

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EXPERI-METAL INC.,  
a Michigan corporation,

Plaintiff,

vs.

Case No. 2:09-cv-14890

Hon. Patrick J. Duggan

COMERICA BANK,

Defendant.

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**JOINT PRE-TRIAL ORDER**

**1. JURISDICTION**

This court has diversity jurisdiction over this matter pursuant to 28 USC §1332. Jurisdiction is not contested by any party.

## **2. STATEMENT OF PLAINTIFF'S CLAIMS**

This case arises under Article 4A of the Uniform Commercial Code (UCC) which determines whether the risk of loss for unauthorized wire transfers falls upon the bank or its customers and is governed by Sections 440.4702 and 440.4703 of Michigan's Uniform Commercial Code – Funds Transfers.

Experi-Metal is a Michigan corporation which began banking with Comerica in September of 2000. Experi-Metal entered into written agreements with Comerica to allow Experi-Metal to access its bank accounts via the Internet using Comerica's on-line banking system. On November 21, 2003, Experi-Metal entered into an agreement with Comerica to allow Experi-Metal to make electronic wire transfers using Comerica's NetVision Wire Transfer Service. Comerica's NetVision Wire Transfer Service utilized a security process known as Digital Certificates as security to prevent unauthorized access to the customers' accounts.

Experi-Metal utilized Comerica's on-line banking services, including infrequent use of NetVision Wire Transfer Services from 2003 through May 1, 2008. Up until November 1, 2007, Valiena A. Allison (President) and Keith Maslowski (Controller), had authority to initiate wire transfers on behalf of Experi-Metal. On November 1, 2007, Valiena A. Allison entered into an agreement with Comerica changing the authorization, and designated only one authorized wire transfer initiator on behalf of Experi-Metal, Valiena A. Allison. On December 1, 2007, Experi-Metal entered into a written agreement with Comerica designating Valiena A. Allison and Gerald King as the only authorized wire transfer initiators. Mr. Maslowski was not authorized as a wire transfer initiator at any time after November 1, 2007.

In late April of 2008, Comerica advised Experi-Metal that beginning in May of 2008, on-line wire transfer services would be made through a system called TMC Web, rather than NetVision Wire Transfer Services. At the same time, Comerica advised Experi-Metal that the security technology would be enhanced to a Secure Token methodology. TMConnect Web became operational in May of 2008. Experi-Metal did not make any electronic wire transfers through the on-line banking system from July of 2007 through January 22, 2009; and never utilized TMConnect Web to make wire transfers. Incoming wire transfers were not received through TMC Web.

On January 22, 2009, Keith Maslowski received an email purporting to be from Comerica. The email appeared to Maslowski to be similar to previous emails that he had received from Comerica prompting him to click on a link specified in the email. After clicking on the link, Maslowski saw what appeared to him to be a Comerica web site and he was then prompted to enter his confidential banking information, believing that the information was going to Comerica. When he did this, Maslowski unknowingly gave an unauthorized third party access to Experi-Metal's accounts, and the third party fraudsters began wire transferring funds out of Experi-Metal's accounts to various accounts in Russia, Estonia, Scotland, Finland, and China as well as certain domestic accounts.

As a result, Experi-Metal's accounts were charged over \$561,000 for unauthorized wire transfers. The wire transfers on January 22, 2009 were not effective as payment orders of the

Company. Keith Maslowski was not authorized to initiate wire transfers on behalf of the Company as of January 22, 2009, and therefore the fraudsters should not have been able to initiate any of the wire transfers at issue in this case and the transfers should have been rejected. Additionally, the wire transfers were not effective as payment orders of the Company under MCLA §440.4702 in that Comerica did not accept the transfers in good faith and its conduct did not comport with industry or commercial standards applicable to the transactions, and those standards are reasonable standards intended to result in fair dealing and did not act in compliance with the written agreements between Comerica and Experi-Metal.

