2021 WL 6112694 (C.A.4) (Appellate Brief)
United States Court of Appeals, 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.

Nos. 21-2218, 21-2219.
December 22, 2021.

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

Brief for Third-Party Defendant-Appellant JPMorgan Chase Bank, N.A.

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*I DISCLOSURE STATEMENT

• In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
• In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.

• In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)

• Any corporate amicus curiae must file a disclosure statement.

• Counsel has a continuing duty to update the disclosure statement.

Pursuant to FRAP 26.1 and Local Rule 26.1, *JPMorgan Chase Bank, N.A.* (name of party/amicus) who is *appellant* (appellant/appellee/petitioner/respondent/amicus/intervenor), makes the following disclosure:
1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES X NO

2. Does party/amicus have any parent corporations? X YES ☐ NO

If yes, identify all parent corporations, including all generations of parent corporations:

JPMorgan Chase Bank, N.A. is a wholly-owned subsidiary of JPMorgan Chase & Co., which is a publicly held corporation. JPMorgan Chase & Co. does not have a parent corporation.

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES X NO

If yes, identify all such owners:

No publicly held corporation owns 10% or more of JPMorgan Chase & Co.'s stock. However, The Vanguard Group, Inc., an investment adviser which is not a publicly held corporation, has reported that registered investment companies, other pooled investment vehicles and institutional accounts that it or its subsidiaries sponsor, manage or advise have aggregate ownership under certain regulations of 10% or more of the stock of JPMorgan Chase & Co.

***II** 4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐]] YES X NO

If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES X NO

If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES X NO

If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐]] YES X NO

If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: */s/ Alan Schoenfeld*

Counsel for: *JPMorgan Chase Bank, N.A.*

Date: *11/10/2021*

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*1 INTRODUCTION

In the early days of the COVID-19 pandemic, amidst a worldwide frenzy for personal protective equipment, Chain Bridge Bank sought reversal of a suspicious incoming $456 million wire transfer based on concerns about the beneficiary of the wire--its own client--and the bank's own viability. The wire was designated for a newly formed client of the bank, an outfit run by a pair of political lobbyists claiming that it could source 100 million N95 masks for the State of California. Ultimately, based on its own concerns, Chain Bridge persuaded the sending bank, JPMorgan Chase Bank, N.A. (JPMC), to accommodate the reversal. But now, having been sued by its client, Chain Bridge demands indemnification from JPMC for any losses caused by Chain Bridge's own actions. Article 4A of the Uniform Commercial Code, which governs the wire transfer at issue in this appeal, does not permit that result.

Article 4A's indemnification provision, § 4A-211(f), addresses a cancellation sought and directed by the sending bank--for example, where the originator of the transaction (here, California) informs its sending bank (here, JPMC) that something is wrong. Maybe the originator gave the wrong account number or discovered that the transaction was unauthorized. The sending bank then tries to help its client, which originated the wire, get the money back. In that situation, the beneficiary's bank (here, Chain Bridge) knows nothing about the ***2** originator's situation and only wants to protect its client's (here, Blue Flame's) money, both due to significant client-relations interests and to avoid any legal exposure for acceding to the sender's request. U.C.C. § 4A-211(f) provides a reluctant receiving bank an incentive to agree to a reversal that is requested "by the sender"--indemnification of any resulting losses.

This extraordinary case is different, and none of the circumstances providing for indemnification under § 4A-211(f) applies. That section states the rule plainly: "Unless otherwise provided in an agreement of the parties ..., if the receiving bank ... agrees to cancellation ... of the order by the sender," the sender must indemnify the receiving bank for "any loss and expenses ... incurred ... as a result of the cancellation[.]" Here, the receiving bank did not "agree[] to cancellation ... of the order by the sender," but rather canceled the order itself. Moreover, the parties had an "agreement" that provided for no indemnification. And, finally, any loss or expense to Chain Bridge did not come "as a result of the cancellation."

Based on its own concerns about the wire, Chain Bridge took decisive steps to halt and ultimately reverse it. The bank placed an immediate hold on the funds so that its client, Blue Flame, could not access them. It then shared its concerns directly with California, which was not even its customer--an extraordinary act for a bank. And Chain Bridge engaged its internal team responsible for Bank Secrecy Act compliance on the theory that the wire might implicate money laundering or ***3** other concerns. On the originating side of the transaction, JPMC undertook its own investigation and carefully considered the information Chain Bridge shared about Blue Flame, which JPMC had no reason to know.

Chain Bridge was so intent on returning the funds that it proposed it--*twice*. Chain Bridge first raised the matter with California directly, insisting that it would be "happy to return the wire." The State declined. Chain Bridge then asked JPMC to issue a recall. As JPMC explained to Chain Bridge, because the funds were already being held safely, JPMC had no need to take them back. But JPMC promised to consider Chain Bridge's request further. A few minutes later, JPMC agreed to Chain Bridge's request and sent Chain Bridge a reversal message in order to facilitate the proper recrediting of the funds back to California.

The discussions between the banks made clear to both sides that JPMC would not be obligated to indemnify Chain Bridge. And that makes perfect sense--Chain Bridge itself requested the reversal. Chain Bridge had its own reasons for reversing the wire, calculated the risks, and decided that they were worth it. Chain Bridge wanted nothing more to do with Blue Flame; as soon as the reversal went through, Chain Bridge closed Blue Flame's account. And instead of agreeing with their wire specialist's suggestion to secure an indemnification guarantee from JPMC before reversing the wire, the President and CEO of Chain Bridge told their staff to execute the reversal straight away because, "It is what it is ***4** ... [T]his is what we have to do." Chain Bridge and JPMC had already agreed to return the wire without any indemnity obligation by JPMC.

Chain Bridge now seeks indemnification from JPMC for any loss and expenses it may incur in the underlying litigation initiated by Blue Flame. The district court correctly granted Chain Bridge summary judgment against Blue Flame, but erred granting Chain Bridge summary judgment on its indemnification claim against JPMC. The district court's decision granting indemnification should be reversed. At minimum, there are genuine issues of fact that preclude judgment in Chain Bridge's favor and this case should proceed to trial on the indemnification claim.

JURISDICTION

The district court had jurisdiction over Chain Bridge's third-party indemnification claim under 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291. The district court entered final judgment on September 23, 2021, after granting Chain Bridge's motion for summary judgment and denying JPMC's motion for summary judgment. JA3099. JPMC timely appealed on October 21, 2021. JA3104-3106; *see* Fed. R. App. P. 4(a).

ISSUES PRESENTED

Whether, under U.C.C. § 4A-211(f), a "receiving bank" (Chain Bridge) is entitled to indemnification from a "sender" (JPMC) of a wire transfer where:

***5** 1. The receiving bank requested and directed the cancellation of the wire transfer for its own reasons.

2. The receiving bank and the sender agreed on cancellation of the wire transfer without indemnification, as reflected in their discussions and course of conduct.

3. The receiving bank would have deprived its beneficiary client of access to the wire transfer funds regardless of the sender's actions.

STATEMENT OF THE CASE

This case concerns a wire transfer for $456,888,600 that was sent and reversed on March 26, 2020. The participants were the State of California, the originator of the wire; JPMC, California's bank; Blue Flame, the intended beneficiary of the wire; and Chain Bridge, Blue Flame's bank. The main events concerning this extraordinary transaction happened quickly, over the course of several hours.

Because the wire was processed over the Federal Reserve's Fedwire Funds Service, a national interbank system for processing wire transfers, it is governed by regulations issued by the Federal Reserve Board, including Subpart B of its Regulation J. 12 C.F.R. §§ 210.25-210.32. Subpart B of Regulation J incorporates Article 4A of the U.C.C. *Id*. § 210.25(b)(1). Chain Bridge brings its indemnification claim under U.C.C. § 4A-211(f).

*6 A. Legal Background

U.C.C. § 4A-211(f) concerns the indemnification obligation that can arise from the cancellation of a wire transfer. It states in full:

> 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 cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allocating 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.

U.C.C. § 4A-211(f).

Three features of § 4A-211(f) are relevant here. *First*, indemnification is available only "if the receiving bank" (Chain Bridge) "agrees to cancellation ... of the order by the sender" (JPMC). The text thus contemplates a cancellation sought and obtained by "by the sender." U.C.C. § 4A-211(f).

