types of N95 masks exceeded China's total exports of N95 masks to the United States between March and the middle of April 2020. That's paragraph 48 of Mr. Faulkner's report.

And even by the end of April, China was exporting only 5 million masks total per day. These are a small subset that California ordered, namely, four particular types.

So that's the first point that shows the notion that Blue Flame could have procured all those masks is preposterous. They also have not adduced evidence that they had an inventory of masks.

There is a lot more that we put in the record showing that the schedule that they provided on March 25 to California was simply scribbled up in multiple versions by their counsel, Mr. Bearman. He first had a version that said they produced 58 million, and then minutes later, he had another version that said that they would produce 100 million, with no evidence that he got that information from anybody who was in any position to supply them.

But I think second -- and again, proving the point and showing that we don't -- there's no basis on which a jury could engage in some kind of hyper- -- I'm sorry, counterfactual speculation about what would have happened is we know what happened. We know what happened because Blue Flame's outside counsel at Mayer Brown, Exhibit 73, responded to the inquiries of congressional investigators and disclosed that Blue Flame failed to fulfill its 13 other customers' much smaller orders in March and April, a failure that it ascribed, under a duty, obviously, to be truthful with Congress, because of Chinese export restrictions and the failure of Blue Flame's China-based supplier to come through. It didn't say that it failed to do any of this because of Chain Bridge's return of the wire.

In their brief, Blue Flame points out, well, we produced a million and a half masks to the State of Maryland. That order came in on April 1 and was fulfilled sometime after October pursuant to a settlement with the State of Maryland, and they produced 96,000 masks that they produced to the City of Chicago on May 26.

But there is no evidence in the record, and I think this is important, that either of the two middlemen brokers who Blue Flame intended to rely upon to provide these masks, namely, Great Health Companion, that was Mr. Henry Huang's company in China, and Suuchi, which was going to produce 6 million out of the 100 million, there is no record evidence that either of those entities ever supplied a single mask to

Blue Flame.

So there is the, the impossibility of performance based on undisputed facts about the capacity of China to produce N95 masks in general, putting to one side these four particular brands; and then second, we happen to have a historical record of Blue Flame's capabilities, and Blue Flame was unable to provide these masks to its other customers.

So that leaves Blue Flame's contrary assertions to be unsupported speculation of a type that is not jury submissible and is insufficient to overcome summary judgment.

The last thing I'll say on this is at the last minute, Blue Flame adduced a declaration from Mr. Huang, which is Exhibit 95, and Mr. Huang attests in his declaration in conclusory fashion that he could have produced a great number of masks, he doesn't go so far as to say he would have done it within the 30 days required under the contract, and he also says without support that the Chinese government would have let him do it.

This is not in itself or in combination with anything else a sufficient basis to overcome summary judgment first because of the procedural problem with it. We've cited cases demonstrating that an individual who was subpoenaed to give a deposition and to produce documents, as Mr. Huang was by us, cannot parachute in at the end of discovery and submit a declaration that's untested by the other side, and this is particularly egregious here in that there's a contemporaneous e-mail from him to Blue Flame, which is Exhibit 83, all the way back on April 7, and he said orders of this size, quote, would be impossible to fulfill.

We never got to test that because he refused to make himself available despite admitting that he could have left China to give a deposition, he could have returned to China, but he would have been quarantined for some period of time.

THE COURT: So, I'm sorry, let me make sure I'm clear about that. He was not deposed or he was deposed?

MR. ORSECK: He was not deposed.

THE COURT: He was not.

MR. ORSECK: We served the notice of deposition and the document subpoena. He said, "I can't do it because China won't let me," and he said he wouldn't leave China because he'd have to quarantine on the way back in, and he wasn't willing to do it.

We asked to him and to Blue Flame to be included in any discussions about a possible deposition because very late in discovery, we got a notice from Mr. White's firm that they were hoping to after all depose Mr. Huang, and we said we want to be a part of that. We want to know the scheduling. And it never happened.

So the first reason his declaration is insufficient to overcome summary judgment is because it's improper, but I would say even more to the point, his assertions in that declaration are conclusory, and Rule 56(c)(4) says summary judgment affidavits cannot be conclusory. All he says, without any support, is that Great Health Companion could have procured 100 million masks and that he would have gotten the Chinese government to allow him to do it. That's easy enough to say, but it's not credible even if it were admissible, and it's not.

So those are the two main reasons why Blue Flame cannot prove damages to a jury. First, there is no damage to them resulting from Chain Bridge's return of the wire. California had 100 percent right at any time it wanted to cancel this contract. Even if, even if Blue Flame had already been paid, China had a -- California had an unfettered right to terminate the contract, recall the money, and we know it would have done so because it did so.

And the second reason is Blue Flame could never have procured this great number of masks at that time in competition with the rest of the world.

THE COURT: Thank you.

All right, Mr. White?

MR. WHITE: Thank you, Your Honor. To address those in turn, Your Honor, first off, as to the contract with California, that actually is an incorrect description of the contract. While there were termination rights in the contract, there were notice provisions and a number of other things that would have had to have occurred for that contract to be terminated.

The problem here is because defendants intervened with the State of California and poisoned that well by accusing my clients unjustifiably of fraud, that caused certain actions by the State of California, classic tortious interference with contract, classic in violation of both federal law and state law in what they did.

THE COURT: Well, I don't think -- I don't think the record shows that anybody at Chain Bridge accused your client of fraud. They simply were concerned about the unusual nature of what was going on, that is, that a company that had just barely been formed was getting this significant amount of money being sent to it, and I think, you know, they certainly saw smoke.

They certainly were concerned about whether this was legitimate, but even the attorney for your client was alerting your clients that this large amount of money could very well trigger concerns by a bank and that they needed to make sure that the bank was adequately prepared for that situation.

MR. WHITE: Certainly, Your Honor, and that's why Mr. Gula on the 25th had conversations with the bank letting them know exactly what was coming in, exactly what it was for, the amount that was going to be coming in, who the counterparty was, and how it was going to be used, and that same day, the two most senior officers at the bank called Mr. Gula and had a conversation with him about exactly these issues.

