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**
CHAIN BRIDGE BANK, N.A, Third-Party Plaintiff, v. JPMORGAN CHASE BANK, N.A., Third-Party Defendant.	

REPLY IN SUPPORT OF THIRD-PARTY PLAINTIFF CHAIN BRIDGE BANK, N.A.'S MOTION TO ESTABLISH THE AMOUNT OF INDEMNIFIED FEES AND EXPENSES TO BE AWARDED FROM THIRD-PARTY DEFENDANT JPMORGAN CHASE BANK, N.A.

Chain Bridge's successful defense of this matter has saved JPMC (and its customer, California) from hundreds of millions of dollars of liability that, had it been imposed against Chain Bridge, would have immediately become JPMC's responsibility to indemnify.[1] Under the plain

[1] In its summary-judgment opinion, this Court observed that JPMC "can work out with California, in the separate proceeding in California, how to allocate its losses." Dkt No. 175, at 31. JPMC's opposition advises that, on September 14, 2021, California rejected the notice of claim that JPMC had submitted in March 2021. *See* Opp. 4. That administrative decision does not preclude further efforts by JPMC to allocate its losses with California. Under California law,

text of Section 4A-211(f), JPMC must now indemnify Chain Bridge for all of the fees and costs it has incurred in obtaining that successful result, as well as the fees and costs it has incurred in enforcing JPMC's indemnification obligation. Those fees and costs were "incurred by [Chain Bridge] as a result of [JPMC's] cancellation," UCC § 4A-211(f), so they are indemnifiable.

In its opposition, however, JPMC contends that Chain Bridge is not entitled to even a dime of indemnification, at least at this point. JPMC contends that Chain Bridge is not indemnified for its defense against Blue Flame's state-law claims, even though this Court has already held that "*this civil action* undoubtedly resulted from the reversal of the wire transfer," Dkt. No. 175, at 31 (emphasis added), and even though those claims were closely intertwined with the UCC claims that JPMC acknowledges are subject to indemnification. JPMC also contends that it is not responsible for fees and expenses incurred by Chain Bridge in enforcing its indemnification right, even though the indemnification litigation was no less a result of JPMC's wire cancellation and even though refusing to award those fees would frustrate the full recovery that Section 4A-211(f) plainly contemplates. Finally, JPMC complains that the time records of Chain Bridge's counsel are inadequate, including because they are not formatted in a way that would facilitate JPMC's audacious argument that it may avoid indemnification not only for work attributable to the claims that it (mistakenly) contends are not subject to reimbursement, but also for any overlapping work on claims that JPMC acknowledges are reimbursable.

JPMC's arguments are meritless, and they should be rejected. The Court should award Chain Bridge its reasonable fees and expenses in the full amount sought in Chain Bridge's motion.

JPMC's submission of a written notice of claim was a prerequisite to bringing suit against California. *See* Cal. Gov't Code §§ 905.2(b), 945.4. A claimant has six months to bring suit following an administrative rejection of the claim. *Id.* § 945.6(a)(1).

A. Chain Bridge Is Entitled To Recover Fees And Expenses Incurred In Defending Against Blue Flame's State-Law Claims

The fees and expenses that Chain Bridge incurred defending against Blue Flame's state-law claims are indemnified under Section 4A-211(f) because they were "incurred by [Chain Bridge] as a result of [JPMC's] cancellation" of California's wire transfer. UCC § 4A-211(f). JPMC's arguments to the contrary are unpersuasive.

1. JPMC first contends (Opp. 5-9) that Section 4A-211(f)'s indemnification obligation extends only to causes of action seeking to impose liability under the UCC itself. That result follows, JPMC contends, from the principle that "Article 4A serve[s] as the exclusive means for determining the rights, duties and liabilities of all parties involved in a Fedwire funds transfer," *Eisenberg v. Wachovia Bank, N.A.*, 301 F.3d 220, 223 (4th Cir. 2002), as well as a supposed general rule that indemnification provisions should be construed narrowly.[2]

That argument lacks any basis in the text of Section 4A-211(f). Under that provision, a cancelling bank "is liable to the [receiving] bank for *any* loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation." UCC § 4A-211(f) (emphasis added). Section 4A-211(f) thus imposes a broad and complete liability on the sending bank for whatever losses and expenses result from the cancellation of a wire transfer, and does not turn on the theory of liability that the plaintiff decides to assert against the receiving bank.