The official commentary explains the rationale for this requirement. A receiving bank ordinarily faces "substantial risks in agreeing to cancellation," and thus is "reluctant" to do so. U.C.C. § 4A-211(f) cmt. 5. Those risks include "alienat[ing] its customer, the beneficiary, by denying the customer the funds." *Id*. In the ordinary case, the originator of the transaction informs its sending bank of a problem--for example, the wire was unauthorized or a mistake--and the sending bank then tries to get its client's money back. *See* U.C.C. § 4A-211(c)(2); *id*. cmt. ***7** 4 (listing examples of cancellations, including where payment order "was not authorized by the [originator] customer and was fraudulently issued"). The receiving bank's position is different: Knowing nothing about the originator's situation, it wants to protect its client's funds. *See id*. cmt. 5 (recognizing that the receiving bank "may not have any way of knowing whether the requirements" for an effective cancellation "have been met"); *see also* JA1484 ¶ 51 ("[I]n the paradigm case, the beneficiary's bank is acting on information communicated by the sending bank and with respect to facts and circumstances outside the beneficiary's bank's knowledge."). A reversal thus threatens a receiving bank's client relationship, as well as legal exposure. So when the receiving bank does "agree[]" to cancellation "by the sender," U.C.C. § 4A-211(f), it does so at its own peril, "as an accommodation to the sender," *id*. cmt. 5. Indemnification under § 4A-211(f) thus operates as an incentive for the reluctant receiving bank to consent to the sending bank's cancellation request.

Second, any obligation to indemnify under § 4A-211(f) is overridden by "an agreement of the parties." U.C.C. § 4A-211(f). An "agreement" is a defined statutory term meaning "the bargain of the parties in fact," as "distinguished from 'contract,' "

and it can be found in the parties' "language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade." *Id*. § 1-201(b)(3).

***8** *Third*, § 4A-211(f) limits indemnification to the "loss and expenses ... incurred ... as a result of the cancellation." U.C.C. § 4A-211(f). The phrase "as a result of" imposes a causal limit, requiring a showing of but-for and proximate causation. *See, e.g.*, *Burrage v. United States*, 571 U.S. 204, 210-212 (2014) ("courts regularly read phrases like 'results from' to require but-for causality"); *Holmes v. Securities Inv. Prot. Corp.*, 503 U.S. 258, 267-268 (1992) ("by reason of" requires both but-for and proximate cause). This means that an indemnified party must show both that it would not have incurred its claimed "loss and expenses" absent the indemnitor's conduct and that its "loss and expenses" were reasonably foreseeable consequences of the indemnitor's conduct.

Finally, Article 4A does not exist in a legal vacuum. Unless displaced, "principles of law and equity ... supplement" the U.C.C., including Article 4A. U.C.C. § 1-103(b); *see id*. cmt. 2 ("The Uniform Commercial Code was drafted against the backdrop of existing bodies of law, including the common law and equity, and relies on those bodies of law to supplement its provisions in many important ways.").

B. Factual Background

1. March 25, 2020: One Day Before The Wire

On the afternoon of March 25, 2020, Blue Flame's CEO called Chain Bridge and informed the bank that California would be sending Blue Flame "an ***9** unbelievably large wire transfer in the amount of $450 million." JA139-140 ¶ 11. Blue Flame's CEO, Michael Gula, was a longstanding Chain Bridge client, having been with the bank since 2010 and at the time holding many deposit accounts there, including business and personal. JA379. As he relayed, the wire was purportedly for personal protective equipment: "[W]e're buying 100 million masks for the State of California from China." JA3142 at 0:20-0:27; JA3071. At this early stage of the pandemic, scams related to COVID-19 transactions were running rampant; federal regulators had warned banks that "[d]etecting, preventing, and reporting COVID-19-related scams and illicit activity is critical to our national security, safeguarding legitimate relief efforts, and protecting innocent people from harm." JA1145.

Chain Bridge employees quickly circulated the news about Blue Flame within the bank, with dismay and concern. The manager of Chain Bridge's commercial banking team called the wire "massive" and warned that it could cause "problems on our capital ratios" as it was "half our asset size." JA167; JA170. Within hours, top Chain Bridge executives--including the President (David Evinger), CEO (John Brough), and Chairman of the Board of Directors (Peter Fitzgerald)--became involved, and all expressed serious concerns about the anticipated wire. *See* JA172 (email from Brough stating, "David and I are very skeptical ... Peter also thinks it is a scam."); JA3144. They worried about the ***10** wire's effect on Chain Bridge's capital requirements. *See* JA3143 at 3:07-3:20; JA3144 at 2:26-2:30. They discussed the bank's need to get the funds off its books quickly. JA164 ("need it off of the books asap"); JA172 ("[T]here is no way we can hold it on our balance sheet."). They were concerned that accepting the wire would violate Bank Secrecy Act obligations, and, that same day, Chain Bridge engaged its internal Bank Secrecy Act team. JA3143 at 11:51-11:54.

Most importantly, they doubted whether Blue Flame, Chain Bridge's own client, had a right to the funds--expressing skepticism about the transaction and calling it a "scam." JA172; *see* JA3143 at 8:23-9:45 ("Seems too good to be true."); JA207-208. As Chain Bridge knew based on its longstanding relationship with Blue Flame's CEO, he had no experience in the medical supply chain and had never transacted in such a massive amount. *See* JA172; JA3143 at 8:23-9:45; JA207-208. Chain Bridge's internal wire transfer policy has a mandatory directive for situations like this; with respect to incoming wires, it requires: "If there is any question as to the beneficiary's right to the funds ... the wire *will* be returned." JA226 (emphasis added).

2. March 26, 2020: The Day Of The Wire

a. JPMC releases the wire to Chain Bridge

The next day, at 11:21 a.m., the California State Treasurer's Office (STO), through its bank, JPMC, originated the $456,888,600 wire transfer for Blue ***11** Flame's benefit using the Federal Reserve's Fedwire platform. JA140 ¶ 15; JA231-232. Upon the wire's arrival at JPMC, it triggered an alert in JPMC's suspicious-activity system. JA243. JPMC promptly called the STO to confirm that the wire was valid; the STO confirmed that it was. *Id*. Thus, at 11:55 a.m.-- with confirmation from its client (California), but no knowledge of Chain Bridge's concerns about its own client (Blue Flame)--JPMC used Fedwire to send the funds to Chain Bridge. JA140 ¶¶ 15-16; JA254.

b. Chain Bridge immediately holds the wire and repeatedly contacts California

Within minutes of the wire's arrival at Chain Bridge--and before Chain Bridge personnel ever spoke with JPMC--Chain Bridge placed the funds on hold. JA256; JA260; JA185-186. That hold prevented Blue Flame from accessing the funds (*see* JA185-186), which Blue Flame had insisted it needed immediately to complete the transaction with California. *See, e.g.*, JA30-31 ¶ 56; JA2930 (Blue Flame principal informing Chain Bridge on March 25 that "we definitely need same day" outbound wire transfers); JA2485 (Blue Flame attempting to coordinate outbound wire transfer to supplier at 12:14 p.m. on March 26). After Chain Bridge placed the hold--and, again, before speaking with JPMC--Chain Bridge made three calls to California, a stranger to Chain Bridge, about the wire. JA281-282. Chain Bridge told a representative from California's Department of General Services (DGS) that Chain Bridge needed to talk to someone from California about ***12** the wire to determine if it was legitimate. JA326. According to the STO, it is extremely unusual for a counterparty bank to contact California, as a non-customer sender, to discuss concerns about a wire. JA337-338. Expert testimony underscored the point, explaining that such behavior is rare as a matter of industry practice. JA1480; JA1494.

c. Chain Bridge requests and obtains the wire's return

At about 12:30 p.m., Tim Coffey, from the Payment Controls Team at JPMC, called Chain Bridge and spoke with its President, Evinger. JA141 ¶ 19. While JPMC had already released the wire to Chain Bridge, it continued to conduct due diligence on the transaction. *See* JA364; *see also* JA2395-2396. Evinger told Coffey that Chain Bridge suspected problems with the wire and was holding the funds. JA364. Evinger further disclosed that Chain Bridge had contacted California to discuss the wire. *Id*. Coffey shared that JPMC too had concerns and would be in further contact with Chain Bridge. JA355-356.

At 12:44 p.m., Rakesh Korpal of JPMC, the head of the Payments Controls Team (and Coffey's supervisor), called Chain Bridge and spoke with Evinger and Brough (Chain Bridge's CEO). JA141 ¶ 20. On that call, Chain Bridge shared information about Blue Flame: that the Blue Flame account was brand new, that it had been opened by an existing client of about 10 years who was a lobbyist, and that the size of the wire was unusual for this client. JA3133 at 0:39-2:40. JPMC ***13** knew none of that information before Chain Bridge shared it. At the end of the call, JPMC and Chain Bridge agreed that both banks would further investigate the wire and remain in contact. *Id*. at 5:57-6:23.