### **3. DEFENDANT'S CLAIMS**

Plaintiff Experi-Metal, Inc. gave its online banking login ID, PIN, password and account information to criminals in response to an internet "phishing" scam. The criminals then used that information to access Experi-Metal's accounts at Comerica Bank and transfer money out of them. That resulted in Experi-Metal losing \$561,399. The applicable law and the parties' agreements establish that Experi-Metal is responsible for that loss and not Comerica Bank.

The Court has already ruled that security procedure used by Comerica to accept Experi-Metal's wire transfer payment orders was commercially reasonable. Further, Comerica accepted the wire transfers made on January 22, 2009 in good faith, and, in accordance with the parties' agreements because Experi-Metal did not give Comerica any instructions that would have restricted Comerica's acceptance of the wire transfers sent on that day.

Specifically, Experi-Metal never revoked the authority it granted Keith Maslowski to initiate online wire transfers through the NetVision system, which was later renamed TM Connect Web. The written agreements Experi-Metal signed in 2007 do not relate to online banking. Further, as Experi-Metal's account Administrator, Ms. Allison had the power to review Mr. Maslowski's authorizations and change them unilaterally. She never did so.

Consistent with its agreements with Experi-Metal and with common practices for banks similar in size to Comerica, the wire transfers were automatically accepted by the system after they were authenticated with Mr. Maslowski's credentials. Comerica acted promptly to stop these transfers when it learned that Experi-Metal's account had been compromised. It acted honestly and fairly in doing so without any improper motive or opportunity for self-interest.

Further, Experi-Metal is not entitled to relief because it cannot prove that Comerica's actions caused its claimed damages. The unfortunate events of January 22, 2009 happened because Mr. Maslowski failed to safeguard Experi-Metal's security information, in breach of Experi-Metal's contract with Comerica. And those losses would not have occurred had Experi-Metal accepted Comerica's recommendation that Experi-Metal require a different user to approve all wires after one user initiated them.

**4. STIPULATION OF FACTS**

- A. Experi-Metal began banking with Comerica in September of 2000.
- B. On November 21, 2003, Experi-Metal's President, Valiena Allison, signed an agreement with Comerica for Experi-Metal to use Comerica's NetVision service for internet banking, including using NetVision to send online wire transfers.
- C. On January 22, 2009, Maslowski received an email that purported to be from Comerica.
- D. Experi-Metal's accounts were charged \$561,399 for wire transfers initiated by a third party on January 22, 2009
- E. None of the \$561,399 in damages that Experi-Metal is seeking consists of losses to any personal account of Ms. Allison.

**5. ISSUES OF FACT TO BE LITIGATED**

**PLAINTIFF'S ISSUES OF FACT TO BE LITIGATED**

- A. Was Keith Maslowski authorized to initiate electronic wire transfers by Experi-Metal as of January 22, 2009?
- B. Did Valiena A. Allison of Experi-Metal advise Experi-Metal's account officer, at Comerica, Claudia Cassa, in late October of 2007 that Keith Maslowski would no longer be authorized to initiate any wire transfers on behalf of Experi-Metal?
- C. Did Claudia Cassa advise Valiena A. Allison that she would prepare all necessary documents to eliminate authorization of Keith Maslowski as a wire transfer initiator on behalf of Experi-Metal?
- D. Did Claudia Cassa advise Valiena A. Allison that Valiena A. Allison was the only authorized initiator for wire transfers on behalf of Experi-Metal, either by phone, electronically or otherwise, as of November 1, 2007?
- E. Did Claudia Cassa advise Valiena A. Allison that Experi-Metal should have two authorized wire transfer initiators in late November of 2007?
- F. Did Valiena A. Allison advise Claudia Cassa that the only two authorized initiators of wire transfers would be Valiena A. Allison and Gerald King, as they were both owners of the Company?
- G. Did Claudia Cassa advise Valiena A. Allison that she would send Allison all of the documents needed by Comerica to establish that there would be two authorized initiators for wire transfers on behalf of Experi-Metal, Valiena A. Allison and Gerald King?
- H. Did Claudia Cassa then provide documentation for Valiena A. Allison to sign, authorizing those wire transfer initiators on behalf of Experi-Metal?
- I. Were the documents signed by Valiena A. Allison on behalf of Experi-Metal on December 1, 2007?
- J. Did Claudia Cassa confirm to Valiena A. Allison that Keith Maslowski was no longer an authorized initiator for wire transfers and that only Gerald King and Valiena A. Allison could initiate wire transfers, electronic or otherwise, and that Valiena A. Allison did not have to take any other actions to accomplish the authorizations?
- K. As of January 22, 2009, were Valiena A. Allison and Gerald King the only two wire transfer initiators authorized by Experi-Metal?

