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FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
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**IN THE COURT OF APPEALS FOR THE
FIFTH DISTRICT OF TEXAS AT DALLAS**

LISA MATZ
Clerk

In re Stephen B. Hopper and Laura S. Wassmer,

Relators.

MANDAMUS RECORD

**From the Probate Court No. 1, Dallas County, Texas,
Cause No. PR-11-03238-1, Hon. Brenda Hull Thompson, Presiding.**

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing instrument was forwarded to all counsel of record in accordance with the Texas Rules of Civil Procedure on the 26th day of July, 2018 and will be hand delivered to the probate court.

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/s/ Anne M. Johnson

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**CORRECTED CLERK'S RECORD
TRIAL COURT CAUSE PR-11-03238-1
IN THE COUNTY PROBATE COURT
OF DALLAS COUNTY
HONORABLE BRENDA H THOMPSON JUDGE PRESIDING**

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
6/1/2018 8:09:38 AM
LISA MATZ
Clerk

**IN THE MATTER OF
MAX HOPPER, DECEDENT**

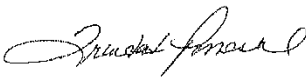
**Appealed to the
Court of Appeals for the Fifth District of Texas, at Dallas, Texas.**

Attorney for Appellant:

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**Delivered to the Court of Appeals for the Fifth District of Texas, at Dallas, Texas on
31st day of May, 2018.**




Trinidad Pimentel, Deputy Clerk



THE STATE OF TEXAS

Probate Court

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**Estate of: IN THE MATTER OF
MAX HOPPER, DECEDENT**

Cause No. PR-11-03238-1/05-18-00558CV

I, JOHN F. WARREN, County Clerk and Clerk of the County and Probate Courts, in and for said county, do hereby certify that the following is the true and correct original instruments and plain copies of miscellaneous papers (i.e., correspondence) in the matter of the above named and styled cause.

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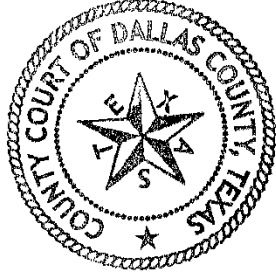
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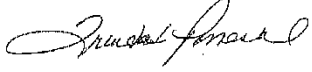
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The same appear now on file and of record in the Probate Courts of Dallas County, Texas a certified copy of the original instruments and miscellaneous papers (i.e., correspondence).

WITNESS MY HAND AND OFFICIAL SEAL OF OFFICE, this 31st day of May, 2018.

JOHN F. WARREN, County Clerk
Dallas County, Texas




By: TRINIDAD PIMENTEL
Deputy

The State of Texas §
County of Dallas §

Trial Court Cause No. PR-11-03238-1

DALLAS COUNTY, TEXAS

CAUSE NO. PR-11-03238-1

IN RE: ESTATE OF
MAX D. HOPPER,
DECEASED

JO N. HOPPER

Plaintiff,

v.

JP MORGAN CHASE, N.A.,
STEPHEN B. HOPPER and LAURA S.
WASSMER

Defendants.

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and FEE,
SMITH, SHARP & VITULLO, LLP

Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK, N.A.,

Defendants.

IN THE PROBATE COURT

NO. 1

DALLAS COUNTY, TEXAS

INTERVENTION DEFENDANTS' NOTICE OF ACCELERATED APPEAL

Intervention Defendants Stephen B. Hopper and Laura S. Wassmer state their desire, under Texas Rules of Appellate Procedure 25.1 and 28.1, to appeal the temporary injunction order signed by this Court on April 24, 2018, as well as any other adverse orders or rulings merged into, subsumed within, or relied upon in issuing the temporary injunction, in *In re: Estate of Max D. Hopper*, Cause No. PR-11-03238-1, in Probate Court No. 1 of Dallas County, Texas. Intervention Defendants appeal to the Court of Appeals for the Fifth District of Texas at Dallas. This is an accelerated, interlocutory appeal of an order granting a temporary injunction, as

authorized by TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4). This accelerated appeal does not involve a parental termination or child protection case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2018, the foregoing *Notice of Accelerated Appeal* was filed using the e-filing system which will send notification of such filing to the following parties via email:

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/s/ Anne M. Johnson
Anne M. Johnson

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED,

JO N. HOPPER,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,
STEPHEN B. HOPPER, and LAURA
S. WASSMER,

Defendants.

IN THE PROBATE COURT

NO. 1

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM,

Intervenor,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN
CHASE BANK, N.A.,

Defendants.

PETITION IN INTERVENTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Intervenor, John L. Malesovas, d/b/a Malesovas Law Firm ("Intervenor"), and files this Petition in Intervention complaining of Defendants, STEPHEN B. HOPPER ("Hopper"), LAURA S. WASSMER ("Wassmer"), or (hereinafter collectively "Clients") and JPMORGAN CHASE BANK, N.A. ("JPM"), and for cause would show the following:

I.
DISCOVERY CONTROL PLAN

1.01 Intervenor requests this lawsuit proceed under a Level 3 Discovery Control Plan pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II.
PARTIES

2.01 Intervenor is an individual licensed to practice law in the State of Texas and doing business as Malesovas Law Firm.

2.02 Defendant, Stephen B. Hopper ("Hopper"), was a former client of Intervenor and is being served herewith pursuant to TRCP 21a.

2.03 Defendant, Laura S. Wassmer ("Wassmer"), was a former client of Intervenor and is being served herewith pursuant to TRCP 21a. Hopper and Wassmer are hereinafter jointly referred to as "Clients."

2.04 Defendant, JPMorgan Chase Bank, N.A. ("JPM"), is a Defendant in the underlying case and is being served herewith pursuant to TRCP 21a.

III.
JURISDICTION AND VENUE

3.01 Venue is proper in Dallas County, Texas pursuant to §15.002(a)(1), Tex. Civ. Prac. & Rem. Code, as Dallas County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and because venue is proper in the underlying action. This Court has jurisdiction to hear this claim because Intervenor has an interest in the matter in controversy.

IV.
FACTS AND CAUSES OF ACTION

4.01 Intervenor, along with Fee, Smith, Sharp & Vitullo, LLP (jointly "Attorneys"), entered into a contingent fee agreement with Clients, a true and correct copy of which is attached hereto as Exhibit A ("Agreement"). Pursuant to the terms of the Agreement, Attorneys fully performed and this case against JPM was tried to a very favorable verdict in this Court.

4.02 Thereafter, on or about April 3 and 4, 2018, through another attorney whom Clients hired for appellate purposes, Jeff Levinger, Clients unilaterally settled the case with JPM without Attorneys authority, agreement and consent. A Rule 11 agreement was filed with the Court on April 4 confirming the settlement between Clients and JPM, and the settlement was announced in open court at 9:00 am on April 5, 2018. Within one (1) hour thereafter, at approximately 10:10 a.m., April 5, 2018, Clients terminated Attorneys under the Agreement and advised Attorneys that they were not going to pay the fee due under the Agreement. Clients also advised Attorneys that they were going to instruct Mr. Levinger to retain an unspecified percentage of the settlement proceeds from JPM in his trust account.

4.03 Intervenor has a justiciable interest in the pending suit in that Intervenor has a lien on and interest in the settlement proceeds of the settlement Clients have entered into with JPM. As such, pursuant to *Texas Mut. Ins. Co, v. Ledbetter*, 251 S.W.3d 31 (Tex. 2008), Intervenor as a lienholder in the settlement proceeds of this case, has an absolute right to intervene. Further, as stated by the Supreme Court in *Ledbetter*, to the extent that Clients, JPM and/or their attorneys settle a case without reimbursing a lienholder, "everyone involved is liable ... for conversion." Thus, Intervenor seeks a declaration from this Court pursuant to Tex.Civ.Prac. & Rem Code 37.001 et. seq. confirming Intervenor's security interest in the settlement proceeds and directing JPM and Clients to pay such interest directly to Intervenor.

4.04 In addition, Clients' actions as described above constitute a breach of the Agreement, as well as an anticipatory breach of the Agreement, thereby entitling Intervenor to the full amount of the fee from the settlement as set forth in the Agreement for which Intervenor sues Clients.

4.05 Attorneys fully performed under the Agreement with no complaint from Clients and secured a very favorable jury verdict. As a result of this favorable jury verdict, Clients were able to secure a settlement with JPM. Only after Clients unilaterally settled with JPM did Clients terminate the Agreement and cook up baseless reasons for not paying the fee due under the Agreement. Clients accepted, used and enjoyed the services of Attorneys which resulted in the settlement with JPM. In accordance with the Courts' holdings in *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356 (Tex.App. – Dallas 2018, no pet.) and *Enochs v. Brown*, 872 S.W.2d 312 (Tex.App. – Austin 1994, no writ), Clients are estopped and quasi-estopped from challenging the validity of the Agreement and the fee due Intervenor thereunder. Further, it would be unconscionable for Clients to challenge the validity of the Agreement after having already accepted the benefits from Attorneys under the contract. Accordingly, Intervenor moves the Court to declare pursuant to Tex.Civ.Prac. & Rem Code 37.001 et. seq. that the Agreement is valid and enforceable and order that the fee due Intervenor under the Agreement from the proceeds of the settlement must be paid by JPM and Clients directly to Intervenor.

4.06 In addition, Intervenor seeks his attorneys' fees from Clients pursuant to Tex.Civ.Prac. & Rem Code 37.009 as well as Tex.Civ.Prac. & Rem Code 38.001. All conditions precedent have been satisfied pursuant to Tex.Civ.Prac.& Rem Code 38.001.

WHEREFORE, PREMISES CONSIDERED, Intervenor moves the Court for all relief requested herein, as well as such other and further relief, in law or in equity, to which he may show himself justly entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on April 6, 2018, in accordance with the Texas Rules of Civil Procedure to:

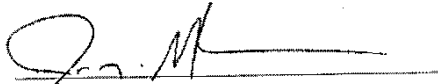
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John L. Malesovas

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER, DECEASED,	§	IN THE PROBATE COURT
	§	
	§	
	§	
JO N. HOPPER,	§	
	§	
Intervenor,	§	
	§	
v.	§	NO. 1
	§	
JPMORGAN CHASE BANK, N.A.,	§	
STEPHEN B. HOPPER, and LAURA	§	
S. WASSMER,	§	
	§	
Defendants.	§	OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a	§
MALESOVAS LAW FIRM, and	§
FEE, SMITH, SHARP & VITULLO, LLP	§
	§
Intervenors,	§
	§
v.	§
	§
STEPHEN B. HOPPER, LAURA S.	§
WASSMER, and JPMORGAN	§
CHASE BANK, N.A.,	§
	§
Defendants.	§

**FEE, SMITH, SHARP & VITULLO, LLP'S PETITION IN INTERVENTION,
APPLICATION FOR DECLARATORY RELIEF, REQUEST FOR TRO
AND TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Intervenor, Fee, Smith, Sharp & Vitullo, LLP ("Intervenor"), and files this Petition in Intervention and Petition for Declaratory Judgment and Application for Temporary Restraining Order and for Temporary Injunction complaining of Defendants, STEPHEN B. HOPPER ("Hopper"), LAURA S. WASSMER ("Wassmer"), or (hereinafter collectively "Clients")

PETITION IN INTERVENTION

PAGE 1

Page 18

MR:018

and/or "Defendants") and JPMORGAN CHASE BANK, N.A. ("JPM"), and for cause would show the following:

I.
DISCOVERY CONTROL PLAN

1.01 Intervenor requests this lawsuit proceed under a Level 3 Discovery Control Plan pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II.
PARTIES

2.01 Intervenor is a limited liability partnership and law firm and doing business as Fee, Smith, Sharp & Vitullo, LLP.

2.02 Defendant, Stephen B. Hopper ("Hopper"), was a former client of Intervenor and is being served herewith pursuant to TRCP 21a.

2.03 Defendant, Laura S. Wassmer ("Wassmer"), was a former client of Intervenor and is being served herewith pursuant to TRCP 21a. Hopper and Wassmer are hereinafter jointly referred to as "Clients".

2.04 JPMorgan Chase Bank, N.A. ("JPM"), is a Defendant in the underlying case and an interested party to this Petition in Intervention and is being served herewith pursuant to TRCP 21a.

III.
JURISDICTION AND VENUE

3.01 Venue is proper in Dallas County, Texas pursuant to §15.002(a)(1), Tex. Civ. Prac. & Rem. Code, as Dallas County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and because venue is proper in the underlying action. This Court has exclusive jurisdiction to hear this claim because Intervenor has an interest in the matter in controversy that involves the Defendants and The Estate of Max D. Hopper. To

the extent that The Estate of Max D. Hopper is a party to the settlement with JPM or to the extent that beneficiaries of The Estate of Max D. Hopper are parties to the settlement with JPM then this Court and only this Court has exclusive jurisdiction over this matter.

IV. **FACTS**

4.01 Intervenor, along with John L. Malesovas, d/b/a Malesovas Law Firm, (jointly “Attorneys”), represented Defendants pursuant to a valid and enforceable contingency fee agreement in the underlying lawsuit pending in this Court. Intervenor’s have fully performed under the terms of the contingency fee agreement. On April 3, 2018 and April 4, 2018, Defendants Appellate Counsel Jeff Levinger filed a Rule 11 agreement with the Court notifying the Court that there was a settlement between Defendants and JP Morgan Chase. At approximately 9:05 am on April 5, 2018, Anthony L. Vitullo on behalf of Defendant’s announced in open court that a settlement between Defendant and JP Morgan Chase had been reached (without violating the confidentiality). At approximately 10:10 am on April 5, 2018, Defendants terminated Intervenor’s without “Cause”. On April 6, 2018, Intervenor, Fee, Smith, Sharp and Vitullo LLP withdrew from representing Defendants in the underlying lawsuit. Intervenor’s Fee, Smith, Sharp & Vitullo own a property right in the “Settlement Proceeds” from the settlement between Defendant and JP Morgan Chase. Intervenor files this Petition in Intervention and Declaratory Judgment and TRO and Temporary Injunction to enforce its property rights in the “Settlement Proceeds.”

4.02 Intervenor has a justiciable interest and property interest in the pending suit in that Intervenor has a lien on and interest in the settlement proceeds of the settlement Clients have entered into with JPM. This lawsuit is a simple declaratory judgment action to enforce Intervenor’s property rights. As such, pursuant to *Texas Mut. Ins. Co, v. Ledbetter*, 251 S.W.3d

31 (2008), Intervenor as a lienholder in the settlement proceeds of this case, has an absolute right to intervene. Further, as stated by the Supreme Court in *Ledbetter*, to the extent that Clients, JPM and/or their attorneys settle a case without reimbursing a lienholder, “everyone involved is liable ... for conversion.” Thus, Intervenor seeks a declaration from this Court pursuant to TEX. CIV. PRAC. & REM CODE § 37.001 et. seq. (Vernon 2014), confirming Intervenor’s security interest in the settlement proceeds and directing JPM and Clients to pay such interest directly to Intervenor. This lawsuit is a simple declaratory judgment action to enforce Intervenor’s property rights.

4.03 Attorneys fully performed under the Agreement and secured a very favorable jury verdict. As a result of the auspicious jury verdict, Clients were able to secure a confidential settlement with JPM. Only after Clients through their appellate attorney Jeff Levinger unilaterally settled with JPM did Clients terminate Attorneys. Clients accepted, used and enjoyed the services of Attorneys which resulted in the settlement with JPM. In accordance with the Courts’ holdings in *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2018, no pet.), *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003); *Mandell & Wright*, 441 S.W.2d 841, 847 (Tex. 1969). Clients are estopped from challenging the validity of the Agreement and the fee due Intervenor thereunder and the property rights Intervenor has to the “Settlement Proceeds.” The optics of Defendants terminating Intervenor—literally as the confidential settlement is being announced—is enormously telling and should be seen for what it is. Further, it would be unconscionable for Clients to challenge the property rights of Intervenor after having already accepted the benefits from Attorneys under the contingency fee agreement. Accordingly, Intervenor moves the Court to declare that the

Intervenor owns a property right in the "Settlement Proceeds" and that the Agreement is valid and enforceable and ordering that the fee due Intervenor under the Agreement from the proceeds of the settlement must be paid by JPM and Clients directly to Intervenor. Alternatively, Intervenor asks this Court to take judicial notice under Rule 201 of the Texas Rules of Evidence that Defendants have waived each and every defense they have, if any, by virtue of the fact that they terminated *after* the settlement was reached. That is long standing and undeniable Texas law. *See Tillery*, 54 S.W.3d at 360-61; *Enochs*, 872 S.W.2d at 317; *Mandell*, 441 S.W.2d at 847.

4.04 In addition, Intervenor seeks its attorneys' fees from Clients pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009 as well as TEX. CIV. PRAC. & REM. CODE § 38.001. All conditions precedent to Intervenor's claim for relief have been performed, have occurred, or been waived.

V.
SUIT FOR DECLARATORY RELIEF

5.01 Intervenor incorporates all of the preceding paragraphs as if they were set forth in their entirety herein.

5.02 Intervenor seeks from this court a declaratory judgment for the following reasons: An actual and justiciable controversy (ies) exists and has arisen between Intervenor and Defendants, and specific orders from this Court as follows as to each of the matters below. Intervenor further seeks judgment against Defendants pursuant to the UDJA declaring the rights, status and other legal relations of Intervenor and Defendants regarding the rights and obligations hereunder of the parties, one to another and to have this Honorable Court declare the rights and legal relations in respect to any and all interests of the parties in relation to the property rights of the Intervenor in the "Settlement Proceeds" from the settlement between Clients, the Estate, and JPM. To the extent JPM entered into a settlement with the Estate of Max D. Hopper this

Honorable Court has exclusive jurisdiction to declaring any rights Intervenor's may have in the "Settlement Proceeds".

5.03 Intervenor is entitled to a declaration from this Honorable Court as follows:

1. Intervenor's own a property right to the "Settlement Proceeds."
2. Intervenor is entitled to immediate possession of its property right to the "Settlement Proceeds."
3. To the extent that the Estate of Max D. Hopper is a party to the settlement with JPM, this Honorable Court has exclusive jurisdiction to declare the rights of the parties including the property rights of the Intervenor.
4. Intervenor is entitled to the full and exclusive use, possession and enjoyment of its interest in the "Settlement Proceeds".
5. That the JPM as IA of The Estate of Max D. Hopper, pursuant to the Texas Probate Code, that it is in the best interest of the Estate to pay Intervenor its interest in the "Settlement Proceeds".
6. That the Court Order JPM as IA of the Estate of Max D. Hopper to pay Intervenor's interest in the "Settlement Proceeds".
7. This Court seeks judgment against Defendants pursuant to the Texas Uniform Declaratory Judgment Act ("UDJA"), Texas Civil Practice & Remedies Code Section 37.001 et seq. Intervenor and Defendants are legal or natural persons having an interest in the matters set forth herein that would be affected by the declarations sought herein, as provided under Texas Civil Practice & Remedies Code, Section 37.006(a). Plaintiff also seeks all legal fees and expenses as allowed under law and set forth elsewhere in this pleading, all of which are incorporated by reference herein

in support hereof.

8. As a result of the aforementioned actions of Defendants, Intervenor has been damaged in an amount in excess of the minimum jurisdictional limits of the Court, for which they now sue.

VI. **ATTORNEY'S FEES**

6.01 Pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code, Intervenor seeks its reasonable and necessary attorney's fees in this case which include the following:

- a. Preparation and trial of this lawsuit;
- b. Post-Trial, pre-appeal legal services;
- c. An appeal to the court of appeals;
- d. Making or responding to an application for writ of error to the Supreme Court of Texas;
- e. An appeal to the Supreme Court of Texas in the event application for writ of error is granted; and
- f. Post-judgment discovery and collection in the event execution on the judgment is necessary.

VII. **ELEMENTS FOR INJUNCTIVE RELIEF**

7.01 In light of the above described facts, Intervenor seeks recovery from Defendants. The nature of the lawsuit is an action for breach of a written attorney fee agreement, unjust enrichment, and damages based on Defendants' failure to pay for the legal services fully performed under the fee agreement.

7.02 Intervenor is likely to succeed on the merits of this lawsuit because Intervenor

shows a probable right to the relief it seeks on final hearing. On final hearing, Intervenor is likely to prove each and every element of all claims asserted against the respective Defendants as the evidence above shows that Intervenor fully performed under the written fee agreement. Defendants represented and agreed to pay Intervenor for the legal services rendered and Defendants have informed Intervenor that they do not intend to pay for the legal services rendered.

7.03 Unless this Honorable Court immediately restrains the Defendants, the Intervenor will suffer immediate and irreparable injury, for which there is no adequate remedy at law to afford Intervenor complete, final, and equal relief. More specifically, Intervenor will show the court the following:

- a) The harm to Intervenor is imminent because Defendants have started to finalize the settlement in the underlying lawsuit and requested that the settlement proceeds be provided to Defendants' attorney, Jeff Levinger.
- b) This imminent harm will cause Intervenor irreparable injury in that once Defendants provide the "Settlement Proceeds" to Jeff Levinger he is obligated to protect the settlement proceeds for the benefit of his clients—the Defendants. In addition, the settlement proceeds will not be protected from unauthorized distributions, conversion, or bank failure; and, moreover, Intervenor should not be forced to give an interest free loan to either Defendants or Mr. Levinger's bank with money that belongs in equity and good conscience to Intervenor.
- c) There is no adequate remedy at law which will give Intervenor complete, final and equal relief because once Defendants do not have sufficient assets to satisfy Intervenor's damages, Intervenor will not be able to recover its damages from Defendants if

Intervenor were to prevail on the merits of this suit.

VIII. **BOND**

8.01 Intervenor is willing to post a reasonable temporary restraining order bond and request the court to set such bond; be that as it may, there should be no bond because Defendants should be forced to explain with clear and specific evidence what it monetarily disputes with any delta going into either the court's registry or an interest bearing account under the exclusive jurisdiction of this Court.

IX. **TRO REMEDY**

9.01 Intervenor has met its burden by establishing each element which must be present before injunctive relief can be granted by this court; and, therefore, Intervenor is entitled to the requested temporary restraining order.

9.02 Intervenor requests that the court restrain Defendants from the following actions (the "Actions") with regard to the "Settlement Proceeds":

- taking any action to transfer, liquidate, convert, encumber, pledge, loan, share, sale, market for sale, conceal, hide, hypothecate, secret, dissipate, deplete, neglect, misuse, damage and/or destroy, lease, assign, granting a lien, security interest, or other interest in, allow the use of, or otherwise dispose of any and all part of the Settlement Proceeds; and
- encouraging, requesting, assisting, suggesting, directing, or implying to anyone that any natural or legal person perform or do any of the matters or things otherwise prohibited by the temporary restraining order.

9.03 It is essential that the court immediately and temporarily restrain Defendants herein, from committing any of the above Actions.

9.04 In order to preserve the *status quo* during the pendency of this action, Intervenor requests that the Defendants be temporarily enjoined from committing the above Actions.

9.05 On final trial on the merits, that the Court permanently enjoin Defendants herein, from committing the above Actions.

9.06 That the Court order the Intervenor's interests in the "Settlement Proceeds" be placed in the Registry of the Court or an interest-bearing court for the benefit of Defendants within the exclusive jurisdiction of the Court.

WHEREFORE, PREMISES CONSIDERED, Intervenor respectfully requests that the Defendants be cited to appear and answer, as required by law, and that Intervenor have the following relief;

1. Actual, direct, indirect, economic, non-economic, and consequential damages in the amount determine to have been sustained by Intervenor;
2. Pre- and Post-Judgment Interest;
3. Costs of this lawsuit, including reasonable attorney's fees, experts fees, and other disbursements; and
4. A temporary restraining order will issue against the Defendants;
5. The Court sets a reasonable bond for the temporary restraining order; or, places the disputed funds into the registry;
6. After notice and hearing, a temporary injunction will issue enjoining and restraining Defendants', Defendants' officers, agents, employees, successors and assigns, and attorneys from directly or indirectly committing any of the above listed Actions.
7. After trial on the merits, the Court permanently enjoin Defendants', Defendants' officers, agents, employees, successors and assigns, and attorneys from directly or indirectly committing any of the above listed Actions.
8. That the Intervenor's interest in the "Settlement Proceeds" be placed in the Registry

of the Court.

9. Such other and further relief, at law or in equity, to which Intervenor may show themselves to be justly entitled.

Respectfully Submitted,

BRIAN LAUTEN, P.C.

A handwritten signature in black ink, appearing to read "BP Lauten", with a stylized flourish at the end.

BRIAN P. LAUTEN

State Bar No. 24031603

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**ATTORNEYS FOR INTERVENOR
FEE SMITH SHARP & VITULLO, LLP**

CERTIFICATE OF SERVICE

In accordance with Rule 21a of the Texas Rules of Civil Procedure, the undersigned certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record via the ECF case manager system and by electronic filing on April 6, 2018.

Cc:

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as Independent Administrator of the Estate of Max D. Hopper, Deceased,
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A handwritten signature in black ink, appearing to read "BTP" followed by a stylized flourish.

BRIAN P. LAUTEN
ATTORNEY FOR INTERVENOR

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED,

IN THE PROBATE COURT

JO N. HOPPER,

Intervenor,

v.

NO. 1

JPMORGAN CHASE BANK, N.A.,
STEPHEN B. HOPPER, and LAURA
S. WASSMER,

Defendants.

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and
FEE, SMITH, SHARP & VITULLO, LLP

Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN
CHASE BANK, N.A.,

Defendants.

VERIFICATION

STATE OF TEXAS)
)
COUNTY OF DALLAS)

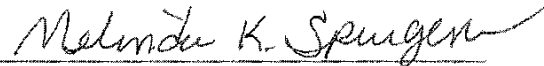
BEFORE ME, the undersigned authority, on this day personally appeared ANTHONY L.
VITULLO, who, being by me duly sworn on oath, deposed and stated that he is a Senior Partner
at Fee, Smith, Sharp & Vitullo, LLP, named as Intervenor in the above-entitled and numbered

cause; that he has read the Petition in Intervention and Petition for Declaratory Judgment and Application for Temporary Restraining Order and for Temporary Injunction; and that every statement contained therein is within his personal knowledge and is true and correct, and that he is authorized to sign on behalf of Fee, Smith, Sharp & Vitullo, LLP.



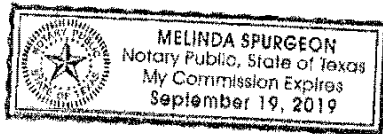
ANTHONY L. VITULLO

SUBSCRIBED AND SWORN TO BEFORE ME this 6th day of April, 2018.



NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

MY COMMISSION EXPIRES: 9-19-2019



upon to support their claims, contains a mandatory arbitration provision. The language contained in the aforementioned contract states as follows:

20. ARBITRATION: . . . should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, *if any controversy or claim arises out of or is related to this agreement*, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (*including malpractice claims and fee disputes*), Attorneys and Client both *waive any right to bring a court action* or have a jury trial and agree that the *dispute shall be submitted to binding arbitration* to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas.¹

This agreement was signed by both Intervenor. Based on this arbitration provision, this Court does *not* have jurisdiction over this matter; Intervenor have waived their right to bring any action in this Court or any other court.

Any doubts regarding the existence or scope of an agreement are resolved in favor of arbitration. *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753 (Tex. 2001). The arbitration provision in the agreement applies to "any controversy or claim [that] arises out of or is related to this agreement." This type of language is construed broadly. *In re Conseco Fin. Serv. Corp.*, 19 S.W.3d 562, 568 (Tex. App. - Waco 2000, orig. proceeding). There is no question that Intervenor's claims arise out of, and are related to, the agreement. Intervenor maintain throughout their petitions that they are entitled to a contingent fee under the agreement.² The Clients dispute this fee, which is a matter within the scope of the arbitration clause. Intervenor also seek declaratory relief regarding their rights under the agreement and claim that the Clients breached the agreement. Once it is determined that an arbitration provision exists and the claim falls within the scope of that provision, a court has no discretion – it must compel arbitration and

¹ See p. 7 of Exhibit A attached to Petition in Intervention filed by Malesovas (emphasis supplied).

² Petition in Intervention at 5.

stay any further proceedings. *See Pepe Int'l Dev. Co. v. Garcia*, 915 S.W.2d 925, 930-31 (Tex. App. - Houston [1st Dist.] 1996, orig. proceeding).

Although the Clients dispute the enforceability of the contingent fee agreement, this issue should be decided by the arbitrator -- not this Court. Once there is an agreement to arbitrate, substantive attacks on the validity of the contract are to be resolved by the arbitrator, and not by the court. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006); *FUNimation Entm't v. SC Films Int'l*, 2013 WL 5770383, (E.D. Tex. Oct. 24, 2013); *Lawrence v. Comprehensive Bus. Serv. Co.*, 833 F.2d 1159, 1162 (5th Cir.1987) (submitting issue regarding illegality defense to arbitration); *Mesa Operating Ltd. P'ship v. La. Intrastate Gas Corp.*, 797 F.2d 238, 244 (5th Cir.1986) (submitting claim that contract was void *ab initio* to arbitration because parties failed to demonstrate that the arbitration agreement was "invalid separately from the entire contract").

Additionally, and without waiving their position that the agreement is unenforceable, in the alternative⁴ event that the agreement is determined to be enforceable -- the Clients contend that the Intervenor's breached the agreement. Pleading alternative theories does not defeat the effect of an arbitration clause that broadly covers all disputes that arise out of the underlying agreement. *In re Kellogg Brown & Root Inc.*, 166 S.W.3d 732, 740 (Tex. 2005).

For those reasons set forth above, the Clients object to Intervenor's improper attempt to invoke this Court's jurisdiction. This Court this court should strike the interventions and/or compel the Intervenor's to pursue their claims in arbitration. Subject to and without waiving this objection, the Intervenor's have not established a right to seek any equitable relief for those reasons discussed below.

Lack of Imminent Harm

A threat of imminent harm is a prerequisite for injunctive relief. *Operation Rescue-Nat'l v. Planned Parenthood of Houston and Se. Tex., Inc.*, 975 S.W.2d 546, 554 (Tex. 1998). Fear or apprehension of injury will not support a temporary injunction. *Frey*, 647 S.W.2d at 248; *Matrix Network, Inc. v. Ginn*, 211 S.W.3d 944, 947-48 (Tex. App.—Dallas 2007, no pet.). “An injunction will not issue unless it is shown that the respondent will engage in the activity enjoined.” *State v. Morales*, 869 S.W.2d 941, 946 (Tex. 1994). If the evidence shows no intent to do the thing sought to be enjoined, the injunctive relief must be denied. *Luccous v. J.C. Kinley Co.*, 376 S.W.2d 336, 341 (Tex. 1964); *see also Dallas Gen. Drivers, Warehousemen & Helpers v. Wamix, Inc., of Dallas*, 156 Tex. 408, 416, 295 S.W.2d 873, 879 (1956).

Intervenors have not shown -- and cannot show -- there is a threat of imminent harm. The Clients have agreed to place the disputed fee into their attorney's (Jeff Levinger) trust account. Further, they have agreed not to disburse those funds (the disputed fee amount) from Mr. Levinger's trust account until this matter is finally resolved. This situation is governed by Rule 1.14 of the Texas Disciplinary Rules of Professional Conduct. Under Rule 1.14, a lawyer in Mr. Levinger's position is *required* to maintain the disputed portion of any settlement in his trust account (or other escrow account) and not disburse the disputed amount until the matter is resolved. Both the Clients and Mr. Levinger have agreed to comply with their obligations under Rule 1.14. Accordingly, there is no imminent harm or danger regarding the disbursement of the disputed fee amount.

Intervenors claim, incorrectly, that they are entitled to the full and exclusive use, possession and enjoyment of their interest in the settlement proceeds. However, Rule 1.14 states otherwise: If a dispute arises concerning a lawyer's interest in settlement funds, “the portion in

dispute shall be kept separated by the lawyer until the dispute is resolved, and the undisputed portion shall be distributed appropriately.” Rule 1.14 Texas Disciplinary Rules of Professional Conduct. Even if an attorney believes he has earned a fee – if the fee is disputed, the funds must be maintained in a trust account until the dispute was resolved. *Fry v. Comm’n for Lawyer Discipline*, 979 S.W.2d 331, 335 (Tex. App. – Houston [14thDist.] 1998, pet. denied). Thus, Intervenor has no entitlement to the exclusive use or possession of the disputed fee amount.

Intervenor Has an Adequate Remedy at Law

Intervenor claims that that they do not have an adequate remedy because they will not be able to recover their damages from the Clients if Intervenor prevails on their claims. This allegation is not supported by – and it is *contrary to* – the evidence. In the unlikely event that Intervenor prevails on their claims, the disputed funds will be available for distribution because they will remain in Mr. Levinger’s trust account (or other escrow account). Rule 1.14 provides an adequate remedy to Intervenor. An injury is not irreparable if the applicant has an adequate remedy at law. *Midway CC Venture I, LP v. O&V Venture LLC*, 527 S.W.3d 531, 534 (Tex. App. —Houston [1st Dist.] 2017, no writ); *see also McGlothlin v. Kliebert*, 672 S.W.2d 231, 232 (Tex. 1984) (“A temporary injunction will not be granted where there is a plain and adequate remedy at law.”).