If that was their concern, Your Honor, they would have told Mr. Gula, "We're not interested in that transaction." They would have told Mr. Gula perhaps even that the account would have been closed. They would have set up a block in their system to keep that from coming in.

They did none of those things. The problem is, what they found out was after agreeing to this transaction that hadn't even hit their balance sheet, they realized they were going to have a huge balance sheet problem, and they couldn't keep it on their books. Their records, their e-mails, their internal e-mails don't talk about any of these issues. They talk about that immediately.

And instead of investigating and seeking to contact Mr. Gula to find out any other information, they interceded, and what were they doing when they called California? Were they, were they just trying to find out more information about the transaction? No. They were giving information.

They weren't trying to get information. They were giving information, and their purpose in doing so was to keep this from remaining on their balance sheet because that would create the problem that is mentioned in those e-mails.

That doesn't go directly to the issues of damages, which I want to make sure I'm responsive to Your Honor. A couple aspects as to damages. Once that well had been poisoned, there was -- as Mr. Orseck recognizes, there was no possibility of going forward with California.

They selectively mentioned certain facts to California, many of which California officials already knew, which was confirmed in depositions. They selectively mentioned some things to them with the purpose of getting a recall of this transaction.

I submit to Your Honor it is a -- the measure of damages both on Count 1, which is consequential damages, and on the state law claims deals with the lost profits. It's very easy to see that by engaging with California in a manner that clearly violated Regulation J, clearly violated federal law, what they did clearly violated federal law, a jury could well believe and we believe will believe the testimony of our clients that they were substantially damaged by that both in defamation and by the tortious interference with the contract with the State of California, but also with their, their business expectancy that they were going to make profit on this transaction, and we will be able to prove that at trial.

So to say that it's not possible that this, that this -- that there's not a material issue of fact as to whether they'd be able to perform is completely inaccurate. Our clients testified, as is cited in our briefs, that they did believe they would be able to perform, that they did have contracts with suppliers. Those contracts --

THE COURT: But isn't the strongest evidence on this counterfactual issue the admissions that were made before Congress that of the, what was it, 13 contracts that, that your client ultimately did get, that they were never ever able to really satisfy any of them except for those, the two, the Chicago contract, which was such a small amount, and the Maryland contract, that was all sort of a problem? Those are the only two.

There's no evidence in this record whatsoever that your client was ever able to get anywhere near 100 million of these masks.

MR. WHITE: Your Honor, to understand the problem that was created here, first off by Chain Bridge Bank doing what they did, their reputation was destroyed. That made it very, very difficult for them to deal with anyone going forward.

THE COURT: But if it was so destroyed, how did they even get the 13 contracts? I mean, I think the problem is it wasn't so destroyed that Chicago didn't enter into a contract with them or that Maryland didn't.

So, I mean, that's a hard argument to make when even after the California situation, there were other entities that were willing to do business with them, but they couldn't deliver, and they couldn't deliver because in part everybody in the world wanted these masks. I mean, there's clear evidence of that in the record. I could take judicial notice of that fact if I had to.

But also, you've got the evidence in the record that the Chinese government, at least in terms of sourcing the materials from China, the Chinese government was putting a stamp on it, so that they couldn't get those quantities.

MR. WHITE: Your Honor, that last point, I want to address that directly because that's misleading. That is not the amount of production that was occurring in China at the time. That was the amount that was being exported to the United States. There was a worldwide market competing for this supply at the time.

The problem here is -- it's much like if you think about any commodities market. Buying extremely large commodities has a certain price. Buying spot commodities, smaller commodities, has a much higher price. That's just the way markets work. You have much more buying power if you are buying a much larger quantity.

If they had been able to get this money where it was supposed to go, to, ultimately to Chinese manufacturers in late March of 2020, the evidence would show that they would have been able to get that production -- sorry, 2020, yes -- they would have been able to get that production because they would have had that level of buying power.

A half a billion dollars being -- or close to that, 400 million, whatever it would be that would ultimately go through Great Health Companion, would give them the ability, as Mr. Huang's declaration states, would give them the ability to get supply consolidated around that California order. It would have taken supply that could have gone to other places, and it would have energized the creation of new production lines.

THE COURT: But that's really hypothetical and speculative, and the problem you've got is you do have the contemporaneous e-mail from Mr. Huang where he's clearly indicating that there could be real problems with the Chinese government and he wasn't at all sure he could produce that quantity.

So I agree with defense counsel that the declaration that's filed solely for purposes of summary judgment, especially if there had been a genuine effort to get the same witness for a deposition, would not be admissible. So -- and again, this has to be admissible evidence.

MR. WHITE: Your Honor, if I may address that, I would beg to differ on that point as to whether it's admissible. They haven't cited a case where an individual -- the cases that they cite are cases where people have avoided subpoenas and avoided service of process. That's not what happened here.

There was an extraordinary event that caused

Mr. Huang's unavailability, and his unavailability would have been for a very extended period of time given if he were to leave China, he would have been quarantined, the entire process would have taken about a month, and he would have been unable to keep his employment because of what he needed -- what he needs to do there.

So he -- and by the way, he was never served with a, with a subpoena of any kind. They attempted to locate him and then abandoned their effort to communicate with him further.

So it is commonly the case that declarations, as a matter of fact, Rule 56, the language of it specifically speaks to declarations and affidavits as evidence, and there are a multitude of cases that talk about declarations of people who haven't been deposed.

Now, if he needs to be deposed prior to trial, that's fine, but what you're talking about is a potential credibility attack on what he had to say. He is clearly a competent witness to say what he had to say in the, in the declaration that's been filed.

In addition to the one text, I can't recall if it's text or e-mail, that talked about potential inability, there are others that say he would have been able to get it done. This is not unusual. This was a very -- it's not unusual in a strange circumstance, as this clearly was, for there to be some back-and-forth about am I going to be able to do it, am I not going to be able to do it.

It ultimately got to the point, and the defendants know this and there is evidence in the record to support it, got to the point that he believed he would be able to do it, and he stated that confidence in the declaration before the Court.