- L. Did Comerica breach its agreements with Experi-Metal by accepting wire transfers by the fraudster using Keith Maslowski's credentials?
- M. Was Comerica aware of phishing email being sent to its customers as of the morning of January 21, 2009 attempting to get those customers to provide confidential banking information? Did Comerica warn its customers of the email phishing attacks?
- N. Did Comerica fail to follow its own systems and procedures and policies by failing to warn its customers?
- O. Did Comerica establish and follow a policy with Experi-Metal prohibiting corporate book transfers from accounts with insufficient balances?
- P. Did Comerica permit the transfer of non-existent funds from the zero balance deposit account of Experi-Metal?
- Q. Did Comerica employees fail to take action with respect to the suspected fraud on a timely basis under industry and commercial standards?
- R. Did Comerica employees fail to follow directives and Comerica policies with respect to killing the phishing session and did Comerica employees violate their own internal policies as well as industry and commercial standards?
- S. Did Comerica fail to follow industry and commercial standards and were those standards reasonably intended to result in fair dealing?
- T. Did Comerica meet its burden of proving it accepted the wire transfers in good faith?
- U. Did Comerica's conduct comport with industry or commercial standards applicable to the transaction?
- V. Did Comerica comply with the security procedure when it accepted the wire transfer orders initiated with Maslowski's information on January 22, 2009?  
**[Comerica Objects]**
- W. Were those standards and similar standards intended to result in fair dealing?
- X. Did Experi-Metal rely on the representations, direction and advice of Comerica's officers?
- Y. Did Comerica fail to act in accordance with the agreements between the parties?
- Z. Damages.



## **DEFENDANT'S ISSUES OF FACT TO BE LITIGATED**

1. Did Experi-Metal provide any written agreements or instructions to Comerica that would have restricted Comerica's acceptance of payment orders creating overdrafts from its accounts?
2. Did Valiena Allison specifically ask Claudia Cassa to pay overdrafts on the Experi-Metal accounts, and know that Comerica had done so in the past?
3. Did Experi-Metal provide any written agreements or instructions to Comerica that would have restricted Comerica's acceptance of the payment orders that came from its accounts on January 22, 2009?
4. As Administrator of Experi-Metal's online banking account, was Valiena Allison able to review and change Keith Maslowski's authorization to initiate wires?
5. Did Experi-Metal fail to confirm any instructions it claims to have given to Comerica regarding online banking through NetVision/TM Connect Web?
6. At what time on January 22, 2009 did Comerica become aware of suspicious activity in Experi-Metal's accounts?
7. What is a reasonable amount of time for Comerica to react after receiving confirmation that the wires were fraudulent?
8. Did Comerica act dishonestly or with motive or opportunity to benefit itself when accepting wire transfers sent from Experi-Metal's accounts on January 22, 2009?
9. Does an unintentional employee mistake rise to the level of a lack of good faith on the part of Comerica?
10. What portion of Experi-Metal's claimed losses occurred before Comerica knew of and had a reasonable amount of time to react to the fraudulent wires?