Violation of Rule 1.05 – Confidentiality of Information

The Clients dispute whether Intervenor is likely to prevail on their claims; however, they should not be forced to litigate this matter before this Court. Litigating this issue in a public forum and in front of other parties – including the Clients’ adversaries – would require the disclosure of confidential and privileged information. Rule 1.05 requires attorneys to maintain the confidentiality of this information, with very few exceptions. The only applicable exception

is contained in Rule 1.05(c)(5), which allows a lawyer to reveal confidential information “to the extent *reasonably necessary* to enforce a claim” on behalf of the lawyer. The comments to Rule 1.05 also provide, when a lawyer is seeking to collect a fee from a client, “Any disclosure by the lawyer, however, should be as protective of the client’s interests as possible.” Comment 15 to Rule 1.05, Texas Disciplinary Rules of Professional Conduct.

However, Intervenor has ignored the express limitations set forth in Rule 1.05. It is not reasonable or necessary for Intervenor to reveal any confidential information in *court* – where the Clients’ adversaries and other parties have access to this information. This should be done in arbitration, where the Clients’ confidential information can be protected from disclosure to other parties. Intervenor itself included a mandatory arbitration provision in their attorney’s fee contract to govern this precise dispute; yet, they have ignored both the arbitration provision and their own ethical obligations under Rule 1.05 to be as protective of the Clients’ interests as possible.

Intervenor’s Requested Relief Threatens to Change the Status Quo

On April 4, 2018, the Clients and JP Morgan Chase Bank filed a Rule 11 agreement confirming they agreed to settle this case based on confidential terms, including the amount of the settlement. Intervenor’s requested relief -- seeking to have the disputed funds placed in the registry of this Court – threatens to violate the confidentiality of the settlement agreement. The relief sought by Intervenor would necessarily require the amount of the settlement to be disclosed – either directly or indirectly – and become a matter of public record. Arguably, this would violate the confidentiality of the settlement agreement and/or jeopardize the settlement. Thus, contrary to Intervenor’s allegations, a temporary restraining order would *not* preserve the status quo; rather, it would have the opposite effect – it could potentially *change the status quo*.

regarding the settlement. For this reason as well, the Clients object to the relief sought by Intervenor.

Conclusion

For those reasons set forth herein, the Clients request this Court to sustain their objections to the Petitions in Intervention, strike the interventions, compel the Intervenor to pursue their claims in arbitration, that the interventions be stayed, and/or that this Court deny all other relief sought by Intervenor.

Respectfully submitted,

s/ James E. Pennington

James E. Pennington

State Bar No. 15758510

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Attorneys for Defendants

Stephen B. Hopper and Laura S. Wassmer

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2018, the foregoing *Objection to Petitions in Intervention* was filed using the e-filing system which will send notification of such filing to the following parties via email:

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OBJECTION TO INTERVENTION

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OBJECTION TO INTERVENTION

8

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s/ James E. Pennington
James E. Pennington

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED,

JO N. HOPPER,

Intervenor,

v.

JPMORGAN CHASE BANK, N.A.,
STEPHEN B. HOPPER, and LAURA
S. WASSMER,

Defendants.

IN THE PROBATE COURT

NO. 1

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and
FEE, SMITH, SHARP & VITULLO, LLP

Attorneys,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, individually and as
Beneficiaries of the ESTATE OF
MAX D. HOPPER, DECEASED,
the ESTATE OF MAX D. HOPPER,
DECEASED, JPMORGAN CHASE
BANK, N.A.,

Defendants.

**JOHN L. MALESOVAS, d/b/a MALESOVAS LAW FIRM AND FEE, SMITH, SHARP &
VITULLO, LLP'S CONSOLIDATED FIRST AMENDED JOINT PETITION IN
INTERVENTION AND PETITION FOR DECLARATORY JUDGMENT, APPLICATION
FOR TEMPORARY RESTRAINING ORDER, FOR TEMPORARY INJUNCTION,
AND MOTION TO DEPOSIT FUNDS IN THE REGISTRY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Attorneys, John L. Malesovas, d/b/a Malesovas Law Firm ("MLF")
and Fee, Smith, Sharp & Vitullo, LLP ("FSSV") (MLF and FSSV hereinafter jointly

referred to as "Attorneys"), and files this Petition in Intervention and Petition for Declaratory Judgment and Application for Temporary Restraining Order and for Temporary Injunction complaining of Defendants, STEPHEN B. HOPPER ("Hopper"), LAURA S. WASSMER ("Wassmer"), individually and as beneficiaries of the Estate of Max D. Hopper (hereinafter collectively "Clients" and/or "Defendants"), the Estate of Max D. Hopper, deceased and JPMORGAN CHASE BANK, N.A. ("JPM"), and for cause would show the following:

I.
DISCOVERY CONTROL PLAN

1.01 Intervenor requests this lawsuit proceed under a Level 3 Discovery Control Plan pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II.
PARTIES

2.01 John L. Malesovas is an attorney licensed to practice law in the State of Texas and doing business as Malesovas Law Firm.

2.02 FSSV is a limited liability partnership and law firm and doing business as Fee, Smith, Sharp & Vitullo, LLP.

2.03 Defendant, Stephen B. Hopper ("Hopper"), individually and as a beneficiary of the Estate of Max D. Hopper, deceased, was a former client of Attorneys and is being served herewith pursuant to TRCP 21a.

2.04 Defendant, Laura S. Wassmer ("Wassmer"), individually and as a beneficiary of the Estate of Max D. Hopper, deceased, was a former client of Attorneys and is being served herewith pursuant to TRCP 21a. Hopper and Wassmer are hereinafter jointly referred to as "Clients".

2.05 The Estate of Max D. Hopper is an estate in administration under the jurisdiction of this Court, and Clients have asserted claims herein on behalf of the Estate as the beneficiaries of the Estate.

2.06 JPMorgan Chase Bank, N.A. ("JPM"), is a Defendant in the underlying case and an interested party to this Petition in Intervention and is being served herewith pursuant to TRCP 21a.

III. JURISDICTION AND VENUE

3.01 Venue is proper in Dallas County, Texas pursuant to §15.002(a)(1), Tex. Civ. Prac. & Rem. Code, as Dallas County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and because venue is proper in the underlying action. This Court has exclusive jurisdiction to hear this claim because Intervenor has an interest in the matter in controversy that involves the Defendants and The Estate of Max D. Hopper. See TEX. ESTATES CODE ANN. § 32.007 et seq. (Vernon 2014), and, TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014) (authorizing declaratory judgment actions in probate court when such relief is germane to an Estate). To the extent that The Estate of Max D. Hopper is a party to the settlement with JPM or to the extent that beneficiaries of The Estate of Max D. Hopper are parties to the settlement with JPM then this Court and only this Court has exclusive jurisdiction over this matter.

IV. FACTS

4.01 MLF and FSSV, (jointly "Attorneys"), represented Defendants pursuant to a valid and enforceable contingency fee agreement in the underlying lawsuit pending in

this Court. A true and correct copy of the contingent fee agreement will be tendered to the Court for *in camera* inspection at the hearing (hereinafter "Agreement"). Intervenor has fully performed under the terms of the Agreement. On April 3, 2018 and April 4, 2018, Clients' Appellate Counsel, Jeff Levinger, settled Clients' claims against JPM and on April 4, 2018 PM filed a Rule 11 agreement with the Court notifying the Court that there was a settlement between Clients and JPM ("Settlement"). At approximately 9:05 am on April 5, 2018, Anthony L. Vitullo appeared before this Court on behalf of Clients and announced in open court and on the record the confidential settlement between Clients and JPM. At approximately 10:10am on April 5, 2018, Clients' attorney, Jim Pennington, terminated Attorneys without cause and advised Attorneys that they were not going to pay the fee due under the Agreement. Mr. Pennington also advised Attorneys that he was going to instruct Mr. Levinger to retain an unspecified percentage of the Settlement proceeds in his trust account. On April 6, 2018, FSSV withdrew from representing Clients in the underlying lawsuit. Attorneys own a property right in the Settlement proceeds. Attorneys file this Petition in Intervention and Declaratory Judgment and Request for TRO and Temporary Injunction to enforce their property rights in the Settlement proceeds.

4.02 Attorneys have a justiciable interest and property interest in the pending suit in that Attorneys have a lien on and interest in the Settlement proceeds. This lawsuit is a simple declaratory judgment action to enforce Attorneys property rights. As such, pursuant to *Texas Mut. Ins. Co, v. Ledbetter*, 251 S.W.3d 31 (2008), Attorneys are lienholders in the Settlement proceeds of this case, and have an absolute right to intervene. Further, as stated by the Supreme Court in *Ledbetter*, to the extent that

Clients, JPM and/or their attorneys settle a case without reimbursing a lienholder, "everyone involved is liable ... for conversion." Thus, Attorneys seek a declaration from this Court pursuant to Tex. Civ. Prac. & Rem Code § 37.001 et. seq. confirming Attorneys' security interest in the Settlement proceeds and directing JPM and Clients to pay such interest directly to Attorneys. This lawsuit is a simple declaratory judgment action to enforce Attorneys' property rights.

4.03 Attorneys fully performed under the Agreement with no complaint from Clients and secured a very favorable jury verdict. As a result of this favorable jury verdict, Clients were able to secure a confidential settlement with JPM. Only after Clients, through their appellate attorney Jeff Levinger, unilaterally settled with JPM did Clients terminate Attorneys. Clients accepted, used and enjoyed the services of Attorneys which resulted in the Settlement. In accordance with the Courts' holdings in *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356 (Tex. App.—Dallas 2018, no pet.) and *Enochs v. Brown*, 872 S.W.2d 312 (Tex. App. – Austin 1994, no writ), Clients are estopped and quasi-estopped from challenging the validity of the Agreement and the fee due Attorneys thereunder and the property rights Attorneys have to the Settlement proceeds. Further, it would be unconscionable for Clients to challenge the property rights of Attorneys under the Agreement after having already accepted the benefits from Attorneys under the Agreement. Further, by accepting the benefits under the Agreement without complaint, Clients have waived any right to complain about the Agreement. Accordingly, Attorneys move the Court to declare that Attorneys own a property right in the Settlement proceeds" and that the Agreement is valid and

enforceable and to further order Clients and JPM to pay all fees and expenses due Attorneys under the Agreement directly to Attorneys from the Settlement proceeds.

4.04 In addition, Attorneys seek their attorneys' fees from Clients pursuant to Tex. Civ. Prac. & Rem Code §§ 37.009, 38.001 (Vernon 2014). All conditions precedent to Attorneys' claim for relief have been performed or have occurred.

**V.
SUIT FOR DECLARATORY RELIEF**

5.01 Attorneys incorporate all of the preceding paragraphs as if they were set forth in their entirety herein.

5.02 Attorneys' seek a declaratory judgment pursuant to the Texas Uniform Declaratory Judgment Act ("UDJA"), Texas Civil Practice & Remedies Code Section 37.001 et seq. An actual and justiciable controversy exists and has arisen between Attorneys and Clients. Attorneys seek judgment against Defendants pursuant to the UDJA declaring the rights, status and other legal relations of Attorneys and Clients regarding the payment of Attorneys interest in the Settlement proceeds. Because the Estate is a party to the Settlement, this Honorable Court has exclusive jurisdiction to declare Attorneys legal interests in the Settlement proceeds.

5.03 Attorneys are entitled to a declaration from this Honorable Court to the following:

- a. Attorneys own a property right in the Settlement proceeds;
- b. Attorneys are entitled to immediate possession of their property right in the Settlement proceeds;
- c. This Honorable Court has exclusive jurisdiction to declare the rights of the parties to the Settlement proceeds;

- d. Attorneys are entitled to the full and exclusive use, possession and enjoyment of their interest in the Settlement proceeds;
- e. That it is in the best interest of the Estate to pay Attorneys their interest in the Settlement proceeds; and
- f. That the Clients and JPM be directed to pay Attorneys interest in the Settlement proceeds directly to Attorneys.

5.04 Attorneys also seek all legal fees and expenses from Clients as allowed under the UDJA as this would be fair and equitable given the facts and circumstances of this dispute.

VI. ATTORNEY'S FEES

6.01 Pursuant to 37.009 and/or 38.001 of the Texas Civil Practice and Remedies Code, Attorneys seek all reasonable and necessary attorney's fees in this case which include the following:

- a. Preparation and trial of this lawsuit;
- b. Post-Trial, pre-appeal legal services;
- c. An appeal to the court of appeals;
- d. Making or responding to an application for writ of error to the Supreme Court of Texas;
- e. An appeal to the Supreme Court of Texas in the event application for writ of error is granted; and
- f. Post-judgment discovery and collection in the event execution on the judgment is necessary.

VII.

ELEMENTS FOR INJUNCTIVE RELIEF

7.01 Attorneys are likely to succeed on the merits of this lawsuit because Attorneys have a probable right to relief they seek on final hearing. On final hearing Attorneys are likely to prove each and every element of all claims asserted against Clients as foregoing shows that Attorneys fully performed under the Agreement. Attorneys have a security interest in the Settlement proceeds and Clients have informed Attorneys that they do not intend to pay or honor Attorneys interest in the Settlement proceeds.

7.02 Unless this Honorable Court immediately restrains Clients from diverting the Settlement proceeds to their own attorneys, the Attorneys will suffer immediate and irreparable injury, for which there is no adequate remedy at law, because in effect, Attorneys will have lost the protection of their security interest in the Settlement proceeds. Attorneys have a lien on and security interest in the Settlement proceeds, the purpose of which is to prevent Clients from taking all of the Settlement proceeds and unilaterally controlling their use and disposition. The Clients simply saying that they will instruct their attorney to keep some unspecified portion of the Settlement proceeds in his trust account eviscerates Attorneys' security interest in the Settlement Proceeds. Attorneys will show the court the following:

- a) The harm to Attorneys is imminent because Clients have started to finalize the Settlement and are attempting to have Attorneys' interest in the Settlement proceeds paid to Clients' attorney, Jeff Levinger.
- b) This imminent harm will cause Attorneys irreparable injury in that once Defendants pay the Settlement proceeds to Jeff Levinger, Attorneys will not

be able to enforce their lien and security interest because Levinger will claim that he is obligated to hold the funds in his trust account, interest free, until the ownership of the fees is resolved. But Rules 1.14 of the Texas Rules of Professional Conduct do not require, nor do they even allow, Clients attorney to even take possession of the Settlement proceeds. Instead, Attorneys' lien and security interest allow them to take possession of their interest in the Settlement proceeds. Thus, unless a temporary restraining order and temporary injunction are issued, Attorney's lien and security interest in the Settlement proceeds will be eviscerated. In addition, Attorneys' interest in the Settlement proceeds will not be protected from unauthorized distributions, conversion, or bank failure.

- c) There is no adequate remedy at law which will enforce Attorneys' lien and security interest absent action from this Court. Further, Clients will not be financially able to respond in damages upon final trial from this intervention unless Attorney's interest in the Settlement proceeds is protected by this Court.

VIII. **BOND**

8.01 Attorneys are willing to post a reasonable temporary restraining order bond and request the court to set such bond.

IX. **TRO REMEDY**

9.01 Attorneys have met Attorneys' burden by establishing each element which must be present before injunctive relief can be granted by this court, therefore Attorneys

are entitled to the requested temporary restraining order.

9.02 Attorneys request the court to issue an Order:

a. Restraining Clients from taking any action to transfer, liquidate, convert, encumber, pledge, loan, share, sale, market for sale, conceal, hide, secret, dissipate, deplete, neglect, misuse, damage and/or destroy, lease, assign, granting a lien, security interest, or other interest in, allow the use of, or otherwise dispose of any and all part of Attorneys' interest in the Settlement proceeds;

b. Ordering that Defendants and any of his, her, their, or its agents, servants, employees, successors, assigns and those persons in active concert or participation therewith, must:

1. Deposit into the registry of this Court the portion of Attorneys' interest in the Settlement proceeds which Clients contend they do not owe Attorneys under the Agreement, which shall remain on deposit in the registry until further Order of the Court, when such funds become available and are ripe for distribution from JPMorgan Chase, N.A. to the underlying Plaintiffs in satisfaction of the confidential settlement agreement reached herein;

2. Pay directly to Attorneys the portion of Attorneys' interest in the Settlement proceeds which Clients do not dispute to be due and owing from the Settlement proceeds immediately when those funds become available under the terms of the Settlement.

9.03 It is essential that grant a temporary restraining order as requested herein in order to preserve the status quo during the pendency of this action.

9.04 That after notice and hearing the Court convert the temporary restraining order into a temporary injunction, and that on final trial on the merits, that the Court disburse to Attorneys all funds deposited into the registry of the Court pursuant to the

temporary restraining order and temporary injunction.

X.
MOTION TO REQUIRE DEPOSIT OF FUNDS
(WHICH IS A NON-APPEALABLE ORDER THAT IS NOT
INJUNCTIVE RELIEF—AS A MATTER OF LAW)

10.01 This court has the inherent power to order that disputed funds be deposited in the registry of the court. See *Prodeco Exploration, Inc. v. Ware*, 684 S.W.2d 199, 201 (Tex. Civ. App.—Houston [1st Dist.] 1984, no writ) (“The trial court has the inherent authority to direct [a party] to deposit disputed funds into the registry of the court pending the outcome of the litigation.”); see also *Castilleja v. Camero*, 414 S.W.2d 431, 433 (Tex. 1967). In addition, in order to secure an order directing a party to deposit disputed funds in the registry of the Court, a party does not have to satisfy the prerequisite for securing a temporary restraining order or temporary injunction. *Diana River & Assocs., P.C. v. Calvillo*, 986 S.W.2d 795, 797-798 (Tex. App.—Corpus Christi 1999, no pet.) (citing *McQuadev. E.D. Sys. Corp.*, 570 S.W.2d 33, 35 (Tex. Civ. App.—Dallas 1978, no writ)). Orders to deposit money into the registry of the court cannot be characterized as temporary injunctions and are non-appealable. *Prodeco*, 684 S.W.2d at 201; *Alpha Petroleum Co. v. Dunn*, 60 S.W.2d 469, 471 (Tex. Civ. App.—Galveston 1933, writ dismissed).

10.02 Clients have filed a pleading in response to Attorneys’ intervention wherein Clients admit that there are disputed funds from the Settlement proceeds. But Clients do not identify the amount of the disputed portion of the Settlement proceeds. Clients suggest that this unidentified amount of funds be kept in their possession, through their attorney, Jeff Levinger, pending the outcome of this dispute. In essence, Clients want to continue to control all disputed funds without oversight from this Court

and without even identifying the amount they dispute. That is obviously unacceptable to Attorneys to let the fox guard the hen house pending the outcome of this matter.

10.03 Accordingly, pursuant to this Court's inherent power, Attorneys move this Court to order that all of the Settlement proceeds be deposited into the registry of this Court pending further order of this Court so that the Settlement can be funded, JPM can be dismissed, and all parties with any interest in the Settlement proceeds can assert their claims and they can be resolved without any fear that one party or the other will dissipate the funds or secure an advantage over the other through possession of the funds pending the outcome of this dispute. The Court can then determine. What amount is in dispute, who is making a claim to the disputed amount, the basis for any such claim, and ultimately to whom the funds should be distributed.

WHEREFORE, PREMISES CONSIDERED, Attorneys respectfully request for all relief requested herein, as well as such other and further relief, in law or in equity, to which they may show themselves justly entitled.

Respectfully Submitted,

BRIAN LAUTEN, P.C.

A handwritten signature in black ink, appearing to read "BP Lauten", with a stylized flourish at the end.

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ATTORNEYS FOR INTERVENORS

CERTIFICATE OF SERVICE

In accordance with Rule 21a of the Texas Rules of Civil Procedure, the undersigned certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record via the ECF case manager system and by electronic filing on April 9, 2018.

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and JPMorgan Chase Bank, N.A., in its Corporate Capacity***

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JPMorgan Chase Bank, N.A.**

A handwritten signature in black ink, appearing to read "BTP" followed by a stylized flourish or "L".

BRIAN P. LAUTEN
ATTORNEY FOR INTERVENORS

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED,

JO N. HOPPER,

Intervenor,

v.

JPMORGAN CHASE BANK, N.A.,
STEPHEN B. HOPPER, and LAURA
S. WASSMER,

Defendants.

IN THE PROBATE COURT

NO. 1

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and
FEE, SMITH, SHARP & VITULLO, LLP

Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, individually and as
Beneficiaries of the ESTATE OF
MAX D. HOPPER, DECEASED,
the ESTATE OF MAX D. HOPPER,
DECEASED, JPMORGAN CHASE
BANK, N.A.,

Defendants.

VERIFICATION

STATE OF TEXAS)
)
COUNTY OF DALLAS)

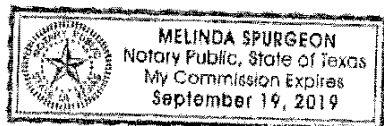
I

BEFORE ME, the undersigned authority, on this day personally appeared **ANTHONY L. VITULLO**, who, being by me duly sworn on oath, deposed and stated that he is a Senior Partner at Fee, Smith, Sharp & Vitullo, LLP, named as Intervenor in the above-entitled and numbered cause; that he has read **JOHN L. MALESOVAS, d/b/a MALESOVAS LAW FIRM AND FEE, SMITH, SHARP & VITULLO, LLP'S CONSOLIDATED FIRST AMENDED JOINT PETITION IN INTERVENTION AND PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR TEMPORARY INJUNCTION AND REQUESTS FOR DISCLOSURES**; and that every statement contained therein is within his personal knowledge and is true and correct, and that he is authorized to sign on behalf of Fee, Smith, Sharp & Vitullo, LLP.



ANTHONY L. VITULLO

SUBSCRIBED AND SWORN TO BEFORE ME this 9th day of April, 2018.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

MY COMMISSION EXPIRES: 9-19-2019

ORIGINAL

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER, §
DECEASED, §
§

IN THE PROBATE COURT

JO N. HOPPER, §

Intervenor, §

v. §

NO. 1

JPMORGAN CHASE BANK, N.A., §
STEPHEN B. HOPPER, and LAURA §
S. WASSMER, §

Defendants. §

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a §
MALESOVAS LAW FIRM, and §
FEE, SMITH, SHARP & VITULLO, LLP §

Intervenors, §

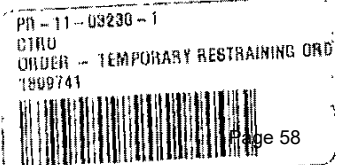
v. §

STEPHEN B. HOPPER, LAURA S. §
WASSMER, individually and as §
Beneficiaries of the ESTATE OF §
MAX D. HOPPER, DECEASED, §
the ESTATE OF MAX D. HOPPER, §
DECEASED, JPMORGAN CHASE §
BANK, N.A., §

Defendants. §

TEMPORARY RESTRAINING ORDER

Came to be heard on the 9TH day of April 2018, the minimum amount of notice having been duly provided pursuant to Local Rule 2.02(a) of Dallas County, Fee Smith Sharp & Vitullo, LLP and John L. Malesovas d/b/a Malesovas Law Firm's (collectively, "Intervenors") *Verified Petition(s) in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief* against, *inter alia*,



MR:058

Stephen Hopper and Laura Wassmer, individually and as beneficiaries of the Estate of Max D. Hopper, deceased, (hereinafter jointly "Clients") and JPMorgan Chase Bank, N.A. (hereinafter "JPM") (Clients and JPM hereinafter jointly, "Defendants" with respect to the claims now pending in this Intervention).

The Court, after considering the *Intervenors' Collective Verified Original Petition in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief*, the evidence submitted by Intervenors *in camera*, the relevant exhibits, the arguments of counsel, concludes that—unless immediately restrained, Defendants will irreparably injure Intervenors.

This Court has subject matter jurisdiction over the dispute brought before it under both, TEX. ESTATES CODE ANN. § 32.007 et seq. (Vernon 2014), and, TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014) (authorizing declaratory judgment actions in probate court when such relief is germane to an Estate).

Intervenors respective Pleas and application for TRO are timely filed, given that this Court has yet to sign a judgment; and, therefore, retains plenary power over this proceeding. See TEX. R. CIV. P. 60 et seq.

This Court has, preliminarily, taken judicial notice, pursuant to Rule 201 of the Texas Rules of Evidence, of the following facts that, in reasonable probability, appear to be true at this preliminary stage of the proceeding:

- 1.) In, around, or about November of 2015, Clients executed a valid and enforceable contingency agreement ("CA") with Intervenors;
- 2.) On or about April 5, 2018, attorneys for Clients and JPM appeared before this Court and announced, without revealing any of the substantive terms, that a confidential settlement had been reached between them in the underlying dispute pending in this Court (hereinafter "Settlement");
- 3.) On or about the same day, April 5, 2018, but—literally what appears to have been within minutes after the Court was informed that a settlement had been reached by the parties in this underlying dispute—Clients terminated their CA with Intervenors by and through their attorney, James Pennington;

- 4.) Intervenor has filed what, by all accounts, appears to be a valid and enforceable First Party Attorney's Fees Lien in the proceeds of the Settlement;
- 5.) Intervenor fully performed; or, at the very least, substantially and materially performed all of their duties, responsibilities, and obligations under the CA at or before the time Clients terminated the CA—as those legal terms are meant in, *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2018, no pet.), *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003), and *Mandell & Wright*, 441 S.W.2d 841, 847 (Tex. 1969); and
- 6.) Given the timing of the termination of Intervenor, Clients are estopped, quasi-estopped, and/or have waived any and all defenses, if any, that could or would be lodged to the CA or the quality of the legal services performed by Intervenor.

Based upon these preliminary findings, this Court is of the opinion that Intervenor has established a probability of success on the merits on their application for, *inter alia*, declaratory relief. See TEX. CIV. PRAC. & REM. CODE § 37.004 et seq. (Vernon 2014). This Court is of the opinion that, unless restrained, one or more Defendants are likely to cause permanent damage to Intervenor, should they be allowed to transfer, hypothecate, assign, or take title to Intervenor's interest in the settlement proceeds before the pleas in Intervention are adjudicated on the merits. Such harm would be irreparable because this Court is of the opinion that there is no showing; or, in the alternative, an inadequate showing that Defendants could timely and immediately pay the disputed funds to Intervenor, should Intervenor ultimately prevail in this proceeding, and because Intervenor has a security interest in and lien upon a portion of the settlement proceeds which would be eviscerated by allowing Clients to dispose of 100% of the settlement proceeds as they saw fit. Moreover, given the

Court's preliminary findings set forth above in (i)-(vi), Intervenor's have established a property right and secured interest in the proceeds at issue.

The Court is, **THEREFORE**, of the opinion that Intervenor's are entitled to the issuance of a Temporary Restraining Order and that such an Order is necessary to protect Intervenor's rights. This **ORDER** is necessary because of the immediate need to enforce the security interest and lien which Intervenor's have in a portion of the settlement proceeds and to stop the wrongful flow of funds in the near future from being disseminated to either Clients or their attorneys, or some other third party subject to Clients' direction and control, upon which Intervenor's would have no adequate remedy at law. Without intervention by this Court, Intervenor's property right, that is Intervenor's security interest in and lien upon the settlement proceeds, would be destroyed and there would be no way to restore that property right in the Settlement proceeds themselves.

This Court is further of the opinion that Intervenor's are entitled to an **EXPEDITED DISCOVERY ORDER**. Therefore, Stephen Hopper and Laura Wassmer shall be made available for deposition on and certainly no later than **Tuesday, April 17, 2018**. If the parties cannot agree on a suitable location for these depositions, they shall be taken in this Court's jury room. The depositions are limited solely to the matters in dispute in the pled Intervention filings and shall last no longer than two hours per deponent (per side). In addition, Intervenor's may serve a *duces tecum* with the deposition notices, which shall be limited to no more than seven (7) discovery requests. The deposition notice shall provide two business days notice to the deponent.

It is further **ORDERED** that Intervenor's may move this Court for a dispositive summary judgment on 14 days notice of any hearing; and any response shall be due to be filed within 5 days of the hearing; and any reply shall be due to be filed within 2 days of the hearing.

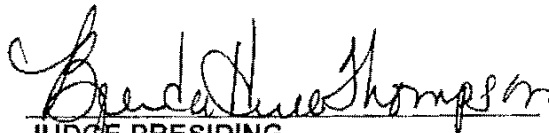
It is therefore **ORDERED, ADJUDGED, and DECREED** that Defendants, Stephen Hopper, Laura Wassmer, and JPMorgan Chase, N.A., and any of his, her, their, or its agents, servants, employees, successors, assigns and those persons in active concert or participation therewith, must:

- 1) Deposit all of the settlement proceeds due to Stephen B. Hopper and Laura s. Wassmer, individually and as beneficiaries of the Estate of Max Hopper, Deceased, into a safekeeping account with JPMorgan Chase Bank, NA, to be held in trust until further Order of this Court. Funds in the safekeeping account shall be withdrawn only upon Order of this Court;
- 2) The parties are **ORDERED** to preserve and prevent the destruction of all documents, including electronic data, emails, and notes, that relate in any way to the matters and claims set forth in the Intervenor's respective Pleas on file—and, moreover, all electronic storage devices must be imaged and preserved.

IT IS FURTHER ORDERED that this order is effective immediately upon Intervenor's deposit with the appropriate clerk of this Court a ~~Corporate Surety or cash~~ ^{PMT} bond in the amount of \$ 10,000,000 ⁰⁰ (U.S. dollars).

IT IS FURTHER ORDERED that Intervenor's application for a temporary injunction is set for an evidentiary hearing and will be heard before this Court on April 24, 2018 at 9 o'clock 9 a.m., and that Stephen Hopper, Laura Wassmer, and JPMorgan Chase, N.A. appear and show cause, if any, why this Temporary Restraining Order should not be continued and converted into a Temporary Injunction until final hearing and trial hereon.

Signed and issued this the 10th day of April 2018, at 4:00 o'clock 9 p.m.


JUDGE PRESIDING

CAUSE NO. PR-113238-1

IN RE: ESTATE OF
MAX D. HOPPER,
DECEASED

JO N. HOPPER

Plaintiff,

v.

JP MORGAN CHASE, N.A.,
STEPHEN B. HOPPER and LAURA S.
WASSMER

Defendants.

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and FEE,
SMITH, SHARP & VITULLO, LLP

Intervenors,

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK, N.A.,

Defendants.

IN THE PROBATE COURT

NO. 1

DALLAS COUNTY, TEXAS

MOTION TO COMPEL ARBITRATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendants, Stephen B. Hopper and Laura S. Wassmer ("the Clients"), and file this Motion to Compel Arbitration of the claims asserted by Intervenors John Malesovas and Fee, Smith, Sharp & Vitullo, LLP ("Intervenors"), and respectfully show the Court the following:

The Clients request this Court to order the parties to arbitrate Intervenors' claims. The agreement(s), which the Intervenors rely upon to support their claims, contains a mandatory

MOTION TO COMPEL ARBITRATION

1

arbitration provision. The language contained in the aforementioned agreement states as follows:

20. ARBITRATION: . . . should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, *if any controversy or claim arises out of or is related to this agreement*, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (*including malpractice claims and fee disputes*), Attorneys and Client both *waive any right to bring a court action* or have a jury trial and agree that the *dispute shall be submitted to binding arbitration* to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas.¹

Intervenors introduced copies of the agreements (signed by Intervenors) into evidence at a hearing on April 9, 2018 regarding Intervenor's request for a temporary restraining order.² On April 10, 2018, this Court determined that the Clients and Intervenors executed the agreements.³ It is undisputed that both agreements contain an arbitration provision, as set forth above. The Clients have requested that Intervenors pursue their claims in arbitration; however, Intervenors refused to arbitrate their claims.

A court shall order the parties to arbitrate on application of a party showing an agreement to arbitrate and the opposing party's refusal to arbitrate. *Tex. Civ. Prac. & Rem. Code, Section 171.021*. Pursuant to the aforementioned statute, the Clients request this Court to compel the parties to arbitration. Additionally, the Clients request this Court to stay the intervention pursuant to Sections 171.021 and 171.025 of the *Tex. Civ. Prac. & Rem. Code*.

Intervenors have waived their right to bring any action in this Court or any other court. Any doubts regarding the existence or scope of an agreement are resolved in favor of arbitration. *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753 (Tex. 2001). The arbitration provision in the

¹ See p. 7 of Exhibit A attached to Petition in Intervention filed by Malesovas (emphasis supplied).

² Intervenors and/or Plaintiffs' Exhibits 1 and 2. There were two separate agreements signed by each of the Clients.

³ April 10, 2018 Order at 2. The Clients do not dispute they executed the agreements; however, they dispute, among other things, whether the attorney's fee provision in the agreements is enforceable or valid. See discussion *infra* at 3.

agreement applies to “any controversy or claim [that] arises out of or is related to this agreement.” This type of language is construed broadly. *In re Conseco Fin. Serv. Corp.*, 19 S.W.3d 562, 568 (Tex. App. – Waco 2000, orig. proceeding). There is no question that Intervenor’s claims arise out of, and are related to, the agreement. Intervenor maintains throughout their petitions that they are entitled to a contingent fee under the agreement.⁴ The Clients dispute this fee, which is a matter within the scope of the arbitration clause. Intervenor also seeks declaratory relief regarding their rights under the agreement and claims that the Clients breached the agreement. Once it is determined that an arbitration provision exists and the claim falls within the scope of that provision, a court has no discretion – it must compel arbitration and stay any further proceedings. *See Pepe Int’l Dev. Co. v. Garcia*, 915 S.W.2d 925, 930-31 (Tex. App. – Houston [1st Dist.] 1996, orig. proceeding).

