

EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EXPERI-METAL, INC.,  
a Michigan corporation

Plaintiff(s),

vs.

Case No. 2:09-CV-14890  
Hon. Patrick J. Duggan

COMERICA BANK,  
a foreign banking organization

Defendant(s).

---

DEPOSITION OF

JONATHON JAMES

January 13, 2011  
9:46 a.m.

Driggers, Schultz & Herbst, P.C.  
2600 W. Big Beaver Road, Suite 550  
Troy, Michigan

Elizabeth G. LaBarge, CSR-4467



**ESQUIRE**  
an Alexander & Sons Company

Telephone: 248.205.7010  
Toll Free: 800.866.5560  
Facsimile: 248.205.7040

2301 West Big Beaver Road  
Suite 925  
Troy, MI 48084

feel free to ask me  
going to assume  
name on the  
2602, Atlanta  
front of you,  
report have any  
I don't believe  
copy it appears  
give you a copy  
use, although  
bel this

9

1 A Yes.

2 Q I want to start -- when did you prepare this report?

3 A It's been a living document. I actually started

4 preparing it when I was first given certain exhibits,

5 certain evidence to examine, so I was writing along the

6 way this entire time. It was finalized, I believe, last

7 week, so when you had received it, it was probably a day

8 or two before.

9 Q Do you recall the date on which you started to draft it?

10 MR. TOMLINSON: And don't guess if you're not

11 certain.

12 A No, I don't recall the exact -- I don't even recall when

13 I was -- if you asked me when I was called on this case,

14 I can't tell you the month at this point.

15 BY MR. HOLLEMAN:

16 Q Look at Exhibit 4-B to your report, please.

17 A Exhibit 4-B?

18 Q Um-hmm.

19 MR. TOMLINSON: Do you want to use yours?

20 MR. HOLLEMAN: That's fine if you want to use

21 yours.

22 MR. TOMLINSON: If that's okay with you.

23 MR. HOLLEMAN: Yeah, that's fine with me.

24 MR. TOMLINSON: That way he can get to the exhibits

25 quicker.

11

1 A I attended University of Puget Sound and I attended

2 Skagit Valley Community College for a little bit

3 afterwards.

4 MR. TOMLINSON: Do you want to spell that for her?

5 A S-k-a-g-i-t.

6 BY MR. HOLLEMAN:

7 Q Let's start at the University of Puget Sound, when did

8 you attend there?

9 A Shortly -- in 1997. Not for very long, though.

10 Q How long did you attend?

11 A About maybe a quarter.

12 Q Did you complete any classes there?

13 A No, I was studying violin.

14 Q And then the second school that you mentioned,

15 Skagit --

16 A Valley Community College.

17 Q -- Skagit Valley Community College, did you attend

18 classes there?

19 A Yeah.

20 Q How long did you -- or how many classes did you attend

21 there?

22 A I think about a semester, as well.

23 Q Did you complete any of those classes?

24 A I don't recall, I'm not sure, I was kind of fooling

25 around and just figuring out life.

remember.  
and we'll say  
r  
e labeled --  
er have too many.  
e that  
copy of the  
th, I think,  
g components.  
of the actual  
cognize  
?  
o your report,

10

1 He's looking for Exhibit B to your report.

2 THE WITNESS: Okay, thanks.

3 BY MR. HOLLEMAN:

4 Q I'm sorry, I'm looking -- oh, yes, okay. It's in a

5 different order than what I -- but that's fine, yes.

6 So we're looking at Exhibit B to your report. Can

7 you tell us what that is, please?

8 A This is my resume based on my experiences.

9 Q When was this resume prepared?

10 A This resume was recently prepared, it's been a living

11 document, as well, the only change was my new position

12 at Vigilant, so it was prepared last week, as well, at

13 the same time as the finalization.

14 Q There's no education background on this resume.

15 Could you tell me, did you graduate from high

16 school?

17 A I did.

18 Q What high school did you graduate from?

19 A Mount Vernon High School.

20 Q Where is that located?

21 A It's in Mount Vernon, Washington.

22 Q Did you go to college?

23 A I did some college, yes, but it was not majoring in

24 computer science and I didn't stay there very long.

25 Q What college did you attend?

12

1 Q Were you studying violin there or other classes?

2 A I was studying more -- I was in their choir, I know

3 that, so I did complete their choir class. I was

4 studying some math, some just basic stuff. Just a few

5 classes, it wasn't anything -- it was just, you know,

6 the -- the -- I'm trying to remember. Pretty much

7 mainly just mostly choir, math. I don't know if I even

8 finished the math stuff. But at that time, that was

9 pretty much what that was, and then I ended up moving.

10 Q Where did you end up moving?

11 A To San Diego in 1998.

12 Q Why did you move to San Diego?

13 A I was looking at both computer opportunities and music

14 opportunities.

15 Q Did you take any computer classes at Skagit Valley

16 Community College?

17 A I did not officially take any computer classes at Skagit

18 Valley Community College. I was in the computer room a

19 lot. I knew the teachers, they were treating me as a

20 colleague, but I did not take any of their courses.

21 Q Did you take any computer classes at University of Puget

22 Sound?

23 A No, I did not.

24 Q Have you ever taken any banking classes at any

25 university?

800.866.5560  
248.205.7040



ESQUIRE  
an Alexander Gallo Company

Toll Free: 800.866.5560  
Facsimile: 248.205.7040

Suite 925  
Big Beaver Road  
Troy, MI 48064  
resolutions.com

Suite 925  
2301 West Big Beaver Road  
Troy, MI 48084  
www.esquiresolutions.com



13

1 A No.

2 Q Have you taken any college classes at any time after you

3 left Skagit Valley Community College?

4 A I took a college class of business law when I was about

5 24 years old.

6 Q Where was that?

7 A It was at, I think, and I cannot confirm this

8 unless - I'd have to go check, but I think it was like

9 at Palomar Community College or - it was a community

10 college in San Diego, I just don't remember exactly

11 which one.

12 Q Did you complete the class?

13 A I did.

14 Q Did you get a grade in the class?

15 A Yes.

16 Q Do you remember what the grade was?

17 A I think it was a B.

18 Q And do you remember what year that was?

19 A I was 24, so that would be around 2001, 2002.

20 Q Is that the only class you took there?

21 A Um-hmm. I was doing it - I was starting a business, so

22 I was learning stuff.

23 Q Why kind of business were you starting?

24 A Secure Science Corporation.

25 Q Okay. What is - now I'm going to look at your resume.

14

1 It says Work Summary, Director of Intelligence,

2 Vigilant, LLC. Is that your current position?

3 A Yes.

4 Q Is that a management position?

5 A Yes.

6 MR. HOLLEMAN: I'd like to mark Exhibit Number 26.

7 (Defendant's Exhibit 26 was marked for

8 identification.)

9 BY MR. HOLLEMAN:

10 Q Do you recognize the people who are displayed on Exhibit

11 Number 26?

12 A Yes, I do.

13 Q Is that the management team at Vigilant?

14 A That is the management team at Vigilant, yeah.

15 Q And you're not listed there, are you?

16 A It is not prepared yet to, but I will be.

17 Q How long have you been there?

18 A Last week I started.

19 Q So at some time in the future you'd expect that your

20 picture and name would be on there?

21 A Yeah, they are in the process of preparing that right

22 now.