**6. ISSUES OF LAW TO BE LITIGATED**

**A. PLAINTIFF'S ISSUES OF LAW**

- A. Were the wire transfers of January 22, 2009, effective orders of Experi-Metal under MCLA 440.4702(2)?
- B. Has Comerica met its burden of proving that it accepted the wire transfer orders in good faith and in compliance with industry or commercial standards of fair dealing?
- C. Did Comerica's conduct comport with industry or commercial standards applicable to the transactions?
- D. Were the standards reasonable standards intended to result in fair dealing?
- E. Did Comerica accept the wire transfer orders in accordance with instruction by Experi-Metal restricting acceptance of payment orders issued in the Company's name?
- F. Did Comerica act in accordance with the security procedures and agreements between the parties?
- G. Was Keith Maslowski authorized by Experi-Metal to initiate wire transfers on behalf of the Company on January 22, 2009?

**B. DEFENDANT'S ISSUES OF LAW**

- 1. Under MCL § 440.4702(2), did Comerica prove that it accepted the wire transfer orders in good faith, which is defined as "honesty in fact and the observance of reasonable commercial standards of fair dealing?"
- 2. Under MCL § 440.4702(2), did Comerica prove that it accepted the wire transfer orders in accordance with any written agreement or instruction by Experi-Metal restricting Comerica's acceptance of payment orders issued in Experi-Metal's name?
- 3. Did Experi-Metal establish it is entitled to any award of damages in this case?
- 4. Did Experi-Metal prove any violation of the statute caused its damages?

**7. EVIDENCE PROBLEMS LIKELY TO ARISE AT TRIAL**

Experi-Metal will object to evidence regarding insurance proceeds based on the collateral source rule.

Comerica will file a motion seeking to reverse the order of proofs, as it has the burden of establishing its affirmative defense.

Comerica will file a motion in limine seeking to exclude the testimony of Experi-Metal's expert, Lance James, as well as any evidence regarding whether Comerica had commercially reasonable security procedures in place, as this issue was decided in the Court's 7/8/2010 Opinion and Order (ECF 26).

Comerica anticipates that Experi-Metal will attempt to introduce improper parol evidence contradicting the terms of its agreements with Comerica.

Comerica will also likely object to the admission of Exhibits 15, 16, ~~64~~, and ~~69~~ at trial and reserves its right to object to other exhibits as necessary.

55, 62, 63, 72

**8. WITNESS LISTS**

**A. PLAINTIFF'S WITNESSES**

Plaintiff will call the following witnesses:

1. Valiena A. Alison
2. Keith Maslowski
3. Rita Pniewski, adverse party witness
4. Connie Jernigan, adverse party witness
5. Catherine Davis, adverse party witness
6. Milverta Ruff, adverse party witness
7. Shawn Murphy, adverse party witness
8. Lance James, expert witness

Plaintiff may call the following witnesses:

1. Denise Ling, adverse party witness
2. Connie Jernigan, adverse party witness
3. Debra S. Nosanchuk, adverse party witness
4. Claudia Cassa, adverse party witness
5. Anne R. Goldman, adverse party witness
6. K. Scott Vowels, adverse party witness
7. Any witnesses listed by Defendant
8. Rebuttal witnesses as necessary

**B. DEFENDANT'S WITNESSES**

Defendant will call the following witnesses:

1. Debra Nosanchuk
2. Milverta Ruff
3. Keith Maslowski adverse witness
4. Valiena Allison adverse witness
5. Denise Ling
6. Rita Pniewski
7. Connie Jernigan
8. Cathy Davis
9. Paul Carrubba, expert witness

Defendant may call the following witnesses:

1. Brenda Paige
2. Sean Murphy
3. Claudia Cassa
4. Annie Goldman
5. Scott Vowells
6. Eleanor Mitchell
7. Any witnesses listed by Plaintiff
8. Rebuttal witnesses as necessary
9. Any witnesses needed for the admissibility of exhibits