Meanwhile, in response to Chain Bridge's inquiries, California and Chain Bridge spoke further. At 12:51 p.m., a DGS representative left a voicemail for Chain Bridge confirming that the wire was legitimate. JA3132 at 0:19-0:26. Brough and Evinger returned the call at 12:55 p.m. and requested to be put in contact with the STO. JA3134 at 0:42-0:47. Two representatives of the STO then called Chain Bridge at 1:19 p.m. and spoke with Brough and Evinger about the wire. JA141 ¶ 23. The STO representatives confirmed that Blue Flame was the intended beneficiary. JA214. Evinger, however, shared information similar to what he had conveyed to JPMC: that the Blue Flame account had been opened the day before the wire and that the client who opened the account was a lobbyist. JA335-336. Chain Bridge then--independently and without having discussed the matter with JPMC--offered to return the wire to California, declaring that Chain Bridge would be "happy to return [it]." JA383. California declined. The STO representatives responded that "they did not want [Chain Bridge] to return the money at that stage." JA215.

About 15 minutes later, at 1:34 p.m., Brough and Evinger called Korpal. JA141 ¶ 24. Despite the fact that California had just advised that it did not want a ***14** return of the money at that time, Chain Bridge continued to press for the wire's return--and more directly. Specifically, Evinger asked Korpal if there was "any way for JPMorgan to issue a recall for the wire." JA3135 at 0:04-0:09. Korpal said he felt "comfortable" with Chain Bridge's continued "holding" of the funds but asked for a "few more minutes" to consider the request. *Id*. at 0:14-0:33.

Had Chain Bridge not requested the recall, JPMC "would not have issued the recall request because [Chain Bridge] said they were holding the funds." JA246-247. JPMC had no need to recall the funds; they were secure in Chain Bridge's possession. JA2464 ("There was not a need for [JPMC] to call the funds back" because the "funds were being held by Chain Bridge Bank"). On further consideration of Chain Bridge's request for reversal, however, Korpal instructed Coffey to contact Chain Bridge and to accommodate it. JA364. Korpal was the one who made the decision to accommodate the request; Coffey, as a subordinate, just executed Korpal's instruction. JA359; *see also* JA2453 (Coffey explaining that he "was not privy to any of the conversations that drove the decision for the funds to be returned").

Following Korpal's instructions, at 1:37 p.m., Coffey spoke with Brough and Evinger. JA141 ¶ 26. Coffey stated: "We're going to be recalling those funds, okay? We have enough concerns that we feel we need to call those funds back." JA3136 at 0:06-0:14. He then asked Chain Bridge, "What are you looking ***15** for from us?" *Id*. at 0:14-0:18. Chain Bridge responded that they would "like official communication from JPMorgan to us to recall the funds," and also requested that JPMC "send it over the Fedline platform." *Id*. at 0:18-0:26. Coffey agreed to do so: "Yup, that's not a problem." *Id*. at 0:26-0:30.

At 2:05 p.m., in response to Chain Bridge's reversal request, JPMC sent Chain Bridge a Fedwire service message bearing the Fedwire "Type/Subtype Code" "1001," which, per the Fedwire Format Reference Guide, refers to a "Request for Reversal." JA142 ¶ 29; JA390; JA467. The message stated: "AS PER REM REQ PLS RETURN FUNDS QUOTING OUR REF. PLS TAKE CARE TO AVOID DUPLICATION." JA468. Reversal messages operate "to reverse the accounting entries effected to accounts at the Federal Reserve." JA2476. JPMC's reversal message both "tied the reversal to the original [w]ire [t]ransfer," an "important" "housekeeping and accounting matter," and also eliminated the potential for human error in returning the funds. *Id.*; *see also* JA2483 (Brough testifying that the requested reversal message was the "neater and tidier" form of returning the funds).

At 3:21 p.m., Chain Bridge returned the wire to JPMC via Fedwire message. JA142 ¶ 32; JA412. JPMC then returned the wire to California's account at JPMC by 4:02 p.m. JA142 ¶ 34; JA467. California decided not to reissue the wire or move forward with the Blue Flame transaction. JA481; JA507.

16** ***d. The parties' agreement concerning the wire's return

The arrangement between Chain Bridge and JPMC to return the wire was made pursuant to certain conditions, including, by Chain Bridge's express request and JPMC's express acquiescence, that JPMC send a request in writing via Fedwire. JA3136 at 0:18-0:26. During their interactions, JPMC and Chain Bridge never explicitly addressed indemnity. But the parties' discussions and course of conduct confirmed that indemnification was not necessary, appropriate, sought, or expected to facilitate the return. *See supra* pp.12-15. Chain Bridge's actions and substantive concerns about the wire made clear to JPMC that Chain Bridge wanted the wire returned for its own reasons and concerns. *See id*. So when Chain Bridge called JPMC and asked that JPMC "issue a recall for the wire," JPMC agreed to do that without providing indemnification, as both Chain Bridge and JPMC understood.

Reflecting that mutual understanding, Chain Bridge's President and CEO disclaimed the need for indemnification upon inquiry from the bank's own wire-transfer specialist (Claudia Mojica-Guadron), an operations technician with more than two decades' experience handling wire transfers. Specifically, on a call ending at about 1:43 p.m.--before Chain Bridge had seen JPMC's reversal message--the following conversation took place:
Operations Technician (Mojica-Guadron): Are we getting an indemnity letter from Chase?

***17 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 1:20-2:50.

Chain Bridge has insisted in this litigation that it is "customary" for reversal messages to include the text "No Indemnity" in order to disclaim an existing indemnification obligation. Chain Bridge Mem. Supp. Mot. Summ. J. 15 (Chain Bridge Mem.), Dist. Ct. Dkt. 123. On this call, however, Chain Bridge's principals insisted on the return *without* asking for indemnification, at a time that--according to their own representations in this case--they had every reason to believe that the incoming reversal request would specify "No Indemnity." As Chain Bridge's principals put it at the time: "It is what it is," and, "[T]his is what we have to do." JA3140 at 2:30-2:50. Then at 1:54 p.m.--still before Chain Bridge had seen JPMC's reversal message--Chain Bridge's CEO emailed numerous senior Chain ***18** Bridge personnel with the subject line, "Wire is being returned." JA421. Again, Chain Bridge was unequivocal and expressed no caveats; there was no mention of any indemnification by JPMC.

e. Chain Bridge severs its relationship with Blue Flame

Minutes after Chain Bridge received the wire and before speaking with JPMC, Chain Bridge instructed employees to cease communications with its client, Blue Flame. JA414; JA259. Next, at 2:36 p.m., before Chain Bridge returned the wire to JPMC, Brough directed Chain Bridge personnel to close the "BlueFlame [a]ccounts," including Blue Flame's account as well as the accounts for previous companies owned by the Blue Flame principals. JA142 ¶ 31; JA416-418. By 2:53 p.m., Chain Bridge had closed the accounts for two such companies. JA418-420.

Chain Bridge could not close the Blue Flame account until the wire had been reversed. JA418; JA427; JA429. But at 3:26 p.m.--just five minutes after Chain Bridge returned the wire to JPMC--Chain Bridge closed Blue Flame's account. JA142 ¶ 33. Chain Bridge subsequently cut all ties with Blue Flame. *See, e.g.*, JA433; JA435; JA420; JA384.

C. This Lawsuit

1. Blue Flame's complaint and Chain Bridge's third-party complaint

Three months after the wire's reversal, Blue Flame commenced this lawsuit against Chain Bridge and its President (Evinger) and CEO (Brough). Blue Flame ***19** asserted claims under Article 4A of the U.C.C. (*see* JA38-40 ¶¶ 86-97 (Count I: violation of U.C.C. § 4A-404A); JA41-43 ¶¶ 98-112 (Count II: violation of U.C.C. § 4A-204)), and a variety of state-law claims (JA43-52 ¶¶ 113-179 (Counts III-X)). The district court granted Chain Bridge's motion to dismiss in part because certain state-law claims were preempted by Article 4A. *See* JA54. But the court allowed five claims to proceed: the two U.C.C. claims and the state-law claims for tortious interference with contract and business expectancy, and defamation. *Id*.

