EXHIBIT 92

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

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BLUE FLAME MEDICAL LLC, :
Plaintiff, :
v. : Civil Action No.
CHAIN BRIDGE BANK, N.A., : 1:20-cv-00658
JOHN J. BROUGH and DAVID M. :
EVINGER, : CONFIDENTIAL
Defendants. :
_____ :
CHAIN BRIDGE BANK, N.A., :
Third-Party Plaintiff, :
v. :
JPMORGAN CHASE BANK, N.A., :
Third-Party Defendant. :

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(Conducted Remotely)

Monday, April 12, 2021

Thomas C. Baxter, Junior

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Videotape Deposition via Zoom of THOMAS C. BAXTER, JUNIOR, a witness herein, called for examination by counsel for the Defendant/Third-Party Plaintiff Chain Bridge Bank, N.A. and Defendants John J. Brough and David M. Evinger in the above-entitled matter, pursuant to notice, the witness being duly sworn by JOAN V. CAIN, a Notary Public in and for the Commonwealth of Virginia, taken at 9:29 a.m. EDT, Monday, April 12, 2021, and the proceedings being taken down by Stenotype by JOAN V. CAIN, Court Reporter, and transcribed under her direction.

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"Type/Subtype Code." What does that refer to?
A That's a 1000 designation, which is a funds transfer.
Q Am I correct, Mr. Baxter, that the first two numbers in that designation, the one and the zero, are the type and then the second two numbers, double zero, are the subtype?
A That's correct.
Q And do you recognize the type one zero as a funds transfer?
A Yes.
Q And then the double zero for the subtype, is that known as a basic value transfer?
A Yes.
Q What is a basic value transfer?
A It's -- it's essentially transferring over the Fedwire system funds rather than securities, and -- and those funds are being passed between Fedwire participants. Value is moving.
Q If the transmittal were one of securities as opposed to dollars, would there be a different subtype code?

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A Yes.
Q What is the purpose of the inclusion of that information in this process?
A Just to provide clarity as to what -- what this is.
Q A bit further down, there's a heading in bold that says, "Originator Information." Do you see that?
A I do.
Q And the name of the originator is the California State Treasurer, right?
A I see that.
Q Does that mean that California or a California government entity was the originator of this wire transfer?
A Yes.
Q Below that, several lines, there's a heading that says, "Originator to Beneficiary Information," and to the right it says, "By Order of Department of General Services."
Do you see that?
A I do.

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Q What is the purpose of that field?
A So the purpose of that field is to indicate to the beneficiary what the -- what the funds are for. It's not information that the processing banks would -- would pay attention to. It's there for the benefit of the beneficiary of the wire transfer.
Q Does the sending bank or somebody at the sending bank type in that information, where it says, "Line 1," and "Line 2"?
A That would typically be provided by the originator.
Q Are there -- for any of these fields, are there drop-down menus when you're preparing the wire process?
So, for example, we were talking about the Type/Subtype Code, and it says 1000. Does some human being type in those numbers, or is that something you select from a menu?
MR. SCHOENFELD: Objection.
THE WITNESS: I don't -- I don't know.
BY MR. ORSECK:
Q Is it your understanding that the language

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under Originator to Beneficiary is what I would call a free text field, where you can include whatever information you want?
A There would be a limitation on the number of characters you could put in that field but, yes.
Q But so, for example, the sending bank could type in, "Good luck on your new venture," if it wanted to; is that right?
A Yes. I assume that's within the number of characters that are available.
Q Yeah. Subject to the character limitation, whatever it is, the sender can type in whatever it feels like or nothing; is that right?
A Yes. Correct.
Q All right. I'd like to now look at a second Fedwire Funds Processor document, and that is Bates stamped CBB2780.
MR. ORSECK: Leslie, what will that be marked?
MS. ESBROOK: That will be marked Plaintiff's Exhibit 43.
BY MR. ORSECK:

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Q Let us -- let us know when you have that, please.
A Okay.
Q What is this document?
A Again, it appears to me to be a record containing a Fedwire administrative message.
Q JPMorgan was the sender of this message?
A Yes.
Q And Chain Bridge the receiver?
A Yes.
Q Can you tell from the indications at the top that this message was sent at about 2:05 p.m., on March 26th?
A Yes.
Q What is the Type/Subtype Code associated with this message?
A 1001.
Q So the type is the same one zero, meaning funds transfer, that we looked at in the previous message?
A Right. It's a service message associated with the funds transfer.

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Q You -- maybe you anticipated my next question.
What -- what do the second two digits in the Type/Subtype Code 1001 mean?
A This is a request for a reversal associated with a funds transfer that was already processed.
Q The funds transfer that it requests reversal of is indicated by the line that says, "Previous message identifier"; is that correct?
A That's correct.
Q And that's the same IMAD number that we saw on the earlier forward wire transfer, right?
A That's correct.
Q What is the definition of a request for reversal?
A So it would be a request by a Fedwire participant, which would always be a bank, to reverse a Fedwire funds transfer that has already been accepted by the beneficiary's bank.
Q Am I right that, in this instance, the Fedwire participant who was issuing the request for

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reversal was JPMorgan?
A That's right.
MR. ORSECK: Can we please mark the Fedwire Funds Service Format Reference Guide. I think that will be DX123.
Leslie, correct me if I'm wrong.
MS. ESBROOK: That's right. I'll drop it in the chat now.
(DEFENDANTS' Exhibit 123 was marked for identification.)
BY MR. ORSECK:
Q Let me know when you have it, Mr. Baxter.
A I do.
Q This is a multipage document. It appears that it's issued by Fedwire, and the title is "Fedwire Funds Service Format Reference Guide, Effective November 19th, 2011."
Are you familiar with this document?
A I've seen this document before.
Q What is the purpose of this document?
A It's to provide information regarding the Fedwire format and what specific identifiers mean

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within the Fedwire format.
Q Would you please turn to page 14?
A Okay. I have it open.
Q At the very top of page 14, there's a heading 13 that says, "Type Code Reference," and the first one is one zero, Funds Transfer.
Does that relate to the first two digits of both Fedwire messages that we've looked at so far?
A Yes.
Q And that means, where those numbers are recorded, that the funds transfer, according to the description here at least, is, "A funds transfer in which the sender and/or receiver may be a bank or a third party (i.e., customer of a bank)"?
Does that sound accurate to you?
A Yes.
Q Under heading 14, Subtype Code Reference, the double zero that we saw on the first message, Plaintiff's Exhibit 20, has for Basic Funds Transfer, which is a basic value funds transfer; is that right?
A Yes. This is what we spoke about earlier,

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that the first -- the first of the funds transfer is, with the 1000 code identified, a Fedwire funds transfer.