So there is evidence that this would have gotten done, and they can't be said that there is no material issue of fact in dispute as to whether there could be damages, as to whether they could have completed that mission. Now, Mr. Orseck may have ample, ample ways to cross-examine that testimony when it comes in at trial, and he may succeed and he may not, but that's what trials are for.

What the plaintiffs have put forward is their own testimony as to how they were going to execute, documentary support in the form of purchase orders from Great Health Companion and Suuchi that support it, that are uncontradicted, and the testimony of Mr. Huang, the executive with Great Health Companion, who would have the ability to perform under this contract and would have the ability to direct the Chinese government, who he is an employee of a state-owned Chinese entity, they would have the ability, as he states in his declaration, to have manufacturing facilities shift their focus toward the California order.

And this is why you can't compare the much smaller orders to the California order. Those are so far different in size and scope. When, when you've got a potential order for $450 million or $500 million that is out there, you're not going to listen to orders for a few thousand dollars or even a few million dollars. It's just not going to happen. You don't have the buying power, and that is what the, the expert for the plaintiff said.

So the statement that his, his -- the expert for the defense is uncontradicted, that's not true. The expert for the plaintiff took issue with that, and that would be an issue that would be posed at trial. So --

THE COURT: Yeah, but you still have, as I understand it, a clear, uncontroverted evidence, I believe, from the defendants' expert as to the record of Chinese exports to the United States of these masks during the relevant time period. I mean, California was expecting to start getting delivery in April. I think April 3 was the date that they had as is shown in Exhibit 7.

And, you know, whether, whether Florida -- I'm sorry, whether China could have delivered it in 2021 is irrelevant to this case. What's relevant is in the time frame that California was looking at, which would have been starting on April 3, that they would start getting shipments.

MR. WHITE: But, Your Honor, that actually is incorrect as well. The one document you're referring to was an internal California document that was not sent to, to plaintiffs. Their agreement, their agreement was best efforts to get this done in a timely basis. That's what the understanding of the parties was.

That purchase order that caused the internal processing of the $456 million wire, that was only internal in California, and nobody testified that they were expecting delivery by April 3.

THE COURT: Well, not of the whole thing but they were expecting -- and your clients had practically told them, what, three to seven days. I mean, there's evidence in the deposition testimony.

MR. WHITE: Well, the Suuchi masks would have been available immediately, Your Honor. That's why they were trying to get that wire out to Suuchi that day and to get the wire out to begin shipment of masks in China that had already been located.

So there would have been -- the testimony would be at trial that there would have been significant productions of masks that would have been made available to California within whatever time frame. I don't believe April 3 is the proper time frame. I think that's a mischaracterization of the record, but even if it were, there would have been substantial production by April 3. That's what the evidence is going to show, and that was cut off by defendants' improper conduct.

THE COURT: All right.

MR. WHITE: If I could address one other point, Your Honor, the measure of damages for Count 1 is foreseeable damages. Clearly, here they knew that if they took the actions that they took, it was going to affect Blue Flame's ability to complete the California contract. It was going to undermine it. They knew that. That was their intention from the beginning.

So those are clearly foreseeable damages that existed there, and I believe it is an issue of fact for the, for the trier of fact to decide. The same with the tortious interference.

Count 2, Your Honor, the damages there are calculated differently. They would be in the -- the problem in Count 2 is that Chain Bridge Bank issued a payment order from Blue Flame Medical's account without Blue Flame Medical's authorization. There's no dispute about that. There's a document that the Court can see.

The document that actually sends the payment from Chain Bridge Bank to JPMorgan in connection with the recall, that document shows that the source of the funds, the source is Blue Flame Medical. It's Blue Flame Medical's account.

They took those funds out of their account in a manner that is clearly and expressly forbidden by federal law. The measure of damages there is return of that money.

And I don't believe there's any issue of material fact as to what happened there. Those, those funds were clearly, there was a payment order clearly without Chain Bridge's -- without Blue Flame Medical's authorization from Blue Flame Medical's account.

Chain Bridge Bank issued that payment order. They did not attempt to nor did they get the consent of the owner of that account. They don't have the authority to do that under federal law, and they knew they didn't have the authority to do it, but they did it anyway.

They took that money from the account, which is clearly and expressly forbidden by Regulation J, which says that there are very strict rules around how banks can handle their customers' money and when they can take money out of their account and when they can't. This clearly is not one of those cases. They had no authority to do that, and the damages there are expressed in the statute, and the damages are rescission back to the customer of that amount that the bank improperly took. There is no dispute in the record that those funds were improperly taken without authorization from that account.

So while I respectfully disagree with the Court's concern regarding the damage -- the foreseeability of damages and the ability to prove damages, I think that's a very typical trier of fact issue. You've got a very large contract. It would be unusual that there wouldn't be profit to be made from that contract. Of course, there was going to be profit to be made from that contract, and that's how they were damaged is that lost profit and that lost business opportunity, which also affected their ability to perform on these other contracts. It dramatically affected their ability to perform on these other contracts because they lost that buying power, and they had the reputational hit that came with it.

So all of those factors together, which were caused by Chain Bridge Bank's conduct in this case, is why we believe that that presents an issue for the trier of fact, but again, regardless, Count 2 has its own separate statutory measure of damages, and I don't think there is -- well, there is no material issue of fact as to whether the actions of Chain Bridge Bank violated the federal law as alleged in Count 2.

THE COURT: All right. I'll hear -- wait. While you're there, Mr. White --

MR. WHITE: Yes, ma'am.

THE COURT: -- on the defamation count, which is the last one that we haven't discussed, but the defendant argues that the statements that were made, none of them could be considered defamatory, and I think that that's a very strong argument that they make.

Again, the word "fraud" was never used. I think all of the facts that were conveyed to California are accurate, that the company had just been started, that the owners of the company were individuals who were political consultants, lobbyists. I mean, the word "lobbyist" can't be considered defamatory. And so the defendants' argument, I want you to respond to that one.