Although the Clients dispute the enforceability of the contingent fee agreement, this issue should be decided by the arbitrator -- not this Court. Once there is an agreement to arbitrate, substantive attacks on the validity of the contract are to be resolved by the arbitrator, and not by the court. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006) (holding that an arbitration provision is severable from the remainder of the contract and, unless the challenge is to the arbitration clause itself, the issue of the contract’s validity is considered by the arbitrator). In *Buckeye*, the United States Supreme Court held that “because respondents challenge the Agreement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract. The challenge should therefore be considered by an arbitrator, not a court.” *Id.* at 446. *See also, FUNimation Entm’t v. SC Films Int’l*, 2013 WL 5770383, (E.D. Tex. Oct. 24, 2013); *Lawrence v. Comprehensive Bus. Serv. Co.*, 833 F.2d 1159, 1162 (5th Cir.1987) (submitting issue regarding illegality defense to arbitration);

⁴ First Amended Joint Petition in Intervention at 3-5; see also Original Petition in Intervention at 5.

Mesa Operating Ltd. P'ship v. La. Intrastate Gas Corp., 797 F.2d 238, 244 (5th Cir.1986) (submitting claim that contract was void *ab initio* to arbitration because parties failed to demonstrate that the arbitration agreement was "invalid separately from the entire contract").

Additionally, and without waiving their position that the agreement is unenforceable, in the alternative event that the agreement is determined to be enforceable – the Clients contend that the Intervenor breached the agreement. Pleading alternative theories does not defeat the effect of an arbitration clause that broadly covers all disputes that arise out of the underlying agreement. *In re Kellogg Brown & Root Inc.*, 166 S.W.3d 732, 740 (Tex. 2005).

Request for Immediate Hearing and/or Ruling

The Clients request this Court to set this matter for hearing in the immediate future *before* any discovery is conducted and *before* the April 24, 2018 hearing on Intervenor's temporary injunction. This Court may *not* defer any ruling on the Clients' motion to compel arbitration. *In re MHI Partnership, Ltd.*, 7 S.W.3d 918, 923 (Tex. App. – Houston [1st Dist.] 1999, orig. proceeding). Delaying a decision on the merits of arbitrability substantially defeats the policy behind section 171.021's abbreviated procedure, and it violates section 171.021's mandate to decide the issues summarily. *Id.* at 923. Deferring a ruling on this matter would effectively force the Clients to litigate Intervenor's claims in court. Thus, it would be an abuse of discretion to defer any ruling on arbitrability until after discovery and/or the temporary injunction hearing, scheduled for April 24, 2018. *Id.* at 923.

Conclusion

For those reasons set forth herein, the Clients request this Court to set this matter for an immediate hearing and/or that the Court issue a ruling on this motion immediately, that this Court compel the Intervenor to pursue their claims in arbitration, that the interventions be

stayed, and that the Clients have all other relief, at law or in equity, which the Clients may be entitled.

Respectfully submitted,

s/ James E. Pennington

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Attorneys for Defendants

Stephen B. Hopper and Laura S. Wassmer

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2018, the foregoing *Motion to Compel Arbitration* was filed using the e-filing system which will send notification of such filing to the following parties via email:

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April 11, 2018

VIA ELECTRONIC FILING AND HAND DELIVERY

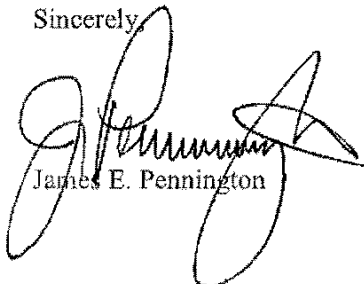
The Honorable Brenda Hull Thompson
Judge, Probate Court No. 1
Dallas County
1201 Elm Street, Suite 2400-A
Dallas, Texas 75207

Re: Cause No. PR-11-3238-1; Estate of Max D. Hopper; Jo N. Hopper v. Stephen Hopper and Laura Wassmer v. JPMorgan Chase Bank pending in Probate Court No. 1, Dallas County, Texas

Dear Judge Thompson:

A motion to compel arbitration was filed today in the above-referenced matter. On behalf of the movants, I respectfully request this matter be set for hearing immediately. As explained the motion, movants are entitled to an immediate ruling on this matter *before* discovery and/or the temporary injunction hearing scheduled on April 24, 2018. This Court may *not* defer a ruling on the motion to compel arbitration. *In re MHI Partnership, Ltd.*, 7 S.W.3d 918, 923 (Tex. App. – Houston [1st Dist.] 1999, orig. proceeding). Deferring a ruling on this matter would effectively force movants to litigate Intervenor's claims in court. Thus, it would be an abuse of discretion to defer any ruling on arbitrability until after discovery and/or the temporary injunction hearing, scheduled for April 24, 2018. *Id.* at 923. Accordingly, I respectfully request that a hearing be scheduled on this motion later this week. Thank you for your consideration of this matter.

Sincerely,



James E. Pennington

cc: All counsel (via electronic filing)

NO. PR-11-3238-1

IN RE: ESTATE OF

MAX D. HOPPER,

DECEASED

JO N. HOPPER,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,
STEPHEN B. HOPPER and LAURA S.
WASSMER,

Defendants.

IN THE PROBATE COURT

NO. 1

DALLAS COUNTY, TEXAS


**JPMORGAN CHASE BANK N.A.'S NOTICE OF
RECEIPT OF TEMPORARY RESTRAINING ORDER**

JPMorgan Chase Bank N.A. ("JPMorgan"), in its capacity as the independent administrator of the Estate of Max D. Hopper, deceased, and in its corporate capacity, has received the Court's April 10, 2018, Temporary Restraining Order. As the Court is aware, the parties signed and filed an April 4, 2018, Rule 11 agreement announcing their settlement pursuant to a confidential term sheet. JPMorgan notifies the Court that, as of today, the parties have not yet signed their Settlement and Release Agreement. Once signed, JPMorgan notifies the Court that certain conditions precedent must occur before JPMorgan has any obligation to make any settlement payment. JPMorgan writes simply to inform the Court that it is aware of and will abide by the Temporary Restraining Order if it remains in effect when JPMorgan's obligation to make a settlement payment arises.

MR:071

Respectfully submitted,

BAKER & BOTTS L.L.P.

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**ATTORNEYS FOR
JPMORGAN CHASE BANK, N.A.
IN ITS CAPACITY AS INDEPENDENT
ADMINISTRATOR OF THE ESTATE
OF MAX D. HOPPER, DECEASED AND
IN ITS CORPORATE CAPACITY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record via the electronic service manager and/or by email on this 11th day of April, 2018.

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April 12, 2018

VIA ELECTRONIC FILING AND HAND DELIVERY

The Honorable Brenda Hull Thompson
Judge, Probate Court No. 1
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1201 Elm Street, Suite 2400-A
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URGENT – IMMEDIATE HEARING REQUESTED

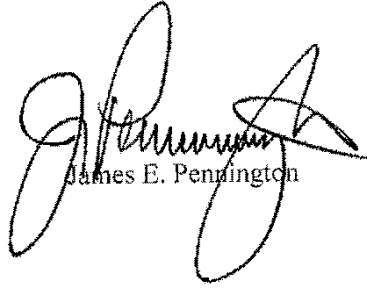
Re: Cause No. PR-11-3238-1; Estate of Max D. Hopper; Jo N. Hopper v. Stephen Hopper and Laura Wassmer v. JPMorgan Chase Bank pending in Probate Court No. 1, Dallas County, Texas

Dear Judge Thompson:

Yesterday, I filed a motion to compel arbitration in the above-referenced matter and requested an immediate hearing and/or ruling on this matter. As explained in the motion and my correspondence to the Court, movants are entitled to an immediate ruling on this matter *before* any discovery takes place. Pursuant to your April 10, 2018 order, Intervenor has scheduled the depositions of movants for April 16, 2018. Additionally, a temporary injunction hearing is scheduled for April 24, 2018.

Accordingly, it is imperative that we obtain a hearing and/or a ruling on the motion to compel arbitration **before April 16, 2018**. *See, In re MHI Partnership, Ltd.*, 7 S.W.3d 918, 923 (Tex. App. – Houston [1st Dist.] 1999, orig. proceeding). Accordingly, I respectfully request that a hearing be scheduled on this motion immediately -- before the depositions commence on April 16, 2018. Thank you for your consideration and timeliness in responding to this matter.

Sincerely,



James E. Pennington

cc: All counsel (via electronic filing)

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2018, the foregoing *Notice of Hearing on Motion to Compel Arbitration* was filed using the e-filing system which will send notification of such filing to the following parties via email:

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NOTICE OF HEARING - MOTION TO COMPEL ARBITRATION

2

Page 77

MR:077

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s/ James E. Pennington
James E. Pennington

CAUSE NO. PR-11-3238-1

JOHN L. MALESOVAS, d/b/a	§	IN THE PROBATE COURT
MALESOVAS LAW FIRM, and	§	
FEE, SMITH, SHARP & VITULLO, LLP	§	
	§	
Intervenors,	§	
	§	
v.	§	NO. 1
	§	
STEPHEN B. HOPPER, LAURA S.	§	
WASSMER, individually and as	§	
Beneficiaries of the ESTATE OF	§	
MAX D. HOPPER, DECEASED,	§	
the ESTATE OF MAX D. HOPPER,	§	
DECEASED, JPMORGAN CHASE	§	
BANK, N.A.,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**INTERVENORS' (LAWYERS) CONSOLIDATED OBJECTIONS AND
RESPONSE TO HOPPER AND WASSMER's (CLIENTS) MOTION TO
COMPEL ARBITRATION, AND BENCH BRIEF IN SUPPORT
OF TEMPORARY ORDERS & RELIEF**

I.

Summary of Argument

The intervenors in this civil action, namely, John L. Malesovas d/b/a Malesovas Law Firm and Fee Smith Sharp & Vitullo, LLP (collectively, "Lawyers"), fully embrace the language and contractual obligations of the parties as set forth and articulated in that certain "Contingency Fee Contract of Representation" ("Contingency Agreement"), executed on or about November 19, 2015, between the Lawyers on the one hand and Stephen Hopper and Laura Wassmer (collectively, "Clients") on the other hand, including, specifically, its arbitration provision. Be that as it may, Clients' Motion to Compel Arbitration (the "Motion") wrongfully presupposes that, because there is an arbitration provision at play, this Court is allegedly divested of its jurisdiction to grant

temporary relief in the form of an order to deposit funds or a temporary injunction; on the contrary, the two concepts cannot be conflated and, indeed, they are mutually exclusive. Accordingly, this Court has jurisdiction and the inherent power (to grant temporary relief and to maintain continuous jurisdiction over the settlement proceeds), notwithstanding the arbitration provision, for three salient reasons:

- (1) By statute, the trial court retains jurisdiction *before and during* an arbitration to grant temporary relief. See *Senter Investments v. Veerjee*, 358 S.W.3d 841, 845 (Tex. App.—Dallas 2012, no pet.); see also TEX. CIV. PRAC. & REM. CODE § 171.086(a)(2)-(3)(1) &(b)(3)(B) (Vernon 2014). To this end, *Senter* and its progeny are abundantly clear that the trial court's jurisdiction to grant temporary relief and its obligation to compel binding arbitration, if any, are mutually exclusive. Clients' Motion wrongfully presupposes the trial court can only do one or the other. Not so. Clients' position to the contrary advances an incorrect proposition of law. See *Senter*, 358 S.W.3d at 845; TEX. CIV. PRAC. & REM. CODE § 171.086(a)(2)-(3)(1) &(b)(3)(B).
- (2) Even assuming *arguendo* the narrow legal issue before this Court is subject to arbitration, and notwithstanding the fact that this Court retains continuing jurisdiction to grant temporary relief, the issue before this Court is not subject to the Contingency Agreement's arbitration clause. On the contrary, the sole issue before this Court is the Lawyers' fully vested and secured property and ownership rights in the disputed funds, which are being held by JPMorgan Chase Bank, N.A. ("JPM"). The Lawyers have no agreement with JPM and the latter is not, obviously, a party to the Contingency Agreement executed between Lawyers and Clients. See *Transamerica Occidental Life Ins. Co. v. Rapid Settlements, Ltd.*, 284 S.W.3d 385, 393-94 (Tex. App.—Houston [1st Dist.] 2008, no

pet.) (reversible error to find that the holder of the settlement funds, who is a non-signatory to the arbitration agreement, is subject to binding arbitration award). JPM is the Independent Administrator of Max Hopper's Estate, it has possession of the disputed funds, and, therefore, this Court has jurisdiction to grant the Lawyers declaratory relief under TCPRC 37.005, given that this issue is "incident" to an Estate, upon which this Court maintains continuing and exclusive jurisdiction. See TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014).

- (3) Finally, because the Lawyers fully performed and, because the Clients terminated Lawyers only *after* a settlement was reached, Clients are fully estopped; accordingly, there is nothing to arbitrate—at least in so far as Lawyers' vested and secured property and ownership rights are concerned. See *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2001, pet. denied); *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003). Even assuming *arguendo* the Clients were not fully estopped from asserting a claim, and they undoubtedly are, they are certainly estopped from taking irreconcilable positions. On the one hand, Clients are contending that the Contingency Agreement is void and unenforceable. Only by arguing that the Contingency Agreement is void and unenforceable can Clients contend that Lawyers should not be compensated for their legal services. Yet, on the other hand, Clients are seeking to enforce the arbitration clause, which is embodied within the very Contingency Agreement they claim is void and unenforceable. The Clients cannot haphazardly pick and choose which provisions of the Contingency Agreement they like, while wholeheartedly ignoring and disregarding those provisions

which they dislike. Principles of estoppel prohibit Clients from being on three sides of a two-sided issue.

For these reasons, this Court should grant temporary relief and table, temporarily, deciding Clients' Motion to Compel Arbitration until the pleadings and the evidentiary record is more fully developed so that it can be fairly and reasonably determined which claims are and are not subject to arbitration, given the fact that the property and ownership issues germane to Lawyers' claims to the disputed funds—through JPM—are not subject to arbitration. The complex adjudication of the underlying lawsuit was never a *pro bono* project—Lawyers must be paid and without any unnecessary and undue delay.

II. Standard(s) of Review

A. **An Order Directing Disputed Funds to be Deposited into the Registry is neither an Injunction nor an Appealable Order**

A "trial court has the inherent authority to order a party to deposit disputed funds into the registry of the Court." See *Diana River Assocs., P.C. v. Calvillo*, 986 S.W.2d 795, 797 (Tex. App. – Corpus Christi 1999, pet. denied). To this end, an order simply directing a party to deposit disputed funds into the registry of the court is not a temporary injunction and is not appealable. See *id.* at 798; see also *Alpha Petroleum Co. v. Dunn*, 60 S.W.2d 469, 471 (Tex. Civ. App.—Galveston 1933, writ dismissed); accord *Prodeco Exploration, Inc. v. Ware*, 684 S.W.2d 199, 201 (Tex. App.—Houston [1st Dist.] 1984, no writ).

B.
An Order Granting a Temporary Injunction is
Subject to a Deferential Abuse of Discretion Standard

In contrast to an order that requires disputed funds to be deposited into the court's registry (which is neither an injunction nor appealable), a trial judge's decision to grant a temporary injunction is subject to a deferential abuse of discretion standard. See *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); see also *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993). Under no circumstances can the reviewing court substitute its judgment for the trial court's decision to grant an injunction, unless the trial court's decision is so arbitrary that it exceeds the bounds of reasonable discretion. See *Butnaru*, 84 S.W.3d at 204.

III.
Brief Factual Predicate

Lawyers represented Clients pursuant to that certain signed and fully executed Contingency Agreement(s). See Exhibits "A" & "B." The Contingency Agreement specifies that Clients shall cause to be paid to Lawyers 45% of any anything of value recovered (should Lawyers represent Clients through trial, which they certainly did). See *id.* (p. 2, ¶ 3). The Contingency Agreement clearly and unambiguously specifies that Lawyers have a valid, readily enforceable First Party Attorneys' Fees Lien and secured interest in the settlement proceeds at issue. *Id.* (p. 5, ¶ 11). Literally within twenty-fours of a settlement having been reached, Clients terminated Lawyers. See Exhibit "C." Given that Lawyers were terminated only *after* their work was completed, Clients cannot deny that they accepted, used, and enjoyed the legal services, which contributed in whole or in part to the settlement at issue.

Clients have anticipatorily and materially breached the Contingency Agreement by, *inter alia*, refusing to pay Lawyers the just amounts due and owing under the contract. *Id.*

On April 10, 2018, this Court heard Lawyers' application for a Temporary Restraining Order (TRO) and, consistent with that application, it entered findings, that: (i) Lawyers have a valid and enforceable First Party Attorney's Fees Lien in the proceeds of the settlement; (ii) Lawyers fully performed, or, alternatively, substantially and materially performed all of their duties, responsibilities, and obligations under the Contingency Agreement; (iii) and Clients are estopped, quasi-estopped, or have waived all defenses, if any, that could otherwise be asserted had those defenses, if any, not been lodged *ex-post*. Accordingly, the Court granted the TRO to protect Lawyers' secured and fully vested ownership and property rights in the settlement proceeds.

At issue here is the Clients' Motion to Compel Arbitration. As noted *supra*, that requested relief is entirely independent of and wholly unrelated to Lawyers' application for an order to deposit disputed funds into the registry of the court and/or a temporary injunction. As Lawyers establish more fully below, this Court should grant a temporary order to protect the funds in dispute and it should temporarily carry Clients' Motion with the case until the evidentiary record is more fully developed so that a pragmatic decision can be made as to which claim or claims are truly covered by the arbitration provision in the Contingency Agreement and which ones are not. These matters are more fully briefed and articulated herein below.

IV.
Argument & Authorities

A.
**This Court has Jurisdiction to Grant Temporary Relief
Regardless of whether the Claims are Subject to Arbitration**

By statute, a trial court maintains jurisdiction to grant temporary relief protecting disputed funds *before* and even *during* the pendency of an arbitration. See *Senter Investments v. Veerjee*, 358 S.W.3d 841, 845 (Tex. App.—Dallas 2012, no pet.); see also TEX. CIV. PRAC. & REM. CODE § 171.086(a)(2)-(3)(1)&(b)(3)(B) (Vernon 2014). Indeed, the Alternative Dispute Resolution Act, as codified in Chapter 171 of the Civil Practice & Remedies Code, is precisely on point and clearly states:

(a) Before arbitration proceedings begin, in support of arbitration a party may file an application for a court order, including an order to:

...

(2) invoke the jurisdiction of the court over an ancillary proceeding in rem, including by attachment, garnishment, or sequestration, in the manner and subject to the conditions under which the proceeding may be instituted and conducted ancillary to a civil action in a district court;

(3) restrain or enjoin:

(A) the destruction of all or an essential part of the subject matter of the controversy;

(b) During the period an arbitration is pending before the arbitrators or at or after the conclusion of the arbitration, a party may file an application for a court order, including an order:

(1) that was referred to or that would serve a purpose referred to in Subsection (a);

(B) in an ancillary proceeding in rem, including by attachment, garnishment, or sequestration, in the manner of and subject to the conditions under which the proceeding may be conducted ancillary to a civil action in a district court.

See TEX. CIV. PRAC. & REM. CODE § 171.086(a)(2)-(3)(1)&(b)(3)(B) (emphasis added).

To this end, *Senter* cites to, *Manna v. Romero*, 48 S.W.3d 247 (Tex. App.—San Antonio 2001, pet. dim'd w.o.j.), which is precisely on point. In *Manna*, the court of appeals affirmed the trial court's order granting a temporary injunction, but it reversed the trial court's order denying a motion to compel arbitration. See *id.* at 251. Thus, the trial court can, without error, grant temporary relief to protect disputed funds, while simultaneously granting a motion to compel arbitration. *Id.*; see also *Structured Capital Resources Corp. v. Arctic Cold Storage, LLC*, 237 S.W.3d 890, 894-95 (Tex. App.—Tyler 2007, orig. proceeding) (“it is entirely permissible for a trial court to order disputed funds paid into the registry of the court until its ownership is determined” and “a temporary injunction, or court order, to maintain the status quo, that is, keep the money from disappearing, was desirable whether it was going to trial or arbitration”).

Clients' Motion wrongfully assumes the trial court can only do one or the other—that argument is rejected by the appellate courts and expressly rebuked by statute. Compare *Senter*, 358 S.W.3d at 845, *Structured Capital Resources Corp.*, 237 S.W.3d at 894-95, and, TEX. CIV. PRAC. & REM. CODE § 171.086(a)(2)-(3)(1) &(b)(3)(B), with, *Manna*, 48 S.W.3d at 251.

B.
Lawyers' Ownership and Property Dispute with JPM
Is Not Subject to Any Arbitration Agreement Whatsoever

Where, as here, there is a non-signatory to an arbitration agreement, namely JPM in the case at bar, who holds funds that are claimed by competing parties who have in fact agreed to arbitrate—it is appropriate for the trial court to maintain jurisdiction over the dispute at hand. On point is, *Transamerica Occidental Life Ins. Co. v. Rapid Settlements, Ltd.*, 284 S.W.3d 385 (Tex. App.—Houston [1st Dist.] 2008, no pet.), which is instructive. There, Echols had a structured settlement, which was funded by Transamerica, who was the annuity obligor. Echols sold his settlement to Rapid for a discounted lump sum. The agreement between Echols and Rapid contained an arbitration clause. Before payment of the lump sum matured, Echols revoked his consent to the agreement. *Id.* at 388.

Rapid filed a demand for arbitration and it ultimately prevailed in the proceeding against Echols. Subsequently, Rapid filed suit to enforce the arbitration award against Transamerica, albeit the latter was a non-party to the arbitration. Pursuant to the arbitration award, the trial court ordered Transamerica to deliver payment to Rapid. *Id.* Upon receiving notice of the judgment, Transamerica appealed. Reversing the trial court's judgment and holding that Transamerica was not bound by the arbitration award because it was a non-signatory to the agreement, *Transamerica* held:

Transamerica's role in the structured settlement transaction—one informed by state law—does not render it a party to the transfer agreement's arbitration clause or otherwise bind it as a non-signatory. **Accordingly, we hold that the arbitration clause in the transfer agreement between Echols and Rapid Settlements does not bind Transamerica, and that neither the arbitration award nor the trial court's judgment confirming that award is enforceable against it.**

Id. at 393-94 (emphasis added). Because Transamerica held the funds and because it was not bound by any arbitration agreement, the appropriate forum to adjudicate the dispute over ownership of the funds remained in the trial court.

Transamerica can be analogized to the present case; here, JPM, just like the annuity obligor in *Transamerica*, is the sole possessor of the disputed funds. But, as was the very situation in *Transamerica*, JPM is clearly a non-signatory to the Contingency Agreement between Lawyers and Clients.¹ See Exhibits "A" & "B." In the case at bar, the sole issue before this Court—at this very preliminary stage of the proceeding—is the proper and just allocation of the proceeds held by JPM, who is undoubtedly a non-signatory to any arbitration agreement, jurisdiction, therefore, remains exclusively in this Court to resolve this narrow issue.

It should be duly noted that JPM remains the Independent Administrator of Max Hopper's Estate, and, as things currently stand, it alone has exclusive possession of the disputed funds; therefore, this Court has jurisdiction to grant Lawyers declaratory relief under Section 37.005, given that what is contested is property "incident" to an Estate, upon which this Court maintains continuing and exclusive jurisdiction. See TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014). Because the narrow issue before this Court is not arbitrable in any event, this Court cannot compel binding arbitration—at least with respect to the limited ownership dispute regarding the settlement proceeds.

¹ Texas law imposes a heavy burden upon the Clients to establish that JPM, as a non-signatory, can be compelled to binding arbitration. See *In re Big 8 Food Stores*, 166 S.W.3d 869, 876 (Tex. App.—El Paso 2005, orig. proceeding); *Mohamed v. Auto Nation USA Corp.*, 89 S.W.3d 830, 836 (Tex. App.—Houston [1st Dist.] 2002, no pet.) ("the initial burden of the party seeking to compel arbitration—to establish the arbitration agreement's existence- includes the entity seeking to enforce the arbitration agreement was a party to it or had the right to enforce the agreement notwithstanding"). Clients have no evidence—literally none—that JPM has agreed to litigate any portion of this dispute in a parallel arbitration proceeding.

C.
The Clients are Fully Estopped

Because the Lawyers fully performed and, because the Clients terminated Lawyers only *after* a settlement was reached, Clients are fully estopped; accordingly, there is nothing to arbitrate—at least in so far as Lawyers' vested and secured property and ownership rights are concerned. See *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2001, pet. denied); *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003).

Indeed, *Enochs* held:

The trial court made findings of fact that Whitehurst [Lawyer] provided valuable legal services to Justin [Client] by successfully handling his personal injury claim, and that Justin accepted, used, and enjoyed these services and the product of these services. These findings support the theory of quasi-estoppel. The principle of quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position he has previously taken...it is unconscionable for Enoch, on Justin's behalf, to challenge the validity of the contingent fee contract when Justin has accepted the benefits of Whitehurst's services. We overrule Enoch's fifth point of error.

872 S.W.2d at 317 [citations omitted].

Even assuming *arguendo* the Clients were not fully estopped from asserting a claim, and they undoubtedly are, they are certainly estopped from taking irreconcilable positions. On the one hand, Clients are contending that the Contingency Agreement is void and unenforceable. Only by arguing that the Contingency Agreement is void and unenforceable can Clients contend that Lawyers should not be compensated for their legal services. Yet, on the other hand, Clients are arguing the arbitration clause, which is embodied within the very Contingency Agreement they claim is void, must

nevertheless be enforced. The Clients cannot haphazardly pick and choose which provisions of the Contingency Agreement they like, while wholeheartedly ignoring and disregarding those provisions which they dislike. Principles of estoppel prohibit Clients from being on three sides of a two-sided issue.

D.

**This Court has Discretion to Escrow the Funds
Without Reaching the Merits of the Injunction
(and that Ruling is Non-Appealable)**

This Court has discretion to escrow the disputed funds without granting a temporary injunction and without even reaching the merits. See, e.g., *Prodeco Exploration, Inc. v. Ware*, 684 S.W.2d 199, 201 (Tex. App.—Houston [1st Dist.] 1984, no writ); *Diana Rivera & Assoc., P.C. v. Calvillo*, 986 S.W.2d 795, 797-98 (Tex. App.—Corpus Christi 1999, pet. denied); accord *Castilleja v. Camero*, 414 S.W.2d 431, 433 (Tex. 1967). If the Court simply escrows the disputed funds, and retains jurisdiction over the funds, it has discretion to do that and such an order is neither a temporary injunction nor the type of ruling that is subject to appeal. See *Diana Rivera & Assoc., P.C.*, 986 S.W.2d at 798.

V.

Conclusion

In conclusion, this Court should grant temporary relief and protect Lawyers' vested and secured property and ownership rights in the disputed funds. This Court should hold any ruling on compelling arbitration temporarily in abeyance until the record is more fully developed as to what claims, if any, are subject to the Contingency Agreement's arbitration clause.

WHEREFORE, PREMISES CONSIDERED, the Intervenor, John L. Malesovas d/b/a Malesovas Law Firm and Fee Smith Sharp & Vitullo, LLP, respectfully pray that this Honorable Court convert this Court's TRO into a temporary order protecting the settlement funds in dispute; that the Court hold any ruling on the motion to compel arbitration temporarily in abeyance; and further grant the Intervenor (Lawyers) all such further relief whether in law or in equity upon which they may show themselves justly entitled.

Respectfully Submitted,

BRIAN LAUTEN, P.C.

A handwritten signature in black ink, appearing to read "BP Lauten", with a large, stylized flourish at the end.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on April 20, 2018, in accordance with the Texas Rules of Civil Procedure to:

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BRIAN P. LAUTEN
ATTORNEY FOR INTERVENORS

CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned **Stephen Hopper, and Laura Wassmer** referred to as "Client" or "Clients" employ and retain Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm, (herein "Attorneys") to represent Client as set forth herein.

1. SCOPE OF REPRESENTATION: Attorneys agree to investigate and evaluate and litigate Client's possible claim or claims of negligence, fraud, breach of contract, and breach of fiduciary duty against JP MORGAN CHASE and persons and companies relating to JP MORGAN CHASE BANKS wrongful acts in acting as the independent administrator of the Estate of Max Hopper..

Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client. Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties.

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.

Client understands and agrees that Attorneys will not file suit against entities that are in a foreign jurisdiction or are international companies whom in attorney's opinion cannot be sued in a United States court. Client understands and agrees that Attorneys are not obligated to pursue entities that are defunct and/or bankrupt.

Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.

2. AUTHORITY OF ATTORNEYS: Client empowers Attorneys to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's

Claims, including hiring investigators, expert witnesses, and/or other attorneys and filing any legal action necessary. Client authorizes and empowers Attorneys to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claim, and Client further authorizes and empowers them to sign any and all pleadings and all releases, checks, drafts, authorizations and other papers necessary and proper in connection with the prosecution or enforcement of Client's Claims and collection or settlement of the damages awarded or to be paid therefore, and to receive such funds or other property in Client's name and for Client on account of any judgment recovered or any settlement agreed upon in connection with Client's Claim. Full power and authority is given by Client to Attorneys to adjust, settle or compromise Client's Claim, but no final settlement shall be made and consummated by Attorneys without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claim without the Attorneys' authority, agreement and consent. Should Client make a settlement in violation of this Agreement, Client agrees to pay Attorneys the full fee agreed upon under paragraph 3 "Attorneys' Fee", below.

3. ATTORNEYS' FEE: This Agreement is a contingency fee contract. Specifically, if Attorneys are successful in recovering money or anything of value for Client, by settlement prior to trial begins, Attorneys shall receive attorneys' fees in the amount of forty percent (40%) of the gross recovery. The attorney fee will be split amongst the attorneys as follows: FSSV 50% Malesovas Law Firm 50%. If the matter is resolved after trial begins, Attorneys shall receive attorneys' fees in the amount of forty-five (45%) of the gross recovery. All attorneys' fees shall be a percentage of the gross recovery. Gross recovery means the gross amount of money or other value or property recovered for Client, before the deduction of expenses. Trial is considered to have commenced at 5:00 p.m. on the Friday closest to ten (10) days before jury selection begins or evidence is first presented to the trier of fact, whichever is the earlier of these two events. If Attorneys do not recover any money or other value or property for Client, Client will not owe any attorneys' fees. Client agrees that Attorneys may, in their discretion, employ associate counsel to assist in prosecuting Client's cause of action, and Client does not object to the participation of any lawyers Attorneys may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel is the responsibility of Attorneys. In the event that the case is settled by way of a structured settlement, Client approves and authorizes attorneys' fees to be based upon the present value benefit of the settlement and further authorizes Attorneys to take attorneys' fees either in cash or in structured payment, as Attorneys deem appropriate.

In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to

avoid paying the Client's claim; a defendant may transfer assets out of the country thereby necessitating the retention of foreign counsel, or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees of such counsel will be deducted from Client's share of the recovery.

4. **COSTS AND OTHER EXPENSES:** Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred. Such costs include filing fees, expert witness fees, court reporter and video fees, copy charges, postage, mailing, travel, witness fees, electronic document conversion fees, delivery fees, internal operating costs and other related charges incurred or paid as an expense on behalf of Client and paid to third-party vendors or incurred internally by Attorneys and charged to Client in connection with Attorneys' representation of Client.

5. **DISBURSEMENT OF PROCEEDS TO CLIENT:** Client understands that Attorneys make no guarantee or assurance of any kind regarding the likelihood of success of Client's claims. Upon receipt by Attorneys of the proceeds of any settlement or judgment, Attorneys shall (1) retain either forty percent (40%) of the proceeds as their attorneys' fees if the matter is settled or resolved before trial begins or forty-five (45%) percent of the proceeds as their attorneys' fees if the matter is settled or resolved after trial begins, (2) deduct from Client's share of the proceeds any costs and expenses, including the fees of any special outside counsel that Attorneys may incur on Client's behalf, and (3) disburse the remainder of Client's share of the proceeds to Client. At the time of disbursement of any proceeds, Client will be provided with a disbursement sheet reflecting the attorneys' fees, the expenses deducted out of Client's share, and the remainder of Client's share.

Upon some circumstances, health insurers, workers compensation carriers, or others who have paid benefits or provided services on Client's behalf may claim a right to recover a portion of the proceeds of any action brought on behalf of the Client and may place Attorneys on notice of their claim. Except as may be required by law, Attorneys will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. **POWER OF ATTORNEY:** Client gives Attorneys a power of attorney to execute and negotiate all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, proofs of claim, ballots, verified statements including those pursuant to Bankruptcy Rule 2019,

and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.

7. **COOPERATION; ADDRESS CHANGE; RETURN OF DOCUMENTS:** Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial. Client shall appear on reasonable notice at any and all depositions and Court appearances and shall comply with all reasonable requests of Attorneys in connection with preparation and presentation of Client's claims. The Client acknowledges and agrees that all communications with Attorneys are privileged. The Client acknowledges that Attorneys may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of Attorneys' clients. Therefore, Client agrees and understands that other individuals who are clients of Attorneys may also invoke the attorney client privilege as to Attorneys' communications with Client. The Client acknowledges and agrees not to provide attorney work product or attorney client communications to any other person.

Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

Client understands that applicable State law may impose sales, service or other tax on any amount that Client may recover or the fees due Attorneys hereunder. Client also understands that applicable Federal income tax law may require that Client pay

income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

9. **DEATH OF CLIENT:** The provisions of this Agreement will not terminate upon the death of Client. In the event of the death of Client, any duly appointed Representative of Client's heirs and/or estate will be bound by this Agreement to the extent allowed by applicable law, including without limitation, the provisions of this Agreement relating to the recovery of attorneys' fees and costs and other expenses. Any such Representative shall, upon request by Attorneys, execute a new Agreement in the capacity as Representative for the heirs and/or estate of the Client.

10. **OFFER OF SETTLEMENT:** Client understands that applicable law may, under certain circumstances, allow a Defendant to make an offer of settlement to Client and if Client rejects or does not accept such an offer, such may result in any award, verdict or judgment in Client's favor being reduced as provided by such law. Client understands that Client has the final authority to accept or reject any offer of settlement. Client understands that if Client rejects or does not accept such an offer, and Client's recovery is subsequently reduced, the fees owed to Attorneys will be calculated on the amount of any award, verdict or judgment before reduction, and the reduction shall be out of Client's share of any recovery.

11. **SECURITY INTEREST:** Client hereby assigns, transfers and conveys over to Attorneys an amount equal to either forty percent (40%) of the proceeds if the matter is settled or resolved before trial begins or forty-five percent (45%) of the proceeds if the matter is resolved after trial begins, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the claims described in this contract. Client does hereby give and grant to Attorneys an express security interest, in addition to any statutory lien, upon Client's claims and any and all judgments recovered, and any and all funds or property realized or paid by compromise or settlement, as security for the compensation and costs and expenses advanced or due to be paid or reimbursed to Attorneys hereunder. This security interest is to continue in the event Attorneys are discharged without good cause. If the claims are not assignable at law, Client expressly assigns to Attorneys, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

12. **BINDING EFFECT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

13. **TERMINATION OF REPRESENTATION:** Client understands that Client can terminate Attorneys' representation of Client at any time by providing written notice to

Attorneys. Should Client elect to terminate Attorneys' representation prior to the full conclusion of Attorneys' representation, Client understands and agrees that Attorneys have a claim for expenses of litigation and unpaid attorneys' fees which will become due upon receipt by Client or any successor attorney of Client or any proceeds for any remaining portion of Client's claim. Client understands that the obligation for unpaid attorneys' fees will be calculated based on the percentage of work completed on the case or claims at the time Client terminates Attorneys.

14. NO GUARANTEE OF RECOVERY: Client understands that no guarantee or assurances of any kind have been made regarding the likelihood of success of Client's claim, but that Attorneys will use their skill and diligence, as well as their experience, to diligently pursue Client's action.

15. MISCELLANEOUS: In case any one or more of the provisions contained in this agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

16. STATUTE OF LIMITATIONS: Client understands that an issue may exist as to whether the applicable statute of limitations has expired. This issue is raised in many lawsuits even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

17. REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL: Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall consent in writing to the terms of the arrangement after being advised of (1) the identity of the lawyer or law firm involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be

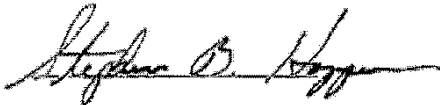
made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

18. NOTICE TO CLIENTS: Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.

20. ARBITRATION: It is Attorney's goal to maintain at all times a constructive and positive relationship with Client on the matter described above and on future matters in which Attorney may perform services for Client. However, should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, if any controversy or claim arises out of is related to this agreement, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (including malpractice claims and fee disputes), Attorneys and Client both waive any right to bring a court action or have a jury trial and agree that the dispute shall be submitted to binding arbitration to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas..

CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.

Laura Wassmer



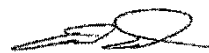
Stephen Hopper

Date: 11/19/2015

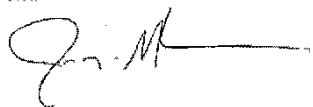
Address: 3625 N. Classen Blvd Oklahoma City, OK 7318

Telephone Numbers: 405-639-9186

ATTORNEYS:



Fee, Smith, Sharp & Vitullo, LLP



Malesovas Law Firm

CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned **Stephen Hopper, and Laura Wassmer** referred to as "Client" or "Clients" employ and retain **Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm,** (herein "Attorneys") to represent Client as set forth herein.

1. **SCOPE OF REPRESENTATION:** Attorneys agree to investigate and evaluate and litigate Client's possible claim or claims of negligence, fraud, breach of contract, and breach of fiduciary duty against JP MORGAN CHASE and persons and companies relating to JP MORGAN CHASE BANKs wrongful acts in acting as the independent administrator of the Estate of Max Hopper..

Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. ~~Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client.~~ Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties. *other than Chase. L*

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit, ~~or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.~~ *LW*

Client understands and agrees that Attorneys will not file suit against entities that are in a foreign jurisdiction or are international companies whom in attorney's opinion cannot be sued in a United States court. Client understands and agrees that Attorneys are not obligated to pursue entities that are defunct and/or bankrupt.

Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.

2. **AUTHORITY OF ATTORNEYS:** Client empowers Attorneys to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's Claims, including hiring investigators, expert witnesses, and/or other attorneys and filing any legal action necessary. Client authorizes and empowers Attorneys to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claim, and Client further authorizes and empowers them to sign any and all pleadings and all releases, checks, drafts, authorizations and other papers necessary and proper in connection with the prosecution or enforcement of Client's Claims and collection or settlement of the damages awarded or to be paid therefore, and to receive such funds or other property in Client's name and for Client on account of any judgment recovered or any settlement agreed upon in connection with Client's Claim. Full power and authority is given by Client to Attorneys to adjust, settle or compromise Client's Claim, but no final settlement shall be made and consummated by Attorneys without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claim without the Attorneys' authority, agreement and consent. Should Client make a settlement in violation of this Agreement, Client agrees to pay Attorneys the full fee agreed upon under paragraph 3 "Attorneys' Fee", below.

3. **ATTORNEYS' FEE:** This Agreement is a contingency fee contract. Specifically, if Attorneys are successful in recovering money or anything of value for Client, by settlement prior to trial begins, Attorneys shall receive attorneys' fees in the amount of forty percent (40%) of the gross recovery. The attorney fee will be split amongst the attorneys as follows: FSSV 50% Malesovas Law Firm 50% If the matter is resolved after trial begins, Attorneys shall receive attorneys' fees in the amount of forty-five (45%) of the gross recovery. All attorneys' fees shall be a percentage of the gross recovery. Gross recovery means the gross amount of money or other value or property recovered for Client, before the deduction of expenses. Trial is considered to have commenced at 5:00 p.m. on the Friday closest to ten (10) days before jury selection begins or evidence is first presented to the trier of fact, whichever is the earlier of these two events. If Attorneys do not recover any money or other value or property for Client, Client will not owe any attorneys' fees. Client agrees that Attorneys may, in their discretion, employ associate counsel to assist in prosecuting Client's cause of action, and Client does not object to the participation of any lawyers Attorneys may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel is the responsibility of Attorneys. In the event that the case is settled by way of a structured settlement, Client approves and authorizes attorneys' fees to be based upon the present value benefit of the settlement and further authorizes Attorneys to take attorneys' fees either in cash or in structured payment, as Attorneys deem appropriate.

In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to avoid paying the Client's claim; a defendant may transfer assets out of the country thereby necessitating the retention of foreign counsel; or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees of such counsel will be deducted from Client's share of the recovery.

4. **COSTS AND OTHER EXPENSES:** Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred. Such costs include filing fees, expert witness fees, court reporter and video fees, copy charges, postage, mailing, travel, witness fees, electronic document conversion fees, delivery fees, internal operating costs and other related charges incurred or paid as an expense on behalf of Client and paid to third-party vendors or incurred internally by Attorneys and charged to Client in connection with Attorneys' representation of Client.

5. **DISBURSEMENT OF PROCEEDS TO CLIENT:** Client understands that Attorneys make no guarantee or assurance of any kind regarding the likelihood of success of Client's claims. Upon receipt by Attorneys of the proceeds of any settlement or judgment, Attorneys shall (1) retain either forty percent (40%) of the proceeds as their attorneys' fees if the matter is settled or resolved before trial begins or forty-five (45%) percent of the proceeds as their attorneys' fees if the matter is settled or resolved after trial begins, (2) deduct from Client's share of the proceeds any costs and expenses, including the fees of any special outside counsel that Attorneys may incur on Client's behalf, and (3) disburse the remainder of Client's share of the proceeds to Client. At the time of disbursement of any proceeds, Client will be provided with a disbursement sheet reflecting the attorneys' fees, the expenses deducted out of Client's share, and the remainder of Client's share.

Upon some circumstances, health insurers, workers compensation carriers, or others who have paid benefits or provided services on Client's behalf may claim a right to recover a portion of the proceeds of any action brought on behalf of the Client and may place Attorneys on notice of their claim. Except as may be required by law, Attorneys will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. **POWER OF ATTORNEY:** Client gives Attorneys a power of attorney to execute and negotiate all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, proofs of claim, ballots, verified statements including those pursuant to Bankruptcy Rule 2019, and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.

7. **COOPERATION: ADDRESS CHANGE: RETURN OF DOCUMENTS:** Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial. Client shall appear on reasonable notice at any and all depositions and Court appearances and shall comply with all reasonable requests of Attorneys in connection with preparation and presentation of Client's claims. The Client acknowledges and agrees that all communications with Attorneys are privileged. The Client acknowledges that Attorneys may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of Attorneys' clients. Therefore, Client agrees and understands that other individuals who are clients of Attorneys may also invoke the attorney client privilege as to Attorneys' communications with Client. The Client acknowledges and agrees not to provide attorney work product or attorney client communications to any other person.

Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

Client understands that applicable State law may impose sales, service or other tax on any amount that Client may recover or the fees due Attorneys hereunder. Client also understands that applicable Federal income tax law may require that Client pay income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

9. **DEATH OF CLIENT:** The provisions of this Agreement will not terminate upon the death of Client. In the event of the death of Client, any duly appointed Representative of Client's heirs and/or estate will be bound by this Agreement to the extent allowed by applicable law, including without limitation, the provisions of this Agreement relating to the recovery of attorneys' fees and costs and other expenses. Any such Representative shall, upon request by Attorneys, execute a new Agreement in the capacity as Representative for the heirs and/or estate of the Client.

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This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

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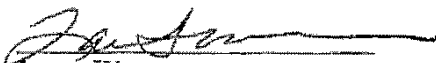
even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

17. **REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL:** Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall consent in writing to the terms of the arrangement after being advised of (1) the identity of the lawyer or law firm involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

18. **NOTICE TO CLIENTS:** Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.

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CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.


Laura Wassmer

Stephen Hopper

Date: _____

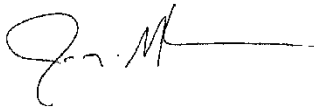
Address: _____

Telephone Numbers:

ATTORNEYS:



Fee, Smith, Sharp & Vitullo, LLP



Malesovas Law Firm

ORIGINAL

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER, §
DECEASED, §

IN THE PROBATE COURT

JO N. HOPPER, §

Intervenor, §

v. §

NO. 1

JPMORGAN CHASE BANK, N.A., §
STEPHEN B. HOPPER, and LAURA §
S. WASSMER, §

Defendants. §

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a §
MALESOVAS LAW FIRM, and §
FEE, SMITH, SHARP & VITULLO, LLP §

Intervenors, §

v. §

STEPHEN B. HOPPER, LAURA S. §
WASSMER, individually and as §
Beneficiaries of the ESTATE OF §
MAX D. HOPPER, DECEASED, §
the ESTATE OF MAX D. HOPPER, §
DECEASED, JPMORGAN CHASE §
BANK, N.A., §

Defendants. §

TEMPORARY RESTRAINING ORDER

Came to be heard on the 9TH day of April 2018, the minimum amount of notice having been duly provided pursuant to Local Rule 2.02(a) of Dallas County, Fee Smith Sharp & Vitullo, LLP and John L. Malesovas d/b/a Malesovas Law Firm's (collectively, "Intervenors") *Verified Petition(s) in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief against, inter alia,*

1

**EXHIBIT
B**

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ORDER - TEMPORARY RESTRAINING ORD
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Page 108

MR:108

Stephen Hopper and Laura Wassmer, individually and as beneficiaries of the Estate of Max D. Hopper, deceased, (hereinafter jointly "Clients") and JPMorgan Chase Bank, N.A. (hereinafter "JPM") (Clients and JPM hereinafter jointly, "Defendants" with respect to the claims now pending in this Intervention).

The Court, after considering the *Intervenors' Collective Verified Original Petition in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief*, the evidence submitted by Intervenors *in camera*, the relevant exhibits, the arguments of counsel, concludes that—unless immediately restrained, Defendants will irreparably injure Intervenors.

This Court has subject matter jurisdiction over the dispute brought before it under both, TEX. ESTATES CODE ANN. § 32.007 et seq. (Vernon 2014), and, TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014) (authorizing declaratory judgment actions in probate court when such relief is germane to an Estate):

Intervenors respective Pleas and application for TRO are timely filed, given that this Court has yet to sign a judgment; and, therefore, retains plenary power over this proceeding. See TEX. R. CIV. P. 60 et seq.

This Court has, preliminarily, taken judicial notice, pursuant to Rule 201 of the Texas Rules of Evidence, of the following facts that, in reasonable probability, appear to be true at this preliminary stage of the proceeding:

- 1.) In, around, or about November of 2015, Clients executed a valid and enforceable contingency agreement ("CA") with Intervenors;
- 2.) On or about April 5, 2018, attorneys for Clients and JPM appeared before this Court and announced, without revealing any of the substantive terms, that a confidential settlement had been reached between them in the underlying dispute pending in this Court (hereinafter "Settlement");
- 3.) On or about the same day, April 5, 2018, but—literally what appears to have been within minutes after the Court was informed that a settlement had been reached by the parties in this underlying dispute—Clients terminated their CA with Intervenors by and through their attorney, James Pennington;

- 4.) Intervenor has filed what, by all accounts, appears to be a valid and enforceable First Party Attorney's Fees Lien in the proceeds of the Settlement;
- 5.) Intervenor fully performed; or, at the very least, substantially and materially performed all of their duties, responsibilities, and obligations under the CA at or before the time Clients terminated the CA—as those legal terms are meant in, *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2018, no pet.), *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003), and *Mandell & Wright*, 441 S.W.2d 841, 847 (Tex. 1969); and
- 6.) Given the timing of the termination of Intervenor, Clients are estopped, quasi-estopped, and/or have waived any and all defenses, if any, that could or would be lodged to the CA or the quality of the legal services performed by Intervenor.

Based upon these preliminary findings, this Court is of the opinion that Intervenor has established a probability of success on the merits on their application for, *inter alia*, declaratory relief. See TEX. CIV. PRAC. & REM. CODE § 37.004 et seq. (Vernon 2014). This Court is of the opinion that, unless restrained, one or more Defendants are likely to cause permanent damage to Intervenor, should they be allowed to transfer, hypothecate, assign, or take title to Intervenor's interest in the settlement proceeds before the pleas in Intervention are adjudicated on the merits. Such harm would be irreparable because this Court is of the opinion that there is no showing; or, in the alternative, an inadequate showing that Defendants could timely and immediately pay the disputed funds to Intervenor, should Intervenor ultimately prevail in this proceeding, and because Intervenor has a security interest in and lien upon a portion of the settlement proceeds which would be eviscerated by allowing Clients to dispose of 100% of the settlement proceeds as they saw fit. Moreover, given the

Court's preliminary findings set forth above in (i)-(vi), Intervenor's have established a property right and secured interest in the proceeds at issue.

The Court is, **THEREFORE**, of the opinion that Intervenor's are entitled to the issuance of a Temporary Restraining Order and that such an Order is necessary to protect Intervenor's rights. This **ORDER** is necessary because of the immediate need to enforce the security interest and lien which Intervenor's have in a portion of the settlement proceeds and to stop the wrongful flow of funds in the near future from being disseminated to either Clients or their attorneys, or some other third party subject to Clients' direction and control, upon which Intervenor's would have no adequate remedy at law. Without intervention by this Court, Intervenor's property right, that is Intervenor's security interest in and lien upon the settlement proceeds, would be destroyed and there would be no way to restore that property right in the Settlement proceeds themselves.

This Court is further of the opinion that Intervenor's are entitled to an **EXPEDITED DISCOVERY ORDER**. Therefore, Stephen Hopper and Laura Wassmer shall be made available for deposition on and certainly no later than **Tuesday, April 17, 2018**. If the parties cannot agree on a suitable location for these depositions, they shall be taken in this Court's jury room. The depositions are limited solely to the matters in dispute in the pled Intervention filings and shall last no longer than two hours per deponent (per side). In addition, Intervenor's may serve a *duces tecum* with the deposition notices, which shall be limited to no more than seven (7) discovery requests. The deposition notice shall provide two business days notice to the deponent.

It is further **ORDERED** that Intervenor's may move this Court for a dispositive summary judgment on 14 days notice of any hearing; and any response shall be due to be filed within 5 days of the hearing; and any reply shall be due to be filed within 2 days of the hearing.

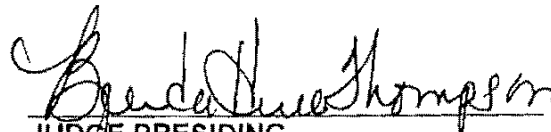
It is therefore **ORDERED, ADJUDGED, and DECREED** that Defendants, Stephen Hopper, Laura Wassmer, and JPMorgan Chase, N.A., and any of his, her, their, or its agents, servants, employees, successors, assigns and those persons in active concert or participation therewith, must:

- 1) Deposit all of the settlement proceeds due to Stephen B. Hopper and Laura s. Wassmer, individually and as beneficiaries of the Estate of Max Hopper, Deceased, into a safekeeping account with JPMorgan Chase Bank, NA, to be held in trust until further Order of this Court. Funds in the safekeeping account shall be withdrawn only upon Order of this Court;
- 2) The parties are **ORDERED** to preserve and prevent the destruction of all documents, including electronic data, emails, and notes, that relate in any way to the matters and claims set forth in the Intervenor's respective Pleas on file—and, moreover, all electronic storage devices must be imaged and preserved.

IT IS FURTHER ORDERED that this order is effective immediately upon Intervenor's deposit with the appropriate clerk of this Court a ~~Corporate Surety or cash~~ ^{POST} bond in the amount of \$ 10,000,000 ~~XX~~ 00 (U.S. dollars).

IT IS FURTHER ORDERED that Intervenor's application for a temporary injunction is set for an evidentiary hearing and will be heard before this Court on April 24, 2018 at 9 o'clock a.m., and that Stephen Hopper, Laura Wassmer, and JPMorgan Chase, N.A. appear and show cause, if any, why this Temporary Restraining Order should not be continued and converted into a Temporary Injunction until final hearing and trial hereon.

Signed and issued this the 10th day of April 2018, at 4:00 o'clock p.m.


JUDGE PRESIDING

LAW OFFICES OF JAMES E. PENNINGTON

A PROFESSIONAL CORPORATION
900 JACKSON STREET, SUITE 440
DALLAS, TEXAS 75202-4473

JAMES E. PENNINGTON
LICENSED IN TEXAS AND COLORADO

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E-MAIL: Jep@JepLawyer.com

April 5, 2018

VIA EMAIL: blauten@brianlauten.com

Brian P. Lauten
Brian Lauten, P.C.
3811 Turtle Creek Blvd.
Suite 1450
Dallas, Texas 75219

Re: Case No. PR-11-3238-1; In re: Estate of Max Hopper, Deceased, Jo N. Hopper v. JP Morgan Chase Bank, N.A., et al., in the Probate Court of Dallas County, Texas.

Brian:

As you know, I represent Dr. Stephen Hopper and Laura Wassmer in connection with a dispute that has developed involving your clients, Anthony Vitullo and Fee, Smith, Sharp & Vitullo, LLP. Please be advised that my clients have decided to terminate their relationship with Mr. Vitullo, Fee, Smith, Sharp & Vitullo, LLP and John Malesovas. Their decision to terminate this relationship is based on a number of factors, which are too numerous to set forth herein. However, I provided you with a brief summary of those reasons yesterday during our call and suggested we meet in person to discuss this in more detail. Ultimately, as a result of several issues that were discovered by Jeff Levinger, the appellate lawyer retained to handle the appeal of the jury's verdict, my clients decided to settle the case with JP Morgan Chase. Most, if not all of these issues, were caused by your clients' omissions before and during trial, such as failing to present expert testimony and several jury charge issues which would have made an appeal very difficult for my clients. Additionally, I discovered a number of facts, some of which I outlined during our call, which indicate that the contingency fee agreement is probably not enforceable and which show that -- even if it is enforceable -- your clients breached the agreement. As a result, I am notifying you that my clients are -- effective immediately -- terminating their relationship with Mr. Vitullo, Fee, Smith, Sharp & Vitullo, LLP and Mr. Malesovas and his firm. It is unclear to me whether you are representing Mr. Malesovas or his firm. Please advise, so that I can notify Mr. Malesovas if needed.

At this time, I am requesting your clients to provide me with their *entire* file regarding their representation of my clients. Although your clients have previously provided me with

EXHIBIT
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Page 113

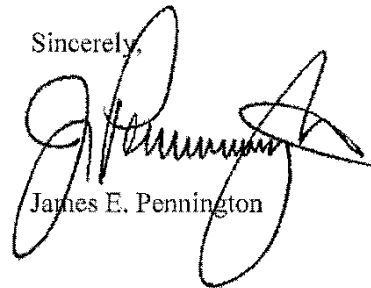
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Brian Lauten
April 5, 2018
Page 2

portions of the file, the files which were provided are not complete and were not provided in the manner in which they were originally maintained by the firm. I am not suggesting anything improper about the manner in which the files were previously produced. However, I am pointing this out to emphasize the importance of making sure that I receive the complete file in the same manner that it was maintained by your clients. You may provide the electronic files on a portable hard drive and have this device, along with the physical files, delivered to my office.

Finally, as I indicated during our call, my clients are willing to discuss a resolution of the attorney's fees related to your clients' representation, so give this some more thought and let me know if you have a proposal. In the meantime, I will instruct Mr. Levinger to retain a percentage of the settlement in his trust account until this matter is resolved. Thank you for your anticipated cooperation. If you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Pennington", with a large, stylized flourish extending from the end of the signature.

James E. Pennington

CAUSE NO. PR-11-03238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED

IN THE PROBATE COURT

JO N. HOPPER

Plaintiff,

v.

JP MORGAN CHASE, N.A.,
STEPHEN B. HOPPER and LAURA S.
WASSMER

Defendants.

NO. 1

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and FEE,
SMITH, SHARP & VITULLO, LLP

Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK, N.A.,

Defendants.

DALLAS COUNTY, TEXAS

SUPPLEMENT TO MOTION TO COMPEL ARBITRATION

Defendants Stephen B. Hopper and Laura S. Wassmer ("the Clients") file this Supplement to their Motion to Compel Arbitration, filed April 11, 2018 (the "Motion"). The Motion requests that this Court order the parties to arbitrate Intervenors' claims pursuant to the mandatory arbitration provision in two separate "Contingency Fee Contract[s] of Representation" between Intervenors and the Clients (the "Fee Agreements"). The Motion is set

for hearing on April 24, 2018, at 9:00 am. The Clients submit the following additional points in support of the Motion:

A. The Court should rule on the Motion to Compel Arbitration immediately.

As a preliminary matter, the Clients reiterate their request for an immediate ruling on the Motion. The Court has no discretion to defer a ruling on the Motion in favor of further litigation on the merits. (Motion at 4.) In particular, the Court may not issue injunctive relief without first ruling on the Motion. *See In re MetroPCS Comms., Inc.*, 391 S.W.3d 329, 340 (Tex. App.—Dallas 2013, orig. proceeding). In *MetroPCS*, the Dallas Court of Appeals held that a trial court abused its discretion in granting injunctive relief without first ruling on a motion to dismiss under a forum-selection clause. *Id.* The Texas Supreme Court has held that forum-selection law is analogous to arbitration law because arbitration clauses are simply a “specialized kind of forum-selection clause.” *Pinto Tech. Ventures, L.P. v. Sheldon*, 526 S.W.3d 428, 437 (Tex. 2017) (internal quotations omitted). Thus, the Court must rule on the Motion prior to issuing further injunctive relief or permitting any further proceedings in the intervention litigation, including discovery.¹

B. Arbitration of Intervenor’s claims is required under both the TAA and the FAA.

In addition to the arguments and authorities cited in the Motion, the Court should compel arbitration under the Federal Arbitration Act (“FAA”). *See* 9 U.S.C. §§ 3-4. The FAA applies to this dispute because the Fee Agreements concern interstate commerce—the provision of legal services by Texas lawyers, in Texas litigation, to clients that reside in Oklahoma and Kansas respectively. *See In re Rubiola*, 334 S.W.3d 220, 223 (Tex. 2011) (“The Federal Arbitration Act (FAA) generally governs arbitration provisions in contracts involving interstate commerce.”);

¹ The Clients appeared for deposition on April 16, 2018, pursuant to this Court’s expedited discovery order in the TRO, but did so while maintaining their objections that discovery is inappropriate while the Motion is pending.

see also *In re Touchstone Home Health LLC*, 572 B.R. 255, 268 (Bankr. D. Colo. 2017) (holding that “many attorney-client engagement agreements” affect interstate commerce, including those where client engages a law firm in a different state or the law firm performs services in a different state, and citing cases to that effect). The FAA and the corresponding provisions of the Texas Arbitration Act (“TAA”)—which were cited in the Motion—are not mutually exclusive. *In re D. Wilson Const. Co.*, 196 S.W.3d 774, 779-80 (Tex. 2006). Both laws apply unless there is a conflict. See *id.*

To compel arbitration under the FAA, like the TAA, the movant need only show: (1) a valid arbitration clause; and (2) that the claims in dispute fall within the agreement’s scope. *Rubiola*, 334 S.W.3d at 223. Where these two elements are satisfied, the court must issue an order compelling arbitration and must dismiss or stay the underlying proceedings. See *id.*; see also *In re Merrill Lynch Trust Co. FSB*, 235 S.W.3d 185, 195 (Tex. 2007). Both elements are satisfied here for the reasons discussed in the Motion. (Motion at 2-4.)

First, the Fee Agreements contain a valid and enforceable arbitration provision. (Ex. A-1 § 20; Ex. B-1 § 20.)² Intervenor themselves have sworn that the Fee Agreements are “valid and enforceable.” (First Amended Joint Petition in Intervention at 3.) Although the Clients dispute the enforceability of the contingency fee agreement, the validity of the contract itself must be decided by the arbitrator, not the Court. See, e.g., *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006). (See also Motion at 3-4.) The law is well-settled that arbitration provisions are severable from the remainder of the contract; so unless there is some question about the enforceability of the arbitration provision itself—and there is not—any other questions

² True and correct copies of the Fee Agreements are attached hereto. See Exhibit A (Declaration of Stephen B. Hopper); Exhibit B (Declaration of Laura S. Wassmer). These agreements were attached to Intervenor’s pleadings, sworn by Mr. Vitullo to be “valid and enforceable contingency fee agreement[s],” and admitted into evidence at the hearing on the Temporary Restraining Order. (See Motion at 2; First Amended Joint Petition in Intervention at 3.) Thus, there can be no dispute about the authenticity or the execution of the Fee Agreements.

of contract validity must be considered by the arbitrator in the first instance. *Id.*; *see also In re Kaplan Higher Educ. Corp.*, 235 S.W.3d 206, 210 (Tex. 2007) (orig. proceeding). The Fee Agreements also contain an explicit severability provision (in Section 15), such that the arbitration clause is enforceable even though other parts of the contract fail.

Second, there is no question that Intervenor's claims fall within the scope of the arbitration clause because their claims arise out of, and are related to, the Fee Agreements. (Ex. A-1 § 20; Ex. B-1 § 20; *see also* Motion at 2.) By its terms, the arbitration clause encompasses "any other matter that may arise between Client and Attorney (including malpractice claims and *fee disputes*)," (Ex. A-1 § 20; Ex. B-1 § 20) (emphasis added).

As a result, the Court should immediately issue an order compelling arbitration under both the FAA and the TAA, and should dismiss or stay the intervention proceedings. (*See* Motion at 2-4.) *See also Merrill Lynch*, 235 S.W.3d at 195 ("Both the Federal and Texas Arbitration Acts require courts to stay litigation of issues that are subject to arbitration. Without such a stay, arbitration would no longer be the 'rapid, inexpensive alternative to traditional litigation' it was intended to be, so long as one could find a trial judge willing to let the litigation proceed for a while.") (internal citations and quotations omitted); 9 U.S.C. § 3 (mandatory stay of litigation with respect to "any issue referable to arbitration"); TEX. CIV. PRAC. & REM. CODE § 171.021(c) ("An order compelling arbitration must include a stay of any proceeding subject to Section 171.025."); TEX. CIV. PRAC. & REM. CODE § 171.025(a) ("The court shall stay a proceeding that involves an issue subject to arbitration if an order for arbitration or an application for that order is made under this subchapter.").

CONCLUSION AND PRAYER

The Clients respectfully request that the Court compel the Intervenor to pursue their claims in arbitration; stay or dismiss the Intervenor's claims; and grant the Clients all other relief, at law or in equity, to which they may be entitled.

Respectfully submitted,

/s/ James E. Pennington

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Attorneys for Defendants
Stephen B. Hopper and Laura S. Wassmer

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April, 2018, the foregoing Supplement to Motion to Compel Arbitration was filed using the e-filing system which will send notification of such filing to the following parties via email:

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blauten@brianlauten.com

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**Attorneys for Defendant, JPMorgan Chase Bank, N.A., as Independent
Administrator of the Estate of Max D. Hopper, Deceased, and JPMorgan Chase
Bank, N.A., in its Corporate Capacity**

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Attorneys for Defendant, JPMorgan Chase Bank, N.A.

/s/ James E. Pennington
James E. Pennington

Exhibit A

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED

IN THE PROBATE COURT

JO N. HOPPER

Plaintiff,

v.

JP MORGAN CHASE, N.A.,
STEPHEN B. HOPPER and LAURA S.
WASSMER

Defendants.

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and FEE,
SMITH, SHARP & VITULLO, LLP

Intervenors,

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK, N.A.,

Defendants.

NO. 1

DALLAS COUNTY, TEXAS

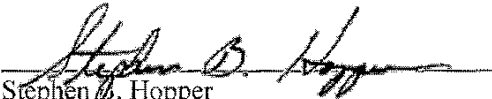
DECLARATION OF STEPHEN B. HOPPER

I, Stephen B. Hopper, hereby declare that the following facts are true and correct:

1. My name is Stephen B. Hopper. I am over twenty-one years of age, have never been convicted of a felony or other crime involving moral turpitude, and suffer from no mental or physical disability that would render me incompetent to make this Declaration.

2. I am a resident of Oklahoma City, Oklahoma, and a Defendant in the above-referenced action. I am able to declare, and I hereby do declare, that all of the facts stated in this Declaration are true and correct and are within my personal knowledge.

3. On November 19, 2015, I executed a "Contingency Fee Contract of Representation" that had already been signed by attorneys from Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm. A true and correct copy of the contract that I executed is attached hereto as Exhibit A-1.


Stephen B. Hopper

JURAT

My name is Stephen B. Hopper, my date of birth is 11/21/1956, and my address is 3625 N. Classen Blvd., Oklahoma City, OK, 73118. I declare under penalty of perjury that every statement in the foregoing is true and correct.

Executed in Oklahoma County, State of Oklahoma, on the 19 day of April, 2018.

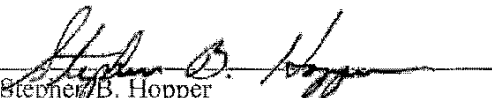

Stephen B. Hopper

Exhibit A-1

CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned **Stephen Hopper, and Laura Wassmer** referred to as "Client" or "Clients" employ and retain Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm, (herein "Attorneys") to represent Client as set forth herein.

1. SCOPE OF REPRESENTATION: Attorneys agree to investigate and evaluate and litigate Client's possible claim or claims of negligence, fraud, breach of contract, and breach of fiduciary duty against JP MORGAN CHASE and persons and companies relating to JP MORGAN CHASE BANKS wrongful acts in acting as the independent administrator of the Estate of Max Hopper..

Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client. Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties.

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.

Client understands and agrees that Attorneys will not file suit against entities that are in a foreign jurisdiction or are international companies whom in attorney's opinion cannot be sued in a United States court. Client understands and agrees that Attorneys are not obligated to pursue entities that are defunct and/or bankrupt.

Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.

2. AUTHORITY OF ATTORNEYS: Client empowers Attorneys to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's

Claims, including hiring investigators, expert witnesses, and/or other attorneys and filing any legal action necessary. Client authorizes and empowers Attorneys to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claim, and Client further authorizes and empowers them to sign any and all pleadings and all releases, checks, drafts, authorizations and other papers necessary and proper in connection with the prosecution or enforcement of Client's Claims and collection or settlement of the damages awarded or to be paid therefore, and to receive such funds or other property in Client's name and for Client on account of any judgment recovered or any settlement agreed upon in connection with Client's Claim. Full power and authority is given by Client to Attorneys to adjust, settle or compromise Client's Claim, but no final settlement shall be made and consummated by Attorneys without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claim without the Attorneys' authority, agreement and consent. Should Client make a settlement in violation of this Agreement, Client agrees to pay Attorneys the full fee agreed upon under paragraph 3 "Attorneys' Fee", below.