[2] JPMC attributes its narrow-construction rule to a pair of Fourth Circuit decisions, but neither one supports JPMC's point. In *Industrial Enterprises, Inc. v. Penn America Insurance Co.*, 637 F.3d 481 (4th Cir. 2011), the court held that the insurance policy language at issue had a well-established meaning, which covered the "insured's tort liability for property damage caused to third parties," but did not encompass "regulatory liability." *Id.* at 489-90. In *Perdue Farms, Inc. v. Travelers Casualty & Surety Co. of America*, 448 F.3d 252 (4th Cir. 2006), the parties agreed that the insurance policy at issue covered claims for relief under ERISA but did not extend to wage-and-hour liability. *See id.* at 255. In both cases, the scope of the insurers' liability was governed by the contractual language in the relevant policies, not by any general preference for narrow construction of indemnification provisions (whether statutory or contractual).

2. JPMC's arguments are no more persuasive when JPMC turns to the question that is actually at issue here: Whether Chain Bridge's fees and expenses incurred in defending against Blue Flame's state-law claims resulted from JPMC's cancellation of the wire transfer.

To begin with, JPMC has no meaningful answer to this Court's holding that JPMC's causation argument is "weak" because "*this civil action* undoubtedly resulted from [JPMC's] reversal of the wire transfer." Dkt. No. 175, at 31 (emphasis added). JPMC insists (Opp. 13) that its current causation argument is "different" from the one that this Court rejected at the summary-judgment stage, because it is premised on JPMC's contention that Blue Flame's state-law claims were based on theories of liability that are distinct from the cancellation itself (rather than on a contention that Chain Bridge would have withheld California's funds from Blue Flame in perpetuity even without a cancellation). But that argument fails to reckon with this Court's common-sense conclusion that Blue Flame brought suit because of the reversal of the wire transfer, which confirms that all of Chain Bridge's fees and expenses in defending against Blue Flame's claims are indemnifiable because they were "incurred . . . as a result of the cancellation." UCC § 4A-211(f).

Considering the counterfactual that would have ensued if Chain Bridge had refused to honor JPMC's cancellation request only reinforces that conclusion. In that scenario, Blue Flame would have received the $456 million of California's money that JPMC and California were seeking so desperately to recover. JPMC and California may well have become embroiled in protracted litigation with Blue Flame to recover those funds (which could have proved impossible, if the funds had been transferred out of the United States and beyond the jurisdiction of U.S. law enforcement and the U.S. courts).[3] In this scenario, however, it is simply implausible that Blue Flame would have sued Chain Bridge *at all*: Blue Flame would have had California's money; it would have had no reason to bring suit against Chain Bridge and its officers.

In any event, Blue Flame's state-law claims cannot be hermetically sealed from its UCC claims, as JPMC's argument presumes. For example, JPMC is wrong to suggest (Opp. 11-12) that Blue Flame's two tortious-interference claims were premised exclusively on Chain Bridge's pre-cancellation interactions with California officials. As Chain Bridge's opening memorandum explained (at 9), Blue Flame contended on summary judgment that Chain Bridge's allegedly wrongful reversal of the wire transfer supplied the "improper methods" to support claims for tortious interference. In other words, those claims were directly premised on Chain Bridge's agreement to JPMC's cancellation request and thus fall squarely within Section 4A-211(f)'s indemnification obligation, even on JPMC's unduly narrow reading of the statute.

Blue Flame's defamation claim was no less bound up with the cancellation of the wire transfer. Indeed, the basic thrust of Blue Flame's defamation claim was that Chain Bridge caused JPMC's cancellation, and so was responsible for it, through its discussions with California officials. *See* Dkt. No. 149 at 30 (alleging that Chain Bridge defamed Blue Flame to trigger the wire cancellation "to protect its own financial interests"). If JPMC had not, in fact, cancelled the wire, then there would have been no need for Blue Flame to try to blame Chain Bridge for that decision.