MR. WHITE: Yes, Your Honor. It's clear under Virginia law that an insinuation of fraudulent conduct is sufficient to allow for the trier of fact to determine whether, whether damages are due. Recall what happened here. This is Chain Bridge Bank's, Chain Bridge Bank's own customer. Chain Bridge is reaching out not to their own customer; they're reaching out to their customer's counterpart, and what are they telling them?

They're telling them they're seeing badges of fraud. That's exactly what happened here. They're telling them that they're seeing badges of fraud, and the reality is the reaction was dramatic, as you would expect. This is their own counterparty's bank who is doing the extraordinary step of calling them, not calling their own customer, not calling their counterparty bank, calling the State of California, the counterparty, who they have the relationship with, and telling them facts that they consider badges of fraud.

Clearly, that creates an insinuation that under Virginia law is actionable as a defamatory conduct.

THE COURT: All right.

MR. WHITE: And just one other point, Your Honor.

THE COURT: Yeah.

MR. WHITE: I disagree that all of the facts that they, that they say they told California were uncontroverted. That's, that's not true. There are things that they told California that, that were literally false as well, but I think the stronger argument and the clear one under Virginia law is the insinuation of fraud is sufficient for defamation.

THE COURT: All right.

MR. ORSECK: Thank you, Judge, and I'll be brief. I'm going to take these in reverse order.

On the defamation claim, the evidence on this point is closed. The California officials who were parties to the call with Chain Bridge Bank, there's no reason to think they'll come to trial, and according to all parties to that conversation, two from the State Treasurer's Office as well as the two defendants, Mr. Brough and Mr. Evinger, all say that what Chain Bridge told California on that call was that Mr. Gula was a, quote, political lobbyist; and two, he'd opened Blue Flame Medical's bank account the previous day. That's at Ms. Gonzalez's deposition transcript at pages 50-51 and 130.

You didn't hear Mr. White say that either of those things was untrue. In fact, in their brief at page 29, they -- the best they can do is to say that there's a technical truth to these. Technical indeed. Another word for that is truth.

Their theory here is how dare you tell the State of California true facts about us that we never told them ourselves? That's not defamation under any version of the law, and the controlling case that we cited, *Cashion v. Smith*, which is a Virginia case from 2013, explains that the insinuation theory that Mr. White was referring to is in a situation where the defendant states an opinion which carries with it an insinuation or a wink-wink, if you will, of defamatory facts.

There is no case and the plaintiff cites no case in which the statement of true facts has been deemed defamatory for fear that the listener of those facts will infer something bad. Nobody -- there's no evidence that anybody ever accused them of fraud or used words to that effect.

So the defamation claim is dead in the water for that reason, and even if it weren't, the law is abundantly clear that there is a privilege that applies in trading information among people who have an interest in knowing that information.

They say, well, California had no interest in knowing this information because it had already authorized the wire transfer. That's not a tenable response. Obviously, California was concerned with nearly half a billion dollars of its taxpayers' money.

That's my response on the defamation claim. On the Count 2, Section 204, the language of that section says that it applies if the receiving bank -- that's Chain Bridge -- accepts a payment order issued in the name of its customer as sender, and all the cases we -- and it turns out to be unauthorized or improper.

All the cases we found consistent with the commentary are cases in which some scam artist calls up the bank purporting to be the bank's customer, purporting to issue a payment order as the sender, and then the bank screws up and sends out the money.

Mr. White, I listened carefully, he very carefully said that the payment order that Chain Bridge sent back to JPMorgan identified Blue Flame as the source, but, in fact, it very explicitly identified Chain Bridge Bank as the sender, which is the term used in the statute. That's Exhibit 68. It says it plain as day. It says sender: Chain Bridge Bank.

So Section 204 has no application in a situation where the bank simply sends the money out. It would be liable in every case, every case that it sends a wire, unless the beneficiary, unless the customer approves, and that's not the law.

If I can circle back to a couple of comments Mr., Mr. White made, the first I agree with wholeheartedly. He said that as soon as the California officials learned these two facts, that Blue Flame's principals were political lobbyists and that they had just opened the account, he said there was no possibility of going forward.

That's the whole point. That's the whole point. Count 1 requires that the plaintiff prove damages as a result of the return of the wire, but here they lost this transaction because California learned from us what Mr. White's client never told them. So that's the end of Count 1, but it's also the end of the tortious interference and defamation counts because those require an untrue statement or some other improper conduct.

As far as Mr. Huang goes, he said there was -- Mr. White said there was no further communication. We e-mailed him repeatedly, that's in Exhibit 114, and the cases we've cited, *Dedvukaj* and *Henry*, do not turn on the question of whether the affiant is a wrongdoer. This is not a punishment when you exclude the evidence. The question is one of fairness to the opposing party, and that's us.

In a situation where we're in realtime, contemporaneously, he said we can't do this. This is impossible. To allow them to overcome summary judgment where we've never had the opportunity and may never have the opportunity to cross-examine him would be quite unfair.

The notion of trying to explain away their failure to fulfill any other contracts on a timely basis on the ground that this one was much bigger and markets allow you to do much better on a big order than a small one, that is the most utter of speculation. There is no record evidence to suggest that any of these suppliers, both of whom, by the way, were merely brokers, to fulfill these contracts, Great Health Companion and Suuchi did not have masks. They were arranging to provide masks, so they said.

Two more points: Mr. White said, well, you should look at the testimony of our expert. He contradicts their expert, who said they could never have fulfilled this. He's referring to Mr. Prisament, and I believe it's paragraph 46 of his report at the end, and all Mr. Prisament says at the end is -- I'm not quoting it because I don't have it in front of me -- but he says: I conclude that there is no reason to doubt that Blue Flame could have fulfilled this contract in these trying times, could have provided these masks in these trying times.

Again, totally conclusory. He may be an expert or not, but that's not sufficient to overcome summary, summary judgment.

The last point, where Mr. White said, well, these statements, this whole, this whole event writ large destroyed our reputation and made it impossible for us to fulfill these contracts, number one, that rests on the doomed defamation claim. We didn't say anything untrue.