Q In Plaintiff's Exhibit 43, the request for reversal, it says here that the second two digits, zero one, are meant to reflect, "A non-value request for reversal of a funds transfer originated on the current business day"; is that accurate?

A That's what the document says.

Q Is that what you understand that subtype code to reference?

A Yes, that the subtype code 1001 is not a Fedwire message that's transferring value. It's a request for a reversal, which upon execution would transfer value back.

Q There's a limitation in this description that is to be used for reversal of a funds transfer originated on the current business day, correct?

A Correct.

Q And if the sending bank is requesting a reversal of a wire that was sent on a prior business day, then it would use a different subtype code?

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A Right.

Q Would you look back at Exhibit 43, please, the service message?

A Bear with me one second.

Q Yeah.

A Okay. Mr. Orseck, I have it open.

Q About two thirds of the way down, there's an indicator on the left that says, "Business Function," and then it says, "SVC - Service Message."

Do you see that?

A Yes.

Q What do the words "Service Message" indicate?

A So from -- from my background and experience, a service message over Fedwire is a non-value message, and that contrasts with the typical basic funds transfer, where the message is also the money.

In a service message, it is simply communicating information. It is not, in this format, moving value.

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Q A bit earlier you referred to this message as an administrative message. Did you mean that to be synonymous with service message, or did you mean something different?

A I meant synonymous with service message.

Q In other words, a message that is not transferring value. It is instead transferring information; is that right?

A Correct.

Q There is a field, again at the bottom, under Additional Information. Do you see that?

A Yes.

Q And as I read it, there's a portion of the IMAD number associated with Exhibit 20, the forward transmittal wire.

Do you see that?

A Yes.

Q And then there's the date?

A Yes.

Q And the amount?

A Yes.

Q Can you read the next words that follow

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that, the first sentence?

A "As per rem req pls return funds quoting our reference. Please take care to avoid duplication."

Q Do you understand the meaning of the words "as per rem req please return funds quoting our ref"?

A So, and, again, I don't know what the author of this intended, but on the basis of my experience, what that might mean is as -- as per the remitter's request. I mean, that -- I'm speculating because I don't know exactly what the author intended, but on the basis of experience, that could be what this means. Again, free text information being provided for whatever -- whatever help it might mean.

Q These are words composed by somebody at JPMorgan, right?

A Yes.

Q They're not composed by somebody at Chain Bridge Bank?

A No. They would be read by someone at Chain

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Bridge Bank.
Q Do you have an understanding as to who the remitter is in that sentence?
A So, again, and I'm speculating, the way I would interpret this is the remitter is the party who will be sending back the funds. So I would interpret this to mean as per the remitter's request. That would reference Chain Bridge Bank.
But, again, Mr. Orseck, I'm speculating because I don't know what the author intended.
MR. SCHOENFELD: I apologize, Gary. I objected to that question. It looks like it wasn't recorded, so I just wanted to state that for the record.
MR. ORSECK: Okay.
BY MR. ORSECK:
Q You read Mr. Korpal's deposition, right?
A Yes.
Q And he testified that the intended meaning here is that the State of California is the remitter.
Do you remember his testimony to that

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effect?
MR. SCHOENFELD: Objection.
THE WITNESS: I don't.
BY MR. ORSECK:
Q Mr. Coffey said the same. Do you know who Mr. Coffey is?
A I believe he's the JPMorgan employee who worked for Mr. Korpal.
Q If those two gentlemen who authored this language say that the remitter is intended to refer to California, would you credit that representation by them, or do you think that's wrong?
MR. SCHOENFELD: Objection. Misstates the record.
THE WITNESS: I just don't know one way or another.
BY MR. ORSECK:
Q Okay. We can come back to that.
What do the words "please return funds quoting our ref" mean, as best you understand it?
A That this is a reversal request seeking the return of a funds transfer that was executed earlier

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in the day.
Q Did JPMorgan use the correct type and subtype code if its purpose was to request a return of the funds from Chain Bridge Bank?
A Yes.
Q Would you please look back at your report, Exhibit 122, and I'd like to direct you to paragraph 30?
A Yes.
Q There's a footnote at the end of paragraph 30. It's footnote 20 at the bottom of the page, and it reads, "Rakesh Korpal, JPMC's corporate designee, succinctly described this in his deposition testimony when he said, 'The recall request was delivered to Chain Bridge Bank. Chain Bridge Bank then returned the funds to JPMorgan Chase. JPMorgan Chase then returned the funds to the State of California...at about 4 p.m. Eastern.'"
Have I read that correctly?
A You did.
Q Was, as best you understand it, Mr. Korpal referring to this 2:05 p.m. service message,

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Plaintiff's Exhibit 43?
MR. SCHOENFELD: Objection.
THE WITNESS: I wouldn't say referring exclusively to the service message because the service message is followed by action on the part of Chain Bridge Bank, which reverses the funds transfer and transfers value back through the funds transfer chain to the State of California.
BY MR. ORSECK:
Q Fair point. I was trying to be complete and not cut off the quote.
What I really meant was, with respect to the portion of his testimony you quote that says, "The recall request was delivered to Chain Bridge Bank," does that refer to this service message shown at Plaintiff's Exhibit 43?
MR. SCHOENFELD: Objection.
THE WITNESS: That is how I would interpret it.
BY MR. ORSECK:
Q That is how you would interpret it? Is that what you said?

