

Jonathon James

January 13, 2011

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UNITED STATES DISTRICT COURT  
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,  
a foreign banking organization,

Defendant.

DEPONENT: JONATHON LANCE JAMES  
DATE: Thursday, January 13, 2011  
TIME: 9:46 a.m.  
LOCATION: Driggers, Schultz & Herbst, P.C.  
2600 W. Big Beaver Road, Suite 550  
Troy, Michigan  
REPORTER: Elizabeth G. LaBarge, CSR-4467

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APPEARANCES:

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Also Present: Ms. Valiena Allison  
Mr. Paul Carrubba  
Ms. Shirley Halas

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I N D E X

WITNESS PAGE

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(Exhibits are attached hereto)

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1 Thursday, January 13, 2011  
2 Troy, Michigan  
3 9:46 a.m.

4 \* \* \*

5 J O N A T H O N L A N C E J A M E S  
6 having been first duly sworn, was examined and  
7 testified as follows:

8 E X A M I N A T I O N

9 BY MR. HOLLEMAN:

10 Q Mr. James, good morning.

11 A Good morning.

12 Q Have you ever been deposed before?

13 A Technically, but not related to an expert witness case.

14 Q What do you mean, technically, what does that mean?

15 A I was deposed in a lawsuit years ago with my wife, my  
16 ex-wife had a lawsuit that I was deposed as the husband.

17 Q What kind of lawsuit was that?

18 A It was a medical malpractice.

19 Q And were you a party to that lawsuit, were you a  
20 plaintiff or a defendant in that lawsuit?

21 A At the time she was my wife, she was the plaintiff.

22 Q And so you were called as a witness --

23 A Yeah, a witness.

24 Q -- is that correct?

25 A Someone who knew her, yes.

1 Q Where was that case pending?

2 A This was in San Diego.

3 Q Was it in state court or federal court?

4 A It was an adjudication, so I don't know all the -- I was  
5 younger, I don't even recall most of the details except  
6 for I believe it was just a civil case, probably in  
7 state. It wasn't in federal.

8 Q And was it your wife suing for injuries and --

9 A Yes.

10 Q -- and you testified as a witness in that trial or --

11 A Yes, it was in front of the judge, yes. It was an  
12 adjudication, so -- or arbitration, sorry.

13 Q And I'm sorry, so was there a deposition that took place  
14 or did you -- let me back up.

15 Did you testify at a deposition?

16 A I believe I -- I remember testifying at a deposition,  
17 yes.

18 Q And did you then later testify at trial?

19 A Yes.

20 Q Okay. And do you recall how many years ago that was?

21 A Years ago. I was probably 22, 21 years old.

22 Q And how old are you now?

23 A I'm 32.

24 Q So for purposes of a deposition, I'm here to ask you  
25 questions, which you've obviously sworn yourself to tell

1 the truth to those questions.

2 A Um-hmm.

3 Q If you don't understand my question, feel free to ask me  
4 to rephrase it.

5 A Okay.

6 Q If you don't ask me to rephrase it, I'm going to assume  
7 you understand it, is that fair?

8 A That's very fair.

9 Q Let's just make sure we get your full name on the  
10 record, please?

11 A Jonathon Lance James.

12 Q And your current address, please?

13 A Is 1016 Howell Mill Road, Apartment 2602, Atlanta  
14 Georgia 30318.

15 Q Let's look at -- you have your report in front of you,  
16 or a report in front of you. Does that report have any  
17 handwritten notes on it at all?

18 A Let me double-check if this one has -- I don't believe  
19 so, but let me double-check. On this copy it appears  
20 not to be.

21 Q Okay. We're going to -- I'm going to give you a copy  
22 for purposes of the deposition that we'll use, although  
23 that looks -- it's probably about right.

24 A Probably the same.

25 MR. HOLLEMAN: We're going to label this

1 Defendant's -- I think we're at 22. I can't remember.  
2 I can't remember, but why don't we skip up and we'll say  
3 Defendant's 25.

4 A I was going to joke and say 22-F or --.

5 (Defendant's Exhibit 25 was marked for  
6 identification.)

7 BY MR. HOLLEMAN:

8 Q Mr. James, I've handed to you what we've labeled --

9 MR. HOLLEMAN: Do you want one?

10 MR. TOMLINSON: Sure. You can never have too many.

11 BY MR. HOLLEMAN:

12 Q -- Deposition Exhibit 25. Do you recognize that  
13 document?

14 A Yes, I recognize the document.

15 Q What is it?

16 A This is a copy of my report and it's also a copy of the  
17 FFIEC examination handbook covering both, I think,  
18 authentication, e-banking, mainly e-banking components.  
19 Let me double-check. Yeah, this is a part of the actual  
20 web site off of the FDIC. So yes, I'm -- I recognize  
21 the documents.