23 Q And you would be listed as director of intelligence?

24 A Yes.

25 Q What does that mean, what is your role?

1 A My role there is to handle intelligence services offered

2 by Vigilant for banking and government, so this is to

3 deal with threat intelligence, fraud intelligence, fraud

4 analysis, external threats that exist on the internet,

5 online crime, things like that. So I'll be handling

6 that entire group.

7 Q Where is your - do you have an office with Vigilant?

8 A Yes.

9 Q Where is your office?

10 A 66 York Street, Jersey City, New Jersey.

11 Q Are you moving from Atlanta to New Jersey then?

12 A Yeah, I'm in the process right now.

13 Q Look at the second item listed. What is a senior threat

14 analyst?

15 A A senior threat analyst is someone who looks at online

16 threats, external threats in a daily manner, including

17 phishing attacks, malware attacks against targets such

18 as banks or government agencies or whatever your target

19 is, and we assess those threats and then we categorize

20 them and look at techniques for prevention, techniques

21 to help our customers that actually utilize the product

22 that we offer. So we're basically the research team

23 that stares at all these threats all day and has to be

24 kind of an expert about what's going on. If there's a

25 new piece of malicious software out there, we have to

1 analyze it and let them know, hey, this is what's new

2 and this is what's attacking you.

3 Q What is Damballa, D-a-m-b --

4 A Oh, Damballa?

5 Q - a-I-I-a, the organization listed there?

6 A The organization? They have a project called - or a

7 product called Failsafe, which is a hardware machine

8 that basically sits in a corporate network to prevent

9 exfiltration of data leakage. The idea is that when

10 people break into a site or put malware on a computer,

11 like this laptop here, if it were inside and she had an

12 infection, it would end up, if it's connected to the

13 internet, end up leaking data out of this office, and so

14 our job was to basically track down what assets may be

15 having exfiltration problems based on what pieces of

16 malicious software are in their corporate environment or

17 government environment.

18 Q It lists 2010 as the time frame. Are you still

19 employed -

20 A No, I left -

21 Q - with Damballa?

22 A - them two months ago in November, now it's probably

23 three months, and I was in discussions to join Vigilant

24 at that time.

25 Q Why did you leave Damballa to go to Vigilant?



services offered  
ent, so this is to  
elligence, fraud  
the internet,  
e handling  
ce with Vigilant?  
t is a senior threat  
ho looks at online  
ner, including  
inst targets such  
whatever your target  
en we categorize  
ntion, techniques  
ize the product  
search team  
nd has to be  
1. If there's a  
ere, we have to

is what's new  
?  
ct called -- or a  
dware machine  
rk to prevent  
is that when  
e on a computer,  
rd she had an  
ted to the  
s office, and so  
at assets may be  
what pieces of  
le environment or  
u still  
now it's probably  
to join Vigilant  
Vigilant?

: 800.866.556  
: 248.205.704  
Suite 92  
ig Beaver Road  
Troy, MI 4808  
esolutions.com

17  
1 A I was -- on a personal level, I was recently divorced,  
2 so I was just kind of taking a job that was a little  
3 more easy going, not so executive level, managerial, and  
4 I wanted to just kind of take a break, but the pay scale  
5 is a little bit different and I was just preparing all  
6 my personal life to get more settled, and so that -- at  
7 that time, I pretty much took on employment there, and  
8 then as things were more prepared in my personal life, I  
9 decided to go back into a managerial executive type  
10 role.  
11 Q The third item on your work summary is CTO of Technology  
12 and Development for Secure Science Corporation from 2003  
13 to 2010, is that correct?  
14 A Yes.  
15 Q Why did you leave -- well, did you leave Secure  
16 Science --  
17 A No, I was --  
18 MR. TOMLINSON: Lance, you're going to have to try  
19 to wait until he --  
20 THE WITNESS: Okay.  
21 MR. TOMLINSON: -- finishes his question, you're  
22 kind of clipping off the end of his question. And it's  
23 natural, it happens all the time, so --.  
24 THE WITNESS: Okay.  
25 BY MR. HOLLEMAN:

18  
1 Q Were you -- are you still employed by Secure Science  
2 Corporation?  
3 A I own this company, so I'm still co-founder of this  
4 company and I do some projects through that company.  
5 Q So at present, you're employed by Vigilant and Secure  
6 Science Corporation?  
7 A I'm an officer of Secure Science Corporation company. I  
8 don't know if it would be considered employment at this  
9 time, as I'm not having -- or receiving an official  
10 paycheck, but I own the company, so it's something that  
11 when there's side work, you know, things -- older  
12 clients that come back, sometimes I'll use it through  
13 that company and pay taxes respectively.  
14 (Defendant's Exhibit 27 was marked for  
15 identification.)  
16 BY MR. HOLLEMAN:  
17 Q Mr. James, I've handed to you what we've labeled  
18 Deposition Exhibit Number 27. It's a document printed  
19 from the California Secretary of State web site showing  
20 the status of Secure Science Corporation as suspended.  
21 A Okay.  
22 Q Do you know what that means?  
23 A I now do. I didn't know that, I wasn't aware of it.  
24 Q Is it still operating?  
25 A The company is not technically operating, no.

19  
1 Q So when you testified that you're still doing work for  
2 the company, how are you doing that if it's not  
3 operating?  
4 A Most of my projects aren't in my name anyways, but due  
5 to the divorce, we're still -- she owns co-assets,  
6 so -- but I'm not -- I don't go around -- when I say  
7 this, one, I wasn't aware of this, so when I work -- do  
8 Secure Science, people know me for owning Secure Science  
9 Corporation, people have done business with me in the  
10 past, prior to its suspension, obviously. When I am  
11 looking at Secure Science, this is the -- not only a  
12 company that specifically has a reputation for certain  
13 business, but it is something I do own, whether its  
14 status is suspended or not, so I have it posted on my  
15 resume as basically stating that this is still part  
16 of this and this may not discontinue, this  
17 may -- obviously, now that I know it's suspended,  
18 there's some action I will take to probably find out why  
19 and get it unsuspending, so it will be handled.  
20 Q Okay. So is it your testimony that the company is still  
21 operating today or not operating today?  
22 A In an official sense, the company is not actively  
23 operating, but I am an official owner of the company, so  
24 I put it on my resume as claiming I'm a co-founder of  
25 the company. If it is not operating at this time,

20  
1 obviously, due diligence, I'll have to go into the  
2 matter and find out why it's not operating properly, but  
3 once it is operating, there is no intent to discontinue  
4 the company.  
5 Q Does the company have any employees?  
6 A Not at this time, no.  
7 Q Does it have any offices?  
8 A Not at this time, no.  
9 Q Does it have any assets?  
10 A Not -- at this time, the assets are in review by my  
11 divorce -- the situation with the divorce. For official  
12 purposes, we're going to say that this company is  
13 obviously suspended and that it is not operating at this  
14 point. It's on my resume for a point of being a  
15 co-founder.  
16 Q The next item is technical advisor and you state  
17 numerous financial institutions, law enforcement and  
18 intelligence agencies, 2003 to present, do you see that?  
19 A Yes.  
20 Q What are the financial institutions that you've been a  
21 technical advisor to?  
22 A I've technically advised Wells Fargo, TD Ameritrade,  
23 Charles Schwab, PNC Bank. Multiple conversations with  
24 HSBC.  
25 THE WITNESS: Do you know where that list is?



