Nos. 21-2218, 21-2219

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BLUE FLAME MEDICAL LLC,
Plaintiff-Appellant,

v.

CHAIN BRIDGE BANK, N.A.,
Defendant and Third-Party Plaintiff-Appellee.

JOHN J. BROUGH; DAVID M. EVINGER,
Defendants-Appellees,

v.

JPMORGAN CHASE BANK, N.A.,
Third-Party Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of Virginia, No. 1:20-cv-00658-LMB-IDD
Before the Honorable Judge Leonie M. Brinkema

REPLY BRIEF FOR THIRD-PARTY DEFENDANT-APPELLANT JPMORGAN CHASE BANK, N.A.

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March 14, 2022

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INTRODUCTION

Chain Bridge obtained exactly what it wanted when—holding $456 million the State of California had wired to Chain Bridge's customer, Blue Flame Medical—it asked JPMC: "Is there any way for JPMorgan to issue a recall for the wire?" Now Chain Bridge tries to avoid the consequences, but neither the law nor facts support that result.

Chain Bridge insists that it should be indemnified under U.C.C. § 4A-211(f), but that provision does not apply because Chain Bridge did not "agree[] to" a "cancellation" "by the sender." Rather, Chain Bridge requested and directed the cancellation. Moreover, the evidence shows that Chain Bridge reached an agreement with JPMC to reverse the wire without any indemnification obligation, which defeats any argument for indemnification. Finally, the factual record forecloses Chain Bridge from establishing the causal link required for indemnification.

None of this is to say that the concerns Chain Bridge had in making its request to JPMC were groundless. Under urgent circumstances, Chain Bridge sought the reversal of a half-billion-dollar wire based on concerns about its own client and protecting its own balance sheet. The priority was to safeguard their own exposure with all possible speed. Indemnity, simply, was not part of the bargain. As Chain Bridge's principals put it, with resignation: "It is what it is. …

[We] have been working on this with both the State of California and JPMorgan and this is what we have to do."

ARGUMENT

I. There Is No Right To Indemnification Under U.C.C. § 4A-211(f) Because Chain Bridge Requested And Directed The Cancellation

A. Chain Bridge Canceled The Wire

Section 4A-211(f) provides indemnification only where there is a "cancellation … by the sender," and "the receiving bank … agrees to" that "cancellation." U.C.C. § 4A-211(f). Where, as here, a receiving bank cancels a wire, there is no right to indemnification under § 4A-211(f). At 1:34 p.m. on March 26, 2020, Chain Bridge's President called JPMC and asked: "Is there any way for JPMorgan to issue a recall for the wire?" JA3135 at 0:04-0:09. As JPMC explained (JPMC Br. 29-31), Chain Bridge's oral request to reverse the wire constitutes a cancellation request under Article 4A, to which JPMC agreed. JA246-247. That should be the end of the matter.

Instead of grappling with its own cancellation request—Chain Bridge mentions the call only once in passing (CBB Br. 16)—Chain Bridge seeks to evade it. Reprising arguments it pressed in the district court (but that the court did not address), Chain Bridge contends that its own actions are "irrelevant" because only a sender can cancel a wire. CBB Br. 69. As JPMC already explained (JPMC Br. 31-32), that is wrong, and Chain Bridge's remaining arguments in its answering brief lack merit. As detailed below, Chain Bridge had the ability to cancel the wire; its various claims that it was powerless to do so are belied by statute and practical operation of the wire system.

Focusing on § 4A-211(a), Chain Bridge argues that this provision "defines" the universe of cancellations and supports the notion that "*every* cancellation of a payment order is done by 'the sender of the payment order.'" CBB Br. 70. Section 4A-211(a) does no such thing; it simply describes how senders may transmit communications canceling, or amending, payment orders. Neither this provision, nor any other, states that "*every* cancellation" (*id.*) is done by the sender. Chain Bridge's reliance on § 4A-211(b) fails for the same reason.