One month later, Chain Bridge filed its third-party complaint against JPMC, seeking indemnification under § 4A-211(f). *See generally* JA113-128. [1]

2. District court's summary judgment opinion

Following discovery, all parties moved for summary judgment. On the underlying claims, the district court granted Chain Bridge's motion and denied Blue Flame's, entering judgment against Blue Flame. JA3066-3067. As for the third-party complaint at issue here, the district court granted Chain Bridge's motion and denied JPMC's, entering judgment against JPMC. *Id*. [2]

***20** In both its moving papers and opposition to Chain Bridge's motion, JPMC set out three independent reasons why Chain Bridge was not entitled to indemnification. *See* JPMC Mem. Supp. Mot. Summ. J. 14-26 (JPMC Mem.), Dist. Ct. Dkt. 113; JPMC Mem. Opp. to Chain Bridge Mot. Summ. J. (JPMC Opp.) 1-16, Dist. Ct. Dkt. 145; JPMC Reply Supp. Mot. Summ. J. (JPMC Reply) 10-20, Dist. Ct. Dkt. 158. *First*, JPMC explained, § 4A-211(f) only provides for indemnification where the sending bank (JPMC) seeks cancellation, and the receiving bank (Chain Bridge) accommodates the request. Here, however, the facts showed that Chain Bridge both expressly requested and directed the cancellation for its own reasons. *Second*, Chain Bridge and JPMC agreed, through their discussions and course of conduct, that there would be no indemnity, thereby overriding any potential indemnification obligation under § 4A-211(f). *Third*, Chain Bridge could not establish causation because any loss or expenses incurred were not "a result of" the cancellation, but rather resulted from other circumstances including Chain Bridge's independent actions.

The district court disagreed. *First*, the court concluded that Chain Bridge's "interests" and "motivations" were irrelevant. JA3093-3094. "Even if cancellation serves the receiving bank's own interests," the court stated, all that ***21** mattered under § 4A-211(f) was that JPMC sent the reversal message and that Chain Bridge then returned the funds. JA3094. According to the court, neither the official commentary, nor the cases JPMC cited, supported a different interpretation. The commentary, the court wrote, had little import; it simply stated a universal reality that all receiving banks in all cases will always be accommodating a sender's request because a receiving bank is never required to consent to such a request, regardless of the circumstances. *Id*. And common law had no bearing because, according to the court, § 4A-211(f) "clearly displace[d] it." *Id*. The district court did not address JPMC's argument that Chain Bridge's express oral request for reversal constituted a cancellation under Article 4A.

Second, the district court concluded that JPMC and Chain Bridge had not reached any agreement to return the wire without indemnity. The court initially acknowledged that "[s]uch an agreement could include a 'bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade [.]' " JA3094 (quoting U.C.C. § 1-201(b)(3)). But then it faulted JPMC for failing to provide a certain kind of evidence--a "communication" or an "execut [ed] agreement[]"--as between Chain Bridge and JPMC. JA3095; *id*. (stating that JPMC is capable of "executing agreements to reallocate risk," but "did not do so in this case"). As for the Chain Bridge phone call where its principals disclaimed the need for ***22** indemnification, the court disregarded it as "simply an internal discussion at Chain Bridge bank about potential liabilities." *Id*.

Third, on causation, the district court found that "this civil action undoubtedly resulted from the reversal of the wire transfer," and that there was "zero evidentiary basis for JPMorgan's speculation that Chain Bridge would have returned the funds without a cancellation by JPMorgan." JA3096. In so doing, the district court did not address several material facts that JPMC had invoked--including that Chain Bridge placed the funds on hold without ever speaking to JPMC, that Chain Bridge believed giving Blue Flame access to the funds might violate its Bank Secrecy Act obligations, that Chain Bridge's own wire transfer policy required the return of funds to California, and that Chain Bridge immediately closed Blue Flame account after the reversal. *See* JPMC Mem. 25-26; JPMC Opp. 18-20; JPMC Reply 7-9.

The district court took care to note that it did not mean to "punish or criticize JPMorgan," and that "JPMorgan's quick and thorough investigation of potential fraud [was] commendable." JA3095.

LEGAL STANDARD

Summary judgment is appropriate only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). This Court "review[s] de novo a district court's grant of summary ***23** judgment." *Covol Fuels No. 4, LLC v. Pinnacle Mining Co., LLC*, 785 F.3d 104, 111 (4th Cir. 2015). "In so doing, 'it is elementary that ... [t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [its] favor.' " *Id.* (alterations in original). "[T]he judge's function is not ... to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Reyazuddin v. Montgomery Cnty.*, 789 F.3d 407, 417 (4th Cir. 2015).

SUMMARY OF ARGUMENT

The district court erred in granting summary judgment to Chain Bridge. For three independent reasons, Chain Bridge is not entitled to indemnification under § 4A-211(f).

First, indemnification is available only "if the receiving bank," "agrees to cancellation ... of the order by the sender." U.C.C. § 4A-211(f). Where, as here, a cancellation is requested and directed by the receiving bank--Chain Bridge--then indemnification is inapplicable. The Chain Bridge President's oral request to reverse the wire constituted the cancellation request, to which JPMC agreed. Thus, the reversal here was not a "cancellation ... by the sender," but was instead a cancellation by the receiving bank. The district court did not address this argument, which presents a threshold ground to reject Chain Bridge's claim. The court further misinterpreted the importance of Chain Bridge's independent ***24** decision-making and motivations in effecting the reversal of the wire, deeming those all irrelevant. Under the text, commentary, and common law, Chain Bridge's actions and motivations remove this case from § 4A-211(f)'s ambit.

Second, U.C.C. § 4A-211(f) disallows indemnification if "otherwise provided in an agreement of the parties," and there was such an agreement here. The U.C.C. defines "agreement" to mean a "bargain of the parties in fact," and instructs that such an "agreement" can be found in the parties "language *or* inferred from other circumstances." U.C.C. § 1-201(b)(3) (emphasis added). Here, "other circumstances" included a sustained course of information-sharing and strategy-making between JPMC and Chain Bridge. The purpose of those discussions was to determine how to handle the wire. The only plausible interpretation of the cooperative, consensus-seeking behavior between JPMC and Chain Bridge is that it formed an "agreement." Under that agreement, as the banks' discussions and conduct made clear, Chain Bridge would not be indemnified for any fallout from the reversal that Chain Bridge itself requested. The high-level internal phone call at Chain Bridge confirms the point beyond any dispute: Chain Bridge's senior-most executives told their wire-transfer specialist that the bank should not seek an indemnity letter from JPMC because Chain Bridge had already agreed to effectuate the reversal *without* indemnification.

***25** The district court failed to consider the course-of-conduct evidence. As for the phone call, the court erroneously held as a matter of law that an internal discussion cannot serve as evidence of an external agreement and found as a matter of fact that it merely concerned discussion of "potential liabilities."

Third, U.C.C. § 4A-211(f) limits indemnification to "loss and expenses ... incurred ... *as a result of* the cancellation" (emphasis added), and Chain Bridge did not and cannot make the requisite causal showing. Concluding otherwise, the district court found no evidence that Chain Bridge "would have returned the funds" absent JPMC's conduct. But that finding misses the point and is incorrect in any event. The dispositive point on causation is that Chain Bridge, regardless of JPMC's conduct, never would have allowed Blue Flame to access the funds within the very short time Blue Flame supposedly needed them. As a result, JPMC was not the cause of any damages incurred by Blue Flame because any such damages would have accrued by virtue of Chain Bridge's independent actions.

The district court's judgment should therefore be reversed and judgment should be rendered in favor of JPMC. At minimum, there are genuine issues of fact that preclude judgment in Chain Bridge's favor.

*26 ARGUMENT

I. Indemnification Under U.C.C. § 4A-211(f) Is Inapplicable Because The Receiving Bank--Chain Bridge--Requested And Directed The Cancellation

As the record here shows, Chain Bridge canceled the wire for its own reasons. Focusing narrowly on Chain Bridge's "interests" and "motivations" and finding those irrelevant, however, the district court held that Chain Bridge still was entitled to indemnification under § 4A-211(f). JA3094. That conclusion was incorrect and conflicts with the statute's text and commentary, and indemnification at common law. At bottom, the court's decision distorts § 4A-211(f)'s indemnification regime into a limitless insurance policy for receiving banks' independent conduct--an outcome inconsistent with the drafters' intent, and inconsistent with common law.