Toll Free: 800.866.5560  
Facsimile: 248.205.7040  
Suite 925  
2301 West Big Beaver Road  
Troy, MI 48084  
www.esquiresolutions.com



21

1 MR. TOMLINSON: It's in your Exhibit A. Exhibit A  
 2 is tabbed, so if you look right behind the tab. You can  
 3 keep those like that and just put those over there.  
 4 A Okay. Wells Fargo, as I said, TD Waterhouse, TD --  
 5 BY MR. HOLLEMAN:  
 6 Q I'm sorry. You're reading off of something here --  
 7 A Yeah, this is Exhibit A, a Brief Summary --  
 8 Q This is Exhibit A off of your report, right?  
 9 A Yes.  
 10 Q Okay. And so you're reading off of here the --  
 11 A Right.  
 12 Q Well, tell me what you're reading off of?  
 13 A I'm reading off the list of financial institutions that  
 14 are included but not limited to -- again, I've talked  
 15 to -- I've consulted with many, many companies in the  
 16 last few years, so I don't necessarily have them all  
 17 verbatim by heart, so I'm reading off this based on what  
 18 was mentioned.  
 19 Wells Fargo, TD Waterhouse prior to them being part  
 20 of TD Ameritrade, TD Ameritrade, Citigroup, Charles  
 21 Schwab, Pay Pal, Ticketmaster, Wachovia, Chase, and  
 22 Washington Mutual. And there's others such as PNC Bank,  
 23 HSBC, RBS, Barclays.  
 24 Q Were you paid by each of those institutions for work  
 25 that you did for them?

22

1 A Not all institutions necessarily paid me, but did call  
 2 me on proposals for -- of payment, yes.  
 3 Q Do you --  
 4 A Some of it is also -- go ahead, sorry.  
 5 Q Go ahead.  
 6 A Some of it is community related, so we're all in certain  
 7 communities where the banking information may be  
 8 disbursed through lectures. Like for instance, when I  
 9 was invited to the APACS, I lectured, and the banks  
 10 attended for that as seeking expertise in this problem,  
 11 which I may -- I was paid for for the actual lecture,  
 12 but not necessarily specifically by the financial  
 13 institutions themselves.  
 14 Q So if a financial institution attended a seminar that  
 15 you put on, you were listing them as an institution that  
 16 you were a technical advisor to?  
 17 A I am listing -- I'm not -- I'm listing them as I have  
 18 technically advised many financial institutions on my  
 19 resume, yes.  
 20 Q Which ones of -- which financial institutions have you  
 21 had a contractual relationship with to do  
 22 financial -- or I'm sorry -- to do technical advising  
 23 for?  
 24 A Wells Fargo, TD Waterhouse. TD Ameritrade. Citigroup.  
 25 Charles Schwab. Wachovia at the time of the Wells Fargo

1 merger. PNC Bank. And there's -- I know there's some  
 2 others, I just don't have them necessarily by heart  
 3 right now.  
 4 Q When did you have a contract to do work with Wells  
 5 Fargo?  
 6 A 2004.  
 7 Q Was that individually or was that through --  
 8 A Secure Science Corporation.  
 9 Q And again, let me finish my question.  
 10 MR. TOMLINSON: Let him finish his question.  
 11 BY MR. HOLLEMAN:  
 12 Q She's trying to type my question and your answer, so  
 13 that's why we ask that.  
 14 When did you have a contractual relationship to  
 15 give technical advice to TD Waterhouse?  
 16 A I won't recall exact dates. It's sometime --  
 17 MR. TOMLINSON: Don't guess at it if you don't  
 18 know.  
 19 A I know what approximates it is.  
 20 BY MR. HOLLEMAN:  
 21 Q Okay, approximately then.  
 22 A Between 2004 and 2006.  
 23 Q And again, was that through Secure Science Corporation  
 24 A Yes.  
 25 Q When did you have a contractual agreement to do

1 technical advising for TD Ameritrade?  
 2 A The year that they merged, so if you did research on  
 3 whatever year they merged, that's -- I believe it pretty  
 4 much crossed over.  
 5 Q And was that through Secure Science Corporation also?  
 6 A Yes.  
 7 Q When did you have a contractual relationship with  
 8 Citigroup to perform technical advisory services?  
 9 A Sometime between 2004 and 2005.  
 10 Q And that was through Secure Science Corporation also?  
 11 A Yes.  
 12 Q What about Charles Schwab, when did you have a  
 13 contractual relationship to perform technical advisory  
 14 services for it?  
 15 A Charles Schwab, sometime in 2005 to 2006, that's -- at  
 16 some point in those times.  
 17 Q And that was through Secure Science Corporation also?  
 18 A Yes.  
 19 Q Finally, Wachovia, when did you have a contractual  
 20 agreement to do technical advisory services for it?  
 21 A 2008.  
 22 Q Was that through Secure Science Corporation?  
 23 A Yes.  
 24 Q Taking the Wells Fargo engagement, what specific area  
 25 were you giving advice towards?



29

1 Q What is Bakbone Software company? Let me rephrase that.  
 2 Is that a company?  
 3 A Yes.  
 4 Q What does -- is that company still in existence?  
 5 A As far as my knowledge as I am aware that they're still  
 6 in existence.  
 7 Q What did you -- why did you leave Bakbone Software in  
 8 2004?  
 9 A I was in the process of starting Secure Science  
 10 Corporation, and based on some of the contracts I had  
 11 received from them, I decided to leave the company and  
 12 focus on Secure Science.  
 13 Q What do you mean by contracts you received from them?  
 14 A From -- for Secure Science from customers at Secure  
 15 Science. In 2003 I was in the process of doing Secure  
 16 Science, getting it up as a business, and a few of the  
 17 contracts enabled me to basically just focus on that, so  
 18 I could pretty much leave Bakbone and focus on Secure  
 19 Science.  
 20 Q Did you take customers with you from Bakbone to Secure  
 21 Science Corporation?  
 22 A No, I -- not directly like that. They were people that  
 23 had left later on that I had talked to and had hired,  
 24 but I did not take anybody from their company directly  
 25 leaving, no.

30

1 Q Bakbone didn't sue to try to stop you from going or  
 2 anything like that, did they?  
 3 A No, they -- congratulations.  
 4 Q And the next listing you have is for a company called  
 5 Invisiblenet from 2001 to 2003, do you see that?  
 6 A Yes.  
 7 Q Were you an owner or founder of Invisiblenet?  
 8 A Invisiblenet, to be clear, is not a company, it is an  
 9 open source project.  
 10 Q What is an open source project?  
 11 A A open source project is a software project that is open  
 12 to the community for development, so it is a project  
 13 to -- usually it's designed to prove research of some  
 14 sort or put together a community of developers to focus  
 15 on a specific goal. Another example of an open source  
 16 project is Firefox, I'm sure you're familiar with the  
 17 browser, so that's an open source project, it's a free  
 18 tool that is utilized by the public and it is also  
 19 written by the public.  
 20 Q So who gave you the title of principal engineer and  
 21 software development manager?  
 22 A That was my title based on what my role was at  
 23 the -- the project.  
 24 Q It's a title you gave yourself?  
 25 A Yes.