3. ATTORNEYS' FEE: This Agreement is a contingency fee contract. Specifically, if Attorneys are successful in recovering money or anything of value for Client, by settlement prior to trial begins, Attorneys shall receive attorneys' fees in the amount of forty percent (40%) of the gross recovery. The attorney fee will be split amongst the attorneys as follows: FSSV 50% Malesovas Law Firm 50%. If the matter is resolved after trial begins, Attorneys shall receive attorneys' fees in the amount of forty-five (45%) of the gross recovery. All attorneys' fees shall be a percentage of the gross recovery. Gross recovery means the gross amount of money or other value or property recovered for Client, before the deduction of expenses. Trial is considered to have commenced at 5:00 p.m. on the Friday closest to ten (10) days before jury selection begins or evidence is first presented to the trier of fact, whichever is the earlier of these two events. If Attorneys do not recover any money or other value or property for Client, Client will not owe any attorneys' fees. Client agrees that Attorneys may, in their discretion, employ associate counsel to assist in prosecuting Client's cause of action, and Client does not object to the participation of any lawyers Attorneys may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel is the responsibility of Attorneys. In the event that the case is settled by way of a structured settlement, Client approves and authorizes attorneys' fees to be based upon the present value benefit of the settlement and further authorizes Attorneys to take attorneys' fees either in cash or in structured payment, as Attorneys deem appropriate.

In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to

avoid paying the Client's claim; a defendant may transfer assets out of the country thereby necessitating the retention of foreign counsel, or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees of such counsel will be deducted from Client's share of the recovery.

4. **COSTS AND OTHER EXPENSES:** Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred. Such costs include filing fees, expert witness fees, court reporter and video fees, copy charges, postage, mailing, travel, witness fees, electronic document conversion fees, delivery fees, internal operating costs and other related charges incurred or paid as an expense on behalf of Client and paid to third-party vendors or incurred internally by Attorneys and charged to Client in connection with Attorneys' representation of Client.

5. **DISBURSEMENT OF PROCEEDS TO CLIENT:** Client understands that Attorneys make no guarantee or assurance of any kind regarding the likelihood of success of Client's claims. Upon receipt by Attorneys of the proceeds of any settlement or judgment, Attorneys shall (1) retain either forty percent (40%) of the proceeds as their attorneys' fees if the matter is settled or resolved before trial begins or forty-five (45%) percent of the proceeds as their attorneys' fees if the matter is settled or resolved after trial begins, (2) deduct from Client's share of the proceeds any costs and expenses, including the fees of any special outside counsel that Attorneys may incur on Client's behalf, and (3) disburse the remainder of Client's share of the proceeds to Client. At the time of disbursement of any proceeds, Client will be provided with a disbursement sheet reflecting the attorneys' fees, the expenses deducted out of Client's share, and the remainder of Client's share.

Upon some circumstances, health insurers, workers compensation carriers, or others who have paid benefits or provided services on Client's behalf may claim a right to recover a portion of the proceeds of any action brought on behalf of the Client and may place Attorneys on notice of their claim. Except as may be required by law, Attorneys will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. **POWER OF ATTORNEY:** Client gives Attorneys a power of attorney to execute and negotiate all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, proofs of claim, ballots, verified statements including those pursuant to Bankruptcy Rule 2019,

and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.

7. **COOPERATION; ADDRESS CHANGE; RETURN OF DOCUMENTS:** Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial. Client shall appear on reasonable notice at any and all depositions and Court appearances and shall comply with all reasonable requests of Attorneys in connection with preparation and presentation of Client's claims. The Client acknowledges and agrees that all communications with Attorneys are privileged. The Client acknowledges that Attorneys may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of Attorneys' clients. Therefore, Client agrees and understands that other individuals who are clients of Attorneys may also invoke the attorney client privilege as to Attorneys' communications with Client. The Client acknowledges and agrees not to provide attorney work product or attorney client communications to any other person.

Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

Client understands that applicable State law may impose sales, service or other tax on any amount that Client may recover or the fees due Attorneys hereunder. Client also understands that applicable Federal income tax law may require that Client pay

income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

9. **DEATH OF CLIENT:** The provisions of this Agreement will not terminate upon the death of Client. In the event of the death of Client, any duly appointed Representative of Client's heirs and/or estate will be bound by this Agreement to the extent allowed by applicable law, including without limitation, the provisions of this Agreement relating to the recovery of attorneys' fees and costs and other expenses. Any such Representative shall, upon request by Attorneys, execute a new Agreement in the capacity as Representative for the heirs and/or estate of the Client.

10. **OFFER OF SETTLEMENT:** Client understands that applicable law may, under certain circumstances, allow a Defendant to make an offer of settlement to Client and if Client rejects or does not accept such an offer, such may result in any award, verdict or judgment in Client's favor being reduced as provided by such law. Client understands that Client has the final authority to accept or reject any offer of settlement. Client understands that if Client rejects or does not accept such an offer, and Client's recovery is subsequently reduced, the fees owed to Attorneys will be calculated on the amount of any award, verdict or judgment before reduction, and the reduction shall be out of Client's share of any recovery.

11. **SECURITY INTEREST:** Client hereby assigns, transfers and conveys over to Attorneys an amount equal to either forty percent (40%) of the proceeds if the matter is settled or resolved before trial begins or forty-five percent (45%) of the proceeds if the matter is resolved after trial begins, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the claims described in this contract. Client does hereby give and grant to Attorneys an express security interest, in addition to any statutory lien, upon Client's claims and any and all judgments recovered, and any and all funds or property realized or paid by compromise or settlement, as security for the compensation and costs and expenses advanced or due to be paid or reimbursed to Attorneys hereunder. This security interest is to continue in the event Attorneys are discharged without good cause. If the claims are not assignable at law, Client expressly assigns to Attorneys, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

12. **BINDING EFFECT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

13. **TERMINATION OF REPRESENTATION:** Client understands that Client can terminate Attorneys' representation of Client at any time by providing written notice to

Attorneys. Should Client elect to terminate Attorneys' representation prior to the full conclusion of Attorneys' representation, Client understands and agrees that Attorneys have a claim for expenses of litigation and unpaid attorneys' fees which will become due upon receipt by Client or any successor attorney of Client or any proceeds for any remaining portion of Client's claim. Client understands that the obligation for unpaid attorneys' fees will be calculated based on the percentage of work completed on the case or claims at the time Client terminates Attorneys.

14. NO GUARANTEE OF RECOVERY: Client understands that no guarantee or assurances of any kind have been made regarding the likelihood of success of Client's claim, but that Attorneys will use their skill and diligence, as well as their experience, to diligently pursue Client's action.

15. MISCELLANEOUS: In case any one or more of the provisions contained in this agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

16. STATUTE OF LIMITATIONS: Client understands that an issue may exist as to whether the applicable statute of limitations has expired. This issue is raised in many lawsuits even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

17. REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL: Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall consent in writing to the terms of the arrangement after being advised of (1) the identity of the lawyer or law firm involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be

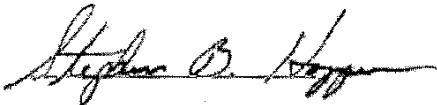
made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

18. **NOTICE TO CLIENTS:** Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.

20. **ARBITRATION:** It is Attorney's goal to maintain at all times a constructive and positive relationship with Client on the matter described above and on future matters in which Attorney may perform services for Client. However, should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, if any controversy or claim arises out of is related to this agreement, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (including malpractice claims and fee disputes), Attorneys and Client both waive any right to bring a court action or have a jury trial and agree that the dispute shall be submitted to binding arbitration to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas..

CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.

Laura Wassmer



Stephen Hopper

Date: 11/19/2015

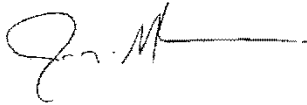
Address: 3625 N Classen Blvd Oklahoma City, OK 7318

Telephone Numbers: 405-639-9186

ATTORNEYS:



Fee. Smith. Sharn & Vitullo. LLP



Malesovas Law Firm

Exhibit B

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED

IN THE PROBATE COURT

JO N. HOPPER

Plaintiff,

v.

JP MORGAN CHASE, N.A.,
STEPHEN B. HOPPER and LAURA S.
WASSMER

Defendants.

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and FEE,
SMITH, SHARP & VITULLO, LLP

Intervenors,

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK, N.A.,

Defendants.

NO. 1

DALLAS COUNTY, TEXAS

DECLARATION OF LAURA S. WASSMER

I, Laura S. Wassmer, hereby declare that the following facts are true and correct:

1. My name is Laura S. Wassmer. I am over twenty-one years of age, have never been convicted of a felony or other crime involving moral turpitude, and suffer from no mental or physical disability that would render me incompetent to make this Declaration.

2. I am a resident of Prairie Village, Kansas, and a Defendant in the above-referenced action. I am able to declare, and I hereby do declare, that all of the facts stated in this Declaration are true and correct and are within my personal knowledge.

3. On or before November 20, 2015, I executed a "Contingency Fee Contract of Representation" that had already been signed by attorneys from Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm. A true and correct copy of the contract that I executed is attached hereto as Exhibit B-1.


Laura S. Wassmer

JURAT

My name is Laura S. Wassmer, my date of birth is 1/21/62, and my address is 7700 Mission Road, Prairie Village, Kansas 66208. I declare under penalty of perjury that every statement in the foregoing is true and correct.

Executed in Johnson County, Kansas, on the 20 day of April, 2018.


Laura S. Wassmer

Exhibit B-1

CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned **Stephen Hopper**, and **Laura Wassmer** referred to as "Client" or "Clients" employ and retain **Fee, Smith, Sharp & Vitullo, LLP**, and **Malesovas Law Firm**, (herein "Attorneys") to represent Client as set forth herein.

1. **SCOPE OF REPRESENTATION:** Attorneys agree to investigate and evaluate and litigate Client's possible claim or claims of negligence, fraud, breach of contract, and breach of fiduciary duty against **JP MORGAN CHASE** and persons and companies relating to **JP MORGAN CHASE BANKS** wrongful acts in acting as the independent administrator of the Estate of **Max Hopper**.

Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. ~~Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client.~~ Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties. *other than Chase.*

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit, ~~or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.~~

Client understands and agrees that Attorneys will not file suit against entities that are in a foreign jurisdiction or are international companies whom in attorney's opinion cannot be sued in a United States court. Client understands and agrees that Attorneys are not obligated to pursue entities that are defunct and/or bankrupt.

Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.

2. **AUTHORITY OF ATTORNEYS:** Client empowers Attorneys to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's Claims, including hiring investigators, expert witnesses, and/or other attorneys and filing any legal action necessary. Client authorizes and empowers Attorneys to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claim, and Client further authorizes and empowers them to sign any and all pleadings and all releases, checks, drafts, authorizations and other papers necessary and proper in connection with the prosecution or enforcement of Client's Claims and collection or settlement of the damages awarded or to be paid therefore, and to receive such funds or other property in Client's name and for Client on account of any judgment recovered or any settlement agreed upon in connection with Client's Claim. Full power and authority is given by Client to Attorneys to adjust, settle or compromise Client's Claim, but no final settlement shall be made and consummated by Attorneys without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claim without the Attorneys' authority, agreement and consent. Should Client make a settlement in violation of this Agreement, Client agrees to pay Attorneys the full fee agreed upon under paragraph 3 "Attorneys' Fee", below.

3. **ATTORNEYS' FEE:** This Agreement is a contingency fee contract. Specifically, if Attorneys are successful in recovering money or anything of value for Client, by settlement prior to trial begins, Attorneys shall receive attorneys' fees in the amount of forty percent (40%) of the gross recovery. The attorney fee will be split amongst the attorneys as follows: FSSV 50% Malesovas Law Firm 50% If the matter is resolved after trial begins, Attorneys shall receive attorneys' fees in the amount of forty-five (45%) of the gross recovery. All attorneys' fees shall be a percentage of the gross recovery. Gross recovery means the gross amount of money or other value or property recovered for Client, before the deduction of expenses. Trial is considered to have commenced at 5:00 p.m. on the Friday closest to ten (10) days before jury selection begins or evidence is first presented to the trier of fact, whichever is the earlier of these two events. If Attorneys do not recover any money or other value or property for Client, Client will not owe any attorneys' fees. Client agrees that Attorneys may, in their discretion, employ associate counsel to assist in prosecuting Client's cause of action, and Client does not object to the participation of any lawyers Attorneys may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel is the responsibility of Attorneys. In the event that the case is settled by way of a structured settlement, Client approves and authorizes attorneys' fees to be based upon the present value benefit of the settlement and further authorizes Attorneys to take attorneys' fees either in cash or in structured payment, as Attorneys deem appropriate.

In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to avoid paying the Client's claim; a defendant may transfer assets out of the country thereby necessitating the retention of foreign counsel, or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees of such counsel will be deducted from Client's share of the recovery.

4. **COSTS AND OTHER EXPENSES:** Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred. Such costs include filing fees, expert witness fees, court reporter and video fees, copy charges, postage, mailing, travel, witness fees, electronic document conversion fees, delivery fees, internal operating costs and other related charges incurred or paid as an expense on behalf of Client and paid to third-party vendors or incurred internally by Attorneys and charged to Client in connection with Attorneys' representation of Client.

5. **DISBURSEMENT OF PROCEEDS TO CLIENT:** Client understands that Attorneys make no guarantee or assurance of any kind regarding the likelihood of success of Client's claims. Upon receipt by Attorneys of the proceeds of any settlement or judgment, Attorneys shall (1) retain either forty percent (40%) of the proceeds as their attorneys' fees if the matter is settled or resolved before trial begins or forty-five (45%) percent of the proceeds as their attorneys' fees if the matter is settled or resolved after trial begins, (2) deduct from Client's share of the proceeds any costs and expenses, including the fees of any special outside counsel that Attorneys may incur on Client's behalf, and (3) disburse the remainder of Client's share of the proceeds to Client. At the time of disbursement of any proceeds, Client will be provided with a disbursement sheet reflecting the attorneys' fees, the expenses deducted out of Client's share, and the remainder of Client's share.

Upon some circumstances, health insurers, workers compensation carriers, or others who have paid benefits or provided services on Client's behalf may claim a right to recover a portion of the proceeds of any action brought on behalf of the Client and may place Attorneys on notice of their claim. Except as may be required by law, Attorneys will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. **POWER OF ATTORNEY:** Client gives Attorneys a power of attorney to execute and negotiate all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, proofs of claim, ballots, verified statements including those pursuant to Bankruptcy Rule 2019, and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.

7. **COOPERATION; ADDRESS CHANGE; RETURN OF DOCUMENTS:** Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial. Client shall appear on reasonable notice at any and all depositions and Court appearances and shall comply with all reasonable requests of Attorneys in connection with preparation and presentation of Client's claims. The Client acknowledges and agrees that all communications with Attorneys are privileged. The Client acknowledges that Attorneys may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of Attorneys' clients. Therefore, Client agrees and understands that other individuals who are clients of Attorneys may also invoke the attorney client privilege as to Attorneys' communications with Client. The Client acknowledges and agrees not to provide attorney work product or attorney client communications to any other person.

Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

Client understands that applicable State law may impose sales, service or other tax on any amount that Client may recover or the fees due Attorneys hereunder. Client also understands that applicable Federal income tax law may require that Client pay income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

9. **DEATH OF CLIENT:** The provisions of this Agreement will not terminate upon the death of Client. In the event of the death of Client, any duly appointed Representative of Client's heirs and/or estate will be bound by this Agreement to the extent allowed by applicable law, including without limitation, the provisions of this Agreement relating to the recovery of attorneys' fees and costs and other expenses. Any such Representative shall, upon request by Attorneys, execute a new Agreement in the capacity as Representative for the heirs and/or estate of the Client.

10. **OFFER OF SETTLEMENT:** Client understands that applicable law may, under certain circumstances, allow a Defendant to make an offer of settlement to Client and if Client rejects or does not accept such an offer, such may result in any award, verdict or judgment in Client's favor being reduced as provided by such law. Client understands that Client has the final authority to accept or reject any offer of settlement. Client understands that if Client rejects or does not accept such an offer, and Client's recovery is subsequently reduced, the fees owed to Attorneys will be calculated on the amount of any award, verdict or judgment before reduction, and the reduction shall be out of Client's share of any recovery.

11. **SECURITY INTEREST:** Client hereby assigns, transfers and conveys over to Attorneys an amount equal to either forty percent (40%) of the proceeds if the matter is settled or resolved before trial begins or forty-five percent (45%) of the proceeds if the matter is resolved after trial begins, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the claims described in this contract. Client does hereby give and grant to Attorneys an express security interest, in addition to any statutory lien, upon Client's claims and any and all judgments recovered, and any and all funds or property realized or paid by compromise or settlement, as security for the compensation and costs and expenses advanced or due to be paid or reimbursed to Attorneys hereunder. This security interest is to continue in the event Attorneys are discharged without good cause. If the claims are not assignable at law, Client expressly assigns to Attorneys, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

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This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

16. **STATUTE OF LIMITATIONS:** Client understands that an issue may exist as to whether the applicable statute of limitations has expired. This issue is raised in many lawsuits

even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

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CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.


Laura Wassmer

Stephen Hopper

Date: _____

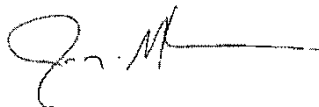
Address: _____

Telephone Numbers:

ATTORNEYS:



Fee, Smith, Sharp & Vitullo, LLP



Malesovas Law Firm

CAUSE NO. PR-11-3238-1

JOHN L. MALESOVAS, d/b/a	§	IN THE PROBATE COURT
MALESOVAS LAW FIRM, and	§	
FEE, SMITH, SHARP & VITULLO, LLP	§	
	§	
Intervenors,	§	
	§	
v.	§	NO. 1
	§	
STEPHEN B. HOPPER, LAURA S.	§	
WASSMER, individually and as	§	
Beneficiaries of the ESTATE OF	§	
MAX D. HOPPER, DECEASED,	§	
the ESTATE OF MAX D. HOPPER,	§	
DECEASED, JPMORGAN CHASE	§	
BANK, N.A.,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**INTERVENORS' (LAWYERS) CONSOLIDATED TRADITIONAL RULE 166a(c)
MOTION FOR SUMMARY JUDGMENT (MSJ) ON THEIR SECURED AND
FULLY VESTED PROPERTY AND OWNERSHIP RIGHTS TO THE
DISPUTED FUNDS, APPLICATION FOR ATTORNEY'S FEES,
AND BRIEF IN SUPPORT**

I.

Summary of Argument

On or about November 19, 2015, the intervenors in this civil action, John L. Malesovas d/b/a Malesovas Law Firm and Fee Smith Sharp & Vitullo, LLP (collectively, "Lawyers"), executed that certain "Contingency Fee Contract of Representation" ("Contingency Agreement"), with Stephen Hopper and Laura Wassmer (collectively, "Clients"). Lawyers represented Clients pre-trial, at trial, and through settlement. Under the Contingency Agreement, Lawyers have a fully vested, perfected, and secured property and ownership interest in the settlement proceeds (45% of the recovery and value created). Because Clients terminated Lawyers *after* the latter fully performed, Clients are fully estopped. It would be unconscionable to hold otherwise. Therefore,

Lawyers are entitled to a declaration that they are entitled to the full amount of their fully vested, contingency interest without any further delay. See *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2001, pet. denied); *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003).

Lawyers are entitled to traditional summary judgment and this Court should, pursuant to Section 37.005 et seq. of the Civil Practice & Remedies Code, immediately declare the following: (i) Clients are fully estopped from contesting the enforceability of the Contingency Agreement; (ii) Lawyers have a secured, perfected, and fully vested property and ownership right in the settlement proceeds (up to the very limit of their contingency interest); (iii) and Lawyers are entitled to immediate possession of their property and ownership rights in the settlement proceeds. Because there is no genuine issue of any material fact, Lawyers are entitled to the declaratory relief requested as a matter of law.

II.

Exhibits & Competent Evidence

Exhibit "A" --	Contingency Fee Contract
Exhibit "B" --	Termination Letter
Exhibit "C" --	Deposition Excerpt of Stephen Hopper
Exhibit "D" --	Deposition Excerpt of Laura Wassmer
Exhibit "E" --	Verified Application for TRO
Exhibit "F" --	TRO
Exhibit "G" --	Court's Charge/Verdict Form
Exhibit "H" --	Rule 11 Settlement

III.
Brief Factual Predicate

Lawyers represented Clients pursuant to a valid and enforceable Contingency Agreement pre-trial, at trial, and when the underlying case settled. See Exhibits "A" & "G." The underlying lawsuit was tried in September 2017 and, as the Court well knows, a substantial verdict was returned in Clients' favor. This Court can take judicial notice¹ of the Court's Charge and the Jury's Verdict Form. See Exhibit "G."

On or about April 3rd or 4th, 2018, Clients' freshly retained appellate counsel, Jeff Levinger, settled Clients' claims against JPMorgan Chase Bank, N.A. ("JPM") and, on April 4, 2018, the parties caused to be filed a Rule 11 agreement notifying the Court that there was a settlement between Clients and JPM ("Settlement"). This Court can take judicial notice of the Rule 11 Settlement Agreement filed of record. See Exhibit "H."

At approximately 9:05 a.m. on April 5, 2018, Anthony L. Vitullo, Esq. appeared before the Court on Clients' behalf and announced in open court that a confidential settlement had been reached between Clients and JPM. The Court can take judicial notice of this fact from the record of the proceedings before the Court that day.

Approximately one hour later, 10:10 a.m. on April 5, 2018 to be exact, Clients' separately retained attorney, Jim Pennington, terminated Lawyers without cause, and advised Lawyers that Clients would not pay the fees that are due and owing under the Contingency Agreement. See Exhibit "B."

On April 6, 2018, and in light of the irreconcilable conflict of interest created by Clients' termination letter(s), Lawyers immediately withdrew from representing Clients;

¹ See TEX. R. EVID. 201.

and, subsequently, Lawyers intervened to assert and enforce their secured, perfected, and fully vested ownership and property rights in the Settlement proceeds.

On April 9, 2018, this Court heard Lawyers' Application for Temporary Restraining Order (TRO) and, on April 10, 2018, the Court entered a TRO preventing the disbursement of the disputed funds. See Exhibit "F." This Court granted Lawyers' parallel request for an expedited discovery order. See *id.* (p. 4, ¶ 2).

On April 16, 2018, Clients were deposed under the Court's expedited discovery order, wherein Clients admitted that they received, enjoyed, and accepted legal services provided by Lawyers (under the Contingency Agreement), that such legal services had been and were fully performed, and that Clients terminated the Contingency Agreement only after they reached a settlement. Because those depositions were taken under the auspices of an agreed upon protective and confidentiality order, the relevant testimony is being submitted to the Court *in camera* under a sealed envelope. The relevant citations that support this MSJ are tendered *in camera* as follows: Exhibit "C" (54-55; 83; 96), and, Exhibit "D" (96-99).

IV. Argument & Authorities

A. **Because Clients Terminated Lawyers After Full Performance, Clients Are Estopped**

Because Lawyers fully performed and, because Clients terminated Lawyers only after a settlement was reached, Clients are fully estopped; accordingly, the Lawyers have a fully vested and secured property and ownership right,² upon which this Court

² An attorney's right to compensation pursuant to a contingency fee agreement "**is a property right determined under applicable state law.**" See *Marro v. United States*, 117 F.3d 297, 307 (5th Cir. 1997) (emphasis added). Under Texas law, a contingency fee contract "is generally considered to be

should grant summary judgment. See *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2001, pet. denied); *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003).

Indeed, *Enochs* held:

The trial court made findings of fact that Whitehurst [Lawyer] provided valuable legal services to Justin [Client] by successfully handling his personal injury claim, and that Justin accepted, used, and enjoyed these services and the product of these services. These findings support the theory of quasi-estoppel. The principle of quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position he has previously taken...it is unconscionable for Enoch, on Justin's behalf, to challenge the validity of the contingent fee contract when Justin has accepted the benefits of Whitehurst's services. We overrule Enoch's fifth point of error.

872 S.W.2d at 317 [citations omitted].

In the case at bar, Clients admitted that they accepted, received, and enjoyed the benefits of Lawyers' legal services; and, furthermore, Clients admitted that Lawyers fully performed under the Contingency Agreement and that they did not terminate Lawyers

an executory contract." *Id.*, at 307-308 (citing *Lee v. Cherry*, 812 S.W.2d 361, 363 (Tex. App.—Houston [14th Dist.] 1991, writ denied); *Brenan v. LaMotte*, 441 S.W.2d 626, 630 (Tex. Civ. App.—San Antonio 1969, no writ); *White v. Brookline Trust Co.*, 371 S.W.2d 597, 600 (Tex. Civ. App.—Amarillo 1963, writ ref'd n.r.e.); *Carroll v. Hunt*, 168 S.W.2d 238, 240 (Tex. Com. App. 1943, opinion adopted)).

Once the contingency occurs, however, the agreed upon contingency fee is no longer executory, and it is beyond question that an attorney has a lien on any judgment or settlement securing his or her services. Indeed, such a lien "is paramount to the rights of the parties in the suit, and is superior to other liens on the money or property involved, subsequent in point of time." See *Marre*, 117 F.3d at 308 (quoting *In re Willis*, 143 B.R. 428, 432 (Bankr. E.D. Tex. 1992)).

Here, the Contingency Agreement expressly provides in pertinent part:

[I]f Attorneys are successful in recovering money or anything of value for Client, by settlement prior to trial begins, Attorneys shall receive attorneys' fees in the amount of forty percent (40%) of the gross recovery.... If the matter is resolved after trial begins, Attorneys shall receive attorneys' fees in the amount of forty-five (45%) of the gross recovery.

See Exhibit "A" (p. 2, ¶ 3).

until the case was concluded by the Settlement. The relevant pages of testimony that establish those admissions are submitted to this Court *in camera* under a sealed envelope as Exhibit "C" (54-55; 83; 96), and, Exhibit "D" (96-99).

**B.
Because Clients are Estopped, Lawyers have a Fully
Vested Security Interest and Property Right, that is
Ripe for Summary Judgment**

Under Texas law, "a contract may establish an attorney's lien for money received in judgment or settlement of a matter." See *Norem v. Norem*, Civil Action No. 3:07-CV-0051, 2008 WL 2245821, at *6 (N.D. Tex. June 2, 2008) (Stickney, J.) [citations omitted]. Here, the Contingency Agreement does exactly that; it *expressly* grants Lawyers a security interest in and first party lien upon any settlement proceeds (including anything of "value" which would encompass a reverse contingency on the successful defense of the counter-claims) as follows:

Client hereby assigns, transfers and conveys over to Attorneys an amount equal to either forty percent (40%) of the proceeds if the matter is settled or resolved before trial begins or forty-five percent (45%) of the proceeds if the matter is resolved after trial begins, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the claims described in this contract. Client does hereby give and grant to Attorneys an express security interest, in addition to any statutory lien, upon Client's claims and any and all judgments recovered, and any and all funds or property realized or paid by compromise or settlement, as security for the compensation and costs and expenses advanced or due to be paid or reimbursed to Attorneys hereunder. This security interest is to continue in the event Attorneys are discharged without good cause. If the claims are not assignable at law, Client expressly assigns to Attorneys, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

See Exhibit "A" (p. 5, ¶ 11).

Bottom Line: A contractual attorneys' lien is fully enforceable in Texas. See *Norem*, 2008 WL 2245821, at *6; see also *United States v. Betancourt*, No. CRIM. B-

03-090-S1, 2005 WL 3348908, at *3 (S.D. Tex. Dec. 8, 2005) (Tagle, J.). Upon full performance, as here, Lawyers' interest in the settlement proceeds is undeniably a "property right." See *Marre v. United States*, 117 F.3d 297, 307 (5th Cir. 1997).

By the very language of the Contingency Agreement itself, a lien applies to any "property, money or other value recovered" when the "matter is resolved after trial begins ... [or] by settlement." See Exhibit "A" (p. 5, ¶ 11). This Court can take judicial notice of the following: (i) the Contingency Agreement, a copy of which has already been admitted into evidence at the TRO hearing; (ii) jury charge and verdict form (Exhibit "G"); (iii) the announcement of the settlement in open court on April 5, 2018 and the Rule 11 Settlement Agreement filed with the Court on April 4, 2017 (Exhibit "H"); and (iv) Clients' termination of Lawyers on April 5, 2018, a copy of which has already been admitted into evidence at the TRO hearing (Exhibit "B").

**C.
Lawyers are Entitled to their Attorney's
Fees Under Section 37.009**

Given Clients' underhanded actions in terminating Lawyers and trying to avoid paying a fee within hours of settling this case, an award of attorney's fees in the Lawyers' favor is particularly *apropos*. See TEX. CIV. PRAC. & REM. CODE § 37.009 (Vernon 2014). Lawyers respectfully request that the Court award them their reasonable and necessary attorney's fees (which can be done by fee application after summary judgment is granted), which would be "just" and "equitable." *Id.* at § 37.009.

**V.
Conclusion**

In conclusion, because there is no genuine issue of any material fact, Lawyers are entitled to the declaratory relief requested herein.

WHEREFORE, PREMISES CONSIDERED, Intervenor (Lawyers) respectfully pray that this Honorable Court grant their summary judgment; grant the declaratory relief requested; award attorney's fees; and fully grant Lawyers all such further relief whether in law or in equity upon which they may show themselves justly entitled.

Respectfully Submitted,

BRIAN LAUTEN, P.C.

A handwritten signature in black ink, appearing to read "BP Lauten", with a stylized flourish at the end.

BRIAN P. LAUTEN

State Bar No. 24031603

blauten@brianlauten.com

3811 Turtle Creek Blvd.

Ste. 1450

Dallas, Texas 75219

(214) 414-0996 telephone

ATTORNEYS FOR INTERVENORS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on April 20, 2018, in accordance with the Texas Rules of Civil Procedure to:

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Kerry F. Schonwald
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and JPMorgan Chase Bank, N.A., in its
Corporate Capacity**

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Stephen B. Hopper and Laura S. Wassmer**



BRIAN P. LAUTEN
ATTORNEY FOR INTERVENORS

CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned **Stephen Hopper, and Laura Wassmer** referred to as "Client" or "Clients" employ and retain Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm, (herein "Attorneys") to represent Client as set forth herein.

1. SCOPE OF REPRESENTATION: Attorneys agree to investigate and evaluate and litigate Client's possible claim or claims of negligence, fraud, breach of contract, and breach of fiduciary duty against JP MORGAN CHASE and persons and companies relating to JP MORGAN CHASE BANKS wrongful acts in acting as the independent administrator of the Estate of Max Hopper..

Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client. Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties.

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.

Client understands and agrees that Attorneys will not file suit against entities that are in a foreign jurisdiction or are international companies whom in attorney's opinion cannot be sued in a United States court. Client understands and agrees that Attorneys are not obligated to pursue entities that are defunct and/or bankrupt.

Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.

2. AUTHORITY OF ATTORNEYS: Client empowers Attorneys to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's

Claims, including hiring investigators, expert witnesses, and/or other attorneys and filing any legal action necessary. Client authorizes and empowers Attorneys to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claim, and Client further authorizes and empowers them to sign any and all pleadings and all releases, checks, drafts, authorizations and other papers necessary and proper in connection with the prosecution or enforcement of Client's Claims and collection or settlement of the damages awarded or to be paid therefore, and to receive such funds or other property in Client's name and for Client on account of any judgment recovered or any settlement agreed upon in connection with Client's Claim. Full power and authority is given by Client to Attorneys to adjust, settle or compromise Client's Claim, but no final settlement shall be made and consummated by Attorneys without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claim without the Attorneys' authority, agreement and consent. Should Client make a settlement in violation of this Agreement, Client agrees to pay Attorneys the full fee agreed upon under paragraph 3 "Attorneys' Fee", below.

3. ATTORNEYS' FEE: This Agreement is a contingency fee contract. Specifically, if Attorneys are successful in recovering money or anything of value for Client, by settlement prior to trial begins, Attorneys shall receive attorneys' fees in the amount of forty percent (40%) of the gross recovery. The attorney fee will be split amongst the attorneys as follows: FSSV 50% Malesovas Law Firm 50% If the matter is resolved after trial begins, Attorneys shall receive attorneys' fees in the amount of forty-five (45%) of the gross recovery. All attorneys' fees shall be a percentage of the gross recovery. Gross recovery means the gross amount of money or other value or property recovered for Client, before the deduction of expenses. Trial is considered to have commenced at 5:00 p.m. on the Friday closest to ten (10) days before jury selection begins or evidence is first presented to the trier of fact, whichever is the earlier of these two events. If Attorneys do not recover any money or other value or property for Client, Client will not owe any attorneys' fees. Client agrees that Attorneys may, in their discretion, employ associate counsel to assist in prosecuting Client's cause of action, and Client does not object to the participation of any lawyers Attorneys may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel is the responsibility of Attorneys. In the event that the case is settled by way of a structured settlement, Client approves and authorizes attorneys' fees to be based upon the present value benefit of the settlement and further authorizes Attorneys to take attorneys' fees either in cash or in structured payment, as Attorneys deem appropriate.

In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to

avoid paying the Client's claim; a defendant may transfer assets out of the country thereby necessitating the retention of foreign counsel, or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees of such counsel will be deducted from Client's share of the recovery.