Under § 4A-211(f), indemnification applies only "if the receiving bank ... agrees to cancellation ... of the order by the sender." The text of the statute thus addresses one specific scenario: a cancellation sought and obtained "by the sender," not the receiving bank. It does not cover cancellation sought by a receiving bank. Nor, for the same reason, does it cover cancellation achieved as a joint decision between two banks. Article 4A's official commentary confirms this interpretation of the text--with emphasis on a receiving bank's motivations against agreeing to a cancellation. *See Donmar Enters., Inc. v. Southern Nat'l Bank of* *27 *N.C.*, 64 F.3d 944, 948 (4th Cir. 1995) (official comments to Article 4A "may ... 'be useful in interpreting Article 4A' ").

As discussed (*supra* pp.6-7), a receiving bank ordinarily faces "substantial risks in agreeing to cancellation." U.C.C. § 4A-211 cmt. 5. Most immediately, the risk is "alienat[ing] its customer, the beneficiary, by denying the customer the funds." *Id*. But there is also legal exposure. *See id*. Thus, far from a situation where a receiving bank *advocates* for reversal, the commentary explains that a receiving bank is likely "reluctant" to agree to cancellation-- "[e]ven with indemnity." U.C.C. § 4A-211 cmt. 5; *see also* JA1484 ¶ 51. Where a receiving bank does agree, it is doing so "as an accommodation to the sender" (U.C.C. § 4A-211 cmt. 5)--that is, "for convenience or to satisfy a need" of the "sender," *Webster's Ninth New Collegiate Dictionary* 49 (1990) (defining "accommodation"). Where, conversely, a receiving bank *itself* seeks to reverse a wire, the receiving bank is not "accommodating" the request of a "sender"; instead, the receiving bank is satisfying its own self-interested needs, and indemnification under § 4A-211(f) does not apply. The commentary thus outlines the bounds of the scenario that § 4A-211(f) covers: a cancellation sought and obtained by the sender, where the reluctant receiving bank acts on information outside its knowledge as an accommodation to the sender.

*28 Indemnification at common law reaffirms this straightforward interpretation of § 4A-211(f), and the U.C.C. expressly incorporates common law principles: "Unless displaced by the particular provisions of [this Act], the principles of law and equity ... supplement its provisions." U.C.C. § 1-103(b); *see id*. cmt. 2 ("The Uniform Commercial Code was drafted against the backdrop of existing bodies of law, including the common law and equity, and relies on those bodies of law to supplement it provisions in many important ways."); *see also, e.g.*, *Mellon Inv. Servs., LLC v. Longwood Country Garden Centers, Inc.*, 263 F. App'x 277, 283 (4th Cir. 2008) ("there is a presumption that the U.C.C. does not displace claims based in equity"); *Adkinson v. International Harvester Co.*, 975 F.2d 208, 215 (5th Cir. 1992) ("[E]quitable principles of contribution and indemnity" "have not been displaced by" Mississippi's Uniform Commercial Code, but rather "supplement" the Code.).

As this Court has explained, 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." *White v. Johns-Manville Corp.*, 662 F.2d 243, 249-250 (4th Cir. 1981). Thus, common-law indemnification applies where, for example, "the indemnitee has been held absolutely liable for the wrongful acts of another," "the indemnitee was induced to act by ... the indemnitor," or "where *29 the indemnitee acted pursuant to directions of the indemnitor." *Id*. at 249. Where, by contrast, a purported indemnitee "active [ly]" caused the injury to the plaintiff, "an essential predicate to

[indemnitee's] right to indemnification is necessarily missing." *Id.* at 250. [3] "The rationale behind indemnification is to ensure that the losses are borne by the party responsible for the damages. ... The right to indemnity stands upon the principle that everyone is responsible for the consequences of his or her own acts[.]" 42 C.J.S. Indemnity § 2 (2021).

Consistent with the text of the statute and its common law roots, indemnification under § 4A-211(f) does not apply where the receiving bank requests the cancellation or otherwise directs the cancellation by its own actions. Chain Bridge's indemnification claim therefore fails because that is what happened here.

A. Chain Bridge Canceled the Wire

At 1:34 p.m., Chain Bridge's President (Evinger) called JPMC and asked: "Is there any way for JPMorgan to issue a recall for the wire?" JA3135 at 0:04-0:09. Chain Bridge's oral request to reverse the wire constitutes a cancellation ***30** request under Article 4A. *See* U.C.C. § 4A-211(a) ("A communication of the sender of a payment order cancelling ... the order may be transmitted to the receiving bank orally, electronically, or in writing."); *id.* § 4A-210(a) ("A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing."). The reversal in this case was not a "cancellation ... by the sender," JPMC, but rather one by the receiving bank, Chain Bridge.

JPMC's statements and actions in accommodation of Chain Bridge's reversal request do not alter the legal import of Chain Bridge's original action. Coffey's responsive call to Evinger and JPMC's subsequent Fedwire reversal message were an accommodation to Chain Bridge's oral request: within minutes of the 1:34 p.m. call, Korpal instructed Coffey to accommodate Evinger's request. JA364. Coffey immediately followed his supervisor's instructions when he called Evinger at 1:37 p.m.--within two minutes of Evinger's request--to indicate that JPMC would "be recalling those funds," at which point Chain Bridge's CEO (Brough) asked "if [JPMC] could send [the reversal message] over the Fedline platform," to which Coffey agreed. JA3136 at 0:06-0:30. Coffey's statements during the 1:37 p.m. call and the Fedwire reversal message were therefore ***31** statements and actions by JPMC, the sender, to "agree" to and "accommodat[e]" Evinger's oral cancellation. U.C.C. § 4A-211 cmt. 5. [4]

The district court did not address this argument. *See* JA3092-3095. Chain Bridge argued that the reversal of "*every*" wire "results from" a sender's cancellation, and that, as a receiving bank, Chain Bridge was "powerless" to do what JPMC says it did. Chain Bridge Opp. JPMC Mot. for Summ. J. (Chain Bridge Opp.) 14, Dist. Ct. Dkt. 141. To the extent Chain Bridge reprises these points on appeal, it is wrong on both.

Article 4A recognizes that a receiving bank can effect a cancellation. For example, § 4A-210 provides for the "rejection" of a payment order "by the receiving bank." A rejection is just another form of cancellation, both of which result in the reversal of the wire. *See* U.C.C. §§ 4A-210, 211. Article 4A elsewhere 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), and also speaks to a receiving bank's "processing of payment orders and communications *cancelling* or amending payment orders," *id.* ***32** § 106(a) (emphasis added). Whatever the label-- "cancellation," "rejection," or otherwise--a receiving bank can seek and obtain a wire's reversal under Article 4A, just as Chain Bridge did here.

Nor was Chain Bridge "powerless" to act. To the contrary, by using Fedwire, Chain Bridge could have reversed the wire without first receiving JPMC's reversal message. *See* JA408; JA2940-2941. And that fact highlights the absurdity of Chain Bridge's position. If, as Chain Bridge has claimed, "*every* cancellation of a payment order result from" a sender (Chain Bridge Opp. 14), then § 4A-211(f) would entitle a receiving bank to indemnification even when it returns the funds without the sender's advance knowledge. The sending bank-- the party that did not even know the reversal was coming--would be on the hook for any loss and expenses (resulting from the reversal) incurred by the receiving bank--the only party responsible for the reversal. That absurd result cannot be correct.

B. Chain Bridge Directed The Cancellation For Its Own Reasons

The evidentiary record makes clear that Chain Bridge not only requested the cancellation of the wire, but also--skeptical from the start--directed the cancellation at every material turn.

The day before receiving the wire, top Chain Bridge executives called the wire a "scam" (JA172; *see* JA3143 at 8:23-9:45; JA207-208) and engaged the ***33** bank's BSA team (JA3143 at 11:51-11:54) because they were suspicious of Blue Flame.

Upon receipt of the wire and before ever speaking to JPMC, Chain Bridge immediately placed the funds on hold (JA256; JA 260; JA185-186), and then repeatedly called California to raise concerns about Blue Flame and the legitimacy of the transaction (JA281-282). Chain Bridge's repeated calls to California were an extraordinary act for a counterparty bank. JA337-338; JA1480; JA1494. As a California representative testified, she was not aware of "any other instance" where a counterparty bank sought to contact California about a wire's return. JA338.

Chain Bridge then pushed the reversal of the wire--twice. It did so first with California, saying that it would be "happy to return the wire." JA383. Undeterred by California's response that it "did not want [Chain Bridge] to return the money at that stage" (JA215), minutes later Chain Bridge asked JPMC to "issue a recall for the wire" (JA3135 at 0:04-0:09).