1 Q And those are the types of areas you were working in  
 2 that are listed there, secure distributed computing,  
 3 et cetera?  
 4 A Yes.  
 5 Q Did you stop working with Invisiblenet in 2003?  
 6 A I did.  
 7 Q Why?  
 8 A The upgraded version was not -- the community -- I did  
 9 not agree with the community on the ideals or the  
 10 reasons why we were doing the project after 2003.  
 11 Q What was your disagreement over?  
 12 A I'm not anti-government, and some of those people are in  
 13 Puerto Rico or in some other country and don't  
 14 necessarily -- they have the right to their opinion, but  
 15 I just didn't -- I didn't want to paint the wrong  
 16 picture for the project.  
 17 Q Back up to your entry with respect to Secure Science  
 18 Corporation. CTO stands for chief technology officer,  
 19 is that correct?  
 20 A Yes.  
 21 Q Of technology and development, that's listed as your  
 22 title, right?  
 23 A Um-hmm.  
 24 Q Is that a title you gave yourself?  
 25 A That was a title that I had given myself for the

1 ownership of that company, yes.  
 2 Q Did you have partners in the ownership of that company?  
 3 A My spouse is a technical partner. She was not listed as  
 4 a partner, but in California she has partial ownership  
 5 in that company.  
 6 Q Was there a CEO of the company?  
 7 A There was -- I was officially on the books written as  
 8 the CEO for the actual -- the office books of the  
 9 company. I did not apply that title in the open or  
 10 live. The combination of the CEO decisions were decided  
 11 between my ex-wife and I at this -- at that time, so it  
 12 was more of a joint discussion.  
 13 Q Did Secure Science Corporation ever have employees?  
 14 A Yes.  
 15 Q How many at --  
 16 A Let me be clear. We had contractors.  
 17 Q So it never had any of its own employees?  
 18 A No, we did not, we maintained contractors.  
 19 Q What's the highest number of contractors the company had  
 20 at any time during its existence?  
 21 A I'm not at complete confidence of the number. I can  
 22 give you probably an estimate, that at least twelve.  
 23 Q Do you remember when that was?  
 24 A It was multiple times, it was -- during -- it  
 25 depended -- it was dependent on certain projects.



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.866.556  
Facsimile: 248.205.704

Suite 92  
2301 West Big Beaver Road  
Troy, MI 48068  
www.esquiresolutions.com



as you were working in  
 tributed computing,  
 iblenet in 2003?  
 -- the community -- I did  
 the ideals or the  
 project after 2003.  
 ver?  
 me of those people are ir  
 ntry and don't  
 to their opinion, but  
 it the wrong  
 act to Secure Science  
 ef technology officer,  
 , that's listed as your  
 myself for the

ership of that company?  
 She was not listed as  
 partial ownership  
 ?  
 books written as  
 ooks of the  
 the open or  
 ecisions were decided  
 it that time, so it  
 er have employees?  
 's.  
 oyees?  
 actors.  
 actors the company had  
 e number. I can  
 t least twelve.  
 l -- it  
 lain projects.

33

1 Q When you were employed by Damballa, were you a paid  
 2 employee?  
 3 A Yes.  
 4 Q And how long were you working there?  
 5 A From April 2010 to November 2010.  
 6 Q Did you report to anyone there?  
 7 A Yes.  
 8 Q Who was the person that you reported to?  
 9 A Gunter Ollman.  
 10 Q Do you know how his last name is spelled?  
 11 A O-I-I-m-a-n.  
 12 Q Do you know where he's located?  
 13 A I know where his office is located in Atlanta, yes.  
 14 Q What's the address in Atlanta for --  
 15 A 817 West Peachtree Street, Suite 800, Atlanta, Georgia.  
 16 Q Mr. James, have you been involved in any way with any  
 17 litigation? We talked about -- let me rephrase that,  
 18 it's kind of vague.  
 19 Have you been a party to, a defendant or a  
 20 plaintiff, in any litigation?  
 21 A Can you still rephrase it? I don't necessarily  
 22 understand the --  
 23 Q Has anyone sued you ever?  
 24 A Not successfully, no, so I have not.  
 25 Q That's a little different, successfully or not --

34

1 A I've never been in a trial for just being sued.  
 2 Q Okay. But have you been sued before?  
 3 A No.  
 4 Q Have you sued anyone before?  
 5 A I have not personally, no.  
 6 Q Let's look at your report, the first page of your  
 7 report. In the introduction, you made some statements.  
 8 Now, was this report prepared for purposes of the  
 9 litigation between Experi-Metal and Comerica Bank?  
 10 A Yes.  
 11 Q And you have an agreement with the Driggers,  
 12 Schultz & Herbst firm under which you are an expert  
 13 witness in this case, is that correct?  
 14 A Yes.  
 15 Q So were you retained by Mr. Tomlinson's firm to give  
 16 testimony in this case?  
 17 A Yes.  
 18 Q Do you have a written agreement with Mr. Tomlinson's  
 19 firm?  
 20 A Yes.  
 21 Q The Industry Standards section of your report which  
 22 starts in the first paragraph of the first page, do you  
 23 see that?  
 24 A I do.  
 25 Q You refer to, about the middle of the paragraph, the GLB

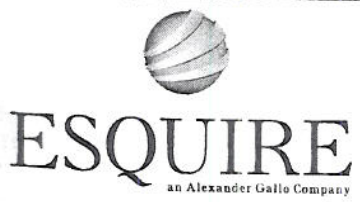
35

1 guidelines, right?  
 2 A Yes.  
 3 Q And that refers to the Gramm-Leach-Bliley Act  
 4 guidelines, right?  
 5 A Yes.  
 6 Q Are guidelines mandatory?  
 7 A Guidelines are a recommendation for procedure.  
 8 Q And in fact, in your next paragraph where you say  
 9 pursuant to the GLB guidelines, you say "Comerica  
 10 should... Bank should," "The Bank should," and "The  
 11 Bank should" --  
 12 MR. TOMLINSON: Where are you referring to?  
 13 MR. HOLLEMAN: Paragraph three, page one of  
 14 Mr. James's report.  
 15 BY MR. HOLLEMAN:  
 16 Q Do you see that?  
 17 MR. TOMLINSON: Paragraph one or two?  
 18 MR. HOLLEMAN: Paragraph three.  
 19 MR. TOMLINSON: Okay, sorry.  
 20 A I see it.  
 21 BY MR. HOLLEMAN:  
 22 Q And those are your words, right, you typed those, that  
 23 "Comerica should"?  
 24 A Yes.  
 25 Q And "The Bank should"?

36

1 A Yes.  
 2 Q You don't say "Comerica must," right?  
 3 A No, I don't.  
 4 Q Have you ever worked with the FDIC or any banking  
 5 examiner in the examination of a bank?  
 6 A I have worked with -- I have worked directly -- okay.  
 7 Let me rephrase.  
 8 I have consulted with Doug Foster, who was one of  
 9 the co-authors of the FFIEC. I have also had experience  
 10 with SAS 70 audits and compliance going -- literally  
 11 being the information security consultant on staff for  
 12 handling the -- like for delivering the deliverables and  
 13 knowing the requirements. I've also as a vendor to  
 14 the -- the financial institutions, they have required  
 15 certain requirements for me handling their data, which  
 16 included both GLB and FFIEC documents to be signed.  
 17 Q My question is a little different.  
 18 Have you ever done an examination of a bank of its  
 19 practices and procedures with an FDIC examiner?  
 20 A No, I have not.  
 21 Q Have you ever done an examination of a bank, its  
 22 practices and procedures, with a Federal Reserve Board  
 23 examiner?  
 24 A No, I have not.  
 25 Q Have you ever worked specifically for the FDIC?