The provisions JPMC cites, by contrast, show that receiving banks can effect cancellations under Article 4A. *See* JPMC Br. 31-32. Chain Bridge says little in response. *See* CBB Br. 70-72. It acknowledges (CBB Br. 70 n.23) that Article 4A identifies the "functions of [a] *receiving bank*" as "receipt, processing, and transmittal of payment orders, *cancellations* and amendments." U.C.C. § 4A-105 cmt. 2 (emphasis added). Chain Bridge's only response is to protest, without explanation, that that language "cannot plausibly" mean what it says. CBB Br. 71 n.24. Chain Bridge also acknowledges that Article 4A speaks to a receiving bank's "processing of payment orders and communications *cancelling* or amending payment orders," U.C.C. § 4A-106(a) (emphasis added), but tries to amend the text by adding the word "sender" where it does not appear. *See* CBB Br. 70 n.23 (arguing that § 4A-106(a) must refer to "*senders*' 'communications cancelling or amending payment orders'" (emphasis in original)).

Moreover, Chain Bridge accepts that what happened in this case was a "reversal" (CBB Br. 19, 26), as did the district court (*see* JA3096 ("the reversal of the wire transfer")). And there can be no question that a receiving bank can effect a reversal of funds, as Chain Bridge did here. Chain Bridge recognizes that § 4A-210 "allows a receiving bank to 'reject' a payment order" (CBB Br. 70). Chain Bridge resists the conclusion that a rejection is just another form of cancellation by the recipient—both of which result in the reversal of a wire. *See* U.C.C. §§ 4A-210, -211. But the only way that Chain Bridge gets there is by clinging to the point that a "receiving bank can reject a payment order *only before it is accepted*." CBB Br. 70. That is irrelevant. A cancellation is also constrained by "acceptance," U.C.C. § 4A-211(c), (d). Whether or not the formality of "acceptance" has occurred dictates only whether a reversal (*i.e.*, a rejection or a cancellation) is legally effective. It does not bear on whether a receiving bank can reverse a payment order in the first place—and a receiving bank clearly can do so.

Indeed, Chain Bridge now abandons the categorical argument it advanced in district court that it was "powerless" to reverse the wire (Chain Bridge Mem. Opp. to JPMC Mot. Summ. J. 14, Dist. Ct. Dkt. 141 ("CBB Opp.")), retreating to the position that there is "considerable doubt about" whether it could do so (CBB Br. 71). As JPMC's cited sources show, receiving banks can reverse wires—even unilaterally. A Fedwire guide expressly instructs *receiving* banks: "If you receive a funds transfer message and need to return it to the sender ABA, *you can derive the reversal*." JA2940 (emphasis added), *cited at* JPMC Br. 32. Chain Bridge cites nothing to the contrary. And the fact that receiving banks can effectuate unilateral reversals highlights the absurdity of Chain Bridge's categorical position that "*every* cancellation of a payment order is done by 'the *sender* of a payment order.'" CBB Br. 70 (second emphasis added). Chain Bridge's argument that *every* cancellation necessarily comes from a sender would mean that a unilateral reversal by a receiving bank would entitle that receiving bank to indemnification for its unilateral actions. That cannot be correct.[1]

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[1] The facts need not be as extreme as a unilateral reversal unbeknownst to the sending bank to illustrate the flaw in Chain Bridge's view of § 4A-211(f). Take the case of a receiving bank that refuses to credit its beneficiary client despite pleas from the originator and the sending bank. The receiving bank insists on reversal of the payment order and asks the sending bank to provide a reversal message. The sender accommodates the request so that its client can find another way to pay the beneficiary. Under Chain Bridge's read, those circumstances would still constitute a cancellation "by the sender" triggering an indemnification obligation under § 4A-211(f)—even though the sender unwaveringly pressed the receiving bank to *credit* the funds.

B. Chain Bridge Directed The Cancellation

Even assuming Chain Bridge's request that JPMC recall the wire did not itself constitute a cancellation request by Chain Bridge, Chain Bridge's indemnification claim still fails because Chain Bridge directed the cancellation. Chain Bridge challenges that result on the law and the facts. It is wrong on both.