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A Yes, sir.
Q Mr. Baxter, I think you said earlier you have a dog-eared copy of at least some of the UCC handy; is that right?
A I do.
Q Would you turn, if you have it, to Section 4A-211?
A I have it in front of me, Mr. Orseck.
Q The first sentence of subsection A of 4A-211 reads, "A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing."
Do you see that?
A I do.
Q Is Exhibit 43, the 2:05 p.m. service message, a communication of the type described in 4A-211(a)?
MR. SCHOENFELD: Objection.
THE WITNESS: Yes.
BY MR. ORSECK:
Q In paragraph 16 of your report -- and

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forgive me for jumping around. I'm trying to not make it too crazy.
In paragraph 16 of your report, in the fourth line down, you refer to JPMC's purported cancellation request. Are you referring to this same service message of 2:05 p.m.?
A Yes.
Q And I want to understand your use of the modifier "purported."
Do you intend to convey there that this cancellation request is something other than what it appears to be or merely an alleged cancellation request or not a real cancellation request, or do you mean -- with that big wind up, why don't I just ask you: What do you mean, if anything, by that modifier?
A So I would call it a request for reversal of the administrative message that was sent by JPMC to Chain Bridge Bank. That's -- that's what I'm referring to, that from -- from my experience and background, what I would look at this as a request for reversal, which is what it's designated as in --

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in Federal Reserve documentation.
Q By your use of the word "purported," you're not questioning the legitimacy or appropriateness of this service message; am I right?
A You're right. I'm not.
Q Pardon me. I'm just trying to find my place for a minute.
Would you turn to page 46 -- paragraph 46 of your report on page 18, please?
A I have it before me.
Q Four lines from the bottom in paragraph 46, you write, "The administrative actions taken by JPMC not only tied the reversal to the original transfer, but the associated entries were necessary to execute another important element of Article 4A's architecture -- and this was getting California its money back."
Do you see where I'm reading?
A I do.
Q What do you mean by your reference to administrative actions?
A So the sending of the request for reversal

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triggered action on the part of the Chain Bridge Bank, and that action was essentially the cancellation of the payment order that it accepted and the nullification of that acceptance, and when that happens, there's an obligation on the part of all funds transfer participants to remit the value that they've received on the forward process back through the chain so that money gets back to the originator.
Q The reference here in your report is to administrative actions taken by JPMC. Is the sending of the service message, PX46, such an administrative action?
A The administrative actions would be the discussion preceding the -- the sending of the service message and the sending of the service message itself.
MR. SCHOENFELD: Gary, did you mean to reference PX43.
MR. ORSECK: Yes. Did I not say that?
MR. SCHOENFELD: You said PX46.
MR. ORSECK: Forgive me. Thank you for

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correcting it. I meant -- I meant 43. That's the 2:05 p.m. wire.

MR. SCHOENFELD: Correct.

BY MR. ORSECK:

Q So I had a question here for you whether something in the Fedwire funds guide, reference guide we looked at earlier identifies these -- any of these steps as administrative actions, but am I right in understanding your prior testimony to be that when you described this 2:05 p.m. wire as an administrative message, that's another way of calling it a service message?

A So I wouldn't -- I wouldn't characterize, Mr. Orseck, the service message as a wire. I would characterize it as a service message, if you will. It's not transferring value. It's seeking action.

Q Thank you for correcting me. I didn't mean to call it that. I've got wire on the brain.

What I should have asked is: In your testimony a moment ago that your reference to administrative actions in paragraph 46 of your report refers in part to Exhibit 43, you mean that

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it's an administrative message also known as a service message, correct?

A Yes, and the actions that preceded JPMC and led it to send that service message.

Q Once Chain Bridge Bank received the 2:05 p.m. service message, it remained at liberty to elect not to wire the money back to JPMorgan, correct?

A So -- and the reason I'm pausing is that the reversal of the wire transfer is typically within the discretion of the beneficiary's bank. I think there's a question, given the dialogue between Chain Bridge and JPMC, whether there was an agreement that when the service message was received by Chain Bridge, it would reverse the funds transfer.

So, you know, I'll leave that as a legal conclusion, but the -- there is a question whether the beneficiary's bank still had that discretion or whether the agreement was the funds will be returned as soon as we get the service message.

Q Let me make sure I understand this.

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Are you -- are you saying that the question you don't want to answer here is whether, as a matter of contract law, Chain Bridge Bank and JPMorgan Bank had reached an agreement that Chain Bridge Bank would return the wire such that if Chain Bridge Bank later decided not to it might be in breach?

MR. SCHOENFELD: Objection.

THE WITNESS: The way I would answer that question, Mr. Orseck, is I don't feel I'm here as someone who should be offering a legal opinion as to what the agreement between the banks was. On the basis of my experience, there was an agreement between Chain Bridge and JPMorgan Chase that when the service message was received, the funds transfer would be reversed.

BY MR. ORSECK:

Q Is there anything in Section 211 that in any way constrains the recipient of a request for a reversal to comply with that request?

A So I'm going to have to ask that you clarify your question in one respect, Mr. Orseck,

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and that is you talked about the recipient. Here we've got a receiving bank that is the beneficiary's bank, and in this context where the beneficiary's bank has accepted a Fedwire, there's a need for an agreement by the beneficiary's bank to return or reverse the Fedwire.

Q When you say there is a need for an agreement by the beneficiary's bank to return or reverse the wire, what do you mean?

A That without an understanding by the beneficiary's bank, an acquiescence, that the funds transfer is going to be reversed that it won't be reversed, and there are some beneficiary's banks who have a policy that they will not reverse a wire transfer.

Q Yeah. So let me broaden my question.

Under Section 211 of Article 4A, when any bank receives a request for reversal after acceptance of the wire, it's up to that receiving bank to decide whether or not it wants to return the money; is that right?

A Yes.

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Chain Bridge Bank that this funds transfer was, on the basis of the circumstances known to the bankers, either unauthorized or mistaken.

BY MR. ORSECK:

Q I'm going to ask the same question.

You said that there's a question about whether indemnity applies based on whether or not the receiving bank's conduct was proper. You're now saying that's not what happened here. But since you've stated the principle, I'm asking you if you have any support for it.

MR. SCHOENFELD: Objection.

THE WITNESS: And -- and I'll go back to what I originally said, and that is if there were a situation, and this is not one of them, where a beneficiary's bank acted unlawfully in reversing a wire transfer, that I don't think that unlawful conduct could be indemnified.