**9. EXHIBITS**

**A. PLAINTIFF'S EXHIBITS**

1. Treasury Management Services Agreement Comerica NetVision Wire Transfer dated 11/21/03
2. Treasury Management Services Implementation Worksheet Comerica NetVision – Contingency Authorizations and Security Procedures dated 11/25/03
3. Global Wire Transfer Authorization and Security Procedures and attached email dated 11/1/07
4. Declaration for Entering Wire Transfer Agreements and Designation of Authorized Agents dated 12/1/07
5. Wire Transfer Authority and Security Procedure with No Call Back
6. April 25, 2008 letter from Comerica to Valiena Allison
7. Operating Area Standard Information Sheet dated 9/14/06
8. Treasury Management Customer Requested dated 3/8/07
9. Emails dated January 22, 2009 from Keith Maslowski to [Fraud@INFOSECALERTS.com](mailto:Fraud@INFOSECALERTS.com)
10. Email from Comerica to Keith Maslowski dated 5/22/06 and attached email from Comerica to Keith Maslowski dated 5/23/06
11. Email from Comerica to Keith Maslowski dated 5/2/07 and attached email from Comerica to Keith Maslowski dated 5/21/07
12. Email from Comerica to Keith Maslowski dated 4/29/08
13. Signed Statement of Victimization dated 8/3/09
14. Letter from U.S. Department of Justice – FBI to Valiena Allison dated 3/4/09
15. Experi-Metal deposit information relating to deposit on January 22, 2009 and subsequent dates
16. Chart summarizing wire transfers and book transfers from Comerica's records
17. Comerica file information and related screen shots on Bates Stamp #s 1428-1431

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submit  
all  
PLM  
Exhibits*

*Exhibit  
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18. Treasury Management Service Implementation Worksheet dated 12/5/03
19. Declaration and agreement for opening and maintaining deposit accounts and Treasury Management Services dated 9/15/04
20. Email from Claudia Cassa to Valiena A. Allison dated 4/28/08
21. Email from Rita Pniewski to Catherine Davis dated 1/21/09 at 10:14 a.m. and email from Rita Pniewski to Anne Goldman dated 1/21/09
22. Email from Rita Pniewski to Catherine Davis dated 1/22/09 at 11:59 a.m.
23. Email from Denise Ling to Milverta Ruff dated 1/22/09 at 12:04 p.m.
24. Log from Intellect dated 1/22/09 – Comerica Bates Stamp #00116
25. Treasury Management Customer Request (Log) (Comerica Bates Stamp #01424
26. Email from Rita Pniewski to Connie Jernigan dated 1/22/09 at 1:38 p.m.
27. Emulation of wire transfer dated 1/22/09 at 11:47 a.m.
28. Email from Rita Pniewski to Kathy Davis dated 1/22/09 at 4:19 p.m.
29. Audit from Intellect on the Intellect System (Comerica Bates Stamp #01869-01870)
30. Treasury Management Internal Procedures Phishing Emails
31. Procedures of Treasury Management Department (Bates Stamp #03546-03550)
32. Procedures Treasury Management (Bates Stamp #03552 – 03556)
33. TMConnect Web User Guide
34. Claudia Cassa email to Catherine Davis and others dated 1/23/09 at 11:40 a.m.
35. Worksheet showing Experi-Metal's losses
36. Catherine Davis' Excel spreadsheet regarding phishing incident and Experi-Metal losses
37. Comerica 456 Report (Emulation) dated 1/23/09 at 9:11 a.m.
38. Email from Catherine Davis to Denise Ling dated 1/23/09 at 3:39 p.m.