[3] In a press release dated April 13, 2020, the FBI warned of "multiple incidents in which state government agencies, attempting to procure [personal protective] equipment, wire transferred funds to fraudulent brokers and sellers in advance of receiving the items." *FBI Warns of Advance Fee and BEC Schemes Related to Procurement of PPE and Other Supplies During COVID-19 Pandemic* (Apr. 13, 2020), https://tinyurl.com/FBI-PPE-April. "By the time the purchasing agencies became suspicious of the transactions, much of the funds had been transferred outside the reach of U.S. law enforcement and were unrecoverable." *Id.*

B. Chain Bridge Is Entitled To Recover Its Fees And Expenses Incurred In Enforcing JPMC's Indemnification Obligation

JPMC is also incorrect to contend (Opp. 14-19) that Chain Bridge may not recover its fees and costs incurred in enforcing JPMC's indemnification obligation (and for insurance-coverage advice for Blue Flame's claims). Because those expenses resulted from JPMC's cancellation of the wire transfer, they are recoverable under Section 4A-211(f).

1. JPMC's opposition is notable for what it does *not* say. JPMC never challenges Chain Bridge's showing (Memo. 10-11) that Section 4A-211(f)'s plain text encompasses Chain Bridge's indemnification fees because, as a matter of basic logic, they were expenses "incurred by [Chain Bridge] as a result of the cancellation." UCC § 4A-211(f). The point is straightforward, but it bears repeating: The fees and expenses that Chain Bridge has incurred (and continues to incur) to enforce JPMC's indemnification obligation are a direct and proximate result of JPMC's cancellation. Chain Bridge would not have had to incur those fees and expenses were it not for JPMC's cancellation of its wire transfer.

JPMC nonetheless insists that, even though Section 4A-211(f)'s plain text comfortably encompasses fees for pursuing indemnification, those fees are not recoverable here because Section 4A-211(f) lacks a sufficiently clear statement to that effect. But the law does not require "magic words" to justify an award of fees for pursuing indemnification. Indeed, one of JPMC's own cases, *Galante v. Queens Borough Public Library*, No. 15-cv-6267, 2016 WL 4573978 (E.D.N.Y. Sept. 1, 2016), illustrates the point. There, the indemnification statute covered "such reasonable expenses . . . as are necessary in connection with [the] defense" of claims brought against the former officer of a public library. *Id.* at *3 (quoting N.Y. Not-for-Profit Corp. Law § 724(c)). The court explained that an award of "fees on fees" requires "explicit statutory authority," but it held that the statute at issue authorized recovery because enforcing the indemnification right was necessary for the former officer to mount his defense. *Id.* at *6. The court reached that conclusion even though the statute did not specifically mention fees on fees; rather, it was enough that fees for enforcing the indemnification right logically fell within the statute's broad text. *Id.*

Federal courts reached precisely the same conclusion in *Missouri Pacific Railroad Co. v. Kansas Gas & Electric Co.*, 862 F.2d 796 (10th Cir. 1988), and *Brown v. Seaboard Coast Line Railroad Co.*, 554 F.2d 1299 (5th Cir. 1977), cases cited in Chain Bridge's opening memorandum but never mentioned in JPMC's opposition. In both cases, broadly worded indemnification provisions were held to encompass fees on fees, despite not including any specific reference to that category of fees. *See Missouri Pac. R.R.*, 862 F.2d at 797, 801; *Brown*, 554 F.2d at 1304. There is no sound basis to construe Section 4A-211(f) "general, broad words" of indemnification, *Brown*, 554 F.2d at 1304, not to reach fees and expenses that plainly resulted from JPMC's cancellation.

If any doubt remained, it would be eliminated by the litany of cases holding that federal fee-shifting statutes and rules authorize recovery for fees and expenses incurred in enforcing the fee obligation. *See* Memo. 13-14 & nn. 6, 7 (collecting more than a dozen such cases). That consensus is explained by the courts' recognition "that the unavailability of 'fees for fees' could render fee-shifting provisions impotent, thereby reducing the effectiveness of the underlying statutes." *American Fed'n of Gov't Emps., AFL-CIO, Local 3882 v. Fed. Labor Relations Auth.*, 994 F.2d 20, 22 (D.C. Cir. 1993). If fees on fees are not recoverable, then "the attorney's fee to which [the plaintiff] is entitled by law is in fact diminished." *Hernandez v. Kalinowski*, 146 F.3d 196, 199 (3d Cir. 1998).[4]