1. As to the law, Chain Bridge's position conflicts with the statute's plain language. The words of U.C.C. § 4A-211(f) take care to set out a particular situation where the cancellation is "by" one bank and a different bank "agrees to" it: an affirmative act "by the sender," to which the receiving bank responsively "agrees." U.C.C. § 4A-211(f). It would be inconsistent with that plain text to include the distinct circumstance where a cancellation is directed *by the receiving bank*.[2]

Ignoring the text, Chain Bridge turns to the commentary and contorts its guidance to mean that cancellation is *always* "an accommodation to the sender," U.C.C. § 4A-211 cmt. 5, because receiving banks are under no obligation to return accepted funds. *See* CBB Br. 73. That is incorrect. As explained, a receiving bank can reverse a wire transfer unilaterally, without the sender's advance knowledge or request. *See supra* p.5. There is no way to understand that event as

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[2] Chain Bridge's claim would still fail on the law if the record reflected a joint decision by Chain Bridge and JPMC to reverse the wire, as opposed to, as here, a cancellation directed by Chain Bridge. *See* JPMC Br. 26, 34-35.

"an accommodation to the sender"—even though it is true that the receiving bank in that hypothetical case was under no obligation to effectuate the return. In any event, the commentary's use of the term "accommodation" underscores that the phrase "agrees to" (in the provision's text) describes a responsive act. *See Donmar Enters., Inc. v. Southern Nat'l Bank of N.C.*, 64 F.3d 944, 948 (4th Cir. 1995) (commentary is "'useful in interpreting Article 4A'"). Where a receiving bank *directs* a cancellation—as Chain Bridge did here—that is incompatible with the meaning of "agrees to."

Chain Bridge complains that JPMC's interpretation would require a factual finding "that the receiving bank honored the cancellation request solely to 'accommodate' the sender's interest, rather than its own." CBB Br. 73. Not so. The statute only provides for indemnification when a receiving bank "agrees to" cancellation of a payment order "by the sender"—"as an accommodation to the sender," and not in other circumstances. Under that reading, courts are tasked, as they always are, with determining whether facts match a legal description. To be sure, there may be close cases where it is for some reason unclear which bank directed the cancellation. But courts are well-equipped to analyze whether circumstances fit statutory language. And, in any event, this is not a close case. *See infra* pp.10-11.[3]

Finally, indemnification at common law reaffirms JPMC's straightforward interpretation of the statute's text, and the U.C.C. expressly incorporates common-law principles. Indeed, as Chain Bridge does not and cannot dispute, only JPMC's reading of § 4A-211(f) accords with the purpose of indemnification at common law, which is premised on the principle that a party should be responsible for the consequences of its actions. *See* JPMC Br. 28-29, 36-37; *see, e.g.*, *White v. Johns-Manville Corp.*, 662 F.2d 243, 249-250 (4th Cir. 1981) (indemnification "applies a restitutionary principle" that allows an indemnitee whose liability is merely "technical, passive or secondary" to "shift[]" "the burden for the entire loss … to the indemnitor whose actual fault caused the injury"). Indemnification does not apply where, as here, the putative indemnitee undertook the liability-producing conduct actively and of its own accord.

Chain Bridge invokes *Banca Commerciale Italiana v. Northern Trust International Banking Corp.*, 160 F.3d 90 (2d Cir. 1998), to argue that the Court

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[3] Chain Bridge criticizes JPMC for not mentioning the commentary's statement that a receiving bank "is *automatically* entitled to indemnification" if it "agrees to cancellation." CBB Br. 73 (quoting U.C.C. § 4A-211 cmt. 5) (emphasis added). JPMC has never questioned the so-called "automatic-ness" (*id.*) of § 4A-211(f)'s operation—*if* its predicate requirements are satisfied. But they are not satisfied here.

should disregard common-law principles of indemnification because Article 4A displaces them. *Banca* is inapposite. The narrow question there was whether a statute of limitations for actions "'created or imposed by statute'" governed a § 4A-211(f) claim. To answer that question, the court examined whether § 4A-211(f) indemnification would exist apart from statute. It is both uncontroversial and unremarkable to say that it would not, and accordingly that the codification of the provision marked a "depart[ure] from the common law." *Banca*, 160 F.3d at 94; *see also* Article 4A Prefatory Comment (before Article 4A, there was "no consensus about the juridical nature of a wire transfer"). Chain Bridge's leap from there—that § 4A-211(f) *precludes* consideration of common-law principles—is unsupported. Far from being precluded, courts are regularly encouraged to find "helpful guidance" from "the common law's definition" of familiar concepts in statutory interpretation cases. *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 447-448 (2003).