Chain Bridge had powerful incentives to seek the reversal it requested. Chain Bridge worried that a wire that "massive" could pose "problems on [its] capital ratios." JA167; JA170. And Chain Bridge determined that it needed the wire "off of the books asap." JA164. Chain Bridge also continued to worry that the wire would threaten its compliance with obligations under the BSA, along with anti-money laundering (AML) rules and regulations. JA2913. Chain Bridge called ***34** the transaction a "scam" based on what it knew about its client and the circumstances--Blue Flame's account was opened the day before the wire, Blue Flame's principals were political lobbyists with no experience in the medical supply chain, and the wire was massively larger than anything the Blue Flame principals had received before. *See* JA172; JA3143 at 8:23-9:45; JA207-208. Indeed, Chain Bridge's President and CEO made clear in their testimony that BSA/AML risk was a central concern with the wire. *See, e.g.*, JA2913; JA2916.

Finally, Chain Bridge's own wire transfer policy for incoming wires provides: "If there is any question as to the beneficiary's right to the funds ... the wire *will* be returned." JA226 (emphasis added). In language virtually parroting that policy, Chain Bridge's own expert concluded that "Chain Bridge [had] reasonable doubt concerning whether Blue Flame Medical had a right to the payment sent by the State of California." JA343. The bank was thus required by its own policy to return the wire to California.

In sum, the undisputed facts show that Chain Bridge took independent and unilateral actions that laid the foundation for the cancellation, and then Chain Bridge directed its ultimate execution. Indemnification under § 4A-211(f) is thus inapplicable. [5]

***35** The district court deemed the evidence of Chain Bridge's interests and motivations irrelevant because, it concluded, "the regulation does not impose any requirements regarding the receiving bank's motivations at all." JA3093-3094. That is incorrect. As explained, § 4A-211(f) is meant to address only one specific scenario: a cancellation sought and obtained "by the sender," not the receiving bank. Chain Bridge's actions and motivations not only demonstrate that the reversal request was not "by the sender," but they also show that Chain Bridge did not "agree" to the cancellation in any sense of the word; rather, it directed the cancellation. [6]

Moreover, the commentary underscores that § 4A-211(f) does indeed view a bank's motivations to be relevant to statutory indemnification. The drafters of ***36** Article 4A provided for indemnification where a receiving bank is "reluctant" to agree to the reversal of funds due in large part to the risk of "alienat[ing]" its customer. U.C.C. § 4A-211 cmt. 5; *see also id.* § 4A-211 cmt. 4; JA1477-1478 ¶ 36; *supra* pp.6-7. The drafters never intended to give receiving banks a windfall for their independent decision-making. The commentary thus speaks of "an accommodation to the sender"--not a cancellation for the

receiving bank's own self-interested reasons. And contrary to the district court's conclusion (JA3094), not every cancellation will be an "accommodation" to the sender. As explained (*supra* p.32), receiving banks can cancel wires even without a sender's advance knowledge. It thus cannot be that every cancellation accommodates a sender.

The district court also disregarded the common law JPMC cited, concluding that "Section 4A-211(f) clearly displaces a traditional common law analysis by creating a default rule for risk allocation which parties can only alter through agreement." JA3094. That too was error. As explained, the U.C.C. not only allows but requires court to develop the meaning of the U.C.C.'s text by express incorporation of common law principles--"[u]nless displaced" by the statutory text. *See supra* pp.8, 28. There was no such displacement here.

The displacement question is not whether the Code "create[s] a default rule" (JA3094), but rather "whether any of the provisions or policies of the commercial code *conflict* with [common law] principles," *Adkinson*, 975 F.2d at 214 (emphasis ***37** added); *see also Equitable Life Assurance Soc'y of U.S. v. Okey*, 812 F.2d 906, 909 (4th Cir. 1987) (Code's "allocation of the burden of proof of [an] element ... differs from that in common law negligence," which "demonstrate[s] an intended displacement"). Thus, there is displacement, for example, where parties attempt to hold counterparties liable by bringing a common-law claim that conflicts with the liability regime of the U.C.C. *See id*. at 908 ("common law negligence claim").

Here, however, JPMC simply maintains, in accordance with § 1-103, that common-law understandings of the same type of liability created by § 4A-211(f) should inform the bounds and application of that provision, and that common-law indemnification precludes recovery where an indemnitee actively undertook the conduct that caused its own loss. *See Abbasid, Inc. v. First Nat'l Bank of Santa Fe*, 2010 WL 11509114, at *5 (D.N.M. Feb. 19, 2010) ("Although the UCC displaces common law claims for conversion with respect to negotiable instruments, that displacement does not necessarily vitiate all common law principles relating to conversion."). The Code's funds-transfer provisions do not blind courts to considerations of equity.

II. JPMC And Chain Bridge Agreed To The Wire's Return Without Indemnity

Assuming the statutory requirements for indemnification were satisfied (they were not), Chain Bridge's indemnification claim fails for a second, independent reason. An indemnification obligation is overridden if "otherwise provided in an ***38** agreement of the parties." U.C.C. § 4A-211(f). Here, there was such an agreement providing otherwise--*i.e.*, an agreement to return the wire without indemnification by JPMC--as reflected by the parties' discussions and course of conduct. At minimum, the evidence JPMC introduced raises a genuine issue for trial.

A. The district court concluded there was no agreement based on its determination that JPMC failed to introduce evidence of a "communication" or an "execut[ed] agreement" between Chain Bridge and JPMC. JA3095. That analysis was incorrect.

Under Article 4A, an "agreement" can be found in the parties' "language *or* inferred from other circumstances, including course of performance, course of dealing, or usage of trade." U.C.C. § 1-201(b)(3) (emphasis added). The statutory terms thus make clear that an "agreement" may exist in the absence of a formal contract (written or oral) or explicit inter-bank negotiation of indemnity. *See id*. (defining "agreement" as "distinguished from 'contract' "). The district court recognized as much (JA3094 (quoting U.C.C. § 1-201(b)(3)), but then contravened the statutory text it quoted by requiring more: evidence of a "communication" between the banks discussing indemnity or an "execut[ed] agreement." JA3095. If explicit "language" were required, then the phrase "or inferred from other circumstances," U.C.C. § 1-201(b)(3), would be rendered meaningless. *See In re Total Realty Mgmt., LLC*, 706 F.3d 245, 254 (4th Cir. 2013) ("In construing a ***39** statute, to the extent possible, we seek to give meaning to every word and 'reject constructions that render a term redundant.' "). So too if an "execut[ed] agreement" were required (JA3093), where the statute specifically "distinguishe[s]" an "agreement" from a "contract" (U.C.C. § 1-201(b)(3)).

The district court was also incorrect in reading JPMC's interpretation of § 4A-211(f) to "suggest[] that the parties needed to have agreed upon indemnification," where the statute provides for indemnification "as a default." JA3094; *see also id*. ("JPMorgan incorrectly reverses the requirements of the regulation[.]"). Assuming the statutory requirements for indemnification are

satisfied, there is no dispute § 4A-211(f) allows indemnification "[u]nless otherwise provided in an agreement of the parties"; thus, indemnification is the "default" (*id*.). JPMC has never argued otherwise. On the law, JPMC's point is only the unremarkable one that a default can be displaced, just as the statute provides.

B. Assessed under the correct legal standard, JPMC identified "other circumstances" establishing the existence of a "bargain of the parties in fact," U.C.C. 1-201(b)(3)--or, at the very least, raising a genuine issue whether there was one.

The parties' agreement to return the wire without indemnity developed out of discussions between JPMC and Chain Bridge about how to handle the ***40** transaction--discussions beginning with, and focused on, Chain Bridge's concerns about its client, Blue Flame. Thus, when the banks first spoke, Chain Bridge told JPMC it had placed a hold on the funds and had called California to raise concerns about Blue Flame. JA364. Chain Bridge also told JPMC it did not "like the smell" of the transaction because, among other things, Blue Flame's account was "brand new," the account had been opened by "a lobbyist," and the account holder did not "maintain[] that kind of money." JA3133 at 0:39-3:22. For JPMC, these concerns were informative and worthy of serious consideration-- *Chain Bridge* was the bank that had close visibility into Blue Flame, including by means of a longstanding relationship with one of Blue Flame's principals (*see* JA379), and *Chain Bridge* was the one advocating for reversal. JPMC shared its own concerns about the wire, but explained that it supported Chain Bridge's decision to hold the funds and did not see a need to do anything else when Chain Bridge first requested the recall. JA3135 at 0:04-0:33. The bankers from both institutions agreed to keep each other apprised of their respective investigations, and they did just that. Both Chain Bridge and JPMC understood that the purpose of their discussions was to reach an agreement as to how to proceed with the wire.