The federal courts' treatment of 28 U.S.C. § 1447(c)'s fee-shifting rule is particularly instructive. That statute provides that a defendant who improperly removes a case to federal court may be ordered to pay, on a successful remand motion, the plaintiff's "just costs and any actual expenses, including attorney fees, *incurred as a result of the removal*." (Emphasis added.) Those fees and expenses include any that the plaintiff reasonably incurred to establish and litigate its right to fees, because those expenses, too, are "incurred because of removal." *See, e.g.*, *Walgreens Mail Serv., Inc. v. BlueCross BlueShield of Tenn.*, No. 2:05-cv-2827, 2007 WL 9710376, at *1 (W.D. Tenn. Oct. 2, 2007); *Sheppard v. Conway*, No. 3:14-cv-25039, 2015 WL 1528788, at *4 (S.D. W. Va. Apr. 3, 2015). And if the costs of enforcing the removal-related fee-shifting obligation are themselves fees "incurred because of removal," it is hard to understand why the fees Chain Bridge incurred in enforcing JPMC's cancellation-related indemnification obligations are not likewise incurred "as a result of the cancellation." UCC § 4A-211(f).

JPMC hardly mentions these cases, insisting instead (Opp. 18) that the federal statutes and rules are inapposite because they were adopted to promote different policy interests than the ones that are implicated here. But of course the Federal Reserve adopted Section 4A-211(f) to promote important policy interests that would be frustrated if a bank's indemnification rights were

[4] The Third Circuit's decision in *Hernandez* provides a particularly clear counterexample to JPMC's insistence that magic words are required to authorize the recovery of fees on fees. The statute at issue there, the Prison Litigation and Reform Act (PLRA), authorizes fee-shifting only upon a showing that "the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights." 42 U.S.C. § 1997e(d)(1)(A). The court held that, despite this limitation, the PLRA authorized recovery for fees incurred preparing a fee application, relying heavily on historical practice and the policy interests underlying the PLRA in reaching that conclusion. *See* 146 F.3d at 199-201.

arbitrarily limited in the manner JPMC proposes. Section 4A-211(f) reflects the reality that "a sender has no right to cancel a payment order after it is accepted by the receiving bank," and that when a receiving bank nevertheless "agrees to cancellation" it does so "as an accommodation to the sender *and it should not incur a risk of loss in doing so*." UCC § 4A-211 cmt. 5 (emphasis added). The cancelling sender thus assumes "absolute liability" for *all* of the receiving bank's resulting losses and expenses. *Banca Commerciale Italiana, N.Y. Branch v. Northern Tr. Int'l Banking Corp.*, 160 F.3d 90, 94 (2d Cir. 1998). The unmistakable intent is to provide receiving banks full confidence that they will be held harmless if they agree to wire cancellations—which would be a hollow promise indeed if receiving banks could not recover the significant fees and expenses they incur if, as here, the sender repudiates its indemnification obligation and instead chooses to litigate.

2. The same principles foreclose JPMC's challenge (Opp. 16) to the fees and expenses that Chain Bridge incurred in seeking insurance-coverage advice for Blue Flame's claims. There is no basis for JPMC's conclusory assertion (*id.*) that "these insurance fees lack the requisite casual connection to the cancellation." Put simply, Chain Bridge would not have had to incur fees for advice on insurance-coverage issues in the absence of this civil action, which is itself the product of JPMC's cancellation. *See* p. 6, *supra*.[5]

[5] Nor is there merit to JPMC's prediction (Opp. 16) that requiring indemnification of insurance fees would "put sending banks on the hook for any kind of expenses a receiving bank . . . might opt to spend." That concern is addressed not by Section 4A-211(f)'s causation requirement, but rather by its limitation to only *reasonable* attorney's fees. There may be circumstances in which fees that are causally connected to cancellation are nonetheless so excessive or unnecessary that they would fail the reasonableness requirement. But that was not the case here. Chain Bridge was faced with claims seeking to impose hundreds of millions of dollars of liability. Its decision to incur $158,650 in fees—a tiny fraction of that amount—for advice regarding potential insurance coverage was abundantly prudent.

C. JPMC's Criticisms Of Counsel's Time Records Are Misplaced

JPMC also levels a series of criticisms regarding the time records kept by Chain Bridge's counsel and submitted as exhibits to Chain Bridge's motion. Those objections are meritless.