The U.C.C. directs it explicitly. A core feature of its design is the incorporation of common-law principles unless inconsistent with the text. *See* U.C.C. § 1-103(b) ("Unless displaced by the particular provisions of [this Act], the principles of law and equity … supplement its provisions."). Accordingly, common-law indemnification informs the bounds of the provision and confirms that a § 4A-211(f) claim fails where the receiving bank itself cancels or directs cancellation of the payment order.

2. As to the facts, Chain Bridge accuses JPMC of "mischaracteriz[ations]," but Chain Bridge's recitation cannot be reconciled with the record. The first two facts that Chain Bridge cites to challenge that it "directed the cancellation" are (1) that JPMC "initiated contact with Chain Bridge to report JPMorgan's own 'concerns of fraud'" and (2) that JPMC asked "Chain Bridge to place a temporary hold on the funds." CBB Br. 74-75 (quoting JA3074). If initiating contact to report concerns and placing funds on hold are relevant to show who directed a cancellation, they reveal unequivocally that it was Chain Bridge. Before JPMC "initiated contact with Chain Bridge," Chain Bridge repeatedly called California to report concerns about Blue Flame and the legitimacy of the transaction (JA281-282). That is an extraordinary step for a counterparty bank with no relationship to the sender of the wire. JA337-338; JA1480; JA1494; JA338 (California representative not aware of "any other instance" where a counterparty bank sought to contact California about a wire's return). And before the banks ever spoke, Chain Bridge independently and immediately placed the funds on hold based on concerns it had about its own client. JA256; JA260l; JA185-186. Under Chain Bridge's own theory, *it* was the bank that directed the reversal from the start.

Chain Bridge calls the "notion" that it "orchestrated" the cancellation "baseless" (CBB Br. 75) but fails to even try to refute JPMC's evidence for it—for example, that Chain Bridge explicitly pushed for the wire's reversal *twice*. Chain Bridge pushed for reversal with California and, undeterred after California declined at the time (JA215), Chain Bridge then asked JPMC to issue a recall (JA3135 at 0:04-0:09). Chain Bridge's answering brief has nothing to say about why those actions do not show that Chain Bridge orchestrated the cancellation.

Chain Bridge also accuses JPMC of "obliquely" contending that the wire transfer "somehow" "caused 'dismay and concern' over the bank's 'capital ratios.'" CBB Br. 75 n.26 (citing JPMC Br. 1, 9). There is nothing oblique about the record on this point, as the contemporaneous evidence shows. Chain Bridge employees said, "[T]here is no way we can hold it on our balance sheet" (JA172) and that they would "need it off of the books asap" (JA164). The manager of Chain Bridge's commercial banking team warned that it could cause "problems on our capital ratios" as it was "half our asset size." JA167. To the extent the Court harbors any factual questions about whether Chain Bridge orchestrated the cancellation, it should remand for trial.

Finally, repeating a point the district court found unremarkable, Chain Bridge criticizes JPMC for taking a position here that, it says, is inconsistent with the one it has taken against California. *See* CBB Br. 75-76. There is no inconsistency. *See* JPMC Br. 35 n.6. Of course California wanted its $456 million returned, but that is immaterial here. This third-party case brought by Chain Bridge is about Chain Bridge's demand for indemnification from JPMC and the inapplicability of Section 4A-211(f) to the interaction between the banks.

II. JPMC AND CHAIN BRIDGE AGREED TO THE WIRE'S RETURN WITHOUT INDEMNITY

Even assuming the requirements of § 4A-211(f) were satisfied, Chain Bridge's indemnification claim still fails because the parties "otherwise provided in an agreement." U.C.C. § 4A-211(f).