The concerns that Chain Bridge articulated to JPMC, Chain Bridge's independent decision to continue holding the wire even after California confirmed its legitimacy, and Chain Bridge's subsequent advocacy for reversal with JPMC all ***41** made clear to JPMC that Chain Bridge had its own strong motivations for preventing Blue Flame from accessing the funds. So after Chain Bridge called JPMC to request a recall, after further consideration, JPMC agreed to do that without any express discussion of indemnity. The reason is plain: It was readily apparent from the parties' communications and course of conduct that no indemnification was necessary, appropriate, sought, or expected to facilitate the reversal that Chain Bridge itself requested.

If there were any doubt on that, a high-level Chain Bridge phone call resolves it. This call took place at 1:43 p.m. on March 26--*before* JPMC sent Chain Bridge the reversal message in response to Chain Bridge's request. With a concerned tone and nervous laughter, Chain Bridge's wire transfer specialist asked her supervisors, including Chain Bridge's President and CEO: "Are we getting an indemnity letter from Chase?" JA3140 at 1:19-1:26. She advised, "Normally, you want to get that from the other bank," and particularly "in this case" where the client's account had been credited. *Id*. at 2:16-2:27. But Chain Bridge's President and CEO waved away her concern, with resignation: "It's okay," "Don't worry about it," and, "It is what it is." *Id*. at 2:27-2:36. They explained: "David and I have been working on this with both the State of California and J.P. Morgan and this is what we have to do." *Id*. at 2:36-2:49. With no caveats or exceptions, they ***42** gave the specialist clear and equivocal instructions: "just return [the wire] to the same place it came from." *Id*. at 1:37-1:41.

The call by itself is critical evidence, but even more so given Chain Bridge's position in this litigation. When Chain Bridge's principals were on that call, they did not know what JPMC's reversal message would say; it had not arrived yet. Chain Bridge has insisted, however, that it was (and is) "customary" (*e.g.*, Chain Bridge Mem. 15) for reversal messages to disclaim indemnity by stating the phrase, "No Indemnity." So, according to Chain Bridge, Chain Bridge's principals would have had every reason to expect that JPMC would include that no-indemnity text on its reversal message but still told their staff to reverse the wire.

Under Chain Bridge's own theory, Chain Bridge's principals certainly would have taken up the wire specialist's proposal to ask JPMC to ask for an indemnity letter. At minimum, if Chain Bridge were proceeding without any preexisting agreement disclaiming indemnity, Chain Bridge's principals would have warned the wire specialist: "Just return [the wire], *unless the recall message includes the phrase 'No Indemnity*.' " The principals would have directed that the wire specialist wait to process the wire's return unless and until she confirmed to a half-billion-dollar certainty that the no-indemnity language was absent.

That is not what happened. No one at Chain Bridge took up the wire specialist's proposal to get an indemnity letter. No one stated any caveat. The ***43** directive from the top of the organization was clear, unequivocal, and without exception: "Just return [the wire] to the same place it came from" (JA3140 at 1:37-1:41), and "[d]on't worry about [the indemnity letter]. ... [T]his is what we have to do" (*id*. at 2:27-2:49). Chain Bridge's complete comfort with--and insistence upon--reversing the wire *before* seeing JPMC's message underscores that there was already an agreement between Chain Bridge and JPMC for a wire reversal that did not include indemnity.

Of all the evidence JPMC identified in support of an agreement here, this phone call was the only piece that the district court addressed, and the court rejected it as legally and factually insufficient. The court characterized the conversation as mere "internal discussion" that could not shed light on whether there was a "meeting of the minds" between Chain Bridge and JPMC. JA3095. That conclusion fails as a matter of both law and fact.

First, a party's internal communications can be evidence of an external agreement, and the conversation here was. *See, e.g.*, *Dataflow, Inc. v. Peerless Ins. Co.*, 2014 WL 148685, at *4 (N.D.N.Y. Jan. 13, 2014) ("[A party's] internal communications evincing its interpretation of ... [an] agreement are relevant to ... [the] interpretation of" that agreement.); *Service & Training, Inc. v. Data Gen. Corp.*, 963 F.2d 680, 689 (4th Cir. 1992) ("Circumstantial evidence of appellants' behavior after the signing of the ... agreement confirms [how] they interpreted the ***44** agreement."); *W.A. Stratton Constr. v. Butler Mfg. Co.*, 1992 WL 159107, at *8 (W.D. Va. June 23, 1992) (party's post-agreement conduct "indicate[d] strongly that it never understood the terms of the agreement to forbid such conduct"); *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.").

Second, this was no mere "internal discussion" about "potential liabilities." JA3094. To cast it aside as such was unfounded, and certainly improper at summary judgment. The conversation plainly referenced Chain Bridge "working on this with both the State of California and J.P. Morgan." JA3140 at 2:36-2:44. And there is simply no way to listen to that phone call and understand it as anything other than Chain Bridge's clear and obvious recognition that indemnification was off the table in light of those interactions. Chain Bridge had agreed with JPMC that it would return the wire at its own peril of the consequences.

Chain Bridge has never offered a coherent counter explanation, and it cannot. The only argument Chain Bridge has ever advanced is the claim that its principals knew--in their minute-to-minute thinking about a franchise-threatening wire--that the bank was already protected, fully and unconditionally, as a matter ***45** of law under § 4A-211(f), even though their wire specialist thought otherwise. *See* Chain Bridge Opp. 21. That claim strains credulity.

Chain Bridge has never pointed to any contemporaneous record evidence in support of that position, and there is none. Rather, Chain Bridge's only support was its President's deposition testimony, where he said: "We didn't view there was a need for an indemnification based on the recall because the recall had that indemnification built in." JA804. This post-hoc deposition testimony squarely conflicts with the contemporaneous factual record. *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). Not once did anyone from Chain Bridge mention even the possibility of the "built[-]in" indemnification that Chain Bridge's President claimed, 10 months later in litigation, to have been relying on. JA804. To the contrary, the bank's wire specialist--an employee with more than two decades of experience in handling wire transfers--proposed that Chain Bridge *should* get an "indemnity letter" before proceeding. *See* JA3140 at 1:19-2:27. It both defies reason and contradicts the contemporaneous record evidence to believe that the Chain Bridge principals were silently familiar enough with § 4A-211(f) that they had full confidence in its indemnification regime. *Cf. News & Observer* ***46** *Publ'g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 580 n.7 (4th Cir. 2010) ("[S]ummary judgment does not require ignoring logic or common sense [.]"). Moreover, someone who knows that they have the certain security of indemnification does not say, with resignation, "It is what it is," and "[t]his is what we have to do." JA3140 at 2:27-2:49.

There is still more evidence, which JPMC invoked and the district court left unaddressed. Still before Chain Bridge had seen JPMC's reversal message, Chain Bridge's CEO emailed numerous senior personnel at Chain Bridge with the subject line, "Wire is being returned." JA421. The message expressed no caveats. It left no room for the possibility that the wire might not be returned if JPMC's message said, "No Indemnity." The reason is simple. The possibility of a "No Indemnity" disclaimer did not matter because Chain Bridge and JPMC had already agreed to return the wire without indemnity.

III. Chain Bridge Cannot Establish Causation

Chain Bridge's indemnification claim fails for a third, independent reason: Chain Bridge cannot establish that its claimed "loss and expenses"--*i.e.*, Blue Flame's damages, if any, and Chain Bridge's litigation expenses--were caused by JPMC's conduct. The district court erred in concluding otherwise.

U.C.C. § 4A-211(f) limits indemnification to "loss and expenses ... incurred ... *as a result of* the cancellation." (Emphasis added.) Thus, Chain Bridge had the ***47** burden of showing both "but for" and proximate cause for the "loss and expenses" it claims. *See* JPMC Mem. 24-25; Chain Bridge Opp. 21-23 (no dispute); *Burrage v. United States*, 571 U.S. 204, 210-212 (2014); *Holmes v. Securities Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992); *National Org. for Marriage, Inc. v. United States*, 24 F. Supp. 3d 518, 529 (E.D. Va. 2014) (citing *Paroline v. United States*, 572 U.S. 434, 445 (2014) for the "common maxim that a plaintiff must prove both proximate cause and actual cause to recover damages that are 'a result of' a particular defendant's conduct"). As applied here, those causation requirements mean that a jury would need to find on this record that--absent JPMC's involvement--Chain Bridge would have given Blue Flame unfettered access to the $456 million wire within enough time for Blue Flame to complete the deal with California. The record forecloses that possibility; no reasonable jury could make that finding.