1. JPMC repeatedly asserts (Opp. 13-14, 18-19, 21-22) that counsel's time records are inadequate because they do not permit JPMC to segregate fees that JPMC contends are not reimbursable from fees that JPMC acknowledges are reimbursable. As explained above, however, *all* of Chain Bridge's fees and expenses are reimbursable. Thus, no allocation is required, which moots JPMC's objection to counsel's time descriptions.

In any event, JPMC's criticisms are meritless on their own terms. In fact, counsel kept detailed time records that provide a reasonable indication of the work performed. For example, although JPMC complains (Opp. 13-14) about its inability to segregate fees relating to Blue Flame's state-law claims, counsel's time records *do* contain task descriptions tied to Blue Flame's specific legal theories. *See, e.g.*, Burke Decl. Ex. 1 at 4 (fraud and breach of contract claims); *id.* at 7 (tortious interference); *id.* at 33 (tortious interference and conversion); *id.* at 40 (defamation section of motion to dismiss reply); *id.* at 171 (tortious interference).

JPMC appears to believe that there should be more such entries reflecting work attributable to Blue Flame's state-law claims. As a practical matter, however, there was complete factual overlap between Blue Flame's state-law claims and the UCC claims that JPMC acknowledges are subject to indemnification. Chain Bridge's receipt of the wire transfer, its interactions with California officials and JPMC, its decision to honor JPMC's cancellation request, and its return of the funds to JPMC all took place over the course of a few hours on a single day. Chain Bridge's interactions with the California officials were directly relevant to Chain Bridge's investigation of the suspicious wire transfer and to Chain Bridge's ultimate decision to honor JPMC's cancellation request. Tellingly, despite having intimate familiarity with the progress of this litigation, JPMC has failed to identify a single deposition that was taken, pleading that was filed, or discovery request that was propounded solely in connection with the state-law claims. Moreover, the state-law claims were little more than a side show throughout the litigation: They occupied less than three pages of Defendants' summary-judgment brief (*see* Dkt. No. 119, at 28-30), and just two-and-a-half pages of this Court's summary-judgment opinion (*see* Dkt. No. 175, at 25-27).

Counsel's time records also fairly describe the fees Chain Bridge incurred in enforcing JPMC's indemnification obligation. For example, counsel separately billed for time spent drafting and revising pleadings on the indemnification claim. *See, e.g.*, Burke Decl. Ex. 1 at 45 ("Research and draft third-party complaint . . . ."); *id.* at 49 ("Revise third-party complaint."); *id.* at 197 ("Revise JPM summary judgment brief."); *id.* at 217 ("Draft JPMC reply brief . . . ."). Counsel also segregated time spent working on expert witness Charles Grice's indemnification-related report from time spent on his report addressing Blue Flame's allegations, and then followed the same practice in preparing for Mr. Grice's two depositions. *See, e.g.*, *id.* at 143 ("Edit [redacted] report."); *id.* ("Edit [redacted] report."); *id.* at 190 ("Outline and prepare for [redacted]."); *id.* ("Outline and prepare for [redacted].").[6]

[6] At one point, JPMC objects (Opp. 21-22) to time spent "[d]raft[ing] deposition outline," on the theory that the outline might have related to Mr. Grice's indemnification-related deposition (which JPMC contends is non-reimbursable). That is not the case. The time entries JPMC highlights were from October 2020, before JPMC had even answered Chain Bridge's third-party complaint, and long before anyone was preparing for Mr. Grice's deposition. They relate to the drafting of a general outline summarizing discovery materials in preparation for *all* of the anticipated depositions in this case. As counsel's billing records reflect, time spent preparing for a particular deposition was consistently recorded as such. See, *e.g.*, Burke Decl. Ex. 1 at 117 ("Prepare for [redacted] depos."); *id.* at 146 ("Prepare for [redacted] deposition."); *id.* at 148 ("Prepare for [redacted] deposition."); *id.* at 164 ("Prepare for deposition of [redacted]."); *id.* at 165 ("Prepare for [redacted] deposition.").