BY MR. ORSECK:

Q What is your support for that?

A My understanding of the way indemnification works.

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Q Anything else?

A No.

Q You said in your paradigmatic situation the sender elicits the return of the wire through a proffer of indemnity. That's what you said?

A Yes.

Q Can you point me to any authority for the proposition that indemnity applies only in an instance where the sender uses the promise of indemnity to induce or elicit the reversal by the receiving bank?

A Again, I'll refer to the language in subdivision (f) of Section 211 of 4A, which speaks about action being taken by the sender, and -- and those words in the statute are important for them.

Q So it's the -- it's the words in subsection (f) of 211 that you rely on for the proposition that indemnity applies only when it's used by the sender to elicit a return of the funds?

A And I'll give another -- I'll give another example.

Q Sir, can you -- I don't want another example.

Can you first answer my question? Is it the language of 211(f) that you rely on for that proposition?

A It's the language 211(f), certainly, but it's also the -- the overall statute, Article 4A, and how it's designed to work.

Q Okay. But I'm asking for specific language. Do you have specific language, or I just have to understand the architecture of the whole statute?

A Well, we talked about -- we talked about by a sender, Mr. Orseck. So let me give you another --

Q Can you point me to -- I want to know where you're referring to. What do you mean by a sender?

A It's the -- the sentence? Subparagraph (f) --

Q Right.

A -- which reads, "Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to

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cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment."

Q Okay. You just read the entirety of Section (f), right?

A Yes. But I emphasized the specific words "by the sender" or "the sender."

Q And that's the -- that's the language you rely on for the proposition that indemnity attaches when the sender elicits -- only when the sender elicits the return of the money through a proffer of indemnity. Am I understanding that correctly?

A That's the operation of subparagraph F.

Q Okay.

A I was going to refer you to another provision of Article 4A to illustrate a point.

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Shall I do that now, Mr. Orseck?
Q If there is other language in Article 4A that supports the proposition that indemnity is limited to circumstances where it is used to elicit return of the wire, I'm happy for you to -- I'd like you to point me to it.
A Okay. So -- and, again, I'm not talking about the case before us but a hypothetical case, and let's look at the language of Section 4A-209 subparagraph (c), and specifically the second sentence speaks, "Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account."
Q Okay. You rely on that language as well?
A Yes. Because here's -- here's the hypothetical case, and I know it's not our case, but the hypothetical case could be that -- that the beneficiary's bank asks the intermediary bank to send a service message reversing an earlier funds

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transfer because the beneficiary's bank doesn't have an account for the beneficiary. Let's assume that the beneficiary's bank then sends the funds back.
Is there an indemnity in that instance? I would say no, because the indemnification is not being sought on behalf of the sender, and that's an illustration of -- of the point I was trying to make, Mr. Orseck, that you can't read subparagraphs (f) of 211 in isolation.
Q You need to read it, at a minimum, together with 4A-209(c)?
A And the other provisions of 4A that --
Q Okay.
A -- operate as an integrated whole.
Q Is there somewhere that I could look to support the proposition that the paradigm scenario you laid out is the only scenario in which indemnity under 211(f) attaches?
A I'm not aware of such a thing.
Q Is the receiving bank, upon receiving a request for reversal, free to decline that invitation for any old reason it likes?

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A Yes.
Q Look at paragraph 19 of your report. It begins on page 7. It's all on page 7. And this, in summary form, I believe is where you lay out your principal reasons why there's no indemnity obligation here, right?
A Yes.
THE COURT REPORTER: I'm sorry, Counsel. I clicked Exhibit 69 and it started playing. I think it's not playing now. I apologize. I was trying to save it.
MR. ORSECK: All right. I didn't hear it. Shall I continue?
THE COURT REPORTER: Yes.
BY MR. ORSECK:
Q Your first principal reason, Mr. Baxter, is you say that -- I'm reading from your report, "Indemnification under 4A-211(f) contemplates a scenario where the sender is seeking cancellation from the receiving bank (which might be the beneficiary's bank), and the receiving bank complies as an accommodation to the sender," right?

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A Yes.
Q So, in other words, you're saying that the motivation or reason for the reversal by the receiving bank must be that it's doing it to accommodate the sender; is that right?
A Yes.
Q And if it's doing it to accommodate its own selfish interest, then 211(f) doesn't apply?
A Yes.
Q And to determine the motivation of the receiving bank, we look to all surrounding circumstances?
A Yes.
Q And that's what you did here?
A The circumstances that I was aware of and saw in the record.
Q You said in the paradigm scenario where indemnification does apply, there may be a colloquy between the two banks before the funds are returned, right?
A Yes.
Q So if, during that colloquy, the receiving

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bank states, and the call is recorded, "Yes, we'll return the wire as an accommodation to your request," in that circumstance indemnity?

A Yes.

Q What happens if they have their colloquy and, same scenario, the receiving bank says, "We'll return the wire as an accommodation to your request, but, you know, it occurs to us that doing so will have the additional salutary effect of avoiding any negative publicity and litigation risk for us" -- so that's another good reason to do it -- and they go ahead and send the money back; indemnity or no indemnity?

MR. SCHOENFELD: Objection.

THE WITNESS: And that they will accept a service message reversing the funds transfer. There's no discussion of an indemnity in that?

BY MR. ORSECK:

Q No discussion of indemnity. They say, "We're going to do this as an accommodation, but also it suits our own purposes as well."

A "And send us a service message, and we'll

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act on it"?

Q No. They don't say anything about service messages, but they get one and they return the money.

A I would say there's a question on the --

Q Okay. What if we adopt your condition? The receiving bank says, "We'll do it as an accommodation -- it also suits our purposes by the way -- and please send us a service message"?

A "Which we'll act on?"

Q Sure. And the sending bank sends the service message, the money is returned; indemnity or no indemnity?

A No indemnity. The banks have collectively agreed as to what to do.

Q And the collective agreement that they reached is what?

A To reverse the funds transfer.

Q And they have not said a single word about whether there will or will not be indemnity?

A Correct.

Q And the fact that they've agreed in advance

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of the service message what's going to happen, that essentially preempts the application of 211(f)?