39. Internet File Maintenance Log dated 1/22/09; Bates Stamp #01842-01848
40. Case File for Comerica transaction number 200900680
41. Case File for Comerica transaction number 200900656
42. Case File for Comerica transaction number 200900697
43. Case File for Comerica transaction number 200900667
44. Case File for Comerica transaction number 200900662
45. Case File for Comerica transaction number 200900678
46. Case File for Comerica transaction number 200900665
47. Case File for Comerica transaction number 200900653
48. Case File for Comerica transaction number 200900671
49. Case File for Comerica transaction number 200900668
50. Case File for Comerica transaction number 200900676
51. Case File for Comerica transaction number 200900666
52. Case File for Comerica transaction number 200900669
53. Global Funds Transfer Wire Room Policies
54. Damage Calculation prepared by Keith Maslowski
- ✓ 55. Expert Report of Lance James and attached exhibits *Motion Filed*
56. Email from Anne Goldman to various dated 1/21/09 at 12:14 p.m. (Bates Stamp # 3537)
57. Email from Anne Goldman to Catherine Davis, et al. dated 1/21/09 at 3:46 p.m.
58. Meeting announcement: "Coordinate/Update Phishing Procedures Between TM, EDM, Wire, Fraud, Quality" dated 1/23/09 (Comerica Bates Stamp #03515)
59. E-mail from Rita Pniewski to Donna Berger dated 1/21/09 at 10:50 a.m. (Bates Stamp # 3500 – 3501)
60. Summit '06 agenda, Scott Vowels as presenter



- 61. Phishing Defense and Response document by Scott Vowel
- 62. YASML e-mail regarding 2008 phishing e-mail
- 63. Report of Comerica phishing email from Miller Smiles.Co.UK reported 4/27/08
- 64. Comerica's Response and Amended Response to Plaintiff's First Request for Production of Documents
- 65. Defendant's Responses to Plaintiff's First Set of Interrogatories
- 66. Defendant's Answers to Plaintiff's Second Set of Interrogatories
- 67. Defendant's Responses to Plaintiff's Second Request for Production of Documents and Supplemental Request
- 68. Defendant's Responses to Plaintiff's Third Request for Production of Documents
- 69. Defendant's Responses to Plaintiff's Fourth Request for Production of Documents
- 70. All exhibits listed by Defendant
- 71. Rebuttal exhibits as necessary
- 72. All deposition exhibits
- 73. All affidavits filed in support of motions

**B. DEFENDANT'S EXHIBITS**

- 1. Treasury Management Services Agreement – Comerica NetVision Wire Transfer (Defendant's Dep. Ex. 18).
- 2. Treasury Management Services – Implementation Worksheet – Comerica NetVision – Contingency Authorizations and Security Procedures (Defendant's Dep. Ex. 5).
- 3. Treasury Management Services – Implementation Worksheet – Automated Information Reporting and Transaction Initiation Services: Comerica NetVision (Comerica 003313-3327).
- 4. Treasury Management Customer Request – January 9, 2004 (Comerica 00719-721).
- 4(a) Treasury Management Customer Request – January 20, 2004 (EMI000336).

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Exhibits  
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5. Treasury Management Customer Request – January 22, 2004 (Plaintiff's Dep. Ex. 42, Comerica 00747).
6. Treasury Management Customer Request – January 22, 2004 (Plaintiff's Dep. Ex. 43, Comerica 00748).
7. Operating Area Standard Information Sheet – January 26, 2004 (Comerica00164-165).
8. Treasury Management Customer Request – May 13, 2004 (Comerica 00797).
9. Declaration and Agreement for Operating and Maintaining Deposit Account(s) and Treasury Management Services (Plaintiff's Dep. Ex. 39, Comerica 00073-74).
10. Treasury Management Customer Request – March 15, 2005 (Comerica 00845-846).
11. Treasury Management Customer Request – March 17, 2005 (Comerica 00847).
12. Treasury Management Customer Request – June 6, 2005 (Comerica 00888-891).
13. Operating Area Standard Information Sheet – December 6, 2005 (Comerica01012-1013).
14. Treasury Management Customer Request – April 19, 2006 (Comerica 01049-1056).
15. Operating Area Standard Information Sheet – September 14, 2006 (Comerica01108-1109).
16. Treasury Management Customer Request – March 8, 2007 (Plaintiff's Dep. Ex. 7, Comerica 01148-1149).
17. Global Wire Transfer – Authorization and Security Procedures (Plaintiff's Dep. Ex. 4).
18. Declaration for Entering Wire Transfer Agreements and Designation of Authorized Agents (Plaintiff's Dep. Ex. 5)
19. Comerica Bank – Wire Transfer Authorization and Security Procedure with No Call Back (Defendant's Dep. Ex. 6, Comerica 00087-88).
20. Treasury Management Customer Request – April 11, 2008 (Comerica 01289-1290).
21. Letter dated April 25, 2008 from Comerica Bank to Valiena Allison enclosing List of all TMC Web user(s) and envelope(s) containing PINs for each TMC Web user (EMI000340-341).