Free: 800.866.5566  
 File: 248.205.7040  
 Suite 925  
 2301 West Big Beaver Road  
 Troy, MI 48068  
 www.esquiresolutions.com



Toll Free: 800.866.5560  
 Facsimile: 248.205.7040  
 Suite 925  
 2301 West Big Beaver Road  
 Troy, MI 48084  
 www.esquiresolutions.com

ed on congressional  
 ction (9). Do you see where  
 us, please?  
 : an individual who obtains,  
 ancial products or  
 f for primarily – used  
 or household purposes,  
 'esentative of such an  
 s not include a business, doe  
 r question? I'm sorry.  
 t include a business, does it?  
 at you said?  
 ed at, does that change or  
 question of whether the  
 s to a business or  
 hat I'm not necessarily  
 the fact that you've

re not defined commercial  
 Congress has with that  
 nged that you didn't look  
 pared your report, did  
 tes, no, so I did not.  
 ri-Metal is a business,  
 h to your report.  
 it 2, which is the FFIEC  
 ation Handbook, okay?  
 u've got a bunch of  
 l, but I've numbered them  
 you're going to be able  
 front and start  
 don't have for you  
 r a minute.  
 information technology  
 A standards, is that your

49  
 1 A The guidelines utilized, the GLB assisted in  
 2 establishing this handbook. I would not say that it is  
 3 completely based on this, but it has a lot of the same  
 4 statutes in accordance with the GLB, yes.  
 5 Q In preparing your report, did you consider at all  
 6 Article 4A of the Uniform Commercial Code?  
 7 A In my report I was specifically looking at the FFIEC and  
 8 the GLB, so I likely did not.  
 9 Q And you didn't list Article 4A of the Uniform Commercial  
 10 Code as an industry standard in your report?  
 11 A I did not.  
 12 Q Did you review Michigan law as it applies to wire  
 13 transfer orders when you prepared your report?  
 14 A I did not.  
 15 Q Let's look at your tab 1 or Exhibit 1.  
 16 MR. TOMLINSON: He's going to a different --  
 17 BY MR. HOLLEMAN:  
 18 Q Sorry, I'm jumping around a little bit, I got lost in my  
 19 outline.  
 20 MR. TOMLINSON: You're back to the GLB guidelines,  
 21 is that what you're talking about?  
 22 MR. HOLLEMAN: I'm at his Exhibit 1.  
 23 A The FDIC web site.  
 24 BY MR. HOLLEMAN:  
 25 Q You've underlined some entries on this document on

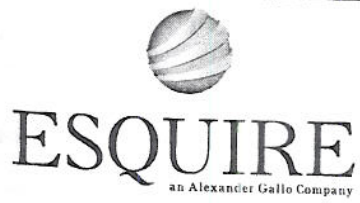
50  
 1 page 3 of the document, can you go there?  
 2 A Yes.  
 3 Q Why did you underline those sections?  
 4 A I underlined them due to the fact that when you  
 5 look -- can you -- can we actually rephrase that?  
 6 Because there's context to why I underlined it, but it's  
 7 not as simple as --  
 8 Q My question is why did you underline those sections?  
 9 A I was looking at the ability to look at monitoring and  
 10 behavioral analysis as an extended authentication  
 11 system, and these were underlined due to the fact that  
 12 these procedures in my opinion were not followed  
 13 properly.  
 14 Q Do you have any evidence from any regulator that  
 15 Comerica is not or was not in compliance with any of  
 16 those guidelines?  
 17 A I have no evidence from a regulator.  
 18 Q And this is an outline for the use of regulators, right?  
 19 A It is.  
 20 Q Do the guidelines you underlined on page 3 require any  
 21 particular technological approach to meet those  
 22 guidelines?  
 23 A On which -- are you referring to the stuff I underlined  
 24 right now?  
 25 Q Yeah.

51  
 1 A So can you repeat the question, please?  
 2 MR. HOLLEMAN: Could you repeat it, please?  
 3 (Record repeated.)  
 4 A Can you rephrase the question particulars a bit? It  
 5 could mean from a vendor or it could mean from a  
 6 literally technological perspective, I just wanted to  
 7 clarify.  
 8 BY MR. HOLLEMAN:  
 9 Q Either way. Do they require -- do the guidelines you  
 10 underlined on the third page of your exhibit require any  
 11 particular technology or vendor to meet those  
 12 guidelines?  
 13 A There's a yes and no to that. It states here host  
 14 intrusion detection systems, network traffic monitoring,  
 15 manual review of logs, which is a technique, and other  
 16 information available to assess management's monitoring  
 17 processes. This is basically a yes in that because if  
 18 you don't have any technologies in place to do that,  
 19 then you have no monitoring, you have no visibility. So  
 20 your term "required" is what's kind of tricky, and I'm  
 21 just going to be honest, but it's the guideline is  
 22 recommending that you have systems in place, yes.  
 23 Q Okay. So there's different ways that an institution can  
 24 meet that guideline?  
 25 A There are multiple ways to do it, yes.

52  
 1 Q And that includes various ways of authentication that  
 2 could be used to meet the guidelines, right?  
 3 A Yes, there are options for multiple different forms of  
 4 authentication, yes.  
 5 Q And one of those acceptable options is the use of token  
 6 technology, isn't it?  
 7 A Yes, it is.  
 8 Q The authentication process that's used should be  
 9 appropriate and commercially reasonable, right?  
 10 A Yes.  
 11 Q You'd agree with me that what constitutes commercially  
 12 reasonable can change over time, right?  
 13 A Given the threats constantly changing, yes, that can  
 14 possibly change. To clarify, though, there are  
 15 fundamental basics that would lower risk no matter what  
 16 time and climate you're at, yes.  
 17 Q But sometimes reducing the risk is not always  
 18 commercially reasonable, is it?  
 19 A I would have to ask you to clarify what you mean.  
 20 Q I'll withdraw the question.  
 21 Did you review Judge Duggan's opinion in this case  
 22 with respect to Comerica's motion to dismiss?  
 23 A In thorough detail, no. I'm apprised of it, but I did  
 24 not review it in detail.  
 25 Q Did you read it?