22 Q The report has some exhibits to it, correct?

23 A Correct.

24 Q And those are exhibits that you attached to your report,  
25 is that correct?



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.

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?

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.

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?

- 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.

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-l-l-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?



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:

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.

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 unsuspended, 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,

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?

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?

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?



- 1 A External threat and fraud intelligence management.
- 2 Q Did they terminate that relationship with you?
- 3 A In 2008 when they had troubles in the -- banking  
4 troubles, yes, they terminated that relationship in  
5 2008.
- 6 Q Why did they terminate it?
- 7 A Due to the fact they had no budget at the time because  
8 of the mergers.
- 9 Q What kind of engagement were you doing for  
10 TD Ameritrade?
- 11 A TD Ameritrade was also a fraud intelligence and external  
12 threat management role.
- 13 Q Was that relationship terminated?
- 14 A It was also terminated in 2008. Or 2009, sorry.
- 15 Q Did TD Ameritrade terminate that relationship?
- 16 A Yes, they did.
- 17 Q Why?
- 18 A There was no said reason at the time, but they had  
19 changed hands and CSO and it may have just been an  
20 internal decision, I'm not sure.
- 21 Q What type of technical advice were you giving or working  
22 with Citigroup on?
- 23 A The same as before, fraud intelligence and external  
24 threat intelligence.
- 25 Q And that relationship ended in 2005, is that correct?

1 A No, that relationship ended in the beginning of 2008.

2 Q And why was that relationship terminated?

3 A They decided to -- they were going with RSA for that  
4 year, so they were going to utilize their services.

5 Q What do you mean, going with RSA?

6 A They had a budget for one or the other, so they wanted  
7 to try out RSA, which is a company that offers fraud  
8 intelligence.

9 Q Is that the same company that offers tokens?

10 A Yes.

11 Q Did the company go to using token technology in 2008?

12 A No, they were -- their interest was just for the fraud  
13 management.

14 Q What kind of engagement did you have with Charles  
15 Schwab?

16 A It was an intelligence service, fraud intelligence  
17 service.

18 Q And was that relationship terminated at some point?

19 A Yes, I don't recall the year, but it was sometime  
20 between 2008 and 2009.

21 Q Why was it terminated?

22 A They had also gone with RSA.

23 Q Did any of the entities you've listed tell you at any  
24 time that they were dissatisfied with the services you  
25 were providing?

1 A None of them had claimed any dissatisfaction.

2 Q Did they pay you everything that you billed them?

3 A Yes.

4 Q Looking at the next item on your resume -- let me stay  
5 there a minute. It says technical advisor to law  
6 enforcement also. What law enforcement --

7 MR. TOMLINSON: That's on Exhibit -- what exhibit  
8 are you referencing, B?

9 MR. HOLLEMAN: I'm sorry, I'm back on his resume,  
10 which is Exhibit B.

11 BY MR. HOLLEMAN:

12 Q You list technical advisor to law enforcement and  
13 intelligence agencies.

14 A Yes.

15 Q What entities are you referring to there?

16 A FBI. Oceanside Police Department, which is located in  
17 San Diego. The Hong Kong Police Department.  
18 German -- the German Deutsch -- the police department,  
19 what do they call it? They have multiple names, but  
20 most of their online crimes. Some of it is -- some of  
21 them get -- it's a very long list. But CIA is also on  
22 that list.

23 Q Do you have any contractual relationships with any law  
24 enforcement and intelligence agencies for your services?

25 A Due to confidentiality and that relationship I have with

1           some of those groups, I'm not at liberty to answer.

2           MR. TOMLINSON: There's some provisions in his  
3           agreements that don't permit him to disclose it.

4 BY MR. HOLLEMAN:

5 Q       Without stating the names of the entities that you have  
6       agreements with, do you have current agreements with any  
7       law enforcement and intelligence agencies whereby  
8       they've retained you to perform services for them?

9 A       Yes.

10 Q      And your testimony is you can't tell me which ones  
11      because of a confidentiality provision in them?

12 A      Yes.

13 Q      How many?

14 A      At this time, I would say two.

15 Q      And it says -- the last area there, it says 2003 to  
16      present, so you have two contractual relationships  
17      currently with law enforcement and intelligence  
18      agencies.