22. Letter dated April 28, 2008 from Comerica Bank to Valiena Allison enclosing List of Users, Brochures, Secure Tokens and IDs for each TMC Web user (EMI000342-343)
23. Letter dated April 28, 2008 from Comerica Bank to Keith Maslowski (EMI000339).
24. Treasury Management Customer Request – July 23, 2008 (Comerica 01315).
25. Email dated January 21, 2009 at 10:50 am from Rita Pniewski to Donna Berger (Plaintiff's Dep. Ex. 60, Comerica 003500-3501)
26. Email dated January 21, 2009 at 12:14 pm from Annie Goldman to BBTMRS-All (Plaintiff's Dep. Ex. 62, Comerica 003537-3545)
27. Email dated January 21, 2009 at 4:02 pm from Corporate News to Comerica Colleagues (Plaintiff's Dep. Ex. 67, Comerica 003506)
28. Email dated January 21, 2009 at 4:45 pm from Terry Ennis to BBTMSMISales, TMSWDSales, TXSITMSTMO, BBTMRS-Relationship Specialists (Plaintiff's Dep. Ex. 68, Comerica 003507)
29. Email dated January 22, 2009 at 9:31 am from Rita Pniewski to Scott Richard, Stephanie Boehler, Matt Elsey, Danna Mapes, EnglishJ, KlugJ, OwenM, Millere, DantonK, Nicole Megale, Colleen Holder, Benita Liggans, Patricia Schrand, Rita Humbach, Shari Dybes and Ed Dallwein (Plaintiff's Dep. Ex. 70, Comerica 003510-3511)
- 29(a) Treasury Management Customer Request – January 22, 2009 (Plaintiff's Dep. Ex. 41, Comerica 00115)
30. Comerica Telephone Management System – Extension Detail Report (Comerica 003516-3520).
31. Treasury Management Customer Request – January 26, 2009 (Plaintiff's Dep. Ex. 19, Comerica 01424-1427)
32. Comerica Cash Management System – Money Transfer Transaction Report – (Plaintiff's Dep. Ex. 20, Comerica 01489-1516).
33. Email dated January 22, 2009 at 11:59 am from Rita Pniewski to Catherine Davis (Plaintiff's Dep. Ex. 14, Comerica 00092)
34. Comerica Telephone Management System – Extension Detail Report: Denise Ling (Plaintiff's Dep. Ex. 44, Comerica 01584-1589).
35. Email dated January 22, 2009 at 12:04 pm from Denise Ling to Milverta Ruff (Plaintiff's Dep. Ex. 17, Comerica 00093).