But in any event, the record is clear, and I would refer you to our expert, Laura Stamm's report, that there was no press whatsoever about the failure of this transaction until more than a month later, which was after they'd already tried to obtain and fulfill these other contracts that they weren't able to fulfill.

So just as a matter of the chronology, the notion that my client destroyed Blue Flame's reputation, thus causing damages, is a physical impossibility, even if you were to ignore the fact that nobody made any untrue statements about Blue Flame.

THE COURT: All right, thank you.

Mr. White, I saw you sort of jumping around. Do you want to respond to some of that?

MR. WHITE: Yes, briefly, Your Honor. As to the State of California, no California -- all the California officials that were deposed here were asked about would they have liked to have known this fact or that fact or the other fact. They were then asked would that have made a difference, and no one said it would have. They said it's information they would want to know, but no one said it would have made a difference to their determination.

They had done their diligence on this deal, and those true facts that he says that he was letting them know, there may be some additional details that they would have wanted to know, but absolutely no one from California said that it would have made a difference. No one testified to that.

California has investigated it. California has not accused Blue Flame of fraud.

THE COURT: Well, if it wouldn't have made a difference, then why did they -- why did they cancel the contract?

MR. WHITE: Because, because Blue Flame's bank was making an insinuation of fraud. It's that simple. The State of California can't be dealing with an entity when their own bank is making an insinuation of fraud, and that insinuation was false.

THE COURT: Okay.

MR. WHITE: And that's why they would not deal with them any longer. It didn't have anything to do with this detail or that detail. They all testified that would have been interesting information, but I'm not saying that would have made a difference, every one of them.

What they did say is what happened was once there's been an insinuation of fraud and they could get the money back, they're going to get the money back and move on, and they're not going to deal with them again. That's the, that's the very essence of the damage here and the problem here.

If I could address as well the point regarding the --

THE COURT: Count 2?

MR. WHITE: Yes, regarding Count 2. The actual wire instruction, the wire transfer display that was produced in discovery, it's -- Plaintiff's Exhibit 45 is one of the copies of it, it's in a couple of places, that document, it is always going to be the case that the sender in a wire transaction is a bank and the receiver in a wire transaction is a bank.

The fact that the sender was Chain Bridge Bank, well, obviously, of course it was Chain Bridge Bank who do wire transfers, banks do, but that document has listed the originator of the wire, and the originator of the wire is Blue Flame Medical LLC with their account. So the originator of that wire was Chain Bridge Bank's customer.

That's exactly what 204 talks about. It talks about a bank having -- without authority, sending money, wiring money out of a customer's account.

Mr. Orseck made an interesting comment. He said that would subject banks to liability every time they wired money out of a customer account without their authorization. He's right; it would and it does.

Banks know they're not supposed to do that. Banks know they don't have the authority to do that. Banks know they can't wire money out of their customers' accounts without their authorization. That's why it doesn't happen, but it did happen here.

And the entire structure of Regulation J and the way that the banking laws are set up is to avoid that happening. That's why, you know, it's unusual, this case, I think, is a really good case for summary judgment as to the liability issues both between Chain Bridge Bank and JPMorgan and between Chain Bridge Bank and Blue Flame Medical because Regulation J in the structure itself and the comments explicitly contemplated this circumstance, explicitly contemplated this circumstance, and they're extremely clear as to what banks can and can't do.

Banks can't send out money out of a customer account without that customer's authorization, period, full stop. If they do, they have to put the money back. That's what 204 says, and it can't be more clear.

It also can't be more clear that that's exactly what Chain Bridge Bank did here. They took money that was in a customer account, and they sent it out to JPMorgan without the customer's authorization, didn't even tell them they were doing it, and that's a clear violation of a banking regulation that you don't see violated very often because it is so crystal clear, and that, as I mentioned before, that doesn't hinge on any of the proof issues that the Court has mentioned regarding damages, which may I respectfully disagree, that seems to me the classic trier of fact issue that should be decided here in terms of whether they were going to be able to perform, and if so, what that level of performance would have been and what they lost out on in the benefit of the bargain when their bank called their counterparty and accused them of fraud.

THE COURT: All right, thank you.

MR. ORSECK: May I just beg the Court's indulgence for 60 seconds?

THE COURT: All right. I'll time you on that one.

MR. ORSECK: That's fine. Mr. White is wrong that California said that's interesting but I don't care. Mr. Kim's deposition, who was the director of the department of general services, who is the director of the Department of General Services, at page 85 testified that had he learned these true facts, it, quote, would raise alarm bells; and the controller of California said in a text message to Mr. Thomas, the head of Blue Flame, that what they'd learned had raised a credibility issue. That's Exhibit 12. So the idea that they don't care is just wrong.

Second, Mr. White is incorrect that anytime a bank returns a wire without its customer's approval, it's violated the law. That's what 211(c) talks about, that, that when there is a cancellation, the wire may be returned without the beneficiary's authorization.

And if a bank were to just spirit off a customer's money, without anybody cancelling it or without the client -- the customer authorizing it, that would amount to a breach of contract between the bank and its accountholder, but 204 is a very narrow provision that refers to a circumstance in which the bank accepts a payment order from someone purporting to act as the sender, as the customer, in which case the bank is responsible. The law puts the burden of that mistake on the bank.

That's not what happened here.

THE COURT: All right. Now, we still have the JPMorgan motion for summary judgment, so we'll give you a chance, Mr. Schoenfeld. Just remember to speak loud and slow.

MR. SCHOENFELD: Understood. Thank you, Your Honor.

The record is unequivocal, I think, that Chain Bridge intended to prevent Blue Flame from accessing the wire funds, and I think the record is clear on that point both on the 25th and on the 26th. Every single action that Chain Bridge Bank took on March 25 and March 26 confirmed and furthered that intention.

So with that in mind, I'd like to address Chase's argument on the parties' agreement and on causation, and the causation argument that we make in the briefs may be mooted, I think, a little bit by the exchange between Mr. Orseck and Mr. White. We fully agree with everything Mr. Orseck has said, of course, with respect to whether Chain Bridge -- whether Blue Flame could ever have performed on these contracts and whether any of the losses may have been caused by anything that Chain Bridge did versus, as I believe Mr. White conceded, what California chose to do.