19           Do you have any contractual relationships right now  
20      with any financial institutions under which you are a  
21      technical advisor?

22 A      Not at this time.

23 Q      The next item on your resume lists Bakbone,  
24      B-a-k-b-o-n-e, Software. Is that spelled right?

25 A      Yep.

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.

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.



- 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-l-l-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 --

- 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

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," "The 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"?

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?

1 A No.

2 Q Have you ever worked for the Federal Reserve Board?

3 A No.

4 Q Have you ever applied the Gramm-Leach-Bliley Act  
5 guidelines to any bank as a regulator or as a bank  
6 employee?

7 A No.

8 Q On the second page of your report you talk about  
9 reasonableness of industry standards, do you see that?

10 A Yes.

11 Q You say that "The Guidelines --" and go on in the first  
12 sentence "-- are reasonable because the GLB is federal  
13 law and the development of such guidelines was a  
14 requirement of such law," do you see that?

15 A Yes.

16 Q Is every federal law reasonable?

17 MR. TOMLINSON: I'm going to object as he's not  
18 here as an expert on every federal law. He's stated his  
19 conclusions in his report.

20 I don't know if you have an opinion as to whether  
21 every federal -- I don't know that there's any  
22 foundation for him to comment on every federal law,  
23 unless you know every federal law.

24 THE WITNESS: I don't.

25 MR. TOMLINSON: Okay.

1 BY MR. HOLLEMAN:

2 Q So just the fact that guidelines are developed pursuant  
3 to federal law doesn't make them reasonable, does it?

4 A I find that this is a subjective -- it's not an  
5 objective answer. So subjectively, as my opinion goes,  
6 I believe that we tend to try to trust our Government to  
7 make our laws reasonable and I think -- we have  
8 committees out there that inspect these laws and look at  
9 the reasonability of our laws, and I think that across  
10 the board most people have not disagreed that GLB is  
11 unreasonable due to the fact that most people know what  
12 that law is that are involved in it and they conduct  
13 that law, so I believe that everybody agrees that in a  
14 general sense, that it is a reasonable law, and I too  
15 tend to agree that this is reasonable.

16 Q But there's room for reasonable minds to disagree on  
17 that point, isn't there?

18 MR. TOMLINSON: If you know.

19 A If I know. If -- that -- the way I look at that  
20 question and the answer to it is that these go under  
21 votes, these go under committees, these go under -- it's  
22 not a document that was written overnight, and they are  
23 usually -- these committees are usually filled around by  
24 people of very reasonable minds or are expected to, and  
25 they're voted upon by a majority in the sense that

1 they're something reasonable. If people disagreed with  
2 it, enough people, then we would probably have less  
3 reasonability on that and people could say that.

4 It isn't a really unreasonable stance, I mean, it's  
5 just basically a set of guidelines that say this is a  
6 very reasonable approach and a very -- and it's actually  
7 quite conservative, so it isn't a liberal like  
8 overreaching approach, it's literally a conservative  
9 approach to some guidelines that could help mitigate  
10 risk, unnecessary risk.

11 BY MR. HOLLEMAN:

12 Q We're talking about the guidelines establishing  
13 standards for safeguarding customer information, right?

14 A Yes.

15 Q Those were prepared pursuant to the Gramm-Leach-Bliley  
16 Act, right?

17 A Yes.

18 Q They don't apply to a bank's relationship with  
19 commercial customers like Experi-Metal, do they?

20 A Can you rephrase the question?

21 MR. HOLLEMAN: Could you read it back, please?

22 MR. TOMLINSON: I think he said he doesn't  
23 understand what you're saying.

24 MR. HOLLEMAN: That's fine.

25 (Record repeated.)

1 A Can you rephrase it in a way that -- you're trying to  
2 ask me which part applies and which doesn't. It's an  
3 entire guideline, there are pieces that may considerably  
4 apply. So I'm trying to understand what you're saying.

5 BY MR. HOLLEMAN:

6 Q My question is do the guidelines establishing standards  
7 for safeguarding customer information pursuant to the  
8 Gramm-Leach-Bliley Act apply to a bank's relationship to  
9 its commercial customers?

10 MR. TOMLINSON: And are you limiting it just to the  
11 GLB or are you including the FFIEC handbook which was  
12 developed as part of it?