Having resisted the point below, Chain Bridge finally concedes on appeal that an "agreement" to displace an indemnification obligation under § 4A-211(f) need not be express. *Compare* CBB Opp. 18 ("Section 4A-211(f) provides that parties can *expressly* agree that there will be no indemnification between them[.]" (emphasis added)), *with* CBB Br. 77 ("[U]nder the UCC, an 'agreement' can be 'inferred from other circumstances, including a course of performance, course of dealing, or usage of trade.'"). Under the U.C.C.'s plain text, an "'agreement' can be 'inferred from other circumstances.'" CBB Br. 77; *see* JPMC Br. 38-39. Here, the circumstances provide clear evidence of an agreement to return the funds without any indemnification by JPMC. JPMC Br. 49-46. At the very least, the circumstances raise a genuine factual dispute precluding the entry of summary judgment in Chain Bridge's favor.

There is no dispute on the law. As one of Chain Bridge's own cases shows, to determine whether a meeting of the minds occurred between the parties to an agreement, a factfinder assesses whether the parties' "'words and acts'" "'judged by a reasonable standard [] manifest an intention to agree[.]'" *Knox Energy, LLC v. Gasco Drilling, Inc.*, 738 F. App'x 122, 124 (4th Cir. 2018), *cited at* CBB Br. 79; *see also Restatement (Second) of Contracts* § 202(1) (1981) ("Words and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight."). Here, Chain Bridge's words and acts—including Chain Bridge informing JPMC of its independent decision to hold the funds, its disclosure to JPMC of serious concerns about the wire's legitimacy, its discussion with JPMC of its communication with California, and its express request to JPMC to recall the wire—made clear to JPMC that Chain Bridge expected the reversal to proceed without indemnity by JPMC. *See* JPMC Br. 39-43. Contemporaneous record evidence shows that Chain Bridge had the same understanding. *See id.*

The most notable example of Chain Bridge's understanding, though certainly not the only one, is the 1:43 p.m. call on March 26 among high-level Chain Bridge employees. JA3140 at 1:19-2:50; *see also* JPMC Br. 41-42. Chain Bridge attempts to downplay the significance of this critical call and even omits crucial portions of it. *See* CBB Br. 78-79. The relevant discussion—prompted by the concerned question of a Chain Bridge wire transfer specialist with more than 20 years' experience—is reflected below:

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

JA3140 at 1:19-2:50.

In this singularly revealing exchange, Chain Bridge's President cast aside the question from the bank's wire-transfer specialist, who asked whether it was necessary to execute an indemnity letter with Chase, per "normal[]" practice. JA3140 at 1:19-2:50. With resignation, Chain Bridge's President told her: "It's okay. Don't worry about it. … It is what it is. It's—" at which point Chain Bridge's CEO interjected: "*[We] have been working on this* with both the State of California and JPMorgan and *this is what we have to do*." *Id.* (emphasis added).

The only plausible way to interpret this call—and the only permissible way at summary judgment (*see* JPMC Br. 23)—is that Chain Bridge's principals were relaying to their team the mutual understanding, the "'meeting of the minds,'" *Knox Energy*, 738 F. App'x at 124, that had developed during their conversations with JPMC throughout the day. Chain Bridge would return the funds to JPMC without any indemnification obligation by JPMC.

Chain Bridge still cannot provide a coherent counter-explanation of this phone call. *See* JPMC Br. 44-45. As in the district court, Chain Bridge seeks refuge in its President's post hoc deposition testimony, where he claimed that he knew at the time of the cancellation that Chain Bridge was fully and unconditionally protected by a "built in" indemnification right. JA804; *see* CBB Br. 78. That self-serving deposition testimony cannot be reconciled with the contemporaneous record evidence. *See, e.g.*, *Kunik v. New York City Dep't of Educ.*, 436 F. Supp. 3d 684, 695 (S.D.N.Y. 2020) ("In the face of contemporaneous evidence in Plaintiff's own words, her self-serving comments from her deposition after the filing of this lawsuit cannot create an issue of fact[.]"), *aff'd*, 842 F. App'x 668 (2d Cir. 2021); *see also* JPMC Br. 45-46.