4. COSTS AND OTHER EXPENSES: Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred. Such costs include filing fees, expert witness fees, court reporter and video fees, copy charges, postage, mailing, travel, witness fees, electronic document conversion fees, delivery fees, internal operating costs and other related charges incurred or paid as an expense on behalf of Client and paid to third-party vendors or incurred internally by Attorneys and charged to Client in connection with Attorneys' representation of Client.

5. DISBURSEMENT OF PROCEEDS TO CLIENT: Client understands that Attorneys make no guarantee or assurance of any kind regarding the likelihood of success of Client's claims. Upon receipt by Attorneys of the proceeds of any settlement or judgment, Attorneys shall (1) retain either forty percent (40%) of the proceeds as their attorneys' fees if the matter is settled or resolved before trial begins or forty-five (45%) percent of the proceeds as their attorneys' fees if the matter is settled or resolved after trial begins, (2) deduct from Client's share of the proceeds any costs and expenses, including the fees of any special outside counsel that Attorneys may incur on Client's behalf, and (3) disburse the remainder of Client's share of the proceeds to Client. At the time of disbursement of any proceeds, Client will be provided with a disbursement sheet reflecting the attorneys' fees, the expenses deducted out of Client's share, and the remainder of Client's share.

Upon some circumstances, health insurers, workers compensation carriers, or others who have paid benefits or provided services on Client's behalf may claim a right to recover a portion of the proceeds of any action brought on behalf of the Client and may place Attorneys on notice of their claim. Except as may be required by law, Attorneys will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. POWER OF ATTORNEY: Client gives Attorneys a power of attorney to execute and negotiate all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, proofs of claim, ballots, verified statements including those pursuant to Bankruptcy Rule 2019,

and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.

7. **COOPERATION; ADDRESS CHANGE; RETURN OF DOCUMENTS:** Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial. Client shall appear on reasonable notice at any and all depositions and Court appearances and shall comply with all reasonable requests of Attorneys in connection with preparation and presentation of Client's claims. The Client acknowledges and agrees that all communications with Attorneys are privileged. The Client acknowledges that Attorneys may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of Attorneys' clients. Therefore, Client agrees and understands that other individuals who are clients of Attorneys may also invoke the attorney client privilege as to Attorneys' communications with Client. The Client acknowledges and agrees not to provide attorney work product or attorney client communications to any other person.

Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

Client understands that applicable State law may impose sales, service or other tax on any amount that Client may recover or the fees due Attorneys hereunder. Client also understands that applicable Federal income tax law may require that Client pay

income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

9. **DEATH OF CLIENT:** The provisions of this Agreement will not terminate upon the death of Client. In the event of the death of Client, any duly appointed Representative of Client's heirs and/or estate will be bound by this Agreement to the extent allowed by applicable law, including without limitation, the provisions of this Agreement relating to the recovery of attorneys' fees and costs and other expenses. Any such Representative shall, upon request by Attorneys, execute a new Agreement in the capacity as Representative for the heirs and/or estate of the Client.

10. **OFFER OF SETTLEMENT:** Client understands that applicable law may, under certain circumstances, allow a Defendant to make an offer of settlement to Client and if Client rejects or does not accept such an offer, such may result in any award, verdict or judgment in Client's favor being reduced as provided by such law. Client understands that Client has the final authority to accept or reject any offer of settlement. Client understands that if Client rejects or does not accept such an offer, and Client's recovery is subsequently reduced, the fees owed to Attorneys will be calculated on the amount of any award, verdict or judgment before reduction, and the reduction shall be out of Client's share of any recovery.

11. **SECURITY INTEREST:** Client hereby assigns, transfers and conveys over to Attorneys an amount equal to either forty percent (40%) of the proceeds if the matter is settled or resolved before trial begins or forty-five percent (45%) of the proceeds if the matter is resolved after trial begins, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the claims described in this contract. Client does hereby give and grant to Attorneys an express security interest, in addition to any statutory lien, upon Client's claims and any and all judgments recovered, and any and all funds or property realized or paid by compromise or settlement, as security for the compensation and costs and expenses advanced or due to be paid or reimbursed to Attorneys hereunder. This security interest is to continue in the event Attorneys are discharged without good cause. If the claims are not assignable at law, Client expressly assigns to Attorneys, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

12. **BINDING EFFECT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

13. **TERMINATION OF REPRESENTATION:** Client understands that Client can terminate Attorneys' representation of Client at any time by providing written notice to

Attorneys. Should Client elect to terminate Attorneys' representation prior to the full conclusion of Attorneys' representation, Client understands and agrees that Attorneys have a claim for expenses of litigation and unpaid attorneys' fees which will become due upon receipt by Client or any successor attorney of Client or any proceeds for any remaining portion of Client's claim. Client understands that the obligation for unpaid attorneys' fees will be calculated based on the percentage of work completed on the case or claims at the time Client terminates Attorneys.

14. NO GUARANTEE OF RECOVERY: Client understands that no guarantee or assurances of any kind have been made regarding the likelihood of success of Client's claim, but that Attorneys will use their skill and diligence, as well as their experience, to diligently pursue Client's action.

15. MISCELLANEOUS: In case any one or more of the provisions contained in this agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

16. STATUTE OF LIMITATIONS: Client understands that an issue may exist as to whether the applicable statute of limitations has expired. This issue is raised in many lawsuits even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

17. REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL: Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall consent in writing to the terms of the arrangement after being advised of (1) the identity of the lawyer or law firm involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be

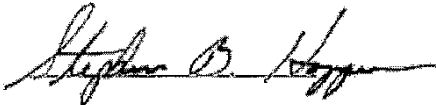
made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

18. **NOTICE TO CLIENTS:** Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.

20. **ARBITRATION:** It is Attorney's goal to maintain at all times a constructive and positive relationship with Client on the matter described above and on future matters in which Attorney may perform services for Client. However, should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, if any controversy or claim arises out of is related to this agreement, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (including malpractice claims and fee disputes), Attorneys and Client both waive any right to bring a court action or have a jury trial and agree that the dispute shall be submitted to binding arbitration to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas..

CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.

Laura Wassmer




Stephen Hopper

Date: 11/19/2015

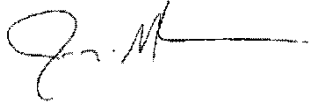
Address: 3625 N. Classen Blvd Oklahoma City, OK 7318

Telephone Numbers: 405-639-9186

ATTORNEYS:



Fee, Smith, Sharn & Vitullo, LLP



Malesovas Law Firm

CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned **Stephen Hopper, and Laura Wassmer** referred to as "Client" or "Clients" employ and retain Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm, (herein "Attorneys") to represent Client as set forth herein.

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Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. ~~Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client.~~ Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties. *other than Chase. Lw*

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit, ~~or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.~~ *LW*

Client understands and agrees that Attorneys will not file suit against entities that are in a foreign jurisdiction or are international companies whom in attorney's opinion cannot be sued in a United States court. Client understands and agrees that Attorneys are not obligated to pursue entities that are defunct and/or bankrupt.

Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.

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In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to avoid paying the Client's claim; a defendant may transfer assets out of the country thereby necessitating the retention of foreign counsel, or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees of such counsel will be deducted from Client's share of the recovery.

4. **COSTS AND OTHER EXPENSES:** Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred. Such costs include filing fees, expert witness fees, court reporter and video fees, copy charges, postage, mailing, travel, witness fees, electronic document conversion fees, delivery fees, internal operating costs and other related charges incurred or paid as an expense on behalf of Client and paid to third-party vendors or incurred internally by Attorneys and charged to Client in connection with Attorneys' representation of Client.

5. **DISBURSEMENT OF PROCEEDS TO CLIENT:** Client understands that Attorneys make no guarantee or assurance of any kind regarding the likelihood of success of Client's claims. Upon receipt by Attorneys of the proceeds of any settlement or judgment, Attorneys shall (1) retain either forty percent (40%) of the proceeds as their attorneys' fees if the matter is settled or resolved before trial begins or forty-five (45%) percent of the proceeds as their attorneys' fees if the matter is settled or resolved after trial begins, (2) deduct from Client's share of the proceeds any costs and expenses, including the fees of any special outside counsel that Attorneys may incur on Client's behalf, and (3) disburse the remainder of Client's share of the proceeds to Client. At the time of disbursement of any proceeds, Client will be provided with a disbursement sheet reflecting the attorneys' fees, the expenses deducted out of Client's share, and the remainder of Client's share.

Upon some circumstances, health insurers, workers compensation carriers, or others who have paid benefits or provided services on Client's behalf may claim a right to recover a portion of the proceeds of any action brought on behalf of the Client and may place Attorneys on notice of their claim. Except as may be required by law, Attorneys will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. **POWER OF ATTORNEY:** Client gives Attorneys a power of attorney to execute and negotiate all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, proofs of claim, ballots, verified statements including those pursuant to Bankruptcy Rule 2019, and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.

7. **COOPERATION; ADDRESS CHANGE; RETURN OF DOCUMENTS:** Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial. Client shall appear on reasonable notice at any and all depositions and Court appearances and shall comply with all reasonable requests of Attorneys in connection with preparation and presentation of Client's claims. The Client acknowledges and agrees that all communications with Attorneys are privileged. The Client acknowledges that Attorneys may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of Attorneys' clients. Therefore, Client agrees and understands that other individuals who are clients of Attorneys may also invoke the attorney client privilege as to Attorneys' communications with Client. The Client acknowledges and agrees not to provide attorney work product or attorney client communications to any other person.

Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

Client understands that applicable State law may impose sales, service or other tax on any amount that Client may recover or the fees due Attorneys hereunder. Client also understands that applicable Federal income tax law may require that Client pay income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

9. **DEATH OF CLIENT:** The provisions of this Agreement will not terminate upon the death of Client. In the event of the death of Client, any duly appointed Representative of Client's heirs and/or estate will be bound by this Agreement to the extent allowed by applicable law, including without limitation, the provisions of this Agreement relating to the recovery of attorneys' fees and costs and other expenses. Any such Representative shall, upon request by Attorneys, execute a new Agreement in the capacity as Representative for the heirs and/or estate of the Client.

10. **OFFER OF SETTLEMENT:** Client understands that applicable law may, under certain circumstances, allow a Defendant to make an offer of settlement to Client and if Client rejects or does not accept such an offer, such may result in any award, verdict or judgment in Client's favor being reduced as provided by such law. Client understands that Client has the final authority to accept or reject any offer of settlement. Client understands that if Client rejects or does not accept such an offer, and Client's recovery is subsequently reduced, the fees owed to Attorneys will be calculated on the amount of any award, verdict or judgment before reduction, and the reduction shall be out of Client's share of any recovery.

11. **SECURITY INTEREST:** Client hereby assigns, transfers and conveys over to Attorneys an amount equal to either forty percent (40%) of the proceeds if the matter is settled or resolved before trial begins or forty-five percent (45%) of the proceeds if the matter is resolved after trial begins, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the claims described in this contract. Client does hereby give and grant to Attorneys an express security interest, in addition to any statutory lien, upon Client's claims and any and all judgments recovered, and any and all funds or property realized or paid by compromise or settlement, as security for the compensation and costs and expenses advanced or due to be paid or reimbursed to Attorneys hereunder. This security interest is to continue in the event Attorneys are discharged without good cause. If the claims are not assignable at law, Client expressly assigns to Attorneys, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

12. **BINDING EFFECT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

13. **TERMINATION OF REPRESENTATION:** Client understands that Client can terminate Attorneys' representation of Client at any time by providing written notice to Attorneys. Should Client elect to terminate Attorneys' representation prior to the full conclusion of Attorneys' representation, Client understands and agrees that Attorneys have a claim for expenses of litigation and unpaid attorneys' fees which will become due upon receipt by Client or any successor attorney of Client or any proceeds for any remaining portion of Client's claim. Client understands that the obligation for unpaid attorneys' fees will be calculated based on the percentage of work completed on the case or claims at the time Client terminates Attorneys.

14. **NO GUARANTEE OF RECOVERY:** Client understands that no guarantee or assurances of any kind have been made regarding the likelihood of success of Client's claim, but that Attorneys will use their skill and diligence, as well as their experience, to diligently pursue Client's action.

15. **MISCELLANEOUS:** In case any one or more of the provisions contained in this agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

16. **STATUTE OF LIMITATIONS:** Client understands that an issue may exist as to whether the applicable statute of limitations has expired. This issue is raised in many lawsuits

even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

17. **REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL:** Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall consent in writing to the terms of the arrangement after being advised of (1) the identity of the lawyer or law firm involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

18. **NOTICE TO CLIENTS:** Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.

20. **ARBITRATION:** It is Attorney's goal to maintain at all times a constructive and positive relationship with Client on the matter described above and on future matters in which Attorney may perform services for Client. However, should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, if any controversy or claim arises out of or is related to this agreement, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (including malpractice claims and fee disputes), Attorneys and Client both waive any right to bring a court action or have a jury trial and agree that the dispute shall be submitted to binding arbitration to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas..

CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.


Laura Wassmer

Stephen Hopper

Date: _____

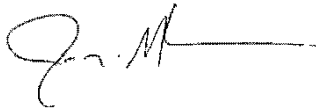
Address: _____

Telephone Numbers:

ATTORNEYS:



Fee, Smith, Sharp & Vitullo, LLP



Malesovas Law Firm

LAW OFFICES OF JAMES E. PENNINGTON

A PROFESSIONAL CORPORATION
900 JACKSON STREET, SUITE 440
DALLAS, TEXAS 75202-4473

JAMES E. PENNINGTON
LICENSED IN TEXAS AND COLORADO

PHONE (214) 741-3022
FAX (214) 741-3055
E-MAIL jep@jeplawyer.com

April 5, 2018

VIA EMAIL: blauten@brianlauten.com

Brian P. Lauten
Brian Lauten, P.C.
3811 Turtle Creek Blvd.
Suite 1450
Dallas, Texas 75219

Re: Case No. PR-11-3238-1; In re: Estate of Max Hopper, Deceased, Jo N. Hopper v. JP Morgan Chase Bank, N.A., et al., in the Probate Court of Dallas County, Texas.

Brian:

As you know, I represent Dr. Stephen Hopper and Laura Wassmer in connection with a dispute that has developed involving your clients, Anthony Vitullo and Fee, Smith, Sharp & Vitullo, LLP. Please be advised that my clients have decided to terminate their relationship with Mr. Vitullo, Fee, Smith, Sharp & Vitullo, LLP and John Malesovas. Their decision to terminate this relationship is based on a number of factors, which are too numerous to set forth herein. However, I provided you with a brief summary of those reasons yesterday during our call and suggested we meet in person to discuss this in more detail. Ultimately, as a result of several issues that were discovered by Jeff Levinger, the appellate lawyer retained to handle the appeal of the jury's verdict, my clients decided to settle the case with JP Morgan Chase. Most, if not all of these issues, were caused by your clients' omissions before and during trial, such as failing to present expert testimony and several jury charge issues which would have made an appeal very difficult for my clients. Additionally, I discovered a number of facts, some of which I outlined during our call, which indicate that the contingency fee agreement is probably not enforceable and which show that -- even if it is enforceable -- your clients breached the agreement. As a result, I am notifying you that my clients are -- effective immediately -- terminating their relationship with Mr. Vitullo, Fee, Smith, Sharp & Vitullo, LLP and Mr. Malesovas and his firm. It is unclear to me whether you are representing Mr. Malesovas or his firm. Please advise, so that I can notify Mr. Malesovas if needed.

At this time, I am requesting your clients to provide me with their *entire* file regarding their representation of my clients. Although your clients have previously provided me with

EXHIBIT

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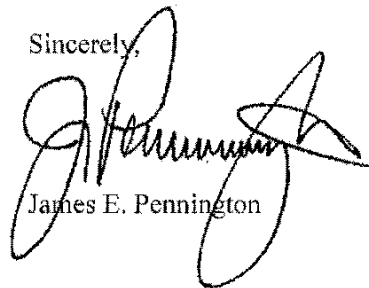
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Brian Lauten
April 5, 2018
Page 2

portions of the file, the files which were provided are not complete and were not provided in the manner in which they were originally maintained by the firm. I am not suggesting anything improper about the manner in which the files were previously produced. However, I am pointing this out to emphasize the importance of making sure that I receive the complete file in the same manner that it was maintained by your clients. You may provide the electronic files on a portable hard drive and have this device, along with the physical files, delivered to my office.

Finally, as I indicated during our call, my clients are willing to discuss a resolution of the attorney's fees related to your clients' representation, so give this some more thought and let me know if you have a proposal. In the meantime, I will instruct Mr. Levinger to retain a percentage of the settlement in his trust account until this matter is resolved. Thank you for your anticipated cooperation. If you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Pennington", with a large, stylized flourish extending from the end of the signature.

James E. Pennington

LAW OFFICES OF JAMES E. PENNINGTON

A PROFESSIONAL CORPORATION
900 JACKSON STREET, SUITE 440
DALLAS, TEXAS 75202-4473

JAMES E. PENNINGTON
LICENSED IN TEXAS AND COLORADO

PHONE (214) 741-3022
FAX (214) 741-3055
E-MAIL jep@jeplawyer.com

April 5, 2018

VIA EMAIL: john@malesovas.com
jmalesovas@gmail.com

John Malesovas
1801 S. MoPac Expressway
Suite 320
Austin, Texas 78746

Re: Case No. PR-11-3238-1; In re: Estate of Max Hopper, Deceased, Jo N. Hopper v. JP Morgan Chase Bank, N.A., et al., in the Probate Court of Dallas County, Texas.

Mr. Malesovas:

In the event you have not previously been advised, I have been retained to represent Dr. Stephen Hopper and Laura Wassmer in connection with a dispute that has developed involving your representation in the above-referenced matter. Please be advised that my clients have decided to terminate their relationship with you and Mr. Vitullo, and your respective law firms. Mr. Vitullo was advised of this decision earlier today. The clients' decision to terminate this relationship is based on a number of factors, which are too numerous to set forth herein. Yesterday, I spoke with Mr. Vitullo's attorney, Brian Lauten, and provided him with a brief summary of those reasons and I offered to meet in person to discuss this in more detail. Ultimately, as a result of several issues that were discovered by Jeff Levinger, the appellate lawyer retained to handle the appeal of the jury's verdict, my clients decided to settle the case with JP Morgan Chase. Most, if not all of these issues, were caused by the attorneys' omissions before and during trial, such as failing to present expert testimony and several jury charge issues which would have made an appeal very difficult for my clients. Additionally, I discovered a number of facts, some of which I outlined during my call yesterday with Mr. Lauten, which indicate that the contingency fee agreement is probably not enforceable and which show that – even if it is enforceable – you and/or Mr. Vitullo breached the agreement. As a result, I am notifying you that my clients are – effective immediately – terminating their relationship with you and your law firm.

At this time, I am requesting you to provide me with your *entire* file regarding your representation of my clients. Please make sure that I receive the complete file in the same

John Malesovas

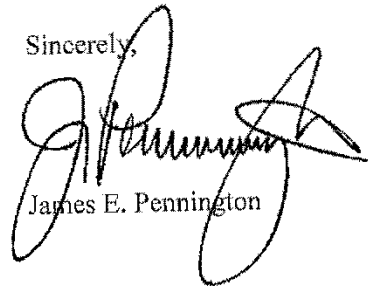
April 5, 2018

Page 2

manner that it was maintained by you and/or your law firm. You may provide the electronic files on a portable hard drive and have this device, along with the physical files, delivered to my office.

Finally, as I indicated to Mr. Lauten during our call, my clients are willing to discuss a resolution of the attorney's fees related to your representation, so please discuss this with Mr. Vitullo and let me know if you have a proposal. In the meantime, I will instruct Mr. Levinger to retain a percentage of the settlement in his trust account until this matter is resolved. Thank you for your anticipated cooperation. If you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Pennington", with a large, stylized flourish extending from the end of the signature.

James E. Pennington

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED,

JO N. HOPPER,

Intervenor,

v.

JPMORGAN CHASE BANK, N.A.,
STEPHEN B. HOPPER, and LAURA
S. WASSMER,

Defendants.

IN THE PROBATE COURT

NO. 1

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and
FEE, SMITH, SHARP & VITULLO, LLP

Attorneys,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, individually and as
Beneficiaries of the ESTATE OF
MAX D. HOPPER, DECEASED,
the ESTATE OF MAX D. HOPPER,
DECEASED, JPMORGAN CHASE
BANK, N.A.,

Defendants.

**INTERVENORS'
EXHIBIT "D"**

IN CAMERA INSPECTION

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED,

JO N. HOPPER,

Intervenor,

v.

JPMORGAN CHASE BANK, N.A.,
STEPHEN B. HOPPER, and LAURA
S. WASSMER,

Defendants.

IN THE PROBATE COURT

NO. 1

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and
FEE, SMITH, SHARP & VITULLO, LLP

Attorneys,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, individually and as
Beneficiaries of the ESTATE OF
MAX D. HOPPER, DECEASED,
the ESTATE OF MAX D. HOPPER,
DECEASED, JPMORGAN CHASE
BANK, N.A.,

Defendants.

**JOHN L. MALESOVAS, d/b/a MALESOVAS LAW FIRM AND FEE, SMITH, SHARP &
VITULLO, LLP'S CONSOLIDATED FIRST AMENDED JOINT PETITION IN
INTERVENTION AND PETITION FOR DECLARATORY JUDGMENT, APPLICATION
FOR TEMPORARY RESTRAINING ORDER, FOR TEMPORARY INJUNCTION,
AND MOTION TO DEPOSIT FUNDS IN THE REGISTRY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Attorneys, John L. Malesovas, d/b/a Malesovas Law Firm ("MLF")
and Fee, Smith, Sharp & Vitullo, LLP ("FSSV") (MLF and FSSV hereinafter jointly

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referred to as "Attorneys"), and files this Petition in Intervention and Petition for Declaratory Judgment and Application for Temporary Restraining Order and for Temporary Injunction complaining of Defendants, STEPHEN B. HOPPER ("Hopper"), LAURA S. WASSMER ("Wassmer"), individually and as beneficiaries of the Estate of Max D. Hopper (hereinafter collectively "Clients" and/or "Defendants"), the Estate of Max D. Hopper, deceased and JPMORGAN CHASE BANK, N.A. ("JPM"), and for cause would show the following:

I.
DISCOVERY CONTROL PLAN

1.01 Intervenor requests this lawsuit proceed under a Level 3 Discovery Control Plan pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II.
PARTIES

2.01 John L. Malesovas is an attorney licensed to practice law in the State of Texas and doing business as Malesovas Law Firm.

2.02 FSSV is a limited liability partnership and law firm and doing business as Fee, Smith, Sharp & Vitullo, LLP.

2.03 Defendant, Stephen B. Hopper ("Hopper"), individually and as a beneficiary of the Estate of Max D. Hopper, deceased, was a former client of Attorneys and is being served herewith pursuant to TRCP 21a.

2.04 Defendant, Laura S. Wassmer ("Wassmer"), individually and as a beneficiary of the Estate of Max D. Hopper, deceased, was a former client of Attorneys and is being served herewith pursuant to TRCP 21a. Hopper and Wassmer are hereinafter jointly referred to as "Clients".

2.05 The Estate of Max D. Hopper is an estate in administration under the jurisdiction of this Court, and Clients have asserted claims herein on behalf of the Estate as the beneficiaries of the Estate.

2.06 JPMorgan Chase Bank, N.A. ("JPM"), is a Defendant in the underlying case and an interested party to this Petition in Intervention and is being served herewith pursuant to TRCP 21a.

III. JURISDICTION AND VENUE

3.01 Venue is proper in Dallas County, Texas pursuant to §15.002(a)(1), Tex. Civ. Prac. & Rem. Code, as Dallas County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and because venue is proper in the underlying action. This Court has exclusive jurisdiction to hear this claim because Intervenor has an interest in the matter in controversy that involves the Defendants and The Estate of Max D. Hopper. See TEX. ESTATES CODE ANN. § 32.007 et seq. (Vernon 2014), and, TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014) (authorizing declaratory judgment actions in probate court when such relief is germane to an Estate). To the extent that The Estate of Max D. Hopper is a party to the settlement with JPM or to the extent that beneficiaries of The Estate of Max D. Hopper are parties to the settlement with JPM then this Court and only this Court has exclusive jurisdiction over this matter.

IV. FACTS

4.01 MLF and FSSV, (jointly "Attorneys"), represented Defendants pursuant to a valid and enforceable contingency fee agreement in the underlying lawsuit pending in

this Court. A true and correct copy of the contingent fee agreement will be tendered to the Court for *in camera* inspection at the hearing (hereinafter "Agreement"). Intervenors have fully performed under the terms of the Agreement. On April 3, 2018 and April 4, 2018, Clients' Appellate Counsel, Jeff Levinger, settled Clients' claims against JPM and on April 4, 2018 PM filed a Rule 11 agreement with the Court notifying the Court that there was a settlement between Clients and JPM ("Settlement"). At approximately 9:05 am on April 5, 2018, Anthony L. Vitullo appeared before this Court on behalf of Clients and announced in open court and on the record the confidential settlement between Clients and JPM. At approximately 10:10am on April 5, 2018, Clients' attorney, Jim Pennington, terminated Attorneys without cause and advised Attorneys that they were not going to pay the fee due under the Agreement. Mr. Pennington also advised Attorneys that he was going to instruct Mr. Levinger to retain an unspecified percentage of the Settlement proceeds in his trust account. On April 6, 2018, FSSV withdrew from representing Clients in the underlying lawsuit. Attorneys own a property right in the Settlement proceeds. Attorneys file this Petition in Intervention and Declaratory Judgment and Request for TRO and Temporary Injunction to enforce their property rights in the Settlement proceeds.

4.02 Attorneys have a justiciable interest and property interest in the pending suit in that Attorneys have a lien on and interest in the Settlement proceeds. This lawsuit is a simple declaratory judgment action to enforce Attorneys property rights. As such, pursuant to *Texas Mut. Ins. Co. v. Ledbetter*, 251 S.W.3d 31 (2008), Attorneys are lienholders in the Settlement proceeds of this case, and have an absolute right to intervene. Further, as stated by the Supreme Court in *Ledbetter*, to the extent that

Clients, JPM and/or their attorneys settle a case without reimbursing a lienholder, "everyone involved is liable ... for conversion." Thus, Attorneys seek a declaration from this Court pursuant to Tex. Civ. Prac. & Rem Code § 37.001 et. seq. confirming Attorneys' security interest in the Settlement proceeds and directing JPM and Clients to pay such interest directly to Attorneys. This lawsuit is a simple declaratory judgment action to enforce Attorneys' property rights.

4.03 Attorneys fully performed under the Agreement with no complaint from Clients and secured a very favorable jury verdict. As a result of this favorable jury verdict, Clients were able to secure a confidential settlement with JPM. Only after Clients, through their appellate attorney Jeff Levinger, unilaterally settled with JPM did Clients terminate Attorneys. Clients accepted, used and enjoyed the services of Attorneys which resulted in the Settlement. In accordance with the Courts' holdings in *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356 (Tex. App.—Dallas 2018, no pet.) and *Enochs v. Brown*, 872 S.W.2d 312 (Tex. App. – Austin 1994, no writ), Clients are estopped and quasi-estopped from challenging the validity of the Agreement and the fee due Attorneys thereunder and the property rights Attorneys have to the Settlement proceeds. Further, it would be unconscionable for Clients to challenge the property rights of Attorneys under the Agreement after having already accepted the benefits from Attorneys under the Agreement. Further, by accepting the benefits under the Agreement without complaint, Clients have waived any right to complain about the Agreement. Accordingly, Attorneys move the Court to declare that Attorneys own a property right in the Settlement proceeds" and that the Agreement is valid and

enforceable and to further order Clients and JPM to pay all fees and expenses due Attorneys under the Agreement directly to Attorneys from the Settlement proceeds.

4.04 In addition, Attorneys seek their attorneys' fees from Clients pursuant to Tex. Civ. Prac. & Rem Code §§ 37.009, 38.001 (Vernon 2014). All conditions precedent to Attorneys' claim for relief have been performed or have occurred.

V.
SUIT FOR DECLARATORY RELIEF

5.01 Attorneys incorporate all of the preceding paragraphs as if they were set forth in their entirety herein.

5.02 Attorneys' seek a declaratory judgment pursuant to the Texas Uniform Declaratory Judgment Act ("UDJA"), Texas Civil Practice & Remedies Code Section 37.001 et seq. An actual and justiciable controversy exists and has arisen between Attorneys and Clients. Attorneys seek judgment against Defendants pursuant to the UDJA declaring the rights, status and other legal relations of Attorneys and Clients regarding the payment of Attorneys interest in the Settlement proceeds. Because the Estate is a party to the Settlement, this Honorable Court has exclusive jurisdiction to declare Attorneys legal interests in the Settlement proceeds.

5.03 Attorneys are entitled to a declaration from this Honorable Court to the following:

- a. Attorneys own a property right in the Settlement proceeds;
- b. Attorneys are entitled to immediate possession of their property right in the Settlement proceeds;
- c. This Honorable Court has exclusive jurisdiction to declare the rights of the parties to the Settlement proceeds;

- d. Attorneys are entitled to the full and exclusive use, possession and enjoyment of their interest in the Settlement proceeds;
- e. That it is in the best interest of the Estate to pay Attorneys their interest in the Settlement proceeds; and
- f. That the Clients and JPM be directed to pay Attorneys interest in the Settlement proceeds directly to Attorneys.

5.04 Attorneys also seek all legal fees and expenses from Clients as allowed under the UDJA as this would be fair and equitable given the facts and circumstances of this dispute.

VI. ATTORNEY'S FEES

6.01 Pursuant to 37.009 and/or 38.001 of the Texas Civil Practice and Remedies Code, Attorneys seek all reasonable and necessary attorney's fees in this case which include the following:

- a. Preparation and trial of this lawsuit;
- b. Post-Trial, pre-appeal legal services;
- c. An appeal to the court of appeals;
- d. Making or responding to an application for writ of error to the Supreme Court of Texas;
- e. An appeal to the Supreme Court of Texas in the event application for writ of error is granted; and
- f. Post-judgment discovery and collection in the event execution on the judgment is necessary.

VII.

ELEMENTS FOR INJUNCTIVE RELIEF

7.01 Attorneys are likely to succeed on the merits of this lawsuit because Attorneys have a probable right to relief they seek on final hearing. On final hearing Attorneys are likely to prove each and every element of all claims asserted against Clients as foregoing shows that Attorneys fully performed under the Agreement. Attorneys have a security interest in the Settlement proceeds and Clients have informed Attorneys that they do not intend to pay or honor Attorneys interest in the Settlement proceeds.

7.02 Unless this Honorable Court immediately restrains Clients from diverting the Settlement proceeds to their own attorneys, the Attorneys will suffer immediate and irreparable injury, for which there is no adequate remedy at law, because in effect, Attorneys will have lost the protection of their security interest in the Settlement proceeds. Attorneys have a lien on and security interest in the Settlement proceeds, the purpose of which is to prevent Clients from taking all of the Settlement proceeds and unilaterally controlling their use and disposition. The Clients simply saying that they will instruct their attorney to keep some unspecified portion of the Settlement proceeds in his trust account eviscerates Attorneys' security interest in the Settlement Proceeds. Attorneys will show the court the following:

- a) The harm to Attorneys is imminent because Clients have started to finalize the Settlement and are attempting to have Attorneys' interest in the Settlement proceeds paid to Clients' attorney, Jeff Levinger.
- b) This imminent harm will cause Attorneys irreparable injury in that once Defendants pay the Settlement proceeds to Jeff Levinger, Attorneys will not

be able to enforce their lien and security interest because Levinger will claim that he is obligated to hold the funds in his trust account, interest free, until the ownership of the fees is resolved. But Rules 1.14 of the Texas Rules of Professional Conduct do not require, nor do they even allow, Clients attorney to even take possession of the Settlement proceeds. Instead, Attorneys' lien and security interest allow them to take possession of their interest in the Settlement proceeds. Thus, unless a temporary restraining order and temporary injunction are issued, Attorney's lien and security interest in the Settlement proceeds will be eviscerated. In addition, Attorneys' interest in the Settlement proceeds will not be protected from unauthorized distributions, conversion, or bank failure.

- c) There is no adequate remedy at law which will enforce Attorneys' lien and security interest absent action from this Court. Further, Clients will not be financially able to respond in damages upon final trial from this intervention unless Attorney's interest in the Settlement proceeds is protected by this Court.

VIII. **BOND**

8.01 Attorneys are willing to post a reasonable temporary restraining order bond and request the court to set such bond.

IX. **TRO REMEDY**

9.01 Attorneys have met Attorneys' burden by establishing each element which must be present before injunctive relief can be granted by this court, therefore Attorneys

are entitled to the requested temporary restraining order.

9.02 Attorneys request the court to issue an Order:

a. Restraining Clients from taking any action to transfer, liquidate, convert, encumber, pledge, loan, share, sale, market for sale, conceal, hide, secret, dissipate, deplete, neglect, misuse, damage and/or destroy, lease, assign, granting a lien, security interest, or other interest in, allow the use of, or otherwise dispose of any and all part of Attorneys' interest in the Settlement proceeds;

b. Ordering that Defendants and any of his, her, their, or its agents, servants, employees, successors, assigns and those persons in active concert or participation therewith, must:

1. Deposit into the registry of this Court the portion of Attorneys' interest in the Settlement proceeds which Clients contend they do not owe Attorneys under the Agreement, which shall remain on deposit in the registry until further Order of the Court, when such funds become available and are ripe for distribution from JPMorgan Chase, N.A. to the underlying Plaintiffs in satisfaction of the confidential settlement agreement reached herein;

2. Pay directly to Attorneys the portion of Attorneys' interest in the Settlement proceeds which Clients do not dispute to be due and owing from the Settlement proceeds immediately when those funds become available under the terms of the Settlement.