MR. SCHOENFELD: Objection.

THE WITNESS: Yeah. They're essentially taking a mulligan on the funds transfer.

BY MR. ORSECK:

Q And where in 211(f) would I look for that outcome?

A Well, if we're excluding other points, we're going to look at those words by the sender.

Q And your theory is that because those words say that the receiving bank agrees to cancellation of the order by the sender, if they've agreed that there's going to be a service message, it's no longer an order by the sender?

A They're collectively agreeing as to the disposition of the earlier wire transfer.

Q Okay. Understood.

What if they have their colloquy, the receiving bank says it will return the wire and it hopes that the accommodation is helpful to the sender, but the main reason it's doing so is to

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avoid any negative publicity and litigation risk, but they say nothing about service messages? It's just that the receiving bank expresses its multiple reasons why it would want to send the money back; indemnity or no indemnity?

MR. SCHOENFELD: Objection.

THE WITNESS: So I don't know how the money gets back. Is the earlier wire transfer reversed?

BY MR. ORSECK:

Q Yeah. So the sending bank sends a reversal message, as you said is typical, at the end of this conversation. They haven't discussed whether the sending bank's going to do that, but that's what the sending bank does; indemnity or no?

MR. SCHOENFELD: Same objection.

THE WITNESS: The sending bank sends the administrative message requesting reversal, there's been no discussion of the sending of that request for reversal, and the beneficiary bank acts on the request for reversal?

BY MR. ORSECK:

Q Correct.

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concluded to respond to the service message by returning the wire?

A This particular reason I don't know whether it was in the knowledge of the bankers from Chain Bridge.

Q When I asked you about Mr. Coffey earlier, you said I don't know what he had in his head. Is it a similar point here?

A I don't know what was in Mr. Brough's or Mr. Evinger's head.

Q The second thing you say in paragraph 41 is that Chain Bridge Bank may have believed that returning it "Relieved it of exposure to any potential claim for lost liquidity," by Blue Flame.

Do you see where I'm reading?

A Yes.

Q Same question here: Are you expressing an expert opinion that such concerns are in fact why Chain Bridge Bank returned the wire?

A Again, I'm -- I'm not trying to get into the heads of Mr. Brough or Mr. Evinger, but I, on the basis of my experience, am aware of situations

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where if you hold availability of a credit from a particular bank customer, that can lead to exposure to that customer.

Q In paragraph 42 on page 16 -- it's a long paragraph, but maybe ten lines from the bottom you say, "In my view, there is no question that Chain Bridge had overwhelming doubts about Blue Flame's right to these funds."

Do you see that?

A Yes.

Q And you've seen support in the record for that proposition, right?

A Yes.

Q Did JPMorgan Chase, likewise, have doubts about Blue Flame's right to these funds?

A Yes.

Q In paragraph 43 you say, and you say it again later in your report, that Chain Bridge Bank faced clear reputational risks by not returning the funds.

I have the same question here. Are you expressing an expert opinion that concern about

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potential reputational risks is in fact why Chain Bridge Bank agreed to return the funds?

A And, again, I don't -- I don't pretend to climb into the heads of either Mr. Brough or Mr. Evinger, but on the basis of my experience, there's reason for this concern.

Q Would JPMorgan Chase have had reason for the same concern?

A Yes.

Q I'm going to paragraph 47. No. I'm jumping ahead. Give me a moment here.

Oh, yeah. Paragraph 64, please, on page 25.

A Yeah.

Q Do you have it?

A I do.

Q In paragraph 64 you say, "Third, if Chain Bridge did not reverse the Wire Transfer, it would need to take some kind of action to deal with the increase in cash on its balance sheet," right?

A Yes.

Q Did you read Mr. Brough's and Mr. Evinger's

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depositions on this point?

A Yes.

Q I take it you have not read Ms. Williamson's deposition, the CFO. She was deposed yesterday.

A I have not.

Q Do you recall Mr. Brough and Mr. Evinger testifying that balance sheet concerns are not what animated its desire to return the funds?

MR. SCHOENFELD: Objection.

THE WITNESS: Yes.

BY MR. ORSECK:

Q Is it your expert opinion that in fact that's not true and that balance sheet concerns are a reason why Chain Bridge Bank returned the funds?

A Yes.

Q Yes, you believe that to be untrue when they say that's not the reason they returned the funds?

A I wasn't quarreling with the truthfulness of the individuals, but I think many times bankers believe that they can invest cash in a particular

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way and there won't be any problems and they turn out to be wrong, that one of the benefits of reversal of this funds transfer is you didn't have that situation at all.

Q Let me try to ask it better, Mr. Baxter.

Do you believe that, in their subjective mind, Mr. Brough and Mr. Evinger in fact decided that Chain Bridge Bank would return the funds because they were in fact concerned about what these funds would do to Chain Bridge Bank's balance sheet if they didn't return the money?

MR. SCHOENFELD: Objection.

THE WITNESS: And I think I understand the question, Mr. Orseck, and, again, I wouldn't presume to try to put myself into their minds.

On the basis of my experience, it's -- it's one less thing they needed to do and to worry about to get these funds off the balance sheet and to do it in a safe way.

BY MR. ORSECK:

Q And just -- I'm sorry if I covered this, but the relevance of these potential incentives that

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you've identified here are that they further your conclusion or support your conclusion that there was an agreement between JPMorgan and Chain Bridge Bank to reverse the wire?

A Yes.

Q In terms of the application of 211(f), and going back to your paradigm scenario of there being a colloquy, for purposes of determining whether 211(f) applies, does it matter which bank initiates the conversation with the other bank about its concerns regarding the transaction?

A I don't think it matters which bank is the first caller, but I do think the dialogue between the banks matters greatly.

Q Does it matter which bank is the first one to express out loud that it has concerns about the transaction?

A I don't think so.

Q Does it matter which one is the first who in fact has concerns about the transaction?

A I don't believe so.

MR. ORSECK: Okay. I'd like to take a

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break. Is this a convenient time for lunch for you? I know Alan's got a -- I'm sorry.

Can we just go off the record, please?

THE VIDEOGRAPHER: Sure. Off the record at 12:28.

(Discussion off the record.)