With respect to this question of the agreement, the provision of 211(f) that speaks to unless otherwise provided in an agreement of the parties, the Court has a full record of the parties' communications around the cancellation of the wire as well as their internal communications reflecting their contemporaneous understanding of what their agreement to cancel the wire entailed. The parties discussed their respective concerns about the wire, the steps they would take to cancel it, and the form and timing of the recall request.

As between the parties, indemnification was not explicitly discussed, and that makes all the sense in the world. There was no plausible basis under these circumstances for either party to believe that Chase was going to indemnify Chain Bridge for doing something that Chain Bridge had expressly requested and openly wanted for its own reasons.

Indemnification is meant to protect a party when that party increases its legal exposure at some other party's behest for that other party's benefit. That's the common law understanding of indemnification, and it's inscribed in 211(f), both in the text and in the commentary, and no one, not even Chain Bridge, contends that indemnification under 211(f) is meant to serve any other purpose.

That purpose is totally foreign to the circumstances here, and the parties knew it. We know precisely what -- where the parties' minds met on this issue because Chain Bridge personnel tell you exactly that. On the call between Mr. Evinger, Mr. Brough, and Ms. Mojica-Guadron, Evinger and

Brough relate all of the details of the cancellation --

THE COURT: Slow down just a second. Slow down just a second. I want to make sure we can get this.

MR. SCHOENFELD: Sorry.

THE COURT: All right.

MR. SCHOENFELD: So on the call between Mr. Evinger, Mr. Brough, and Ms. Mojica-Guadron, which takes place only six minutes after the second call between JPMorgan Chase and Chain Bridge, Evinger and Brough relate all of the details of the conversation they just had, all the details of the cancellation agreement between the banks, who would do what, when, and how, and Chain Bridge specifically disclaims on that call indemnification as an aspect of that agreement.

They tried to clean that up on litigation somewhat, but their account is incredible. On the one hand, they tell you that Chain Bridge personnel knew at the time that 211(f) carried an implicit indemnity. On the other, they tell you that everyone in the industry includes the "no indemnity" language on Fedwire confirms, the transmission that conveyed the instructions to cancel.

If Chain Bridge is to be believed then, their expectation at the time, at 1:43 on March 26, was that Chase was not going to indemnify them and they were willing to return the wire anyway. That's because their incentives were concrete and they were powerful, they're reflected in the record, the decision had been made to return the wire based on Chain Bridge's considerations, and an expectation that indemnification wasn't part of the bank's agreement.

With respect to the second argument we make in the brief, which is essentially on loss causation, as I said, I think a lot of it has been mooted by the exchange between Mr. White and Mr. Orseck. I think, as Your Honor has suggested, the record here is clear that there are no losses to Blue Flame, in which case there's nothing to indemnify, but in any event, any loss was not caused by the cancellation, which is what is required under 211(f), but it was required -- but it was caused by circumstances that have nothing to do with JPMC's conduct here or, in fact, with Chain Bridge's, but as between Chain Bridge and JPMorgan Chase, and I'll do this very briefly because I think the point is relatively moot, as between Chase and Chain Bridge, again, any loss for which Chain Bridge might be indemnified here needs to be as a result of the cancellation, not of any other consideration. It has to be a "but for" cause of any loss that Chain Bridge might have experienced here.

And again, I think the same record evidence about Chain Bridge's intention, its plans as of March 25 never to make the funds accessible to Blue Flame, defeat any claim that the cancellation itself was a "but for" cause of any loss here.

And we know from the moment they were contacted on

March 25 and all of the events of March 26, that there was no intention to make these funds available to Blue Flame. We have all of the record evidence, the e-mails, the phone conversations, both internal and with Chase, they were withholding the funds. They intended to return them to Chase or to California, which they spoke to and offered to return the funds. Then they very quickly closed the accounts down and stopped communicating with their client.

There's also the wire transfer policy, which I realize is a point of contention between us and Chain Bridge, but it speaks for itself. It does have a discretionary clause that says that when the beneficiary's account number doesn't match the account number on the Fedwire confirm, there's discretion to return it, but the second sentence says if there is a question as to the beneficiary's right to funds, the wire will be returned. It's mandatory, and there's plenty of testimony in this record reflecting that particularly under these unique circumstances that wouldn't depart from the mandatory language of its policy.

And so I think again the record is undisputed on this point that this money was not going to be sent to Blue Flame for reasons having nothing to do with the cancellation of the, of the payment order.

So finally there's the argument about the statutory, whether 211(f) applies here at all because this wasn't a communication by the sender, and this consumed most of the parties' briefing, and so I'll keep it hopefully mercifully short.

Indemnification is available under 211(f) when one party to a payment order cancels the transfer and induces the other party to agree. In those circumstances, indemnification provides the inducement.

And it's established as a statutory default, unless the parties otherwise agree, and I think we've discussed that issue, because the vast majority of wires are processed and cancelled with no human interaction. The statute is set up to ensure that transfers are cancelled and returned without the need for the parties to negotiate the details or to concern themselves with future liability.

None of that rationale obtains when the party returning the wire is the one that initiated the cancellation. It's not accommodating anyone's request, and there's no need for it to be indemnified.

The statute doesn't contemplate a windfall or an assurance for one party's willing and self-interested acts. The statute says as much and the commentary in the law of indemnification underscore it. Indemnification is available when the sending bank makes the request and the receiving bank agrees to it. That's not what happened here on any fair reading of the record.

Chain Bridge's main response is that receiving banks can't initiate a cancellation, but the statute never says that. In fact, you know, 211 is quite clear when it speaks to legal or factual impossibility. It states it in very clear, declarative language. 211(e) says a cancelled payment order cannot be accepted.

Chain Bridge wants you to read the same sort of prohibition, the same sort of legal or factual impossibility into 211(a) to say that the receiving bank can never cancel a wire transfer. That's simply not there.