9.03 It is essential that grant a temporary restraining order as requested herein in order to preserve the status quo during the pendency of this action.

9.04 That after notice and hearing the Court convert the temporary restraining order into a temporary injunction, and that on final trial on the merits, that the Court disburse to Attorneys all funds deposited into the registry of the Court pursuant to the

temporary restraining order and temporary injunction.

X.
MOTION TO REQUIRE DEPOSIT OF FUNDS
(WHICH IS A NON-APPEALABLE ORDER THAT IS NOT
INJUNCTIVE RELIEF—AS A MATTER OF LAW)

10.01 This court has the inherent power to order that disputed funds be deposited in the registry of the court. See *Prodeco Exploration, Inc. v. Ware*, 684 S.W.2d 199, 201 (Tex. Civ. App.—Houston [1st Dist.] 1984, no writ) (“The trial court has the inherent authority to direct [a party] to deposit disputed funds into the registry of the court pending the outcome of the litigation.”); see also *Castilleja v. Camero*, 414 S.W.2d 431, 433 (Tex. 1967). In addition, in order to secure an order directing a party to deposit disputed funds in the registry of the Court, a party does not have to satisfy the prerequisite for securing a temporary restraining order or temporary injunction. *Diana River & Assocs., P.C. v. Calvillo*, 986 S.W.2d 795, 797-798 (Tex. App.—Corpus Christi 1999, no pet.) (citing *McQuadev. E.D. Sys. Corp.*, 570 S.W.2d 33, 35 (Tex. Civ. App.—Dallas 1978, no writ)). Orders to deposit money into the registry of the court cannot be characterized as temporary injunctions and are non-appearable. *Prodeco*, 684 S.W.2d at 201; *Alpha Petroleum Co. v. Dunn*, 60 S.W.2d 469, 471 (Tex. Civ. App.—Galveston 1933, writ dism'd).

10.02 Clients have filed a pleading in response to Attorneys’ intervention wherein Clients admit that there are disputed funds from the Settlement proceeds. But Clients do not identify the amount of the disputed portion of the Settlement proceeds. Clients suggest that this unidentified amount of funds be kept in their possession, through their attorney, Jeff Levinger, pending the outcome of this dispute. In essence, Clients want to continue to control all disputed funds without oversight from this Court

and without even identifying the amount they dispute. That is obviously unacceptable to Attorneys to let the fox guard the hen house pending the outcome of this matter.

10.03 Accordingly, pursuant to this Court's inherent power, Attorneys move this Court to order that all of the Settlement proceeds be deposited into the registry of this Court pending further order of this Court so that the Settlement can be funded, JPM can be dismissed, and all parties with any interest in the Settlement proceeds can assert their claims and they can be resolved without any fear that one party or the other will dissipate the funds or secure an advantage over the other through possession of the funds pending the outcome of this dispute. The Court can then determine. What amount is in dispute, who is making a claim to the disputed amount, the basis for any such claim, and ultimately to whom the funds should be distributed.

WHEREFORE, PREMISES CONSIDERED, Attorneys respectfully request for all relief requested herein, as well as such other and further relief, in law or in equity, to which they may show themselves justly entitled.

Respectfully Submitted,

BRIAN LAUTEN, P.C.

A handwritten signature in black ink, appearing to read 'BP Lauten' with a stylized flourish at the end.

BRIAN P. LAUTEN
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Ste. 1450
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(214) 414-0996 telephone

ATTORNEYS FOR INTERVENORS

CERTIFICATE OF SERVICE

In accordance with Rule 21a of the Texas Rules of Civil Procedure, the undersigned certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record via the ECF case manager system and by electronic filing on April 9, 2018.

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and JPMorgan Chase Bank, N.A., in its Corporate Capacity***

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A handwritten signature in black ink, appearing to read "BTP" followed by a stylized flourish or "L".

BRIAN P. LAUTEN
ATTORNEY FOR INTERVENORS

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED,

JO N. HOPPER,

Intervenor,

v.

JPMORGAN CHASE BANK, N.A.,
STEPHEN B. HOPPER, and LAURA
S. WASSMER,

Defendants.

IN THE PROBATE COURT

NO. 1

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and
FEE, SMITH, SHARP & VITULLO, LLP

Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, individually and as
Beneficiaries of the ESTATE OF
MAX D. HOPPER, DECEASED,
the ESTATE OF MAX D. HOPPER,
DECEASED, JPMORGAN CHASE
BANK, N.A.,

Defendants.

VERIFICATION

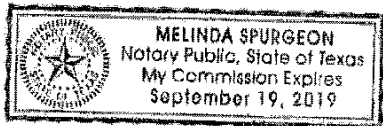
STATE OF TEXAS)
)
COUNTY OF DALLAS)


BEFORE ME, the undersigned authority, on this day personally appeared **ANTHONY L. VITULLO**, who, being by me duly sworn on oath, deposed and stated that he is a Senior Partner at Fee, Smith, Sharp & Vitullo, LLP, named as Intervenor in the above-entitled and numbered cause; that he has read **JOHN L. MALESOVAS, d/b/a MALESOVAS LAW FIRM AND FEE, SMITH, SHARP & VITULLO, LLP'S CONSOLIDATED FIRST AMENDED JOINT PETITION IN INTERVENTION AND PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR TEMPORARY INJUNCTION AND REQUESTS FOR DISCLOSURES** ; and that every statement contained therein is within his personal knowledge and is true and correct, and that he is authorized to sign on behalf of Fee, Smith, Sharp & Vitullo, LLP.



ANTHONY L. VITULLO

SUBSCRIBED AND SWORN TO BEFORE ME this 9th day of April, 2018.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

MY COMMISSION EXPIRES: 9-19-2019

ORIGINAL

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER, §
DECEASED, §

IN THE PROBATE COURT

JO N. HOPPER, §

Intervenor, §

v. §

NO. 1

JPMORGAN CHASE BANK, N.A., §
STEPHEN B. HOPPER, and LAURA §
S. WASSMER, §

Defendants. §

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a §
MALESOVAS LAW FIRM, and §
FEE, SMITH, SHARP & VITULLO, LLP §

Intervenors, §

v. §

STEPHEN B. HOPPER, LAURA S. §
WASSMER, individually and as §
Beneficiaries of the ESTATE OF §
MAX D. HOPPER, DECEASED, §
the ESTATE OF MAX D. HOPPER, §
DECEASED, JPMORGAN CHASE §
BANK, N.A., §

Defendants. §

TEMPORARY RESTRAINING ORDER

Came to be heard on the 9TH day of April 2018, the minimum amount of notice having been duly provided pursuant to Local Rule 2.02(a) of Dallas County, Fee Smith Sharp & Vitullo, LLP and John L. Malesovas d/b/a Malesovas Law Firm's (collectively, "Intervenors") *Verified Petition(s) in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief* against, *inter alia*,

1

EXHIBIT
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ORDER - TEMPORARY RESTRAINING ORD
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Page 191

MR:191

Stephen Hopper and Laura Wassmer, individually and as beneficiaries of the Estate of Max D. Hopper, deceased, (hereinafter jointly "Clients") and JPMorgan Chase Bank, N.A. (hereinafter "JPM") (Clients and JPM hereinafter jointly, "Defendants" with respect to the claims now pending in this Intervention).

The Court, after considering the *Intervenors' Collective Verified Original Petition in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief*, the evidence submitted by Intervenors *in camera*, the relevant exhibits, the arguments of counsel, concludes that—unless immediately restrained, Defendants will irreparably injure Intervenors.

This Court has subject matter jurisdiction over the dispute brought before it under both, TEX. ESTATES CODE ANN. § 32.007 et seq. (Vernon 2014), and, TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014) (authorizing declaratory judgment actions in probate court when such relief is germane to an Estate).

Intervenors respective Pleas and application for TRO are timely filed, given that this Court has yet to sign a judgment; and, therefore, retains plenary power over this proceeding. See TEX. R. CIV. P. 60 et seq.

This Court has, preliminarily, taken judicial notice, pursuant to Rule 201 of the Texas Rules of Evidence, of the following facts that, in reasonable probability, appear to be true at this preliminary stage of the proceeding:

- 1.) In, around, or about November of 2015, Clients executed a valid and enforceable contingency agreement ("CA") with Intervenors;
- 2.) On or about April 5, 2018, attorneys for Clients and JPM appeared before this Court and announced, without revealing any of the substantive terms, that a confidential settlement had been reached between them in the underlying dispute pending in this Court (hereinafter "Settlement");
- 3.) On or about the same day, April 5, 2018, but—literally what appears to have been within minutes after the Court was informed that a settlement had been reached by the parties in this underlying dispute—Clients terminated their CA with Intervenors by and through their attorney, James Pennington;

- 4.) Intervenors have filed what, by all accounts, appears to be a valid and enforceable First Party Attorney's Fees Lien in the proceeds of the Settlement;
- 5.) Intervenors fully performed; or, at the very least, substantially and materially performed all of their duties, responsibilities, and obligations under the CA at or before the time Clients terminated the CA—as those legal terms are meant in, *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2018, no pet.), *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003), and *Mandell & Wright*, 441 S.W.2d 841, 847 (Tex. 1969); and
- 6.) Given the timing of the termination of Intervenors, Clients are estopped, quasi-estopped, and/or have waived any and all defenses, if any, that could or would be lodged to the CA or the quality of the legal services performed by Intervenors.

Based upon these preliminary findings, this Court is of the opinion that Intervenors have established a probability of success on the merits on their application for, *inter alia*, declaratory relief. See TEX. CIV. PRAC. & REM. CODE § 37.004 et seq. (Vernon 2014). This Court is of the opinion that, unless restrained, one or more Defendants are likely to cause permanent damage to Intervenors, should they be allowed to transfer, hypothecate, assign, or take title to Intervenors' interest in the settlement proceeds before the pleas in Intervention are adjudicated on the merits. Such harm would be irreparable because this Court is of the opinion that there is no showing; or, in the alternative, an inadequate showing that Defendants could timely and immediately pay the disputed funds to Intervenors, should Intervenors ultimately prevail in this proceeding, and because Intervenors have a security interest in and lien upon a portion of the settlement proceeds which would be eviscerated by allowing Clients to dispose of 100% of the settlement proceeds as they saw fit. Moreover, given the

Court's preliminary findings set forth above in (i)-(vi), Intervenor have established a property right and secured interest in the proceeds at issue.

The Court is, **THEREFORE**, of the opinion that Intervenor are entitled to the issuance of a Temporary Restraining Order and that such an Order is necessary to protect Intervenor's rights. This **ORDER** is necessary because of the immediate need to enforce the security interest and lien which Intervenor have in a portion of the settlement proceeds and to stop the wrongful flow of funds in the near future from being disseminated to either Clients or their attorneys, or some other third party subject to Clients' direction and control, upon which Intervenor would have no adequate remedy at law. Without intervention by this Court, Intervenor's property right, that is Intervenor's security interest in and lien upon the settlement proceeds, would be destroyed and there would be no way to restore that property right in the Settlement proceeds themselves.

This Court is further of the opinion that Intervenor are entitled to an **EXPEDITED DISCOVERY ORDER**. Therefore, Stephen Hopper and Laura Wassmer shall be made available for deposition on and certainly no later than **Tuesday, April 17, 2018**. If the parties cannot agree on a suitable location for these depositions, they shall be taken in this Court's jury room. The depositions are limited solely to the matters in dispute in the pled Intervention filings and shall last no longer than two hours per deponent (per side). In addition, Intervenor may serve a *duces tecum* with the deposition notices, which shall be limited to no more than seven (7) discovery requests. The deposition notice shall provide two business days notice to the deponent.

It is further **ORDERED** that Intervenor may move this Court for a dispositive summary judgment on 14 days notice of any hearing; and any response shall be due to be filed within 5 days of the hearing; and any reply shall be due to be filed within 2 days of the hearing.

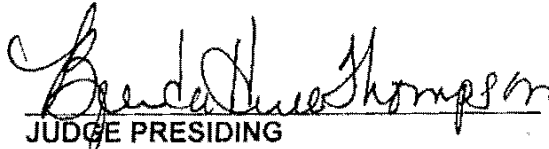
It is therefore **ORDERED, ADJUDGED, and DECREED** that Defendants, Stephen Hopper, Laura Wassmer, and JPMorgan Chase, N.A., and any of his, her, their, or its agents, servants, employees, successors, assigns and those persons in active concert or participation therewith, must:

- 1) Deposit all of the settlement proceeds due to Stephen B. Hopper and Laura S. Wassmer, individually and as beneficiaries of the Estate of Max Hopper, Deceased, into a safekeeping account with JPMorgan Chase Bank, NA, to be held in trust until further Order of this Court. Funds in the safekeeping account shall be withdrawn only upon Order of this Court;
- 2) The parties are **ORDERED** to preserve and prevent the destruction of all documents, including electronic data, emails, and notes, that relate in any way to the matters and claims set forth in the Intervenor's respective Pleas on file—and, moreover, all electronic storage devices must be imaged and preserved.

IT IS FURTHER ORDERED that this order is effective immediately upon Intervenor's deposit with the appropriate clerk of this Court a ^{PART}~~Corporate Surety or cash~~ bond in the amount of \$ 10,000,000 ⁰⁰~~XX~~.00 (U.S. dollars).

IT IS FURTHER ORDERED that Intervenor's application for a temporary injunction is set for an evidentiary hearing and will be heard before this Court on April 24, 2018 at 9 o'clock a.m., and that Stephen Hopper, Laura Wassmer, and JPMorgan Chase, N.A. appear and show cause, if any, why this Temporary Restraining Order should not be continued and converted into a Temporary Injunction until final hearing and trial hereon.

Signed and issued this the 10th day of April 2018, at 4:00 o'clock p.m.


JUDGE PRESIDING

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**IN RE: ESTATE OF MAX D. HOPPER,
DECEASED**

IN THE PROBATE COURT

JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY

JO N. HOPPER
Plaintiff,

NO. 1

Y.

**JPMORGAN CHASE BANK, N.A.
STEPHEN B. HOPPER, LAURA S.
WASSMER,**
Defendants.

DALLAS COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you¹ will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

EXHIBIT



ORIGINAL

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from the other facts proved.

7. A party's conduct includes the conduct of another who acts with the party's authority or apparent authority. Authority for another to act for a party must arise from the party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized. Apparent authority exists if a party (1) knowingly permits

another to hold himself out as having authority or, (2) through lack of ordinary care, bestows on another such indications of authority that lead a reasonably prudent person to rely on the apparent existence of authority to his detriment. Only the acts of the party sought to be charged with responsibility for the conduct of another may be considered in determining whether apparent authority exists.

8. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

9. Do not answer questions by drawing straws or by any method of chance.

10. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

11. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

12. Unless otherwise instructed, the answers to the questions must be based on the decision of at least five of the six jurors. The same five jurors must agree on every answer. Do not agree to be bound by a vote of anything less than five jurors, even if it would be a majority.

13. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what a party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of the judgment. Do not add any amount for interest on damages, if any.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS

"JPMorgan" means JPMorgan Chase Bank, N.A.

"Fee Agreement" means Plaintiff's Exhibit 7.

"The Estate" means the Estate of Max D. Hopper.

Question No. 1

After JPMorgan was appointed Independent Administrator on June 30, 2010, did JPMorgan fail to comply with one or more of the following fiduciary duties:

- a. JPMorgan's duty to act toward Jo Hopper in the utmost good faith and exercise the most scrupulous honesty;

Answer "Yes" or "No": YES

- b. JPMorgan's duty to place the interests of Jo Hopper above its own and to not use the advantage of its position to gain any benefit for itself at the expense of Jo Hopper;

Answer "Yes" or "No": YES

- c. JPMorgan's duty to fully and fairly disclose to Jo Hopper all material facts known to JPMorgan that might affect her rights.

Answer "Yes" or "No": YES

If you answered "Yes" to any subpart of Question No. 1, then answer the following question. Otherwise, do not answer the following question.

Question No. 2

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Jo Hopper for her damages, if any, that were proximately caused by such conduct?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him or her would have foreseen that the event, or some similar event might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following element of damages, if any, and none other.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents, if any.

- a. Jo Hopper's mental anguish sustained in the past.

"Mental anguish" means a relatively high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger.

Answer: \$ 500,000.00

- b. Attorneys' fees paid by Jo Hopper before this lawsuit to address JPMorgan's breaches of its fiduciary duties.

Answer: \$ 222,780.95

Answer the following question only if you unanimously answered "yes" to Question No. 1 and with an amount greater than \$0 to any part of Question No. 2. Otherwise, do not answer the following question.

To answer "yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of five or more jurors. Otherwise, you must not answer the following question.

Question No. 3

Do you find by clear and convincing evidence that the harm to Jo Hopper from JPMorgan's breach of fiduciary duty resulted from malice?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegation sought to be established.

"Malice" means a specific intent by JPMorgan to cause substantial injury or harm to Jo Hopper.

Answer "Yes" or "No": yes

Answer the following question only if you unanimously answered "Yes" to Question No. 3. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

Question No. 4

What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to Jo Hopper as exemplary damages, if any, for the conduct found in response to Question No. 3?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong;
2. The character of the conduct involved;
3. The degree of culpability of JPMorgan;
4. The situation and sensibilities of the parties concerned;
5. The extent to which such conduct offends a public sense of justice and propriety; and
6. The net worth of JPMorgan.

Answer in dollars and cents, if any.

Answer: \$ 2,000,000.00

If you answered with an amount greater than \$0 to any subpart of Question 2, then answer the following question. Otherwise do not answer the following question.

Question No. 5

Did the negligence, if any, or knowing participation in JPMorgan's breach of fiduciary duty, if any, of those named below proximately cause Jo Hopper's damages?

"Negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him or her would have foreseen that the event, or some similar event might reasonably result therefrom. There may be more than one proximate cause of an event.

"Knowing participation in JPMorgan's breach of fiduciary duty" requires that (1) the person or entity knowingly participated in JPMorgan's breach of fiduciary duty, and (2) that person or entity knew of the fiduciary relationship and was aware of his participation in JPMorgan's breach of its duty.

- a. Answer "Yes" or "No" with regard to the negligence, if any, of the following:

Jo Hopper

NO

- b. Answer "Yes" or "No" with regard to knowing participation in JPMorgan's breach of fiduciary duty, if any, of each of the following:

Stephen Hopper

NO

Laura Wassmer

NO

Gary Stolbach and Glast, Phillips & Murray

NO

If you answered "Yes" to Question 5 for more than one of those named below, then answer the following question. Otherwise do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury you found in question 2. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Question No. 6

For each person or entity you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each for the conduct you have found:

JPMorgan	_____
Jo Hopper	_____
Stephen Hopper	_____
Laura Wassmer	_____
Gary Stolbach and Glast, Phillips & Murray	_____
Total	<u>100%</u>

Question No. 7

Did JPMorgan fail to comply with the Fee Agreement with regard to Jo Hopper?

Answer "Yes" or "No": YES

If you answered "Yes" to Question No. 7, then answer the following question. Otherwise, do not answer the following question.

Question No. 8

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Jo Hopper for her damages, if any, that resulted from such failure to comply?

Consider the following elements of damages, if any, and none other.

Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any, with respect to each of the following:

- a. Attorney's fees paid by Jo Hopper before this lawsuit to address JPMorgan's failure to perform its responsibilities under the Fee Agreement.

Answer: \$ 222,780.95

- b. Money owed to Jo Hopper for reimbursement of expenses.

Answer: \$ 58,051.47

If you answered "Yes" to Question No. 7, then answer the following question. Otherwise do not answer the following question.

Question No. 9

What is a reasonable fee for the necessary services of Jo Hopper's attorneys regarding her claim for breach of contract, stated in dollars and cents?

Factors to consider in determining a reasonable fee include:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for each of the following:

1. For representation through this trial.

Answer: \$ 4,061,518.00

2. For representation through appeal to the court of appeals.

Answer: \$ 200,000.00

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$ 50,000.00

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ 75,000.00

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$ 50,000.00

Question No. 10

Does JPMorgan as Independent Administrator hold money that in equity and good conscience belongs to Jo Hopper?

Answer "Yes" or "No": YES

If you answered "Yes" to Question No. 10, then answer the following question. Otherwise, do not answer the following question.

Question No. 11

What is the amount of money held by JPMorgan as Independent Administrator that in equity and good conscience belongs to Jo Hopper?

Answer: \$ 58,682.00

Question No. 12

What is a reasonable fee for the necessary services of Jo Hopper's attorneys regarding the Robledo claims, stated in dollars and cents?

"Robledo claims" mean all the declaratory judgment claims that regarding the house and lot located at 9 Robledo Drive, Dallas, Texas and other issues addressed in the court of appeals opinion issued in December 2014.

Factors to consider in determining a reasonable fee include:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for each of the following:

1. For representation through this trial.

Answer: \$ 4,052,035.00

2. For representation in a future appeal through appeal to the court of appeals.

Answer: \$ 200,000.00

3. For representation in a future appeal at the petition for review stage in the Supreme Court of Texas.

Answer: \$ 50,000.00

4. For representation in a future appeal at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ 75,000.00

5. For representation in a future appeal through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$ 50,000.00

Question No. 13

What is a reasonable fee for the necessary services of Jo Hopper's attorneys in obtaining a ruling that Jo Hopper does not owe the Estate any money for attorneys' fees, stated in dollars and cents?

Factors to consider in determining a reasonable fee include:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for each of the following:

1. For representation through this trial.

Answer: \$ 1469,828.00

2. For representation through appeal to the court of appeals.

Answer: \$ 200,000.00

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$ 50,000.00

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ 75,000.00

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$ 50,000.00

Question No. 14

Did JPMorgan fail to comply with the Fee Agreement with respect to Stephen Hopper and/or Laura Wassmer?

Answer "Yes" or "No" for each of the following:

Stephen B. Hopper: yes

Laura S. Wassmer: yes

If you answered Question Number 14 "Yes," Answer this Question. Otherwise do not answer the following question.

Question No. 15

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Stephen B. Hopper and/or Laura S. Wassmer for their damages, if any, that resulted from JPMorgan's failure to comply with the Fee Agreement?

Consider the following elements of damages, if any, and none other.

1. The amount of legal fees Stephen Hopper paid to his attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's failure to comply with the Fee Agreement.

Answer in dollars and cents, if any, for the following:

Stephen B. Hopper: \$ 84,300.00

2. The amount of legal fees Laura Wassmer paid her attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's failure to comply with the Fee Agreement.

Answer in dollars and cents, if any, for the following:

Laura S. Wassmer: \$ 78,000.00

3. The loss of potential inheritance to Stephen B. Hopper that was a natural, probable and foreseeable consequence of JP Morgan's failure to comply with the Fee Agreement.

Answer in dollars and cents, if any, for the following:

Stephen B. Hopper: \$ 1,847,300.00

4. The loss of potential inheritance to Laura S. Wassmer that was a natural, probable and foreseeable consequence of JP Morgan's failure to comply with the Fee Agreement.

Answer in dollars and cents, if any, for the following:

Laura S. Wassmer: \$ 1,847,300.00

There is no Question No. 16

There is no Question No. 17

There is no Question No. 18

There is no Question No. 19

Question No. 20

After JPMorgan was appointed Independent Administrator on June 30, 2010, did JPMorgan fail to comply with one or more of the following fiduciary duties, which it owed Stephen B. Hopper and Laura S. Wassmer as beneficiaries of the Estate?

- a. JPMorgan's duty to act toward Stephen Hopper and Laura Wassmer in the utmost good faith and exercise the most scrupulous honesty;

Answer "Yes" or "No": YES

- b. JPMorgan's duty to place the interests of Stephen Hopper and Laura Wassmer above its own and to not use the advantage of its position to gain any benefit for itself at the expense of Stephen Hopper and Laura Wassmer;

Answer "Yes" or "No": YES

- c. JPMorgan's duty to fully and fairly disclose to Stephen Hopper and Laura Wassmer all material facts known to JPMorgan that might affect their rights.

Answer "Yes" or "No": YES

If you answered "Yes" to Question 20, then answer the following question. Otherwise, do not answer the following question.

Question No. 21

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Estate for damages, if any, resulting from the conduct complained about in Question 20?

Consider the following elements of damages, if any, and none other.

Any reduction in the value of the Estate.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

Answer: \$ 3,695,000.00

If you answered "Yes" to any subpart of Question 20, then answer the following question. Otherwise, do not answer the following question.

Question No. 22

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Stephen Hopper and Laura Wassmer for damages, if any, that were proximately caused by the conduct inquired about in Question 20?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have fore- seen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other.

Any reduction in the value of the Estate.

Consider each element separately. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

For Stephen Hopper, in dollars and cents:

Answer: \$ 1,847,500.00

For Laura Wassmer, in dollars and cents:

Answer: \$ 1,847,500.00

If you answered with an amount greater than \$0 to any subpart of Question 21 or 22, then answer the following question. Otherwise do not answer the following question.

Question No. 23

Did the negligence, if any, or knowing participation in JPMorgan's breach of fiduciary duty, if any, of those named below proximately cause Stephen Hopper's, Laura Wassmer's, or the Estate's damages?

"Negligence" when used with respect to Jo Hopper, Stephen Hopper, and Laura Wassmer means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Negligence" when used with respect to the conduct of Gary Stolbach and Glast, Phillips & Murray, means failure to use ordinary care, that is, failing to do that which an attorney would have done under the same or similar circumstances or doing that which an attorney would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him or her would have foreseen that the event, or some similar event might reasonably result therefrom. There may be more than one proximate cause of an event.

"Knowing participation in JPMorgan's breach of fiduciary duty" requires that (1) the person or entity knowingly participated in JPMorgan's breach of fiduciary duty, and (2) that person or entity knew of the fiduciary relationship and was aware of his participation in JPMorgan's breach of its duty.

- a. Answer "Yes" or "No" with regard to the negligence, if any, of the following:

Jo Hopper	<u>NO</u>
Stephen Hopper	<u>NO</u>
Laura Wassmer	<u>NO</u>
Gary Stolbach and Glast, Phillips & Murray	<u>YES</u>

- b. Answer "Yes" or "No" with regard to knowing participation in JPMorgan's breach of fiduciary duty, if any, of each of the following:

Jo Hopper	<u>NO</u>
Gary Stolbach and Glast, Phillips & Murray	<u>NO</u>

If you answered "Yes" to Question 23 for more than one of those named below, then answer the following question. Otherwise do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury you found in question 21. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Question No. 24

For each person or entity you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each for the conduct you have found:

JPMorgan	90
Jo Hopper (negligence)	0
Jo Hopper (knowing participation)	0
Stephen Hopper	0
Laura Wassmer (negligence)	0
Gary Stolbach and Glast, Phillips & Murray (negligence)	0
Gary Stolbach and Glast, Phillips & Murray (knowing participation)	10
Total	100%

Answer the following question only if you unanimously answered "Yes" to any subpart of Question No. 20. Otherwise, do not answer the following question.

To answer "yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of five or more jurors. Otherwise, you must not answer the following question.

Question No. 25

Do you find by clear and convincing evidence that the harm to the Estate from JPMorgan's breach of fiduciary duty resulted from malice?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegation sought to be established.

"Malice" means a specific intent by JPMorgan to cause substantial injury or harm to the Estate.

Answer "Yes" or "No": YES

Answer the following question only if you unanimously answered "Yes" to Question Number 25. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

Question No. 26

What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to Estate as exemplary damages, if any, for the conduct found in response to Question No. 25?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong;
2. The character of the conduct involved;
3. The degree of culpability of JPMorgan;
4. The situation and sensibilities of the parties concerned;
5. The extent to which such conduct offends a public sense of justice and propriety; and
6. The net worth of JPMorgan.

Answer in dollars and cents, if any.

Answer: \$ 2,000,000,000.00

Question No. 27

Did JPMorgan commit fraud against Stephen B. Hopper and/or Laura S. Wassmer?

Fraud occurs when---

1. A party makes a material misrepresentation; and
2. The misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. The misrepresentation is made with the intention that it should be acted on by the other party, and
4. The other party relies on the misrepresentation and thereby suffers injury.

Fraud also occurs when---

1. A party fails to disclose a material fact within the knowledge of that party; and
2. The party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth; and
3. The party intends to induce the other party to take some action by failing to disclose the fact; and
4. The other party suffers injury as a result of acting without knowledge of the undisclosed fact.

"Misrepresentation" means---

1. A statement of opinion based on a false statement of fact; or
2. A statement of opinion that the maker knows to be false; or
3. An expression of opinion that is false, made by one who has, or purports to have, special knowledge of the subject matter of the opinion.

Answer "Yes" or "No" with for each of the following:

Stephen B. Hopper:

YES

Laura S. Wassmer:

YES

Answer the following question only if you answered "Yes" to Question Number 27. Otherwise, do not answer the following question.

Question No. 28

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Stephen Hopper and Laura Wassmer for their damages, if any, that were proximately caused by such fraud?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other.

1. The amount of legal fees Stephen Hopper paid to his attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's fraud.

Answer in dollars and cents, if any, for the following:

Stephen B. Hopper: \$ 84,500.00

2. The amount of legal fees Laura Wassmer paid her attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's fraud.

Answer in dollars and cents, if any, for the following:

Laura S. Wassmer: \$ 78,000.00

3. The loss of potential inheritance to Stephen B. Hopper that was a natural, probable and foreseeable consequence of JP Morgan's fraud.

Answer in dollars and cents, if any, for the following:

Stephen B. Hopper: \$ 1,847,500.00

4. The loss of potential inheritance to Laura S. Wassmer that was a natural, probable and foreseeable consequence of JP Morgan's fraud.

Answer in dollars and cents, if any, for the following:

Laura S. Wassmer: \$ 1,847,500.00

If you answered "Yes" to Question 28, then answer the following question. Otherwise do not answer the following question.

Question No. 29

Did the negligence, if any, or knowing participation in JPMorgan's breach of fiduciary duty, if any, of those named below proximately cause Stephen Hopper's, Laura Wassmer's, or the Estate's damages?

"Negligence" when used with respect to Jo Hopper, Stephen Hopper, and Laura Wassmer means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Negligence" when used with respect to the conduct of Gary Stolbach and Glast, Phillips & Murray, means failure to use ordinary care, that is, failing to do that which an attorney would have done under the same or similar circumstances or doing that which an attorney would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him or her would have foreseen that the event, or some similar event might reasonably result therefrom. There may be more than one proximate cause of an event.

"Knowing participation in JPMorgan's breach of fiduciary duty" requires that (1) the person or entity knowingly participated in JPMorgan's breach of fiduciary duty, and (2) that person or entity knew of the fiduciary relationship and was aware of his participation in JPMorgan's breach of its duty.

- a. Answer "Yes" or "No" with regard to the negligence, if any, of the following:

Jo Hopper	<u>NO</u>
Stephen Hopper	<u>NO</u>
Laura Wassmer	<u>NO</u>
Gary Stolbach and Glast, Phillips & Murray	<u>YES</u>

- b. Answer "Yes" or "No" with regard to knowing participation in JPMorgan's breach of fiduciary duty, if any, of each of the following:

Jo Hopper	<u>NO</u>
Gary Stolbach and Glast, Phillips & Murray	<u>NO</u>

If you answered "Yes" to Question 29 for more than one of those named below, then answer the following question. Otherwise do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury you found in question 28. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Question No. 30

For each person or entity you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each for the conduct you have found:

JPMorgan	<u>90</u>
Jo Hopper (negligence)	<u>8</u>
Jo Hopper (knowing participation)	<u>8</u>
Stephen Hopper	<u>0</u>
Laura Wassmer (negligence)	<u>0</u>
Gary Stolbach and Glast, Phillips & Murray (negligence)	<u>10</u>
Gary Stolbach and Glast, Phillips & Murray (knowing participation)	<u>0</u>
Total	<u>100%</u>

Answer the following question only if you unanimously answered "Yes" to any part of Question No. 27. Otherwise, do not answer the following question.

To answer "yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of five or more jurors. Otherwise, you must not answer the following question.

Question No. 31

Do you find by clear and convincing evidence that the harm to Stephen B Hopper and/or Laura S. Wassmer resulted from fraud as found in Question 27?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

Fraud occurs when—

1. A party makes a material misrepresentation; and
2. The misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. The misrepresentation is made with the intention that it should be acted on by the other party, and
4. The other party relies on the misrepresentation and thereby suffers injury.

Fraud also occurs when—

1. A party fails to disclose a material fact within the knowledge of that party; and
2. The party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth; and
3. The party intends to induce the other party to take some action by failing to disclose the fact; and
4. The other party suffers injury as a result of acting without knowledge of the undisclosed fact.

"Misrepresentation" means—

1. A statement of opinion based on a false statement of fact; or

2. A statement of opinion that the maker knows to be false; or
3. An expression of opinion that is false, made by one who has, or purports to have, special knowledge of the subject matter of the opinion.