(Whereupon, at 12:29 p.m., the deposition in the above-entitled matter was recessed, to reconvene at 1:02 p.m., this same day.)

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AFTERNOON SESSION

(1:02 p.m.)

THE VIDEOGRAPHER: On the record at 1:02.

CONTINUED EXAMINATION BY COUNSEL FOR DEFENDANT AND THIRD-PARTY PLAINTIFF CHAIN BRIDGE BANK, N.A. AND COUNSEL FOR DEFENDANTS JOHN J. BROUGH AND DAVID M. EVINGER

BY MR. ORSECK:

Q Mr. Baxter, you've said in your report and on the record that there was an agreement between Chain Bridge Bank and JPMC here. What are the terms of that agreement?

A So the terms of the agreement were the bankers had applied it that the funds transfer should be reversed, that the way to accomplish that objective was for JPMorgan Chase to send a service message to Chain Bridge Bank, which Chain Bridge would accept and execute by doing a reversing funds transfer, and that is what happened.

Q Any other terms to the agreement between the parties?

A It was a pretty simple agreement.

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THE COURT REPORTER: I'm sorry. I didn't hear you.
THE WITNESS: It was a pretty simple agreement.
BY MR. ORSECK:
Q Any other detail or terms to the agreement?
A No.
Q In paragraph 1 of your report, you say that you were an advisor to the drafting committee that produced Article 4A, right?
A Correct.
Q When did that process occur, referring to drafting Article 4A?
A That was a multiyear process. My -- my recollection is it ran from 1987 through approximately sometime in 1990.
Q Were you advisor -- I'm sorry.
A I'm sorry. I'm speculating as to the exact period of time, but it was multiyear and around that period of time, Mr. Orseck.
Q Were you advisor that entire time?
A That's my recollection, yes.

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Q Were there other advisors? You say you were an advisor. Were there multiple advisors?
A As I remember it, there were.
Q Can you give a little better sense as to what your role was and what you did?
A Yeah. I attended all the drafting committee meetings, and there were multiple drafting committee meetings. I would provide advice on the basis of my experience with respect to wire transfers to the full committee. There were a series of questions that I was asked to opine on about wire transfer practice and procedure and current state of wire transfer law, and -- and there's a record of my writing on behalf of the Fed back to the drafting committee and advising the drafting committee in response to particular questions.
When the drafting process completed, I was also asked to participate in several meetings with the New York legislature, which I did, and to help with the enactment of Article 4A and the revisions to Articles 3 and 4 in other states as well.

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Q When was Article 4A enacted?
A My recollection is it was enacted in New York in approximately 1990, but, again, I -- you know, I'm speaking of my recollection.
Q Have you provided advice in an advisory capacity to the committee since 1990?
A So I was -- I was involved with the Uniform Law Commission with the enactment process, which is a little separate from the full committee, the drafting committee that actually was responsible for the text of the article.
So -- so, you know, there's a little -- a little bit of overlap between advice and help to the Uniform Law Commission and advice to the drafting committee itself. I did --
Q What -- what -- when you say you were involved with the Uniform Law Commission, when was -- when did that work end?
A So it ended when the last state enacted Article 4A, certainly. There was a more difficult and extended process with respect to Articles 3 and 4, the revisions that were done at the same time,

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and for New York at least, those have never been enacted in New York.
Q My question was, if you can answer it: When was the last time you performed an advisory function for the Uniform Law Commission?
A I don't remember the last point in time, and -- and I do work currently for the ULC. But with respect to the -- to the three, four, 4A project, I would guess it was around 2000.
Q Has Article 4A been amended since 2000?
A No.
Q Was your advisory work directed solely to the text of Article 4A, or did you also have a role with respect to the official comment?
A Both.
Q Is there anything in the text of Section 211 and the official comments thereto that you disagreed with at the time?
A Not that I remember.
Q Was there any commentary that you proposed that was rejected and not included?
A Not that I can recall.

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Q Have you ever worked as a commercial banker? By that, I mean outside of the Fed.
A No.
Q Have you ever sent a wire transfer?
A Yes.
Q When did you do that?
A It would have been in my capacity as general counsel and executive vice president to the Federal Reserve Bank. I don't remember exactly the year. But there were occasions where, given my nonlegal responsibilities, I had cause to send funds.
Q Were you -- did you ever issue -- have you ever issued a request for reversal?
A And you're speaking about me personally, Mr. Orseck?
Q Yeah.
A No.
Q Have you had some involvement in the issuance of a request for reversal?
A Yes.
Q What's that?

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A Well, certainly, when I was at the Fed in my capacity as a Federal Reserve official and as general counsel, I -- I was involved in a number of different matters where reversal requests were issued.
Q You may have answered this before, Mr. Baxter. If so, forgive me. But you've not testified as an expert in the last four years. Have you ever testified as an expert witness before?
A Yes.
Q Was that in the two criminal cases you mentioned this morning?
A The one criminal case, Mr. Orseck, resulted in a trial, and I was a trial witness in the United States versus Sliker. The other case settled with a criminal disposition, and I never testified.
Q You list senior fellow at NYU Law School. Do you teach any courses there?
A I don't teach a course. I do guest lecture at Paul Roth's financial services class at Paul's request, and I've done that over the last, I think, three, four, five years.

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Q Has a guest lecture ever touched on Section 211 of Article 4A?
A No.
Q You list vice chair of the Committee on International Monetary Law of the International Law Association. Can you briefly tell us what that entails?
A Yeah. This is a committee of the International Law Association, which is comprised of lawyers who are active in the -- in monetary law around the world, including the general counsel of the IMF, the general counsel of the Bank of England, the general counsel of the European Central Bank, and periodically meet to discuss international monetary law issues and to formulate, on occasion, resolutions as to how law and practice should change to accommodate particular issues.
Q Has that touched on wire transfer law?
A No.
Q You list a guest lecturer at law schools. Is that -- does that overlap what you were referring to earlier about Mr. Roth's course?