JPMC cannot dispute any of those points, so instead JPMC targets [redacted] *See* Opp. 18. According to JPMC, it was wrong for counsel to treat that work as a single task, because some of the deposition questions related to Chain Bridge's indemnification claims while other questions related to other claims. But JPMC does not identify which lines of questioning it believes should have been attributed to different claims—such as, for instance, questions that were relevant only to the indemnification claim and did not bear on any other issues in the case. Indeed, it is hard to imagine how such an allocation could have been possible, given that [redacted] In any event, time records need only describe counsel's work "with reasonable particularity." *EEOC v. Nutri/Sys., Inc.*, 685 F. Supp. 568, 573 (E.D. Va. 1988). They do not require the fanciful level of precision that JPMC posits, with time spent on *individual deposition questions* apparently allocated on a minute-by-minute basis. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 n.12 (1983) (counsel "should identify the general subject matter of his time expenditures, but "is not required to record in great detail how each minute of his time was expended").

At bottom, JPMC invokes a few (unpersuasive) examples of imprecision from *the more than 5,500 individual time entries* that Chain Bridge has submitted, and then throws up its hands and asserts the impossibility of making heads or tails of the evidence supporting the fees that Chain Bridge incurred. This approach seems designed more to delay an accounting of JPMC's obligation to Chain Bridge than actually to prevent it. In fact, Chain Bridge gave JPMC its billing records on October 15—well before Chain Bridge filed its motion and more than a month prior to the filing of JPMC's opposition. If JPMC really needed more detail or the clarification of certain time entries, it had plenty of time to say so. The fact that Chain Bridge learned of these supposed objections to its billing records for the first time in JPMC's opposition brief speaks volumes.

2. JPMC is not content with its proposal to excise Chain Bridge's fees attributable to claims that JPMC (mistakenly) contends are not reimbursable. JPMC goes even further, blaming Chain Bridge for failing to flag fees and expenses associated with *concededly reimbursable claims* that (in JPMC's view) Chain Bridge would have incurred in any event to defend against Blue Flame's other claims. *See* Opp. 19-21. But the law does not impose any such requirement.

JPMC's contrary view rests exclusively on cases addressing fee-shifting as a sanction for litigation misconduct, such as discovery violations or the assertion of frivolous claims. In that context, the fee award is "limited to the fees the innocent party incurred solely because of the misconduct," in the sense of "fees that [innocent] party would not have incurred but for the bad faith." *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1184 (2017) (discovery violation). Recovery is not available if the party "would have incurred the expense in any event." *Fox v. Vice*, 563 U.S. 826, 836 (2011) (per curiam) (frivolous claims); *see also Caraway v. City of Elizabeth City, N.C.*, 854 F. App'x 472, 474 (4th Cir. 2021) (frivolous claims); *Mulugeta v. Ademachew*, No. 1:17-CV-649, 2019 WL 7945712, at *2 (E.D. Va. Nov. 6, 2019) (bad-faith abuse of the judicial process); *Salgam v. Advanced Software Sys., Inc.*, No. 1:18-cv-00029, 2020 WL 6322857, at *5 (E.D. Va. July 2, 2020) (fabrication of evidence).

That narrow conception of fee-shifting makes sense in the sanctions context, where fees are awarded as compensation for an injury—litigation misconduct—that is most accurately measured by the incremental costs triggered by the misconduct. Here, however, Chain Bridge is not seeking fee-shifting as compensation for litigation misconduct. Rather, JPMC "is liable . . .

for *any* loss and expenses, including reasonable attorney's fees, incurred by [Chain Bridge] as a result of the cancellation." UCC § 4A-211(f) (emphasis added). That statutory indemnification obligation provides the measure of recovery, and it does not authorize an offset for allegedly "overlapping" work, as JPMC requests.

Tellingly, JPMC does not cite a single case from outside the sanctions context applying the approach JPMC endorses here. And the sole non-sanctions-related case that JPMC does cite *rejected* that approach. In *Beastie Boys v. Monster Energy Co.*, 112 F. Supp. 3d 31 (S.D.N.Y. 2015), the court held that the plaintiff music group was entitled to fee-shifting on its Copyright Act claim, but not on its Lanham Act claim. *See id.* at 45, 47. The court then rejected the defendant's proposal to reduce the fee award by 50 percent to account for that decision. *Id.* at 58. Rather, it held that a reduction of only 20 percent was warranted because of "the very substantial extent to which the work required to pursue the Lanham Act claim overlapped with the work required to prevail on the Copyright Act claims." *Id.* As the court emphasized, "the two claims arose out of the same operative facts," which meant that "[t]he fact discovery into these claims thus was almost entirely overlapping" and "virtually all fact witnesses at trial were relevant to both claims." *Id.* The court held that it was appropriate to reduce the fee award only by an amount "appropriate to strip out the legal work that, but for the Lanham Act claim, would not have been done." *Id.*