Toll Free: 800.866.5560  
 Facsimile: 248.205.7040

Suite 925  
 Vest Big Beaver Road  
 Troy, MI 48064  
 esquiresolutions.com



Toll Free: 800.866.5560  
 Facsimile: 248.205.7040  
 Suite 925  
 2301 West Big Beaver Road  
 Troy, MI 48064  
 www.esquiresolutions.com



53

1 A No.

2 Q Do you know that he ruled that Comerica's security authentication process was commercially reasonable?

3

4 A I was aware of that, yes.

5 Q When was the FFEIC e-banking booklet that you've attached to your report issued?

6

7 MR. TOMLINSON: I-E-C?

8 MR. HOLLEMAN: Did I say it wrong?

9 MR. TOMLINSON: You misstated it.

10 MR. HOLLEMAN: What is it, F --

11 MR. TOMLINSON: -- F-I-E-C.

12 BY MR. HOLLEMAN:

13 Q When was the FFIEC e-banking booklet issued?

14 A Where are you -- I'm sorry, are you on a certain page?

15 Q No.

16 MR. TOMLINSON: He's looking at Exhibit 2, asking when this --

17

18 BY MR. HOLLEMAN:

19 Q Actually, I'm asking you specifically to -- well, yeah, the first page of the exhibit.

20

21 A I don't know the exact date. I knew that it was something to be effective in the year 2006 and above.

22

23 Q But you don't know when it was drafted?

24 A Not in detail, no.

25 Q Do you know not in detail, whatever that means?

54

1 A I do not know when it was drafted.

2 Q But your understanding is that it was to become effective in 2006, is that correct?

3

4 A It was to be acknowledged, and shortly after, the guidelines would be followed by certain financial institutions in 2006 and beyond, yes.

5

6

7 Q It provides guidance, right?

8 A Yes.

9 Q It's not mandatory that an institution follow that guidance, is it?

10

11 A It is a guidance point, there is no mandatory requirement. But it is a guidance to industry standard.

12

13 Q There's nothing binding in this booklet, is there?

14 A No, this is an examination handbook.

15 Q How does it establish industry standards for the commercial relationship between Comerica and Experi-Metal?

16

17

18 A How does it establish?

19 Q Um-hmm. How does it establish industry standards for the commercial relationship between Comerica and Experi-Metal?

20

21

22 A If Comerica follows this and even had a regulatory agent come in and verify that they are following FFIEC examination handbook practices, Comerica and Experi-Metal wouldn't have had the problem that they

1 had.

2 Q This is a little different. What makes what you've labeled, what you've attached as Exhibit 2 an industry standard?

3

4

5 A It is best practices in the security industry and it is community agreed and it is also business agreed and it is government agreed, so it -- overall, it is a reasonable review of good practices. It has proven effectively to lower and mitigate risks and it is approved both by the Government, it has also been examined by people who are in the information security world that are experts in the community there, other banking officials that have dealt with corporate security and wire transfer security and online security and information technology security, so --

6

7

8

9

10

11

12

13

14

15

16 Q Specifically who?

17 A Doug Foster is obviously involved, I believe the FDIC was directly involved in assisting on some of this. I wouldn't know specifically the names at this time, but there are def -- I know for a fact based on the community and when -- in the news about the FFIEC when it was coming about that it wasn't just some small board that got together, it was -- there was considerations and review by people that were experts in this industry.

18

19

20

21

22

23

24

25 Q How often did the organization meet?

1 A I'm not sure of that it had.

2 Q Did you participate in that organization's meetings?

3 A I did not, no.

4 Q When you say "the community," what do you mean, the community?

5

6 A The information security community. It was -- there are definite experts in the field that were brought in to discuss best practices so that this could be established properly.

7

8

9

10 Q How do you define the community?

11 A The community is a -- it's basically the professionals that are in the industry of information security that usually hold expertise, it would be similar to a lawyer community.

12

13

14

15 Q And I know you can rarely get two lawyers to agree on any one thing.

16

17 A Understood.

18 Q Can you get any -- does the community always agree on the best approach to take with respect to information security?

19

20

21 A I'm going to answer it this way. The community -- no two humans always agree on anything, so the term "always," no, but there is a lot of agreement in this guideline. The fundamentals are agreed upon.

22

23

24

25 Q Do -- by who?

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



77

1 look-up-able up on Google.

2 Q But you don't know if that relates to commercial banking

3 or consumer banking, do you?

4 A I assume that "we" means the bank in general.

5 Q But you don't know that for sure, do you?

6 A By definition, no.

7 Q Lower on the page it says "In 2007, Experi-Metal

8 conducted two wire transfers," do you see that?

9 A Yes, I do.

10 Q Who initiated those wire transfers?

11 A Define "who"?

12 Q Who is the individual at Experi-Metal that initiated

13 those wire transfers?

14 A At this time, we don't know the individual, it was an

15 attacker. Or I'm sorry, here. Oh, my bad, I'm sorry.

16 Keith. This was -- I'm sorry, I was looking at the

17 wrong thing. 2007, Experi-Metal, and I believe the

18 account was made by -- it's not in here, but I believe

19 it was -- if --

20 MR. TOMLINSON: Don't guess if you're not sure.

21 THE WITNESS: Do you have it on --

22 MR. TOMLINSON: No.

23 THE WITNESS: We don't?

24 A From what I remember reading, I think it was Keith who

25 made those transaction requests.

78

1 BY MR. HOLLEMAN:

2 Q Do you know where the international wire transfer went?

3 A The international is -- is from what I remember reading,

4 it was Austria.

5 Q Where?

6 A Austria.

7 Q Should Comerica have stopped that international wire

8 transfer from occurring?

9 A I would have agreed that they should call and verify

10 that that's being sent, yes.

11 Q Experi-Metal could have chosen a process by which no

12 wires would have been sent until approved by another

13 customer representative, right?

14 MR. TOMLINSON: If you know.

15 A Repeat the question one more time.

16 BY MR. HOLLEMAN:

17 Q Do you know if Experi-Metal could have chosen a process

18 by which no wire transfers would have been sent until

19 approved by another customer representative?

20 A They could have approved? I'm not aware of that policy,

21 I'm not aware of --

22 Q You don't know if that could have -- if Experi-Metal had

23 that as an option?

24 A Yeah, I haven't read all their contracts, per se, no.

25 Q You'd agree with me that in response to a phishing

1 attack, the customer is the front line of defense?

2 A I don't even understand what you mean by the customer

3 the front line of defense.

4 Q The customer -- well, does the customer have any duties

5 or responsibilities with respect to safeguarding its

6 information?

7 A I think the customer is a -- okay. I wouldn't call it

8 the first line of defense. I think the customer should

9 obviously use common sense when making transactions

10 being online, but unfortunately, the customer is just a

11 computer user and does not necessarily have the savvy

12 skills to actually withstand any kind of, you know,

13 fraudulent type attacks. I would say like it's the

14 customer's duty to not get in mud when someone comes

15 and mudds them, you can't blame it on the victim.

16 Q The customers have duties to secure their own I.D.s and

17 passwords, right?

18 A According to what?

19 Q Industry pol -- industry standards?

20 A Customers don't go by industry standard, they're a user

21 of a bank, they're a service. That's like you're

22 requiring a lot of information from them.

23 Q So in your expert opinion, is a customer obligated to

24 maintain the confidentiality of its I.D. and password?

25 A I wouldn't say obligated. I would say that a customer

1 should try its best to be aware of its passcodes and

2 that there are passcodes for a reason, but you've got to

3 understand it's -- you're expecting a customer that does

4 not have the knowledge of security that the bank hires

5 the information security experts to come in and help

6 secure their money and make sure it doesn't leave the

7 country without prior authorization, you're asking the

8 customer to do the same thing. There's no way, all they

9 do is go, oh, I bought a Linksys firewall and I think

10 I'm good. That's how a customer is, they don't know the

11 difference.

12 Q Phishing scams were pretty much known to be occurring

13 the -- as far back as 2004, right?