A. The district court held that causation existed because, it stated, "[T]his civil action undoubtedly resulted from the reversal of the wire." JA3096. But that misunderstands the point. Chain Bridge's failure on the causation element does not depend on the proposition that "Chain Bridge would have returned the funds without a cancellation by JPMorgan" (*id.*)--though, as discussed below, Chain Bridge could have returned the funds independently and there is evidence that it would have. Instead, as JPMC argued, the dispositive causation question is ***48** whether Chain Bridge would have deprived Blue Flame of access to the funds during the time Blue Flame supposedly needed them to complete the California transaction. *See* JPMC Mem. 25-26; JPMC Reply 6-7. The answer to that question is clearly yes, and thus causation is necessarily lacking: any purported Blue Flame damages from the failed California deal would have resulted from Chain Bridge's own conduct.

As explained, Chain Bridge had clear and strong incentives to prevent Blue Flame from accessing the funds. Chain Bridge feared that giving Blue Flame access would violate the Bank Secrecy Act and Chain Bridge never would have risked non-compliance with, as Chain Bridge's CEO called it, "the paramount regulation that you are supposed to comply with"--even if Chain Bridge thought the U.C.C. might mandate making the funds available. JA2910. Nothing that Chain Bridge could have learned within the days, or even weeks, following its receipt of the wire would have abated its BSA concerns. California had already confirmed with Chain Bridge that the wire was legitimate. JA3132 at 0:19-0:26; JA214. As Chain Bridge's CEO testified, "what was unanswered ... was whether the State of California had done an adequate job of vetting their counterparty prior to wiring the money." JA2915-2916. Specifically, among other "Bank Secrecy Act and customer due diligence questions that had not been answered" were that "the account had been opened just the day before," "Blue Flame was founded three ***49** days before," and "the wire was for $456 million"--an amount "nowhere near" the "average wire size" Blue Flame had previously identified ("about 5 million"). JA2914, 2921. None of those stood to change. So by Chain Bridge's own explanation it had no choice but to protect itself by continuing to withhold the funds.

Consistent with Chain Bridge's incentives, its actions are inconsistent with the notion that it would have ever provided the funds to Blue Flame. Before the reversal was completed on the afternoon of March 26, Chain Bridge already had decided to sever its ties with Blue Flame. *See* JA142 ¶ 31; JA416-418. As Chain Bridge's CEO testified, the "numerous red flags ... that had popped up on this transaction" caused Chain Bridge to close Blue Flame's account. JA2918. Indeed, when Chain Bridge's President and CEO met with one of Blue Flame's principals on March 26, they instructed him "to not send the wire back into another

account at Chain Bridge" and "to find a bank that could handle it[.]" JA375. Those comments and actions cannot square with Chain Bridge's post-hoc speculation that it might at some point have allowed Blue Flame to access the money regardless of JPMC's conduct. The record shows the opposite: by closing Blue Flame's account on March 26--just minutes after the return of the wire that Chain Bridge pressed--Chain Bridge rendered it impossible for Blue Flame to *ever* complete that transaction through Chain Bridge.

***50** Moreover, Chain Bridge itself has admitted that it would have continued holding the funds until at least March 27, "the day after the wire was received." Chain Bridge Opp. 22-23. But Blue Flame has insisted that it "need [ed] to *immediately* wire a portion of the purchase amount to an equipment manufacturer in New Jersey to secure inventory for the first shipment due to California." JA30 ¶ 56 (emphasis added); *see also* JA2485; JA2930. Thus, Blue Flame's purported damages (if any) would have likewise resulted from Chain Bridge's decision to withhold the funds even temporarily, during the period when Blue Flame purportedly needed to wire money out, regardless of any involvement from JPMC. Under Blue Flame's theory of damages, even March 27 would have been too late.

B. Although JPMC need not show that Chain Bridge "would have returned the funds without a cancellation by JPMorgan," the district court erred by discerning "zero evidentiary basis" for that. JA3096. As explained (*supra* pp.10, 34), Chain Bridge's own wire transfer policy for incoming wires provides: "If there is any question as to the beneficiary's right to the funds ... the wire *will* be returned." JA226 (emphasis added). There is no question that the wire here triggered the application of that mandatory rule; Chain Bridge's own expert concluded that "Chain Bridge [had] reasonable doubt concerning whether Blue Flame Medical had a right to the payment." JA343. The bank was thus required by its own policy to return the wire, not just to withhold the funds. Moreover, as ***51** also explained (*supra* p.32), Chain Bridge could have returned the wire without first receiving a reversal message from JPMC.

Chain Bridge's expert agreed that "banks generally adhere to their policies," and one reason for doing so is "to ensure that they comply with BSA/AML laws." JA2928. The evidence highlighting Chain Bridge's BSA concerns demonstrates that Chain Bridge would not have deviated from the provision of its wire transfer policy requiring the return of the $456 million wire. Indeed, Chain Bridge's CEO also testified that the bank would not have made policy exceptions for a $456 million wire. *See* JA188.

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.

***52** Respectfully submitted.

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***53 REQUEST FOR ORAL ARGUMENT**

Under Federal Rule of Appellate Procedure 34(a) and Fourth Circuit Rule 34(a), JPMC respectfully requests that the Court hold oral argument. This appeal involves issues of first impression regarding the interpretation of U.C.C. § 4A-211(f), an important statute with significant consequences for the financial services industry. JPMC respectfully submits that oral argument would aid the Court's decisional process.

Appendix not available.

Footnotes

1 Chain Bridge also asserted an alternative claim for unjust enrichment, but that claim is not at issue in this appeal.

2 As the district court explained, its ruling on the underlying Blue Flame claims mooted Chain Bridge's third-party claim for reimbursement of any damages (subject to Blue Flame's appeal), but there remained the issue of whether JPMC must reimburse Chain Bridge for its attorneys' fees and expenses incurred in the litigation. JA3092. As for the amount of attorneys' fees and expenses to be awarded, the district court ordered additional briefing (JA3096), which is now complete with a hearing set for January 7, 2022.

3 *See also United States v. Seckinger*, 397 U.S. 203, 210-211 (1970) (declining to allow an indemnitee to recover losses caused by his own actions; "a contractual provision should not be construed to permit an indemnitee to recover for his own negligence unless the court is firmly convinced that such an interpretation reflects the intention of the parties"); *Horton v. United States*, 622 F.2d 80, 82 (4th Cir. 1980) (relying on *Seckinger* to reverse the district court's grant of indemnification because the indemnitee "was a joint tortfeasor").

4 As explained (*supra* p.15), there was good reason for Chain Bridge to request a formal Fedwire reversal message from JPMC. *See* JA3136 at 0:18-0:27 (asking JPMC to "send it over the Fedline Platform"). JPMC's reversal message "not only tied the reversal to the original [w]ire [t]ransfer," but also eliminated the potential for human error in returning the funds. JA2476 ¶ 46.

5 Even if, counterfactually, the cancellation was a joint decision of the two banks, Chain Bridge's claim would still fail. For the same reasons stated above, a joint decision by two banks does not constitute a cancellation request "by the sender" and an "accommodation" by the receiving bank. Assuming such a joint-decision scenario, "an essential predicate" for Chain Bridge's indemnification would still be "necessarily missing" because Chain Bridge would have played an "active" role in the cancellation. *White*, 662 F.2d at 250.

6 Reprising a point that Chain Bridge briefly advanced, the district court suggested in a footnote that JPMC's argument here "appear[s] to be in tension" with the administrative claim that it filed against California for indemnification. JA3093 n.13; *see* JPMC Opp. 15-16 (addressing Chain Bridge's argument); JPMC Reply 15-16 (same). That is incorrect, and the administrative claim--which California has denied--is immaterial here. First, the claim was contingent, preserving JPMC's rights in the event it is found liable for indemnification. Second, the indemnification issue here concerns the interactions and relationship between JPMC and Chain Bridge, not California. And as between Chain Bridge and JPMC, there is no question that Chain Bridge directed the cancellation, as the material facts stated above make clear.

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