36. File Maintenance Log, File Account Record Types (Plaintiff's Dep. Ex. 27, Comerica 01842-1848).
37. Email dated January 22, 2009 at 12:48 pm from Rita Pniewski to Catherine Davis (Comerica 01850)
38. Customer Reports Unauthorized Wire /ACH Activity (Plaintiff's Dep. Ex. 63, Comerica 003546-3556).
39. Email dated January 22, 2009 at 1:24 pm from Keith Maslowski to FRAUD@INFOSECALERTS.com (Defendant's Dep. Ex. 19).
40. Email dated January 22, 2009 at 1:34 pm from Rita Pniewski to Claudia Cassa (Comerica 01851).
41. Email dated January 22, 2009 at 1:38 pm from Rita Pniewski to Connie Jernigan (Plaintiff's Dep. Ex. 40, Comerica 00094-95).
42. CJ Audit.Txt Report (Plaintiff's Dep. Ex. 28, Comerica 01869-71).
43. Email dated January 23, 2009 at 3:39 pm from Catherine Davis to Denise Ling (Comerica 00580-581).
44. Experi-Metal 456 Report (Plaintiff's Dep. Ex. 25, Comerica 01444-1476).
45. Spreadsheet: Experi-Metal Worksheet (Plaintiff's Dep. Ex. 23, Comerica 00487).
46. Spreadsheet: Rock Phish Attach – January 21, 2009 (Plaintiff's Dep. Ex. 32, Comerica 02106-2109).
47. List of Experi-Metal Fraudulent Wires and Transfers (EMI000344-345).
48. Email dated February 4, 2009 at 11:20 am from Richard Bagosy to Catherine Davis (Comerica 00600—601).
49. Treasury Management Customer Request – March 4, 2009 (Comerica 01552—1556)
50. Signed Statement of Victimization – Experi-Metal – Valiena Allison -August 3, 2009 (Defendant's Dep. Ex 14)
51. Treasury Management Services – Master Agreement – August 2002 (Defendant's Dep. Ex. 11, Comerica 01653-1685)
52. Comerica's NetVision User Guide – Version 3.7 – May 2003 (Comerica 01773-1801)
53. Treasury Management Connect Web – User Guide – December 2008 (Plaintiff's Dep. Ex. 10, Comerica 01727-1766)

54. Business and Personal Deposit Account Contract (Comerica 03104-3122), Amendment to Comerica's Business and Personal Deposit Account Contract (Comerica 03100-3103)
55. Experi-Metal, Inc. – Check Register – Standard (Comerica 01984-2010)
56. Screen Print: Employee Maintenance (EMI 000001)
- ✓ 57. Chubb Group of Insurance Companies – Payment Summary – Check in the amount of \$10,000 (EMI000003)
58. Section 14: Electronic Communication Policy (EMI000224-227)
59. Comerica Bank – OBP Code Review Report (Comerica 003557-3558)
60. Report of Expert Witness - Paul A. Carrubba.
- ✓ 61. Demonstrative exhibit: Wires Accepted on January 22, 2009
- ✓ 62. Demonstrative exhibit: Wire Room Response
- ✓ 63. Experi-Metal's discovery responses
- ✓ 64. All exhibits listed by Plaintiff
- ✓ 65. Rebuttal and impeachment exhibits, as necessary

**10. DAMAGES**

Plaintiff's losses from its accounts are \$561,399.00.

Comerica does not believe Plaintiff is entitled to any award of damages

**11. TRIAL**

A. Non-jury trial

B. Estimated length of trial

1. Plaintiff's proofs 2 ½ - 3 days
2. Defendant's proofs 2 days

## **12. SETTLEMENT**

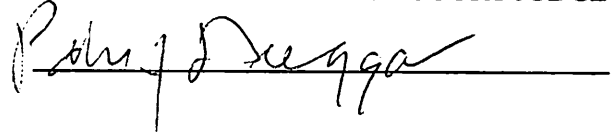
Through counsel, Experi-Metal and Comerica have conferred and considered the possibility of settlement. The most recent discussions occurred on January 18, 2011 via telephone. There have not been any further negotiations, and there are not currently any plans for future discussions.



**13. FILING OF TRIAL BRIEFS, FINDINGS, AND INSTRUCTIONS**

Trial briefs must be filed on the first day of trial. Proposed findings of fact and conclusions of law must be filed before the last day of trial.

UNITED STATES DISTRICT COURT JUDGE



Robert J. Deegan

APPROVED FOR ENTRY:

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