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A So -- so most of the law school lectures involve various aspects of the last financial crisis, the one from 2007 to 2009. I also, when I was at Sullivan & Cromwell, did an annual class on representing a client before a federal regulator.
Q Have you delivered any guest lectures at law schools relating to subjects addressed by Section 211(f)?
A No.
Q You were at Sullivan & Cromwell from 2016 to 2020, give or take?
A About four-and-a-quarter years, from October 2016 to December 2020.
Q You say you provided advice to a variety of financial institutions on subjects ranging from governance and regulation affairs to payment system issues, right?
A Yes.
Q While you were at S&C, did you advise financial institutions on the question whether a reversal of a wire transfer would be subject to indemnification under 211(f)?

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go off, right?
MR. ORSECK: Yeah.
MR. SCHOENFELD: Yeah, please.
THE VIDEOGRAPHER: Off the record at 1:53 p.m.
(Recess.)
THE VIDEOGRAPHER: On the record at 2:20.
BY MR. ORSECK:
Q Mr. Baxter, you state an opinion that Chain Bridge Bank directed the reversal of this wire, correct?
A Yes.
Q What is your evidentiary basis for that conclusion?
A It was the -- principally the phone call between the executives of Chain Bridge Bank and Mr. Korpal.
Q You say principally. Is there other evidence that you had in mind when you wrote that, other than the phone call you just mentioned?
A Well, there were the incentives we talked about earlier.

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Q Yeah. I'm referring -- I'm referring to not the motive behind it, but, rather, the directing to JPMorgan.
Did you have any other communications in mind besides the phone call you just mentioned?
A No. That was the principal piece.
Q I'd like to play that for you -- I think I know the one you're talking about -- and then ask you a couple of questions.
I believe this is Plaintiff's Exhibit 79, and it's a 1:35 Eastern Time phone call on March 26th.
MR. ORSECK: Do you have that, Leslie?
MS. ESBROOK: I've got it.
MR. ORSECK: Okay. Let's play that, please.
(Plaintiff's Exhibit 79 was played for the witness.)
BY MR. ORSECK:
Q Mr. Baxter, we've just listened to the audio recording of Plaintiff's Exhibit 79. Is that the phone call exchange you had in mind in your

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prior answer?
A Yes.
Q David Evinger says to Mr. Korpal, "Is there any way for JPMorgan to issue a recall for the wire so that while you intervene in this you have the funds and feel more comfortable?"
Is that the statement that you had in mind regarding Chain Bridge Bank's direction to JPMorgan to reverse the wire?
A So there is also the following statement about JPMorgan Chase being comfortable with Chain Bridge holding the funds, and, you know, it was between the two options: Chain Bridge continuing to hold the funds or the suggestion from Chain Bridge that a reversal request be sent by JP, and that would reverse the earlier funds transfer. That was the alternative.
Q Let's take them one at a time, though. The first one that I just recited back to you was David Evinger saying, "Is there any way for JPMorgan to issue a recall?"
Is that a communication that you consider

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to support your conclusion that Chain Bridge directed the reversal?
A Yes.
Q And then Mr. Korpal responds, "Well, I feel comfortable that you're holding the money right now. I can issue a recall, but I don't think you and I want to get on the front page of The Wall Street Journal, especially if this is a legitimate transaction," and then Mr. Brough responds, "Okay," right?
A And -- and that he wants to hear back. That -- that happens later.
Q Mr. Brough says, "Okay." Mr. Korpal says, "If you give me a few more minutes," and then Mr. Evinger says, "We look forward to hearing back from you," and they both say, "Thank you."
A Yeah.
Q So is Mr. Evinger's statement, "We look forward to hearing back from you," is that also supportive of your conclusion that Chain Bridge Bank directed the reversal?
A So the way I look at the colloquy between

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the bankers is that -- that the Chain Bridge executives would prefer JPMorgan to request a reversal and they're waiting to hear back that JPMorgan will do that. That's their -- that's their preferred outcome, rather than continuing to hold the money.

Q Mr. Korpal says, "I feel comfortable holding the money," and Mr. Brough says, "Okay," right?

A I don't think so. I think Mr. Korpal is saying he's comfortable with Chain Bridge holding the money.

Q Yeah. That's right. He says, "Well, I feel comfortable that you're holding the money right now," and then Mr. Brough says, "Okay," right?

A Yeah.

Q And is that part of the exchange that you consider as Chain Bridge Bank's direction?

A Yes.

Q Okay. Did you read Mr. Korpal's testimony on this point?

A I did.

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Q And I'll quote to you from page 250. He says he didn't understand this as a question, but he understood Evinger to be making a suggestion. Is that consistent with your reading of this?

A That's Mr. Korpal's impression. My impression is that Chain Bridge preferred a request for a reversal.

MR. SCHOENFELD: Gary, I apologize. Hold on one second.

Tom, it's a little bit hard to hear you when you're reclining backwards. If you could either just speak up a little bit or lean forward, that'd be helpful.

THE WITNESS: I'm sorry.

BY MR. ORSECK:

Q So are you -- Mr. Baxter, are you providing an expert opinion here as to what Mr. Evinger meant that differs with what Mr. Korpal thinks he meant?

MR. SCHOENFELD: Objection.

THE WITNESS: So on the basis of my experience and dealing with colloquy between the bankers in a reversal situation, I mean, there are

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often abbreviated conversations that -- that you need to review to reach a determination as to who wanted what, and, you know, what you're getting from me is my impression of what I read in the -- and what I listened to in the recording of these conversations.

And I fully take the point that others may take away different views from this, but that's -- that's the basis of my view as to what the bankers were concluding in this particular conversation.

BY MR. ORSECK:

Q Is it part of your expert opinion in this case to tell us what Mr. Evinger meant?

A No.

Q In paragraph 19 of your report -- I've come back to that a few times -- you say, in the last four lines, "As noted, Section 4A-211(f) would also be inapplicable even if the reversal of the Wire Transfer had been a joint decision by Chain Bridge and JPMC. After all, the reversal in a joint decision scenario would not be initiated 'by the sender,' as required by 2A-11(f)," right?

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A Yes.

Q Can you explain your reasoning there?

A Yes.

Q Would you?

A Yes. It gets back to the -- the discussion of the paradigm case, where the beneficiary's bank is induced to a reversal by action on the basis of what they're hearing from the sender's agent, typically a financial institution, typically the originator's bank, and contrast that to a situation where the beneficiary's bank and the intermediary bank get together and essentially agree on what the proper disposition should be, and that is a reversal.

