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*Attorneys for Third-Party Defendant, Appellant,
and Cross-Appellee Comerica Bank*

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. DA 20-0362

<p>MASTERS GROUP INTERNATIONAL, INC.,</p> <p>Third-Party Plaintiff, Appellee, and Cross-Appellant,</p> <p>v.</p> <p>COMERICA BANK,</p> <p>Third-Party Defendant, Appellant, and Cross-Appellee.</p>	<p>Declaration of James H. Goetz in Support of Appellant’s Motion for Leave to File Over-Length Brief</p>
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James H. Goetz states the following:

1. I have been retained to serve as lead appellate attorney in the above-captioned case. I have been working for two months reviewing the extensive record, researching, drafting, and working with experienced trial and appellate counsel (including Joseph Shannon and Jane Derse Quasarano, of Detroit, MI).

2. I was admitted to practice law in Montana in 1969. Over the last 51 years I have prepared numerous appellate briefs. I thus feel I am in a good position to judge relative complexity of a case and whether there is a need for a brief in excess of 10,000 words. Specifically, Appellant requests that the Court allow 15,000 words for its opening brief. Masters opposes this motion, stating, through counsel Strauch: “We don’t see the case as that complex or the issues so numerous that the bank can’t make its argument in 10,000 words. Please note in your motion that we oppose and intend to submit a response to the court.” Email, Strauch to Shannon, September 8, 2020.

3. In my judgment, extraordinary justification, as required by Rule 12(10), M.R.App.P., exists for this request. The present appeal cannot be presented adequately in the opening Appellant’s brief within the 10,000 words allotted by Rule 11(4)(a), M.R.App.P.

4. The district court, after an eleven-day trial, entered judgment awarding Masters over \$10 million in compensatory damages, and over \$16

million in attorney's fees and prejudgment interest. The trial transcript in that case is 2,062 pages. The size of the damage awards, as well as the number of issues, warrant close scrutiny.

5. Serious and complicated legal questions are involved on the main issue of breach of contract, including:

(a) whether the court erred in failing to apply the Michigan statute of frauds applicable to financial institutions, MCL § 566.132(2);

(b) whether there was a contract formed in the absence of the signature of one of the Guarantors; and

(c) whether Michigan law on waiver was erroneously applied, particularly Michigan's clear and convincing evidence standard.

6. Additional complicated questions are involved on damages, including:

(a) whether, in the absence of regular contract damages such as lost profits, the court erred in awarding over \$10 million in what he called "seizure damages;" and

(b) whether the court erred in failing to deduct the net benefits accruing to Masters and Guarantors from the damage award—specifically, in failing to deduct the loan amount owed by Masters to Comerica.

7. On the issue of breach of contract and damages, the district court issued its initial decision on November 8, 2019. That 37-page decision is

complicated. Dkt. 602. Further, there are two or three summary judgment opinions that are implicated in this appeal.

8. Compounding the complexity, there are separate issues regarding attorney's fees and interest. On these issues, the court awarded approximately \$16 million. Among the complex issues regarding attorney's fees and interest are:

(a) whether the court erred in applying Montana law to the attorney's fees issue and enforcing Montana's reciprocity provision;

(b) whether the court's award of attorney's fees on a contingent basis was barred by the law of the case because Masters' previous appeal of that issue was abandoned; and

(c) whether the court erred in applying subsection (7) of Michigan's prejudgment interest law, MCL § 600.6013, rather than the general prejudgment interest provision of subsection (8).

The court issued a separate 35-page opinion on attorney's fees/prejudgment interest. Dkt. 629. In addition, the court issued a separate opinion on Rule 59, M.R.Civ.P. motions. Dkts. 329, 553, 569, 651.

9. I served in the same capacity in the previous appeal in this case, *Masters Group Intern., Inc. v. Comerica Bank* ("*Comerica P*"), 2015 MT 192, 380 Mont. 1, 352 P.3d 1101. In that earlier case, I requested, on behalf of Appellant, an expansion of the word count limit to 15,000 words. This Court denied 15,000

words, but granted an expansion to 12,500. For convenience of the Court, that order is attached hereto as Exhibit A. In my judgment, the need for an expansion of the word count is as compelling on this appeal as it was in the prior appeal. For example, in *Comerica I*, this Court said:

We face considerable challenges in addressing the parties' arguments. On appeal, the parties scarcely address the scope of the choice-of-law provision, which is understandable given the word-number constraints and the number of issues involved in this appeal.

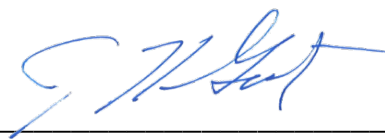
Comerica I, ¶ 60.

10. In sum, because of the complexities in this case, I respectfully submit that the issues cannot be adequately briefed in the allotted limit of 10,000 words, and respectfully request the Court extend that limit to 15,000 words for Appellant's opening brief.

11. Appellant's present due date for its opening brief is October 8, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 8th day of September, 2020.



James H. Goetz
Bozeman, Montana

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3), M.R.App.P., I certify that the word count of this declaration, calculated by Microsoft Word is 818 words, excluding the caption, Certificate of Compliance, and Certificate of Service. This declaration, combined with Appellant’s Motion for Leave to File Over-Length Brief, does not exceed the 1,250 word limit.

DATED this 8th day of September, 2020.

GOETZ, BALDWIN & GEDDES, P.C.

By: /s/ James H. Goetz

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Comerica Bank*

EXHIBIT A

Order of May 27, 2014
granting expansion of word
limit in *Comerica I*

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 14-0113

FILED

MAY 27 2014

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANAMASTERS GROUP
INTERNATIONAL, INC.,Third-Party Plaintiff, Appellee,
and Cross-Appellant,

v.

ORDER

COMERICA BANK,

Third-Party Defendant, Appellant,
and Cross-Appellee.

Appellant Comerica Bank, by counsel, has filed a motion for leave to file an over-length brief, together with the supporting affidavit of counsel for Comerica, James H. Goetz. Comerica asserts that given the number and complexity of the issues to be presented on appeal, and the fact that the substantive issues must be argued under both Michigan and Montana law due to choice of law questions, the present appeal cannot be adequately presented in 10,000 words, as required under M. R. App. P. 11(4)(a). Comerica maintains that the extraordinary justification for an over-length brief required by M. R. App. P. 12(10) exists for this request, and seeks an order permitting it to file a brief within 15,000 words.


Appellee Masters Group International, Inc., by counsel, has filed a memorandum in opposition to Comerica's motion. It represents that it has no intention of seeking to file an over-length brief, and that in fairness, the word count for the briefs of the parties should be equal.

Due consideration having been given,

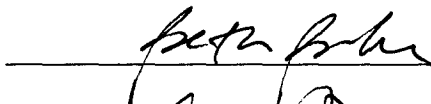
IT IS HEREBY ORDERED that Comerica is given leave to file an opening brief on appeal not to exceed 12,500 words.

The Clerk of this Court is directed to provide notice hereof to all counsel of record.

DATED this 27 day of May, 2014.


Chief Justice








Justices