14 A Before that even.

15 Q On page 7 of your opinion or your report --

16 MR. TOMLINSON: Page 7?

17 MR. HOLLEMAN: Yes.

18 BY MR. HOLLEMAN:

19 Q The second paragraph, it starts "In my opinion, Comerica

20 did not meet good faith or industry and commercial

21 standards in that Comerica did not employ any type of

22 monitoring system --" and it continues on, do you see

23 that?

24 A Yes, I do.

25 Q How do you define good faith?

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25





85

1 MR. TOMLINSON: No, I haven't.  
 2 (Record repeated.)  
 3 A What are you basing -- is this off paragraph 1  
 4 literally?  
 5 BY MR. HOLLEMAN:  
 6 Q Yeah.  
 7 A I didn't use the word -- term "additional." I think  
 8 that this system should have been in place as part of  
 9 the normal industry standard concepts of security.  
 10 They're not additional, it's not, oh, I should get  
 11 additional stuff because it would help us better. No,  
 12 it's those systems at a bank should already be in place.  
 13 Q But if Comerica didn't have those, then they would be  
 14 additional to what Comerica had, right?  
 15 A If Comerica had anything.  
 16 Q So if Comerica didn't have those, the systems you're  
 17 saying it should have would be additional, right?  
 18 A I would say that they are a necessary addition to their  
 19 security components, yes.  
 20 Q And because Comerica didn't have them, you're  
 21 saying -- or you're saying that Comerica didn't have  
 22 them, you're saying Comerica wasn't acting in good  
 23 faith, is that right?  
 24 A Yes, it's not following industry standard practices for  
 25 banking.

86

1 Q Okay. With respect to your paragraph two on page 8 of  
 2 your report, you list various items that you've looked  
 3 at, including the deposition testimony of the witnesses  
 4 in this case?  
 5 A Yeah.  
 6 Q Have you reviewed all the deposition testimony of each  
 7 witness who has been deposed?  
 8 A I have reviewed and am -- I have reviewed the  
 9 depositions that were necessary for my research here.  
 10 Q Who was that or whose deposition transcripts were they?  
 11 A I would say that I've read the Rita -- I don't have them  
 12 all at hand here, but --  
 13 MR. TOMLINSON: You can say I don't remember all  
 14 the names.  
 15 A I don't remember all of them, but I was -- definitely  
 16 read depositions that were pertinent to what I needed to  
 17 understand about writing my report.  
 18 BY MR. HOLLEMAN:  
 19 Q But you don't remember which ones today?  
 20 A No, I'm -- you guys are the paperwork guys, I --.  
 21 Q Do you know how many transcripts you read?  
 22 A Not offhand. I read a lot of stuff since this entire  
 23 case.  
 24 Q Do you have any experience drafting banking agreements  
 25 or forms?

1 A I am familiar with SARs forms, which is a suspicious  
 2 activity report.  
 3 Q So you're familiar with them, but have you ever drafted  
 4 any?  
 5 A I've assisted in drafting SARs reports, yes.  
 6 Q Have you ever drafted a banking agreement?  
 7 A I have not.  
 8 Q Have you ever -- do you have any experience interpreting  
 9 banking agreements?  
 10 A When you say "banking agreement," do you mean between  
 11 customer and a bank?  
 12 Q Between a business and a bank.  
 13 A A business and a bank? No, I have not, I've never  
 14 drafted or interpreted -- I've interpreted my own for  
 15 Secure Science originally, that's the only one I've  
 16 actually done, but not professionally, no.  
 17 Q Have you ever worked at a bank?  
 18 A No.  
 19 Q Have you ever overseen or worked in a wire transfer  
 20 room?  
 21 A No, I have not.  
 22 Q With respect to your opinion paragraph 2 on page 7, what  
 23 in your education gives you a qualification to make that  
 24 opinion?  
 25 A Specifically in my education or my experience?

1 Q Your education.  
 2 A Nothing in my education.  
 3 Q Do you have any experience in making a determination  
 4 whether a bank acted in good faith in responding to a  
 5 phishing attack as defined by the Uniform Commercial  
 6 Code?  
 7 A I do not.  
 8 Q Have you written or consulted on compliance with the  
 9 Uniform Commercial Code requirements as they pertain  
 10 a bank and wire transfers?  
 11 A I have not.  
 12 Q Have you given any testimony or been asked to give  
 13 testimony on the issue of whether a bank acted in good  
 14 faith under the Uniform Commercial Code in response to  
 15 fraudulent act of a customer?  
 16 A I have not.  
 17 Q Or in response to a fraudulent act of a third party?  
 18 A Can you complete the sentence?  
 19 Q Sure. Have you ever previously given any testimony or  
 20 been asked to give testimony on the issue of whether a  
 21 bank acted in good faith under the UCC in response to  
 22 fraudulent acts of third parties?  
 23 A No.  
 24 Q What gives you the experience or qualification to do so  
 25 here?



is a suspicious  
you ever drafted  
yes.  
ement?  
erience interpreting  
o you mean between  
it, I've never  
my own for  
y one I've  
a wire transfer  
2 on page 7, what  
on to make that  
erience?

ng a determination  
responding to a  
orm Commercial  
npliance with the  
nts as they pertain t  
in asked to give  
ank acted in good  
ode in response to  
a third party?  
n any testimony or  
ssue of whether a  
C in response to  
alification to do so

89

1 A I have consulted and have been charged -- okay. With a  
2 lot of experience working in solving fraudulent  
3 problems, building industry standard cases, helped  
4 assisting banks in building out and complying with  
5 industry standard cases, including recommendations of  
6 vendors, recommendations of technologies,  
7 recommendations of products, recommendations of priority  
8 of those products, recommendations of how to build those  
9 properly, a proper defense-in-depth system.  
10 I'm also considerably the de facto expert in  
11 phishing, and so of course they're going to call me to  
12 consult on how do we make sure our money doesn't leave  
13 the bank and how do we identify the fact that it's not  
14 our customer that's actually in the launder -- you know,  
15 pushing money out.  
16 So I would say my experience from being heavily  
17 involved and highly regarded by not only a lot of  
18 financial institutions, but also law enforcement itself  
19 in helping not only assist in the fraudulent side for  
20 the banks, but actually assisting in actually making  
21 arrests, both locally and overseas, because of  
22 understanding how to not only go from the bank needs to  
23 do this, but this is how we track. I've worked with  
24 multiple banks in actually tracking down bad guys. So  
25 we go from the process of you got hit to here's how we

90

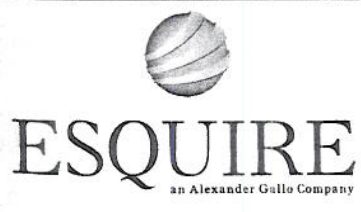
1 safeguard this to here's how we actually get who this  
2 person is. And that's my expertise, that is what I do.  
3 Q Would it be acting in good faith for a third party to  
4 exploit a bank's potential security vulnerabilities for  
5 its own benefit?  
6 A Would it be acting in good faith --?  
7 Q For a third party to exploit a bank's potential security  
8 vulnerabilities for its own benefit?  
9 MR. TOMLINSON: You're asking if the third party  
10 would be acting in good faith or the bank? I don't  
11 understand what you're --  
12 A I don't either, I don't understand it.  
13 MR. HOLLEMAN: Could you repeat the question,  
14 please?  
15 (Record repeated.)  
16 A Define "own benefit."  
17 BY MR. HOLLEMAN:  
18 Q To make money.  
19 A Would be acting in good faith?  
20 Q Um-hmm.  
21 A Who's acting in good faith?  
22 Q The third party.  
23 MR. TOMLINSON: Objection, no relevance to this  
24 case. He's not judging the good faith of third parties,  
25 he's judging --

