

**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.

**THIRD-PARTY PLAINTIFF CHAIN BRIDGE BANK, N.A.'S MEMORANDUM IN
SUPPORT OF MOTION TO FILE UNDER SEAL**

Third-Party Plaintiff Chain Bridge Bank, N.A. (Chain Bridge) respectfully submits this memorandum in support of its motion to seal Exhibits 1-4 to the Declaration of Donald Burke in Support of Third-Party Plaintiff's Motion To Establish The Amount Of Indemnified Fees And Expenses To Be Awarded From Third-Party Defendant JPMorgan Chase Bank, N.A.

1. In accordance with this Court's prior order (Dkts. 176 & 179), Chain Bridge is filing a motion to establish the amount of its indemnified fees and expenses. In support of that motion, Chain Bridge will submit its billing records that itemize the fees and expenses incurred by Chain Bridge as a result of JPMorgan Chase Bank, N.A.'s (JPMC's) wire cancellation, including billing records from (1) its litigation counsel, Robbins, Russell, Englert, Orseck & Untereiner LLP

(Robbins Russell), (2) its insurance-coverage counsel, Weisbrod Matteis & Copley PLLC, (3) an expert consulting firm, Analysis Group, and (4) expert Charles Grice's separate consulting firm, CRI Compliance. *See* Burke Declaration Exs. 1-4 (Oct. 28, 2021).

2. Certain entries in these billing records describe the nature of the work performed by attorneys and experts in ways that reflect confidential information that is protected from disclosure by the attorney-client privilege or work-product protection. Public disclosure of this information would be damaging to Chain Bridge, particularly because Plaintiff Blue Flame Medical LLC (Blue Flame)—which is not a party to this third-party action over indemnification—has noticed an appeal from the judgment against it in this case. Information in these billing records describes Chain Bridge's litigation approach, research topics, and strategy regarding Blue Flame's claims, the disclosure of which would unfairly benefit Blue Flame even while it continues to litigate its case against Chain Bridge.

Accordingly, Chain Bridge seeks to file these billing records under seal, and to file redacted versions of them on the public docket, in order to prevent disclosure of this information. The redactions are narrow in scope and protect information that is particularly sensitive during the course of a pending appeal. No information on the number of attorney or expert hours, their rates, or the fees incurred for which Chain Bridge seeks indemnification will be redacted from the public versions. Third-party defendant JPMC has already been provided the full copies of the four exhibits that Chain Bridge seeks to file under seal.¹

¹ The sealed, "unredacted" versions of Exhibit 1 and Exhibit 2 contain smaller, narrower sets of redactions of information the disclosure of which *to JPMC* would reveal Chain Bridge's litigation strategy, research topics, and other protected information about Chain Bridge's third-party claims against JPMC. Those limited redactions also reflect the names of unretained or non-testifying experts, account information, or time entries not included within Chain Bridge's fee request. JPMC has not identified concerns about these redactions. In the event that the Court wishes to review completely unredacted copies of the sealed exhibits, Chain Bridge would ask to submit them for in camera review.

The information that Chain Bridge proposes to redact from the public versions of these billing records falls squarely within the scope of what courts routinely recognize as being properly protected from public disclosure. Billing records that would “reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law, fall within the privilege.” *Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) (quoting *Clarke v. American Commerce National Bank*, 974 F.2d 127 (9th Cir. 1992)). For instance, bills that “reveal[] the identity of the federal statutes researched . . . constitute privileged communications and, as such, should not be disclosed.” *Id.* at 403; *see also Denton v. PennyMac Loan Servs., LLC*, 252 F. Supp. 3d 504, 508 (E.D. Va. 2017) (“Parties are generally entitled to assert privilege and redact records in connection with motions for fees.”) (internal quotation marks omitted); *Brown v. Tethys Bioscience, Inc.*, No. CIV.A. 1:10-1245, 2012 WL 252632, at *3 (S.D.W. Va. Jan. 26, 2012) (holding that where “billing records contain information respecting a party’s litigation strategy, that information is attorney-client privileged and need not be disclosed. Billing records should be redacted to exclude such information and then disclosed.”) (citation omitted).

Chain Bridge therefore requests that the Court authorize the public filing of redacted versions of Exhibits 1-4 to the Declaration of Donald Burke in Support of Third-Party Plaintiff’s Motion To Establish The Amount Of Indemnified Fees And Expenses To Be Awarded From Third-Party Defendant JPMorgan Chase Bank, N.A, and to maintain the original versions of Exhibits 1-4 under seal. A proposed order reflecting the requested relief is attached hereto.

Dated: October 28, 2021

Respectfully submitted,

/s/ Donald Burke

Gary A. Orseck (*pro hac vice* pending)

Matthew M. Madden (*pro hac vice* pending)

Donald Burke (VA Bar No. 76550)

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 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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