And there's evidence elsewhere in the record and in the statute itself that receiving banks can cancel wires. We point to provisions elsewhere in the statute that speak to the ability of receiving banks to process cancellations of wires. There's also the operational evidence we put in, which is the Fedwire handbook, which allows -- which instructs operational technicians about how precisely you go about returning wires, and there's evidence in there that suggests that a receiving bank can, in fact, reverse a wire.

So their main argument here is that the Court doesn't even need to reach this construction of 211 and 211(f) because it's simply an impossibility for a receiving bank to do exactly what happened here, which is to request and initiate the return of the wire, and under those circumstances, 211(f) doesn't apply here because it is not the situation contemplated by this indemnification provision.

And so just to be clear on the kind of architecture of this argument, there's an argument that 211(f) doesn't apply here at all, and that's the statutory construction argument I just offered. There's then an argument that even if 211(f) did apply here, there's no indemnification obligation here because the parties otherwise agreed, as contemplated in this preparatory clause of 211(f); and finally, even if -- if the Court were to reject the argument about the unless otherwise agreed, there's a question about what losses there are that would be indemnifiable, and that's limited to losses that are "but for" caused by the cancellation, and for the reasons that we discussed, I don't think there's any argument, there's no evidence in the record that any of the losses from Chain Bridge were caused -- would not have been caused but for the cancellation by Chase.

THE COURT: All right. I'll hear a response.

MR. ORSECK: Thank you, Your Honor. I will again take these in reverse order. Mr. Schoenfeld argued first -- or last that Section 211(f) doesn't apply here, but the language again couldn't be clearer. It says unless otherwise provided, in an agreement of the parties, if the receiving bank after accepting a payment order agrees to cancellation, then it goes on to say whether or not that cancellation or amendment is effective, then the cancelling bank is liable to the bank for any loss and expenses, including reasonable attorneys' fees, incurred as a result of the cancellation.

Comment 5 to 211(f) makes clear, and I'm quoting, if a receiving bank agrees to cancellation or amendment under subsection (c)(1) or (2), it is automatically entitled to indemnification from the sender under subsection (f).

THE COURT: Isn't there -- I want to make sure I'm clear that I understand what's going on in this respect: Isn't there information in this record that nobody at Chain Bridge advised JPMorgan that the monies had been credited to the Blue Flame account? Because there is a difference between a bank getting the money and then assigning it to a particular account, correct?

MR. ORSECK: Well, it depends what you mean. The answer to your first question is no, nobody from Chain Bridge told JPMorgan that the money had been credited to Blue Flame's account, and that's because the money was never credited to Blue Flame's account, and we have the accounting documents to prove it.

THE COURT: Well, you put a hold, you put a hold on the money.

MR. ORSECK: We did for, for the two hours between when it came out and we returned it. It was not credited to Blue Flame during that time, but the point I wanted to get to is that's of zero legal significance under Section 211(f). It makes no difference. 211(f) turns on whether the receiving bank accepted the payment order.

Everybody agrees we accepted it because that happens by operation of law the moment it comes into the bank. That's 4A-209(b)(2). It's automatic when it comes in. So we couldn't -- that's a post-acceptance cancellation, but it doesn't matter for purposes of 211(f) whether the money was ever credited to Blue Flame.

The, the argument that Mr. Schoenfeld makes at the podium and in the briefing is he wants to import this concept of inducement was the word he used, and he suggested that 211(f) doesn't apply if the receiving bank, that was Chain Bridge here, induced the cancellation; and then he asserts that we were the ones who orchestrated or induced it or stage-managed it or whatever, but there's nothing in the UCC or the commentary or any case law whatsoever that concerns itself as to any of those case-by-case facts.

211(f) says in the most black line -- or clear line language possible that so long as the sending bank cancels and then the receiving bank honors that cancellation, which it is under the UCC under no obligation to do, it is automatically in the language of comment 5 and it is absolutely in the language of the *Banca Commerciale Italiana* case in the Second Circuit entitled to indemnification of any resulting expenses, which would include any judgment against us by Blue Flame, and it's also entitled to indemnification for any legal fees and expenses. That's automatic.

So there is no basis for a court to inquire whose idea was it first to return the money, whose bread was buttered by the return, who stood more to benefit from it.

And I think more to the point, I understand why JPMorgan keeps referring to common law concepts of indemnity. We have to look to where the burden ought to lie, should it be with them or should it be with us, but the *Banca Commerciale Italiana* case explicitly says, Judge Preska held and then the Second Circuit affirmed, that in drafting the UCC, the idea was to ignore common law indemnification concepts, and the case explicitly says that the concept of who is wrongful has no place. All that has to happen is there is a request for cancellation, which there undeniably was here. They actually set out a Fedwire notice saying please return the funds. Their expert agreed that that counts as a cancellation. It's undisputed that we honored it at 3:21 p.m. on the 26th, and that's the end of the story.

All of this stuff about we orchestrated it, which on the record is completely not true, I mean, all the calls came from JPMorgan saying our global security team is looking at this and it's leading to not good places. They called back twice more and said we're going to have to call this back because California wants us to call it back.

So on the facts, we didn't induce anything, but it's irrelevant, and the reason they're harping on this notion of whose idea it was is because the statute is so damning of their position otherwise.

THE COURT: All right.

MR. ORSECK: They say that their -- they try to say, leverage the language that says unless otherwise provided in an agreement of the parties, but it's a stipulated fact in the case that there was no agreement to displace the default rule of indemnification.

Of course, there was an agreement that we would send the money back because under 211, the receiving bank, that's us, has to agree. You don't have an obligation as the receiving bank to honor a cancellation; you have to agree to do it. But to displace the default rule of indemnification, there has to be an agreement -- in an agreement of the parties, there has to be a provision displacing indemnification.

And it's important that I note, Mr. Schoenfeld said it here and he said it in his brief, he ascribed to us an argument that the cancelling bank, in this case JPMorgan, always puts in a term that says "no indemnity." That's not, of course, what we said.

What we said is if the sending bank wants to displace indemnity and disclaim indemnity, then it has to put in that language, which the Federal Operating Circular that we cite makes very explicit. It puts it in all capital letters.