Nor can Chain Bridge reconcile the view it now espouses of this phone call with its position in this litigation. Chain Bridge has insisted that it is "customary" (Chain Bridge Mem. Supp. Mot. Summ. J. 15, Dist. Ct. Dkt. 123) for reversal messages to disclaim indemnity by displaying the phrase, "No Indemnity." Attempting to evade the plain consequence of that position—*i.e.*, that Chain Bridge would have done or said something to prepare for such a disclaimer—Chain Bridge now claims, citing nothing, that its principals had "absolutely no reason" to "expect" the disclaimer here. CBB Br. 80. But that position finds no support in the evidentiary record, and certainly is not a permissible inference to Chain Bridge at summary judgment.

Surely, Chain Bridge's principals would have had reason in this situation to prepare for the "No Indemnity" disclaimer. Chain Bridge itself requested the reversal and this was an unprecedented, half-billion-dollar wire transfer—amounting to almost half of Chain Bridge's total assets, with significant consequences for Chain Bridge. *See, e.g.*, JA167 (Chain Bridge's commercial banking team calling the wire "massive" and warning that it could cause "problems on our capital ratios" as it was "half our asset size"). At minimum, Chain Bridge's principals would have expressed a caveat on the call giving instructions to the wire transfer specialist: "Just return [the wire], *unless the recall message includes the phrase 'No Indemnity.'*"

That is not what happened, and the reason is simple. The possibility of a "No Indemnity" disclaimer did not matter. Chain Bridge and JPMC had already agreed, as reflected by their words and deeds, to return the wire without indemnity.

As Chain Bridge's principals succinctly summed it up: "It is what it is. … [We] have been working on this with the State of California and JPMorgan and this is what we have to do." JA3140 at 2:31-2:50.

III. Chain Bridge Cannot Establish Causation

Finally, Chain Bridge's indemnification claim also fails because its asserted "loss and expenses" were not "incurred … as a result of the cancellation." U.C.C. § 4A-211(f). Any loss and expenses accruing to Chain Bridge—*i.e.*, Blue Flame's damages, if any, and Chain Bridge's litigation expenses—result from Chain Bridge's own actions. At minimum, there are genuine factual disputes precluding the entry of summary judgment for Chain Bridge.

It is undisputed that Chain Bridge, as the party seeking indemnification under § 4A-211(f), must establish but-for and proximate causation for its alleged losses and expenses. *See* JPMC 46-47; CBB Br. 80-83. The disagreement on appeal concerns whether, as a factual matter, Chain Bridge satisfied its burden to prevail at summary judgment. Causation is a fact-intensive inquiry that is rarely suitable for summary judgment. *See Knussman v. Maryland*, 272 F.3d 625, 652 (4th Cir. 2001) (Lee, J., concurring in part) ("It is well settled that causation is ordinarily left for a jury to determine."); *Qura v. D.R. McClain & Son*, 1996 WL 554434, at *4 (4th Cir. Sept. 30, 1996). It is especially unwarranted here, where there is substantial evidence from which a jury could conclude that Chain Bridge never would have given Blue Flame access to $456 million wire—let alone within sufficient time for Blue Flame to purportedly complete its deal with California.

Chain Bridge insists that only "speculative" "supposition" supports that it "would have continued to withhold payment from Blue Flame in the absence of a cancellation." CBB Br. 82. That is incorrect. As the record shows, Chain Bridge resolved on its own to hold the wired funds up to and past the point when Blue Flame supposedly needed to wire them out to complete the PPE transaction. That alone defeats causation. *See* JPMC Br. 47-50. According to Blue Flame, the funds needed to be transferred to a manufacturer immediately in order to secure inventory for its first California shipment. JA19 ¶ 56; *see also* JA2085. Yet the record is clear that Chain Bridge—itself having pushed for the reversal of the wire twice—had no intention of making the funds available to Blue Flame that day, let alone anytime soon, regardless of JPMC's conduct.