That result is directly opposite to the one JPMC advocates for here. On JPMC's view, the overlapping nature of the two claims at issue in *Beastie Boys* should have been grounds for a *larger* reduction in the fee award, on the theory that all of the overlapping work would have been done in support of the non-reimbursable Lanham Act claim in any event, and hence was not a but-for result of the reimbursable Copyright Act claim. But the court correctly understood that its role was to "strip out" only those fees that were specific to the non-reimbursable claim. *See* 112 F. Supp. 3d at 58.[7]

In the unlikely event that any allocation of fees becomes necessary here, the *Beastie Boys* decision provides the appropriate model. Chain Bridge is entitled to indemnification for all work attributable to any reimbursable claims, and JPMC would at most be entitled to an offset for any work that was specific to any non-reimbursable claims—in the sense that the work would not have been done at all but for the presence of those claims in this case.

3. Finally, JPMC suggests (Opp. 22-23) that Chain Bridge has "failed to describe its fees with appropriate particularity" and purports to reserve its rights to challenge the reasonableness of Chain Bridge's fees. But JPMC points to only a handful of time entries—from the hundreds of pages of billing records that Chain Bridge has submitted with its motion—and even those entries do not support JPMC's point. For example, JPMC professes confusion (Opp. 22-23) as to why counsel would have prepared a "cast of characters." But JPMC's sophisticated counsel must know that, in complex cases like this one, it is common for counsel to maintain a list of individuals

[7] The Fourth Circuit's decision in *Fair Housing Council of Greater Washington v. Landow*, 999 F.2d 92 (4th Cir. 1993), is also inconsistent with the allocation approach JPMC proposes here. In that case, the Fourth Circuit addressed a plaintiff seeking fee-shifting as a prevailing party after succeeding on some, but not all, of its claims. The court explained that, in general, the fee applicant must seek to separate time spent on its successful (reimbursable) claims from time spent on the unsuccessful (non-reimbursable) claims. *Id.* at 97. The court went on to observe that, in some cases, "claims may have such a common core of facts and legal theories so as to prevent any allocation of the fees to the applicant's separate claims." *Id.* The upshot of that observation was that, in such a case, *all* of the applicant's fees would be recoverable, because none of counsel's work would be attributable solely to the unsuccessful claims. On JPMC's theory, however, the overlapping nature of the claims would require a complete denial of fee-shifting. All of the applicant's fees would have been incurred in any event on account of the unsuccessful claims, so there would be no remaining fees attributable to the successful claims for which the applicant was entitled to recover. *See also, e.g.*, *Abell v. Potomac Ins. Co. of Ill.*, 946 F.2d 1160, 1169 (5th Cir. 1991) (reducing fee-shifting award only by amounts "incurred solely" in connection with unsuccessful claims).

involved in the underlying events as part of counsel's discovery and trial-preparation efforts.[8] Counsel's time entry should not be any mystery.

In a footnote, JPMC also glancingly suggests (Opp. 22 n.7) that counsel has engaged in impermissible block billing. But JPMC cites only a single time entry, and even that one is not properly characterized as block billing. Rather, the cited time entry reflects work on a single task—preparing Defendants' motion-to-dismiss reply for filing, on the day it was due—which encompassed revising the reply, reviewing client comments, and conferring with co-counsel regarding the draft. That is not a basis for denial of fees.

* * * * **

For the foregoing reasons, and those stated in Chain Bridge's opening memorandum, the Court should find that Chain Bridge has established that it incurred reasonable fees and expenses resulting from JPMC's wire cancellation, through September 30, 2021, for which it is indemnified by JPMC under UCC § 4A-211(f), in the amount of **$5,935,978.52**. Such finding should be without prejudice to Chain Bridge later establishing, on subsequent motion, additional indemnified amounts that it incurred or incurs on or after October 1, 2021 (including because of Blue Flame's and JPMC's appeals from the Court's summary-judgment order).

[8] *See, e.g.*, LexisNexis, *CaseMap Best Practices Guide: Making the Most of a Cast of Characters*, http://www.lexisnexis.com/docs/wpcasemapcharacters-150212.pdf

Dated: November 29, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2021, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following:

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