The notion that the largest and most sophisticated bank in the United States attempted to reach an agreement with us sub silentio to displace indemnification by not saying anything is -- I know it's a cliché, but it's turning the statute on its head. They're saying because there was no provision that said we will indemnify you, therefore, we won't indemnify you, but the statute very pointedly requires exactly the opposite.

On the causation point, this one Mr. Schoenfeld said, well, this is mooted if you agree with Chain Bridge in granting summary judgment against Blue Flame because then there'll be nothing to indemnify, but this has been a very expensive litigation, through no fault of my client, and we're entitled to indemnification to be held harmless in terms of attorneys' fees as well.

And so on the causation point, I agree, I agree with JPMorgan that our losses have to have been incurred, quote, as a result of the cancellation, that's what 211(f) says, but here we have a complaint from Blue Flame, and it says we're suing you because you honored that cancellation and sent the money back.

It really is that simple. So our honoring it, honoring the cancellation notice is the cause in fact of our damages.

JPMorgan's response to that is to say, well, we're going to speculate that if we hadn't cancelled the money, you were going to just up and send it back anyway or you were going to hold onto it forever.

There is no basis in the record for that. The counterfactual that they're positing would be that when JPMorgan called Chain Bridge at 1:37 p.m. on the 26th and said we're going to be recalling those funds because we're not comfortable about this, we have to claw it back, if they had instead said to us, guess what, Chain Bridge? We've decided we're not going to cancel, we're not going to call back, we've satisfied ourselves that Blue Flame is legit, you can go ahead and pay the money, that Chain Bridge would have said no, no, no, no. No dice. We're going to send it back to you anyway.

There is not a stitch of evidence in the record to support any of that. To the contrary, on that very same call, and we've printed out the transcript in the record, they followed up, it was Mr. Coffey who said, "We're going to be recalling it. Do you need anything from me?"

And the response was, "Yes. We'd like a formal cancellation notice."

And why did they want a cancellation notice? Well, Mr. Evinger testified because we would be indemnified if we got a cancellation notice and we honored it.

We wanted there to be no mistake that we were honoring a formal cancellation done by JPMorgan, and that is exactly what happened. There's no other evidence that matters.

THE COURT: Mr. Schoenfeld, did you want to respond to that briefly?

MR. SCHOENFELD: Thank you, Your Honor. Judge, very briefly on this, I'll take it in the order Mr. Orseck did, this notion that we are trying to import the concept of inducement into this, this is an indemnification provision.

Comment 5 speaks very explicitly about the receiving bank agreeing to cancellation as an accommodation. That's speaking about the receiving bank being induced and doing something that is essentially not consistent with its wishes at the behest of another party, and it's for that reason that indemnification is made available.

The idea that the common law is some stranger to 211(f) is also, you know, defied by the language of the statute. This is not about imputing common law concepts where they don't belong.

The UCC explicitly says that common law concepts of indemnification are relevant to supplement the language of the statute where it's not otherwise inconsistent with the statute, and there's certainly no inconsistency with 211 or with 211(f) in reading it the way that JPMorgan suggests it ought to be read, which is to say when the sending bank cancels the transaction and the receiving bank agrees, in those circumstances, there may be indemnification in order to induce the receiving bank to go along with the request.

But on the facts here -- and I'll get to exactly what the chronology is, but on the facts here, there's no reason to impute the indemnification obligation of 211(f).

With respect to this idea about the record not bearing out in any way that it was -- that the cancellation was orchestrated, initiated, whatever the language Mr. Orseck used, what we have here is insistent requests by Chain Bridge Bank to return this money. They make it first to California twice. They say: Do you want this money back from us?

And California says: No, not now.

They then go to Chase and they say: Do you want this money back from us?

I think what's critically missing from Mr. Orseck's chronology here, the uncontroverted testimony of Mr. Korpal, the person in charge of this at Chase, who said: I was content to have Chain Bridge hold these funds, and I would not have recalled the transaction had Chain Bridge committed to continue holding the funds.

And it was because on that 1:34 call Chain Bridge requested that the money be returned that Chase then decided that it would agree with Chain Bridge's request and recall the funds rather than letting them sit at Chain Bridge to ensure that they didn't go on to Blue Flame, which I think was the common goal here.

I think the reference to Mr. Evinger's testimony that at that point in time, he was confident that 211(f) would allow for indemnification, I think is not, is not consistent with the record, to put it mildly. There's a phone conversation among Chain Bridge Bank employees at 1:43 where someone raises, Ms. Mojica-Guadron, the wire technician, raises the question do we need indemnification?

The answer is not no, they're sending a Fedwire confirm, it's implied, or no, we've got it covered. The answer is this is what it is. This is just what we've got to do.

That is not consistent with the suggestion after the fact in the context of litigation that he was confident in the implied indemnification agreement to 211(f).

Finally, on the loss causation issue, if this comes down to attorneys' fees, I think the question then becomes, you know, but for the cancellation, what attorneys' fees would have been incurred here? I don't think that because there's a claim in the complaint about cancellation, all of Chain Bridge's attorneys' fees were, in fact, caused by the cancellation itself.

So if the remainder of Blue Flame's damages dissipates and this becomes a question of to what extent Chase needs to indemnify Chain Bridge for attorneys' fees incurred in connection with this litigation, I think there's still a question about what fees were incurred as a result of but for the cancellation. That's not an issue that the parties have litigated here, but it's certainly a consequential one if all that -- if that's the only thing that remains of the case.

THE COURT: All right. Well, thank you, gentlemen. You've had interesting arguments. Obviously, it's a very thick record. Your arguments have helped me think about portions of the record that I want to further review in chambers. So we'll get an answer out to you as quickly as we can, but thank you very much.

MR. WHITE: Thank you, Your Honor.

MR. ORSECK: Thank you, Your Honor.

THE COURT: We'll recess court for the day.

(Which were all the proceedings had at this time.)

CERTIFICATE OF THE REPORTER

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/

Anneliese J. Thomson