13 MR. HOLLEMAN: First of all, he can ask clarifying  
14 questions if he wants to.

15 MR. TOMLINSON: I think he has.

16 MR. HOLLEMAN: Well, you're interrupting my  
17 examination of him, so if he doesn't understand my  
18 question, that's fine, but he doesn't need to be coached  
19 and I'd --

20 MR. TOMLINSON: I'm not coaching him.

21 MR. HOLLEMAN: -- ask that you stop.

22 A Are you referring to the GLB specifically?

23 BY MR. HOLLEMAN:

24 Q I am referring to the guidelines establishing -- well,  
25 let's look at your report.



1 A Okay.

2 Q Go back to page one. You cite -- tell me what you cite  
3 to establish the industry standards that you rely on?

4 A Okay. Are you talking about paragraph one, are we  
5 talking about specifically GLB or what I cite for FFIEC?

6 Q You tell me what you cite in your report for the  
7 industry standards that apply to the relationship  
8 between Comerica and Experi-Metal?

9 A The industry standards -- okay. What I cite is,  
10 obviously, the federal -- I don't -- it's not going to  
11 be on this exhibit from based on what I'm  
12 referring -- like there's -- I'd like to -- actually, if  
13 you're talking about that, I'd like to go into detail of  
14 the actual guidelines of what I would cite. Because  
15 your question was very kind of vague, I'm trying to  
16 understand exactly what you want me to cite.

17 Q I want you to tell me -- this is your report, page one  
18 of your report we're looking at, right?

19 A Right.

20 Q And you put a heading there -- you drafted this?

21 A Yes.

22 Q You put a heading Industry Standards, do you see that?

23 A Yes.

24 Q And you said "The industry standards that apply to the  
25 bank are derived from several sources," right?

1 A Yes.

2 Q "Including --"

3 A Because they're FDIC, yes.

4 Q Okay. Including, one, the Gramm-Leach-Bliley Act of  
5 1999, right?

6 A Correct.

7 Q Two, the Federal Financial Institution Examination  
8 Council's Information Technology Examination Handbook,  
9 right?

10 A Yes.

11 Q Do you list anything else in that area in this paragraph  
12 that you rely on to establish industry standards?

13 A No.

14 Q So now let's take the first, the Gramm-Leach-Bliley Act  
15 of 1999. Section 501 -- these are your words that you  
16 typed. Section 501(b) of GLB required the council's  
17 Information Technology Examination Handbook, right? Oh,  
18 I'm sorry, I didn't read that --

19 A Yeah, I'm sitting there --

20 Q Yeah. "Section 501(b) of GLB required the development  
21 of Interagency Guidelines Establishing Standards for  
22 Safeguarding Customer Information," right?

23 A Correct.

24 Q Do those guidelines establishing standards for  
25 safeguarding customer information apply to a commercial

1 relationship such as the relationship between  
2 Experi-Metal and Comerica?

3 A I'm going to have to say that I'm going to have to  
4 conduct further research to answer that question.

5 Q You don't know as you sit here today, do you?

6 A Not at this moment, no. I -- okay.

7 Q Have you ever looked at Regulation S-P, capital S-P?

8 A No.

9 Q Have you ever looked at 17 Code of Federal Regulations  
10 Section 248.1?

11 A No.

12 Q So you wouldn't recognize -- do you know if  
13 Regulation S-P consists of the guidelines establishing  
14 standards for safeguarding customer information?

15 A I wouldn't know at this time, not without looking at  
16 these.

17 Q So in preparation of your report, you didn't consult the  
18 Federal Regulations in any way?

19 A I consulted the GLB Section 501(b) and I consulted the  
20 FFIEC examination handbook.

21 Q You did consult Section 501(b)?

22 A Yes.

23 Q Do you know what the --

24 MR. HOLLEMAN: Let's label this, please.

25 (Defendant's Exhibit 28 was marked for

1 identification.)

2 BY MR. HOLLEMAN:

3 Q I've handed to you a document that's labeled 15 USCA  
4 Section 6801 at the top, do you see that?

5 A I do.

6 Q It has subsections (a) and (b), do you see that?

7 A I do.

8 Q Have you ever seen this before?

9 A Give me time to read it.

10 Q Sure.

11 A Thanks.

12 Q You only have to -- the statute is subsections (a) and  
13 (b), the rest of it is --

14 MR. TOMLINSON: You're asking if he read the  
15 statute itself?

16 MR. HOLLEMAN: Yep.

17 MR. TOMLINSON: Okay.

18 A I have not. Not this specific statute, no.

19 BY MR. HOLLEMAN:

20 Q Let's look at the statute subsection (a). I wasn't  
21 quite finished with it.

22 A Okay, sorry.

23 Q Do you see that subsection (a) says that "It is the  
24 policy of Congress that each financial institution has  
25 an affirmative and continuing obligation to respect the

1           privacy of its customers and to protect the security and  
2           confidentiality of those customers' nonpublic personal  
3           information," do you see that?