And as, you know, I look at this record, you can read the record as having Chain Bridge suggest to JP that a reversal is the right answer. You could also read the record as seeing collective -- a collective decision by JPMorgan and Chain Bridge that reversal was the right answer.

Q And so under either scenario, if you read it as a result of Chain Bridge's suggestion or if

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you read it that the reversal was a result of a joint agreement by the parties, in either of those scenarios, 211(f) rules out indemnity?

A Correct.

Q And I know that from the text of 211(f), the --

A The facts and the circumstances and the text.

Q Sorry?

A The facts and circumstances of this case and the text.

Q And I mean the text of 211(f).

A And all of Article 4A.

Q Okay. You say in paragraph 29 of your report, on page 11, "The Wire Transfer received substantial attention at both JPMC, including because the bank's machines flagged it as anomalous, and at Chain Bridge Bank."

What is your support for the proposition that the wire transfer received substantial attention at JPMC?

A So -- so one of the characteristics of wire

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processing in a large financial institution like JPMorgan Chase is that there'll be suspicious activity monitoring being done, as I say here, by machine to look for a transaction that's not consistent with the customer profile.

And as I understand how this particular transaction came to the attention of individual executives at JPMorgan, it began by getting kicked out through some kind of suspicious activity monitoring routine and then reviewed by specific individual executives at JPMorgan Chase, who looked at it and thought, similar to virtually everyone who looked at this, that this is a strange wire transaction for -- for the State of California.

Q Do you know whether all of that happened prior to JPMorgan and Chain Bridge first speaking to one another about the transaction?

A I believe that to be the case, although it wasn't far in advance. Because we're talking about essentially a four-hour window of time here.

Q Would you look at paragraph 37, please, on page 14 of your report. I want to ask you about the

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first sentence. You say, "Here, both JPMC and Chain Bridge were concerned about the subject Wire Transfer. Their collective concern arose from their own respective internal processes, which identified the Wire Transfer as highly suspicious before the State of California realized what was happening."

That's what you wrote?

A Yes.

Q When did California realize what was happening?

A I don't know.

Q Do you know how they realized what was happening?

A I believe they -- they started to focus on this wire transfer when they heard from either Chain Bridge or JPMorgan Chase.

Q And what was happening?

A The bankers were expressing concern about whether the wire transfer was authorized or a mistake.

Q Look at paragraph 59, please. And I will ask you to flip over to page 24.

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A Yeah.

Q The second full sentence reads, "And the record shows that JPMC personnel concurred with the Chain Bridge executives because of JPMC's concern for its customer, the State of California."

Read that correctly?

A Yes.

Q What is the basis for that statement regarding JPMC's concern for its customer?

A So the -- the different positions of the two banks is JPMC had executed this payment order which resulted in the wire transfer before the suspicious activity came to its attention, and that's the way suspicious activity monitoring works, is it tends to work after the fact. And -- and so JPMC's concerns about this particular funds transfer were not concerns that would stop it from acting because it already acted.

And -- and so when you put yourself in that position, what are the concerns? The concerns have to be, well, if this is unauthorized, we've already transferred it, and that's going to cause a problem

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between us and our customer, the State of California, or a possible problem.
Q Were JPMC's concerns legitimate concerns in your opinion?
A Yes.
Q I didn't ask you, Mr. Baxter: Have you ever served -- have you ever advised or served as an expert or consultant in any capacity to JPMC before?
A Would that include giving legal advice?
Q Oh, sure. Did you do that when you were at Sullivan & Cromwell?
A Yes.
Q Other than that, have you done business in any way with JPMorgan as an advisor or a consultant?
A No, except for this case.
Q Yeah. What about with Wilmer Cutler? Have you served as a consultant or a testifying expert or an advisor in some other capacity before?
A No.
MR. ORSECK: Can we please put up in the chat -- it's marked as Exhibit 97. The Bates is JPMC392.

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MS. ESBROOK: Sure.
BY MR. ORSECK:
Q And you'll let me know when you have that.
A I see a Plaintiff's Exhibit 79. Is that what we're talking about?
Q No.
MS. ESBROOK: It's Plaintiff's Exhibit 97. I just threw it in the chat.
THE WITNESS: Oh, I'm sorry. Transposition error.
Okay.
BY MR. ORSECK:
Q You should have a document where there's an email in the middle of the first page from Alexander Leonard and then one at the top that's redacted from Rakesh Korpal. Is that what you have?
A That's what I see.
Q The one from Mr. Leonard is dated March 27th, 2020. That's the day after -- that's the day after the wire transfer and reversal, correct?
A That's what I believe to be the case, yes.

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Q Do you understand Mr. Leonard to be an individual at JPMC?
A I don't know.
Q Have you seen this document before?
I can tell you it's not on your list of materials considered.
A I don't recall seeing it.
Q About halfway down Mr. Leonard's email, he says, "The Deputy Treasurer believes there are several red flags to the transaction that the State should have flagged. While meeting the minimum fiduciary requirements, he felt that multiple departments fell short in how this was handled."
Do you see where I'm reading?
A I do.
Q Have you formed any opinions in this case about whether California's diligence fell short?
A No.
Q He goes on to report, "The State is extremely grateful for JPMorgan's leadership and the steps we took to get this money recovered."
Do you see that?

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A I do.
Q Did JPMorgan display leadership and take steps to get the money recovered?
MR. SCHOENFELD: Objection.
THE WITNESS: It certainly took steps to get the money recovered. My pausing is on the leadership part.
BY MR. ORSECK:
Q Gotcha.
MR. ORSECK: Okay. Can we get up Defendants' Exhibit 90, nine zero, please.
MS. ESBROOK: Sure. Let me find it.
MR. ORSECK: Tab 11 for us, and it's JPMC386.
MS. ESBROOK: Okay. It's in the chat.
BY MR. ORSECK:
Q Let me know when you have it.
A I have it.
Q This is an email from Fiona Ma to Jamie Dimon of JPMC, and if you look at the bottom email, you'll see that Fiona Ma is the California State Treasurer.