Chain Bridge's CEO confirmed as much, testifying that he was "almost sure that [Chain Bridge] would have held the funds" had Chain Bridge "not received the request to return the wire." JA192; *see also* JA860 ("We probably would have held the funds had we not received a request to return the funds."). Citing the same deposition testimony, Chain Bridge suggests that it might have paid Blue Flame "as soon as the next day"—March 27. CBB Br. 82-83 (citing JA857, 860-861). However, the testimony on which Chain Bridge relies shows that its hold was the default, and Chain Bridge would have consulted counsel *to extend it* however long it deemed necessary: "[W]e would have engaged counsel to extend that hold greater than the period beyond our funds availability policy." JA861.[4]

Moreover, the contemporaneous record evidence shows that while Chain Bridge still had the funds, it told Blue Flame's principal to look elsewhere for banking assistance. JA384 ("John [Brough] told Mike [Gula] that the bank was going to close the Blue Flame Medical account and all of the other accounts Mike had opened in the last couple of weeks. … John told Mike to not send the money back to Chain Bridge Bank because the funds would be returned due to the fact that the account was closed."). And five minutes after Chain Bridge returned the wire to JPMC, it closed Blue Flame's account. *See* JA142 ¶¶ 31, 33 (showing account closure at 3:26 p.m. ET on March 26, 2020).

Chain Bridge tries to minimize its effort to sever the relationship with Blue Flame by saying it took no action until after JPMC shared concerns about the wire. *See* CBB Br. 83. But minutes after Chain Bridge received the wire and before speaking with JPMC, Chain Bridge instructed employees to cease communications

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[4] JPMC does not question whether Chain Bridge's decision to hold the funds was prudent. And Chain Bridge's incentives to do so were strong. As JPMC explained, Chain Bridge was concerned that providing Blue Flame with access to the funds might run afoul of Chain Bridge's obligations under the Bank Secrecy Act (JPMC Br. 48-49), which Chain Bridge does not dispute (CBB Br. 80-83).

with its client. JPMC Br. 18 (citing JA414; JA259). As for the delayed account termination, the reason for that was purely logistical. According to Chain Bridge, it was unable close Blue Flame's account until the funds were off its books. *See* JA418. In sum, the undisputed facts show that Chain Bridge ceased communication with Blue Flame almost immediately upon receipt of the wire, and then severed the relationship with Blue Flame as soon as it could. JPMC's actions aside, Blue Flame would have found itself in the same position with the same purported injuries because Chain Bridge was not going to make the funds available to Blue Flame within the time when Blue Flame said it needed them. Thus, JPMC was not the but-for cause of Chain Bridge's "loss and expenses."[5]

Finally, as JPMC explained (JPMC Br. 47-48, 50), it need not show that Chain Bridge "'would have returned the funds without a cancellation by JPMorgan'" (CBB Br. 81 (quoting district court decision)). But Chain Bridge certainly could have done so (*see supra* p.5), and there is evidence in the record that it would have—because Chain Bridge's wire transfer policy *required* the return of the funds. *See* JPMC Br. 50-51. Chain Bridge refers to the policy as an

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[5] Chain Bridge contends that Blue Flame was aware of Chain Bridge's funds availability policy, which states that wired funds will not be available until the next business day. CBB Br. 83 (citing JA2839). For purposes of the causation inquiry here, it is immaterial whether Blue Flame should have relied on same-day access to the funds. The point is that Blue Flame purportedly did—and that Chain Bridge chose not to grant it.

"internal guideline," but that distorts the policy's plain text. CBB Br. 82. Under the relevant provision, a wire "*will* be returned"—without exception or discretion—when there is "any question as to the beneficiary's right to the funds[.]" JA226 (emphasis added). Chain Bridge focuses on the preceding sentence, but that sentence concerns circumstances that are not at issue here—"a discrepancy between the beneficiary account number and the beneficiary name[.]" *Id.* There is no dispute that the wire presented a "question as to the beneficiary's right to the funds," and when that occurs, Chain Bridge's policy mandates that the funds be returned.

CONCLUSION

The order of the district court granting summary judgment to Chain Bridge should be reversed, and judgment should be rendered in favor of JPMC. In the alternative, the order of the district court granting summary judgment to Chain Bridge should be reversed and the case should be remanded for further proceedings.

Respectfully submitted.

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March 14, 2022

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(ii).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 5,013 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Alan E. Schoenfeld
ALAN E. SCHOENFELD

March 14, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Alan E. Schoenfeld
ALAN E. SCHOENFELD