4           A     I do.

5           Q     Do you know how Congress has defined customers'  
6           nonpublic personal information?

7           A     I wouldn't say that I know exactly how Congress has  
8           defined it.

9           Q     Okay. Let's look.

10                         (Defendant's Exhibit 29 was marked for  
11                         identification.)

12           BY MR. HOLLEMAN:

13           Q     This document is labeled 15 USCA Section 6809, do you  
14           see that?

15           A     Yes.

16           Q     And the one before it was 15 USC Section 6801, right?

17           A     Got it.

18           Q     This one is a definitional section of the statute,  
19           right? That's what it says?

20                         MR. TOMLINSON: If you know. I object to lack of  
21           foundation.

22                         MR. HOLLEMAN: That's fine.

23           BY MR. HOLLEMAN:

24           Q     That's what it says, right?

25                         MR. TOMLINSON: You're asking him what the document

1 says?

2 MR. HOLLEMAN: Yep.

3 A I'm looking for the word "definitions." Yes.

4 BY MR. HOLLEMAN:

5 Q Turn to the second page, please. Do you see where it  
6 says subsection (4), nonpublic personal information?

7 A Yes.

8 Q Could you read that under capital (A)?

9 A Yes. "The term 'nonpublic personal information'  
10 means personally identifiable financial  
11 information provided by a --" continue, I assume?

12 Q Um-hmm.

13 A "-- provided by a consumer to a financial institution;  
14 resulting from any transaction with the consumer or any  
15 service performed for the consumer; or otherwise  
16 obtained by the financial institution."

17 Q Have you ever looked at that definition before?

18 A I am actually familiar with this, not this specific  
19 document, though.

20 Q You're not familiar with the statute, but you've heard  
21 the definition before?

22 A Yes, it's -- yes, it's something that has come up.

23 Q And do you know how a consumer is defined?

24 A I will let you educate me.

25 Q You don't know?

1 A I do not -- I do not know based on congressional  
2 standards.

3 Q Let's turn the page to subsection (9). Do you see where  
4 it says "Consumer"?

5 A Yep.

6 Q And could you read that for us, please?

7 A "The term 'consumer' means an individual who obtains,  
8 from a financial institution, financial products or  
9 services which are to be used for primarily -- used  
10 primarily for personal, family, or household purposes,  
11 and also means the legal representative of such an  
12 individual."

13 Q So the term "consumer" does not include a business, does  
14 it, according to the statute?

15 A It does -- can you repeat your question? I'm sorry.

16 Q The term "consumer" doesn't include a business, does it?

17 A It does not include, is that what you said?

18 Q Correct.

19 A Yes, it's personal.

20 Q So based on what we've looked at, does that change or  
21 does that help you answer the question of whether the  
22 Gramm-Leach-Bliley Act applies to a business or  
23 commercial relationship?

24 A It doesn't change my answer that I'm not necessarily  
25 prepared to answer that due to the fact that you've

1 defined consumer, but you have not defined commercial  
2 entity and the relationship that Congress has with that  
3 based on these laws.

4 Q But your testimony hasn't changed that you didn't look  
5 at these statutes when you prepared your report, did  
6 you?

7 A My testimony 53.

8 Has not included these statutes, no, so I did not.

9 Q You'd agree with me that Experi-Metal is a business,  
10 isn't it?

11 A I do agree.

12 Q Let's look at what you did attach to your report.

13 A Okay.

14 Q We're going to go to your Exhibit 2, which is the FFIEC  
15 Information Technology Examination Handbook, okay?

16 A Okay.

17 Q Now, this is difficult because you've got a bunch of  
18 pages here that aren't numbered, but I've numbered them,  
19 and unfortunately, the only way you're going to be able  
20 to follow me is if you start at the front and start  
21 counting to a certain page that I don't have for you  
22 yet, so we're going to back up for a minute.

23 But the handbook, the FFIEC information technology  
24 handbook, that is based on GLBA standards, is that your  
25 testimony?



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

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.