91

1 BY MR. HOLLEMAN:  
2 Q We're talking about good faith standards, that's --  
3 MR. TOMLINSON: That's not a good faith standard,  
4 he's not --  
5 BY MR. HOLLEMAN:  
6 Q I'll take an answer.  
7 MR. TOMLINSON: If you know the answer to that  
8 question --  
9 A I don't know the answer.  
10 BY MR. HOLLEMAN:  
11 Q Well, isn't that what you did to Comerica?  
12 A I don't know the answer to that.  
13 Q Didn't Comerica have to get a cease and desist letter to  
14 stop you from publishing its web information --  
15 A I didn't receive --  
16 Q -- on vulnerabilities?  
17 A -- a cease and desist letter, Tumblr did.  
18 Q Who did?  
19 A Tumblr.  
20 Q Why did Tumblr receive it?  
21 A Because they said their rules are they're not allowed to  
22 post anything on phishing up on their site according to  
23 Comerica.  
24 Q And what had you done?  
25 A I demonstrated that they have a vulnerability on their

92

1 web site.  
2 Q And you posted that on the internet, didn't you?  
3 A I posted pictures of the vulnerability, not how to do  
4 it.  
5 Q And you were criticizing Comerica for doing that, for  
6 getting you to stop doing that, weren't you?  
7 A Yes, and so were most of the rest of the information  
8 security community.  
9 Q Because you thought Comerica should hire you to fix the  
10 problem, right?  
11 A No, that's not why.  
12 Q Then why would you publish on the internet  
13 vulnerabilities of Comerica's security system?  
14 A Because I actually have a Twitter site called  
15 XSSExploits and we collect and point out when flaws  
16 exist. We didn't do it for the monetary gain, it's more  
17 for the purpose of getting them to fix the problem.  
18 It's a public service, nothing for blackmail.  
19 Q But wouldn't it be more appropriate to call them up and  
20 explain to them that there's a vulnerability?  
21 A Yeah, when you've done it already and they ignore you?  
22 No.  
23 Q When did you talk to Comerica?  
24 A I've talked to Comerica multiple times, 2007, 2008,  
25 2006. They've been vulnerable for years. And so it was





109

1 specifically decreased because of the substituted next  
 2 evolution.  
 3 Q So the tactics of the criminals or fraudsters have  
 4 changed?  
 5 A They have changed. Where they've more  
 6 applied -- they've been kind of the same for a while,  
 7 but they now are going, hey, this works better. So yes.  
 8 Q If you look at page 9 of your report, still under  
 9 paragraph three, but the -- under number 3, but the one,  
 10 two, third paragraph under your numbered paragraph, one,  
 11 two, three, it says "Industry standards have developed,"  
 12 do you see where I've started there?  
 13 A Yes.  
 14 Q Whose standard -- you say industry standard, but where  
 15 does the industry standard come from whereby banks  
 16 quickly notify their customers of the imminent threat of  
 17 known phishing e-mails and potential phishing attacks  
 18 directed to the bank's customers?  
 19 A If we pull up even, I think, FFIEC, it comes under  
 20 alerts and responses. There's multiple  
 21 different -- other than -- I can even -- other than  
 22 FFIEC, FS-ISAC, which is a banking committee, has agreed  
 23 that that is the appropriate response. Also, the  
 24 Anti-Phishing Working Group has agreed that that is the  
 25 appropriate response. The Digital PhishNet, which is a

1 that phishing attack in the sense of warning its  
 2 customers, no.  
 3 Q In your opinion, was Comerica entitled to rely on  
 4 Mr. Maslowski at all to safeguard Experi-Metal's log-on  
 5 I.D., password, and token information?  
 6 A Let me just repeat that so I'm very clear.  
 7 MR. HOLLEMAN: Go ahead, or she can repeat it.  
 8 (Record repeated.)  
 9 A Do I believe Comerica is responsible is the question?  
 10 Or --  
 11 BY MR. HOLLEMAN:  
 12 Q No. I asked the question --  
 13 A The last part of it, please.  
 14 (Record repeated.)  
 15 A In my opinion, I believe that through possible like  
 16 education with -- you know, of the customers, you  
 17 increase the reliability, but in my opinion, I think  
 18 that most of the actual safeguard should be implemented  
 19 and taken care of mostly not by Keith, but actually on  
 20 the banking end.  
 21 BY MR. HOLLEMAN:  
 22 Q So could Comerica -- was Comerica entitled to rely in  
 23 any way on Mr. Maslowski safeguarding his information,  
 24 yes or no?  
 25 A No, they must assume that the system is already

110

1 Microsoft-sponsored consortium, has also decided that's  
 2 the most appropriate response. The NCFITA, which is the  
 3 National Cybercrime Training and Forensics Alliance,  
 4 which is an FBI organization, has decided that's the  
 5 responsible -- the response. The Secret Service, it's  
 6 on their web site. The FBI, it's on their web site. So  
 7 there are multiple places that you can sit there and  
 8 define that this is good standard, good practice.  
 9 Q Is there one particular way that is required by these --  
 10 A Of course --  
 11 Q -- by these industry standards to notify customers?  
 12 A We were discussing industry standards. Not all industry  
 13 standards, like we said, including -- they're mostly  
 14 guidelines and nothing is required, it's in general,  
 15 most of these things cannot be required of any -- an  
 16 institution due to -- so there's no requirements  
 17 respective of this -- this is not a requirement, no.  
 18 Q How many times does something have to occur for it to  
 19 become an industry standard?  
 20 A I guess that depends on the situation and what is the  
 21 occurrence.  
 22 Q Do you know if Comerica took any steps to warn its  
 23 customers on January 21 and 22 of the phishing attack,  
 24 21 and 22 of 2009 of the phishing attack?  
 25 A I was not aware of any steps to specifically address

1 compromised.  
 2 Q Look back at Exhibit Number 30, which is excerpts from  
 3 your book.  
 4 A Sure.  
 5 Q And if you turn to page six of the exhibit, but it says  
 6 page 80 down in the bottom right-hand corner.  
 7 A When you count six, you're counting from page six,  
 8 correct?  
 9 Q Page one. That page.  
 10 A Okay, thank you.  
 11 Q Do you see the shaded portion of text on that page?  
 12 A Um-hmm.  
 13 Q Is that something that you drafted or is that something  
 14 that you pulled in from somewhere else?  
 15 A Let me read it real quick. Well, the Moore law,  
 16 obviously, is what I pulled from Webopedia, I've  
 17 obviously cited, and the actual text itself of the prior  
 18 stuff is what I drafted, yes.  
 19 Q So you wrote "The most expensive security tools and  
 20 firewalls cannot stop such simply conceived attack  
 21 vectors because at the heart of every security problem,  
 22 there is a human," end quote?  
 23 A Yes, and the context of that is actually very specific.  
 24 Q Are you saying that that doesn't apply to -- generally  
 25 to information security problems?