Answer "Yes" or "No" as to each of the following:

Laura S. Wassmer YES

Stephen B. Hopper YES

Answer the following question regarding JPMorgan only if you unanimously answered "Yes" to Question 31 regarding that defendant. Otherwise, do not answer the following question regarding that defendant

Question No. 32

What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to Stephen B. Hopper and Laura S. Wassmer as exemplary damages, if any, for the conduct found in response to Question 31.

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of JPMorgan
- d. The situation and sensibilities of the parties concerned
- e. The extent to which such conduct offends a public sense of justice and propriety
- f. The net worth of JPMorgan

Answer in dollars and cents, if any, as to each of the following:

Laura S. Wassmer \$ 1,000,000,000.00

Stephen B. Hopper \$ 1,000,000,000.00

Question No. 33

Did the negligence, if any, of JPMorgan proximately cause injury to Stephen B. Hopper and/or Laura S. Wassmer?

"Negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer "Yes" or "No" for each of the following:

Laura S. Wassmer

YES

Stephen B. Hopper

YES

Answer the following question only if you answered "Yes" to Question Number 33. Otherwise, do not answer the following question.

Question No. 34

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Stephen Hopper and Laura Wassmer for their damages, if any, that were proximately caused by negligence?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other. Answer in dollars and cents, if any, for the following:

1. The amount of legal fees Stephen Hopper paid to his attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's negligence.

Stephen B. Hopper: \$ 84,500.00

2. The amount of legal fees Laura Wassmer paid her attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's negligence.

Laura S. Wassmer: \$ 78,000.00

3. The loss of potential inheritance to Stephen B. Hopper that was a natural, probable and foreseeable consequence of JP Morgan's negligence.

Stephen B. Hopper: \$ 1,847,500.00

4. The loss of potential inheritance to Laura S. Wassmer that was a natural, probable and foreseeable consequence of JP Morgan's negligence.

Laura S. Wassmer: \$ 1,847,500.00

If you answered "Yes" to Question 34, then answer the following question. Otherwise do not answer the following question.

Question No. 35

Did the negligence, if any, or knowing participation in JPMorgan's breach of fiduciary duty, if any, of those named below proximately cause Stephen Hopper's or Laura Wassmer's damages?

"Negligence" when used with respect to Jo Hopper, Stephen Hopper, and Laura Wassmer means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Negligence" when used with respect to the conduct of Gary Stolbach and Glast, Phillips & Murray, means failure to use ordinary care, that is, failing to do that which an attorney would have done under the same or similar circumstances or doing that which an attorney would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him or her would have foreseen that the event, or some similar event might reasonably result therefrom. There may be more than one proximate cause of an event.

"Knowing participation in JPMorgan's breach of fiduciary duty" requires that (1) the person or entity knowingly participated in JPMorgan's breach of fiduciary duty, and (2) that person or entity knew of the fiduciary relationship and was aware of his participation in JPMorgan's breach of its duty.

- a. Answer "Yes" or "No" with regard to the negligence, if any, of the following:

Jo Hopper

NO

Stephen Hopper

NO

Laura Wassmer

NO

Gary Stolbach and Glast, Phillips & Murray

YES

- b. Answer "Yes" or "No" with regard to knowing participation in JPMorgan's breach of fiduciary duty, if any, of each of the following:

Jo Hopper

NO

Gary Stolbach and Glast, Phillips & Murray

NO

If you answered "Yes" to Question 35 for more than one of those named below, then answer the following question. Otherwise do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury you found in question 34. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Question No. 36

For each person or entity you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each for the conduct you have found:

JPMorgan	<u>90</u>
Jo Hopper (negligence)	<u>0</u>
Jo Hopper (knowing participation)	<u>0</u>
Stephen Hopper	<u>0</u>
Laura Wassmer (negligence)	<u>0</u>
Gary Stolbach and Glast, Phillips & Murray (negligence)	<u>10</u>
Gary Stolbach and Glast, Phillips & Murray (knowing participation)	<u>0</u>
Total	<u>100%</u>

Answer the following question only if you unanimously answered "Yes" to Question 33. Otherwise, do not answer the following question.

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of 5 more jurors. Otherwise, you must not answer that part of the following question.

Question No. 37

Do you find by clear and convincing evidence that the harm to Stephen B. Hopper, Laura S. Wassmer, or the Estate resulted from gross negligence attributable to JPMorgan?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Gross negligence" means an act or omission by JPMorgan

1. which when viewed objectively from the standpoint JPMorgan at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. of which JPMorgan has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

You are further instructed that JPMorgan may be grossly negligent because of an act by Susan Novak if, but only if--

1. JPMorgan authorized the doing and the manner of the act, or
2. Susan Novak was unfit and JPMorgan was reckless in employing her, or
3. Susan Novak was employed in a managerial capacity and was acting in the scope of employment, or
4. JPMorgan or a manager of JPMorgan ratified or approved the act.

A person is a manager or is employed in a managerial capacity if--

1. that person has authority to employ, direct, and discharge an employee of JPMorgan; or

2. JPMorgan has confided to that person the management of the whole or a department or division of the business of JPMorgan

Answer "Yes" or "No" as to each of the following:

Laura S. Wassmer YES

Stephen B. Hopper YES

Answer the following question only if you unanimously answered "Yes" to Question 37. Otherwise, do not answer the following question.

Question No. 38

You must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to Stephen B. Hopper, Laura Wassmer or the Estate as exemplary damages, if any, for the conduct unanimously found in response to Question 37?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are--

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of JPMorgan.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of JPMorgan.

Answer in dollars and cents, if any, for each of the following:

Laura S. Wassmer \$ 1,000,000,000.00

Stephen B. Hopper \$ 1,000,000,000.00

Question No. 39

Did JPMorgan commit conversion against the Estate?

Conversion occurs when:

1. a party owned or had possession of the property or entitlement to possession, and
2. another party unlawfully and without authorization assumed and exercised control over the property to the exclusion or, or inconsistent with, the plaintiff's rights as an owner, and
3. the first party demanded return of the property, and
4. the other party refused to return the property.

Answer "Yes" or "No."

Answer: YES

If you answered "Yes" to Question 39, then answer the following question. Otherwise, do not answer the following question.

Question No. 40

What sum of money, if any, if paid now in cash, would fairly compensate the Estate for the value of the property JPMorgan converted, if any, valued at the time of such conversion?

Answer in dollars and cents for damages, if any:

Answer: \$ 3,695,000.00

Question No. 41

Does JPMorgan as Independent Administrator hold money that in equity and good conscience belongs to the Estate?

Answer "Yes" or "No": YES

If you answered "Yes" to Question No. 41, then answer the following question. Otherwise, do not answer the following question.

Question No. 42

What is the amount of money held by JPMorgan as Independent Administrator that in equity and good conscience belongs to the Estate?

Answer: \$ 3,695,000.00

Question No. 43

Did JPMorgan as Independent Administrator act in good faith, whether successful or not, in defending the action for its removal?

From September 21, 2011 through December 7, 2015, JPMorgan as Independent Administrator defended Jo Hopper's Removal Action.

"Removal Action" means Mrs. Hopper's claims for removal of JPMorgan as Independent Administrator.

"Good faith" means an action that is prompted by honesty of intention and a reasonable belief that the action was probably correct.

Answer "Yes" or "No."

Answer: NO

Question No. 44

What is a reasonable fee for the necessary services of the attorneys for JPMorgan as Independent Administrator in connection with its defense of the Removal Action, stated in dollars and cents?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Attorneys' Fees Incurred in Defense of the Removal Action:

\$1,185,775.00

Question No. 45

What is the amount of JPMorgan as Independent Administrator's reasonable attorneys' fees necessarily incurred in connection with the proceedings and management of the estate?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for representation after December 7, 2015:

1. For representation through trial and the completion of proceedings in the trial court.

Answer: \$ 685,632.00

2. For representation through appeal to the court of appeals.

Answer: \$ 100,000.00

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$ 75,000.00

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ 50,000.00

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$ 50,000.00

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

- a. have the complete charge read aloud if it will be helpful to your deliberations;
- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;
- e. get the signatures for the verdict certificate; and
- f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of five jurors. The same five jurors must agree on every answer in the charge. This means you may not have one group of five jurors agree on one answer and a different group of five jurors agree on another answer.

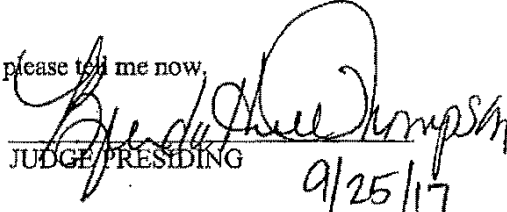
2. If five jurors agree on every answer, those five jurors sign the verdict.

If all six of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all six of you agreeing on some answers, while only five of you agree on other answers. But when you sign the verdict, only those five who agree on every answer will sign the verdict.

4. There are some special instructions before Questions 3, 4, 25, 26, 31, 32, 37, and 38 explaining how to answer those questions. Please follow the instructions. If all six of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.


JUDGE PRESIDING

9/25/17

Verdict Certificate

Check one:

☐ Our verdict is unanimous. All six of us have agreed to each and every answer. The presiding juror has signed the certificate for all six of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

☒ Our verdict is not unanimous. Five of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

1. Randy Gault

RANDY GAULT

2. Ireles Alvarez

Ireles Alvarez

3. Bobby Miller

Bobby Miller

4. Stacey Womack

Stacey Womack

5. Giovanna Rodriguez

Giovanna Rodriguez

If you have answered Question No. 4, 26, 32, and 38, then you must sign this certificate also.

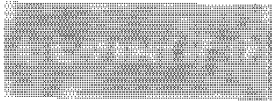
Additional Certificate

I certify that the jury was unanimous in answering the following questions. All six of us agreed to each of the answers. The presiding juror has signed the certificate for all six of us.

Questions 3, 25, 31, and 37 and 4, 26, 32, and 38.

May Sanders
Signature of Presiding Juror

Chaguila Sanders
Printed Name of Presiding Juror



April 4, 2018

JEFFREY S. LEVINGER
Board Certified Civil Appellate Law
Texas Board of Legal Specialization

By E-Mail

Van H. Beckwith
Baker Botts L.L.P.
2001 Ross Avenue, Suite 700
Dallas, TX 75201

Re: No. PR-11-3238-1; *In re Estate of Max D. Hopper; Jo N. Hopper v. JPMorgan Chase Bank, et al.*; in the Probate Court No. 1 of Dallas County, Texas

Dear Van:

This Rule 11 letter will confirm that Laura Wassmer, Stephen Hopper, the Estate of Max Hopper, and JPMorgan Chase Bank, N.A. have agreed to settle this case based on the confidential terms set forth in the email communication between Robert Sacks and me dated April 3 and 4, 2018. Laura Wassmer, Stephen Hopper, and the Estate agree to withdraw their Motion for Judgment and the hearing set on it for April 5-6, 2018, and the parties shall announce this settlement to the Court. I would appreciate it if you would sign this letter below to signify your acceptance of it.

Sincerely,

Jeffrey S. Levinger
Counsel for Laura Wassmer,
Stephen Hopper, and the Estate
of Max Hopper

JL/rh
Enclosure

AGREED

Van H. Beckwith
Counsel for JPMorgan Chase Bank, N.A.

EXHIBIT
H

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER, DECEASED	§	IN THE PROBATE COURT
	§	
	§	
JO N. HOPPER,	§	
	§	
<i>Plaintiff,</i>	§	
	§	NO. 1
v.	§	
	§	
JPMORGAN CHASE BANK, N.A.,	§	
STEPHEN B. HOPPER, LAURA S.	§	
WASSMER,	§	
	§	
<i>Defendants.</i>	§	DALLAS COUNTY, TEXAS

**MOTION TO QUASH AND FOR PROTECTIVE ORDER
AND OBJECTION TO SUBPOENA DUCES TECUM**

To the Honorable Court:

Pursuant to TEX. R. CIV. P. 176.6(d) and (e), 192.6(b), 199.4, and 205.2, and subject to and without waiving the motion to compel arbitration filed by Laura Wassmer and Stephen Hopper, nonparty witness Jeffrey S. Levinger ("Levinger") moves to quash and for protective order, and objects as follows, with respect to the Attorneys' Notice of Intent to Take the Oral and Videotaped Deposition of Jeffrey S. Levinger with Subpoena Duces Tecum ("Notice") attached hereto as Exhibit A.

1. At approximately 9:35 a.m. on Monday, April 16, 2018, John Malesovas, an attorney who claims to be an intervenor in the fee dispute that has

arisen in this matter, sent an email to Levinger attaching the Notice. This Notice was not served in the manner required by Rules 176.5 and 205.1. Therefore, it is unenforceable for that reason alone. Nonetheless, out of an abundance of caution, Levinger will respond to the Notice as follows.

2. First, in accordance with Rule 199.4, Levinger objects to the time and place designated for the deposition. The time (Tuesday, April 17) and place (the offices of Fee, Smith, Sharp, and Vitullo) are not reasonable. Further, inasmuch as the Notice seeks the production of documents from a nonparty on only one day's notice, it fails to comply with Rule 205.2. Accordingly, the Notice should be quashed and a protective order granted.

3. Second, in accordance with Rule 192.6(b), Levinger is entitled to a protective order to protect him — and his clients, Laura Wassmer and Stephen Hopper — from undue burden, unnecessary expense, harassment, annoyance, invasion of personal, constitutional, and property rights, and intrusion into confidential and privileged matters.

4. Third, in accordance with Rules 176.6(d) and (e), Levinger objects to, and is entitled to a protective order from, the Notice's request for documents and other items. The document request is objectionable because it seeks confidential and privileged information. Further, a protective order is necessary to protect Levinger and his clients from undue burden, unnecessary expense, harassment, annoyance,

invasion of personal, constitutional, and property rights, and intrusion into confidential and privileged matters.

5. Fourth, the Notice violates the Temporary Restraining Order signed on April 10, 2018, which entitles the Intervenor (which includes Malesovas) to expedited depositions of only Stephen Hopper and Laura Wassmer.

For all these reasons, the Notice should be quashed, a protective order denying the requested discovery should be entered, the objections should be sustained, and all other relief to which Levinger or his clients are entitled should be granted. In the meantime, the deposition requested in the Notice is stayed in accordance with Rule 199.4.

Respectfully submitted,

Jeffrey S. Levinger

Jeffrey S. Levinger

State Bar No. 12258300

Levinger PC

1445 Ross Avenue, Suite 2500

Dallas, TX 75201

Telephone: 214-855-6817

Fax: 214-855-6808

jlevinger@levingerpc.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Motion to Quash and For Protective Order and Objection to Subpoena Duces Tecum was served by electronic transmission on the following counsel on this 16th day of April, 2018.

John L. Malesovas
Malesovas Law Firm
1901 South Mopac Expressway
Suite 320
Austin, TX 78746

Alan S. Loewinsohn
Kerry F. Schonwald
Loewinsohn Flegle Deary
Simon LLP
12377 Merit Dr. Suite 900
Dallas, TX 75251

Van H. Beckwith
Jessica B. Pulliam
Baker Botts, L.L.P.
2001 Ross Avenue, Suite 700
Dallas, TX 75201

Brian P. Lauten
Brian Lauten, P.C.
3811 Turtle Creek Blvd. Suite 1450
Dallas, TX 75219

Anthony L. Vitullo
Fee, Smith, Sharp & Vitullo, L.L.P.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

John C. Eichman
Grayson L. Linyard
Hunton & Williams, LLP
1445 Ross Avenue, Suite 3700
Dallas, TX 75202

Evan A. Young
Baker Botts, L.L.P.
98 San Jacinto Blvd., Suite 1500
Austin, TX 78701

James E. Pennington
Law Offices of James. Pennington, P.C.
900 Jackson Street, Suite 440
Dallas, Texas 75202

/s/ Jeffrey S. Levinger

Jeffrey S. Levinger

TAB A

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED,

JO N. HOPPER,

Intervenor,

v.

JPMORGAN CHASE BANK, N.A.,
STEPHEN B. HOPPER, and LAURA
S. WASSMER,

Defendants.

IN THE PROBATE COURT

NO. 1

OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and
FEE, SMITH, SHARP & VITULLO, LLP

Attorneys,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, individually and as
Beneficiaries of the ESTATE OF
MAX D. HOPPER, DECEASED,
the ESTATE OF MAX D. HOPPER,
DECEASED, JPMORGAN CHASE
BANK, N.A.,

Defendants.

**ATTORNEYS' NOTICE OF INTENT TO TAKE THE
ORAL AND VIDEOTAPED DEPOSITION OF JEFFREY S. LEVINGER
WITH SUBPOENA DUCES TECUM**

TO: Jeffrey S. Levinger, Levinger PC, 1445 Ross Avenue, Suite 2500, Dallas, TX 75202.

PLEASE TAKE NOTICE that under TEXAS RULES OF CIVIL PROCEDURE 199.2, Attorneys
will take the oral deposition of JEFFREY S. LEVINGER. The deposition will be held at the offices
ATTORNEYS' NOTICE OF INTENT TO TAKE THE ORAL AND VIDEOTAPED
DEPOSITION OF JEFFREY S. LEVINGER WITH SUBPOENA DUCES TECUM

PAGE 1

of Fee, Smith, Sharp & Vitullo, LLP, Three Galleria Tower, 13155 Noel Road, Suite 1000, Dallas, Texas, 75240; telephone 972-934-9100. The deposition will be taken on **Tuesday, April 17, 2018**, beginning at 9:00 a.m., and will continue from day to day until complete.

Pursuant to TEX. R. CIV. P. 199.1(c), notice is given that the deposition may be recorded by stenographic means and by non-stenographic videotape recording before a certified court reporter.

Said deposition, when so taken and returned according to law, will be used in evidence upon the trial of said cause, and you may be present at such time to examine said witness as you may see proper.

Pursuant to Tex. R. Civ. P. 199.2(b)(5), Jeffrey S. Levinger is directed to produce all documents set out on Exhibit "A" and all documents reviewed by him to prepare to testify at this deposition.

Respectfully submitted,



John L. Malesovas
MALESOVAS LAW FIRM
State Bar No. 12857300
1801 South Mopac Expressway, Suite 320
Austin, TX 78746
Telephone: (512) 708-1777
Telecopier: (512) 708-1779
john@malesovas.com

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on April 14, 2018, in accordance with the Texas Rules of Civil Procedure to:

Alan S. Loewensohn
Jim L. Flegle
Kerry F. Schonwald
Loewensohn Flegle Deary Simon LLP
12377 Merit Dr., Suite 900
Dallas, Texas 75251
214-572-1717 Facsimile
alanl@lfdslaw.com
jimf@lfdslaw.com
kerryf@lfdslaw.com
Attorneys for Intervenor Jo Hopper

Jeffrey S. Levinger
J. Carl Cecere
Levinger PC
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Dallas, TX 75202
214-855-6808 Facsimile
jlevinger@levingerpc.com
cecere@cecerepc.com
Attorneys for Defendants, Stephen B. Hopper and Laura S. Wassmer

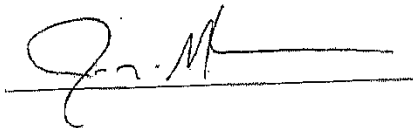
John C. Eichman
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jeichman@hunton.com
glinyard@hunton.com
*Attorneys for Defendant, JPMorgan Chase Bank, N.A.,
as Independent Administrator of the Estate of Max D. Hopper, Deceased,
and JPMorgan Chase Bank, N.A., in its Corporate Capacity*

ATTORNEYS' NOTICE OF INTENT TO TAKE THE ORAL AND VIDEOTAPED
DEPOSITION OF JEFFREY S. LEVINGER WITH SUBPOENA DUCES TECUM

PAGE 3

Van H. Beckwith
Jessica B. Pulliam
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van.beckwith@bakerbotts.com
jessica.pulliam@bakerbotts.com
Attorneys for Defendant, JPMorgan Chase Bank, N.A.

Evan A. Young
Baker Botts L.L.P.
98 San Jacinto Blvd., Suite 1500
Austin, TX 78701
512-322-8306 Facsimile
evan.young@bakerbotts.com
*Attorneys for Defendant,
JPMorgan Chase Bank, N.A.*

A handwritten signature in dark ink, appearing to read "Evan A. Young", is written over a horizontal line.

ATTORNEYS' NOTICE OF INTENT TO TAKE THE ORAL AND VIDEOTAPED
DEPOSITION OF JEFFREY S. LEVINGER WITH SUBPOENA DUCES TECUM

PAGE 4

Page 259

MR:259

EXHIBIT "A"

1. all documents reviewed by him to prepare to testify at this deposition.
2. All email, text, electronic, and paper communication between you and any attorney for JP Morgan Chase Bank, N.A. ("JPM") regarding the negotiation and consummation of the settlement between Dr. Stephen Hopper ("Hopper") and Laura Wassmer ("Wassmer") and JPM ("Settlement"), as well as all attachments to any such communication.
3. All email, text, electronic, and paper communication between you and Hopper or Wassmer prior to 10:09 am, April 5, 2018, as well as all attachments to any such communication.
4. All email, text, electronic, and paper communication between you and Jim Pennington regarding the Settlement prior to 10:09 am, April 5, 2018, as well as all attachments to any such communication.
5. All email, text, electronic, and paper communication between you and Steve Block, or his attorney, Robert Toby, regarding Hopper, Wassmer, Intervenor or this case.

Subpoena

THE STATE OF TEXAS

COUNTY OF TEXAS

To the sheriff, constable, or any person authorized to serve and execute subpoenas as provided in Rule 176, Texas Rules of Civil Procedure.

Greetings:

You are hereby commanded to subpoena and summon the following witness who may be served as follows:

JEFFREY S. LEVINGER

Levinger PC

1445 Ross Avenue, Suite 2500

Dallas, TX 75202

214-855-6817

to appear before a Court Reporter, at the offices of Fee, Smith, Sharp & Vitullo, LLP, Three Galleria Tower, 13155 Noel Road, Suite 1000, Dallas, TX 75240; telephone 972-934-9100, on Tuesday, April 17, 2018, at 9:00 a.m., in order to give deposition as a witness on behalf of the Attorneys in Cause NO. PR-11-3238-1; *In re Estate of Max D. Hopper; Jo N. Hopper v. JPMorgan Chase Bank, et al*; Probate Court No. 1, Dallas County, Texas, to attend from day to day until lawfully discharged.

SAID ABOVE NAMED WITNESS IS FURTHER COMMANDED to produce at said time and place set forth above, the following books, papers, documents, or other tangible things, to-wit:

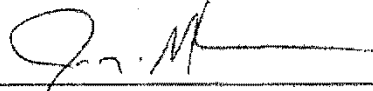
1. all documents reviewed by him to prepare to testify at this deposition.
2. All email, text, electronic, and paper communication between you and any attorney for JP Morgan Chase Bank, N.A. ("JPM") regarding the negotiation and consummation of the settlement between Dr. Stephen Hopper ("Hopper") and Laura Wassmer ("Wassmer") and JPM ("Settlement"), as well as all attachments to any such communication.
3. All email, text, electronic, and paper communication between you and Hopper or Wassmer prior to 10:09 am, April 5, 2018, as well as all attachments to any such communication.
4. All email, text, electronic, and paper communication between you and Jim Pennington regarding the Settlement prior to 10:09 am, April 5, 2018, as well as all attachments to any such communication.
5. All email, text, electronic, and paper communication between you and Steve Block, or his attorney, Robert Toby, regarding Hopper, Wassmer, Intervenor or this case.

The said witness shall continue in attendance from day to day and time to time until discharged according to law. Failure by any person without adequate excuse to obey a subpoena served upon that person may be

deemed a contempt of the court from which the subpoena is issued, and may be punished by fine or confinement, or both.

WITNESS MY HAND this the 14th day of April, 2018.

Respectfully submitted,



John L. Malesovas
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State Bar No. 12857300
1801 South Mopac Expressway, Suite 320
Austin, TX 78746
Telephone: (512) 708-1777
Telecopier: (512) 708-1779
john@malesovas.com

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on April 14, 2018, in accordance with the Texas Rules of Civil Procedure to:


Alan S. Loewinsohn
Jim L. Flegle
Kerry F. Schonwald
Loewinsohn Flegle Deary Simon LLP
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Attorneys for Intervenor Jo Hopper

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Attorneys for Defendants, Stephen B. Hopper and Laura S. Wassmer

John C. Eichman
Grayson L. Linyard
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*Attorneys for Defendant, JPMorgan Chase Bank, N.A.,
as Independent Administrator of the Estate of Max D. Hopper, Deceased,
and JPMorgan Chase Bank, N.A., in its Corporate Capacity*

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evan.young@bakerbotts.com
*Attorneys for Defendant,
JPMorgan Chase Bank, N.A.*



John L. Malesovas

OFFICER'S RETURN

Came to hand the _____ day of _____ A.D. 20____ at _____ o'clock _____ m., and
executed on the _____ day of _____ A.D. 20____ at _____ o'clock
____ m., by delivering to _____ the within named
witness, in person, a true copy of this Trial Subpoena and tendering him \$10.00 which he accepted.

FEES:

Serving Subpoena	\$ _____
Mileage	\$ _____
TOTAL	\$ _____

_____ Process Server

_____ County, Texas

CAUSE NO. PR-113238-1

IN RE: ESTATE OF
MAX D. HOPPER,
DECEASED

JO N. HOPPER

Plaintiff,

v.

JP MORGAN CHASE, N.A.,
STEPHEN B. HOPPER and LAURA S.
WASSMER

Defendants.

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and FEE,
SMITH, SHARP & VITULLO, LLP

Intervenors,

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK, N.A.,

Defendants.

IN THE PROBATE COURT

NO. 1

DALLAS COUNTY, TEXAS

**MOTION TO QUASH AND FOR PROTECTIVE ORDER
AND OBJECTION TO HEARING SUBPOENAS DUCES TECUM**

Subject to and without waiving the pending motion to compel arbitration, and pursuant to TEX. R. CIV. P. 176.6(d)-(f) and 192.6(b), Defendants, Stephen B. Hopper and Laura S. Wassmer ("the Clients") and nonparty attorney Jeffrey S. Levinger ("Levinger") file this Motion to Quash and for Protective Order, and object as follows, with respect to the Subpoenas Duces Tecum ("Subpoenas") attached hereto as Exhibits A-C.

Clients object to Intervenors' Subpoenas, and they object to the temporary injunction

proceeding, because this dispute is subject to binding arbitration. Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor in this action.

Levinger Subpoena

1. At approximately 7:00 a.m. on Wednesday, April 18, 2018, John Malesovas, an intervenor in this lawsuit, attempted to have Levinger served with the Subpoena attached as Exhibit A. The Subpoena purports to require Levinger to attend the temporary injunction hearing scheduled for April 24, 2018 and to produce at the hearing six categories of documents and other items. This Subpoena was not served in the manner required by Rule 176.5 because it lacks the requisite proof of service. Therefore, it is unenforceable for that reason alone. Nonetheless, out of an abundance of caution, the Clients and Levinger will respond to the Subpoena as follows.

2. First, in accordance with Rules 176.6(e)-(f) and 192.6(b), a protective order should be entered to protect the Clients and Levinger from undue burden, unnecessary expense, harassment, annoyance, invasion of personal, constitutional, and property rights, and intrusion into confidential and privileged matters. In addition, Levinger has a conflicting and previously-scheduled court appearance in another case that precludes him from attending the hearing on April 24.

3. Second, in accordance with Rules 176.6(e) and (f), the Clients and Levinger object to, and are entitled to a protective order from, the Subpoena's request for documents and other items. The document request is objectionable because it seeks confidential and privileged information. Further, a protective order is necessary to protect the Clients and Levinger from undue burden, unnecessary expense, harassment, annoyance, invasion of personal, constitutional, and property rights, and intrusion into confidential and privileged matters.

Objections to Documents Requested in Levinger Subpoenas Duces Tecum

Request No. 1. All documents reviewed by him to prepare to testify at this deposition.

Response: Clients object to this request because this dispute is subject to binding arbitration and Defendants do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor in this action. This request is vague and confusing – Levinger has not testified at any deposition.

Request No. 2. All email, text, electronic and paper communication between you and any attorney for JPMorgan Chase Bank N.A. (“JPM”) regarding the negotiation and consummation of the settlement between Dr. Stephen Hopper (“Hopper”) and Laura Wassmer (“Wassmer”) and JPM (“Settlement”), as well as all attachments to any such communication.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor in this action. Clients object to this request on the basis that the documents requested are protected by confidentiality pursuant to the settlement agreement between Defendants and JPMorgan Chase Bank N.A. (“JPMorgan”).

Request No. 3. All email, text, electronic and paper communication between you and Hopper or Wassmer prior to 10:09 a.m., April 5, 2018, as well as all attachments to any such communication.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor in this action. Clients object to this request on the basis of the attorney-client privilege. Levinger is withholding documents responsive to this request based on the attorney-client privilege.

Request No. 4. All email, text, electronic and paper communication between you and Jim Pennington prior to 10:09 a.m., April 5, 2018, as well as all attachments to any such communication.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor in this action. Clients object to this request on the basis of the attorney-client privilege. Levinger is withholding documents responsive to this request based on the attorney-client privilege.

The Clients' Subpoenas

4. At approximately 6:00 p.m. on April 17, 2018, John Malesovas, an intervenor in this lawsuit, served the Clients' attorney with the Subpoenas attached as Exhibit B and C. The Subpoenas require the Clients to attend the temporary injunction hearing scheduled for April 24, 2018 and to produce at the hearing nine (9) categories of documents and other items. In accordance with Rules 176.6(e) and (f), the Clients object to, and are entitled to a protective order from, the Subpoenas' request for documents and other items.

Objections to Documents Requested in Clients' Subpoenas Duces Tecum

Request No. 1. All emails and text messages between and among Laura Wassmer, Dr. Stephen Hopper, and/or anyone else including, but not limited to Jim Pennington and Jeff Levinger (singularly, collectively, and/or disjunctively) regarding settlement of the claims with JPMorgan Chase including but not limited to the ultimate formation of the Rule 11 settlement agreement with JP Morgan Chase, up and until the time the Intervenors were terminated as the attorneys of record for Ms. Wassmer and Dr. Hopper, which was approximately at 10 a.m. on April 5, 2018—as set forth in Exhibit 3 to the TRO hearing.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenors in this action. Clients object to this request on the basis that the documents requested are protected by confidentiality pursuant to the settlement agreement between Defendants and JPMorgan Chase Bank N.A. ("JPMorgan"). Clients are withholding documents responsive to this request on the basis of the attorney-client privilege.

Request No. 2. All documents that support the accusations, allegations, and aspersions cast against Lenny Vitullo and his law firm, Fee Smith Sharp & Vitullo, as set forth in the April 5, 2018 termination letter, which was offered into evidence as Exhibit 3 at the TRO hearing.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenors in this action. Clients object to this request because it is overly broad, burdensome, vague, and ambiguous and it fails to describe the documents sought with reasonable particularity and specificity as required by Rule 196.1. Moreover, this request is beyond the scope of permissible discovery and constitutes an impermissible request for Clients to marshal their evidence. *Loftin v. Martin*, 776 S.W.2d 145, 148 (Tex.1989) (disapproving a similar request because the request did not identify any particular type of documents; rather, it was merely a request for all evidence the other party might have in support of its allegations); *See also In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex.App. Beaumont 2005, orig. proceeding). Subject to and without waiving these objections, Clients are unable to completely respond to this request at this

time because Intervenor's have not provided Clients with their complete files, although those files have been requested by Clients.

Request No. 3. All documents that support your position that the contingency agreements, which were admitted into evidence as Exhibits 1-2 at the TRO hearing are unenforceable—either in whole or in part.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor's in this action. Clients object to this request because it is overly broad, burdensome, vague, and ambiguous and it fails to describe the documents sought with reasonable particularity and specificity as required by Rule 196.1. Moreover, this request is beyond the scope of permissible discovery and constitutes an impermissible request for Clients to marshal their evidence. *Loftin v. Martin*, 776 S.W.2d 145, 148 (Tex.1989) (disapproving a similar request because the request did not identify any particular type of documents; rather, it was merely a request for all evidence the other party might have in support of its allegations); *See also In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. Beaumont 2005, orig. proceeding). Subject to and without waiving these objections, Clients are unable to completely respond to this request at this time because Intervenor's have not provided Clients with their complete files, although those files have been requested by Clients.

Request No. 4. Copies of all fee agreements that you have with Jeff Levinger, including all billing statements sent to you by Jeff Levinger—and all checks paid to Jeff Levinger; this request specifically includes, also, any and all collateral agreements reached with Jeff Levinger to aid and abet your termination of Lenny Vitullo and any monies Mr. Levinger received or you have contracted to pay him for saving attorneys' fees that are due and owing to Mr. Vitullo et al., if any.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor's in this action. Clients also object to the argumentative, improper and misleading manner in which this request is worded; there were no collateral agreements reached with Jeff Levinger to aid and abet the termination of Lenny Vitullo, nor did Mr. Levinger receive any money for saving any fees which may be owed to Mr. Vitullo. Subject to, and without waiving any of the aforementioned objections, Clients have already produced the fee agreement with Jeff Levinger, billing statements sent by Jeff Levinger and checks paid to Jeff Levinger.

Request No. 5. All documents that establish what you claim to be the dollar amount of attorney's fees in dispute, why there is a dispute, why the dispute was not raised until after a settlement was reached, and how those disputed amounts are quantified and the basis for you disputing what you plainly owe in the contingency contracts at issue.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor's in this action. Clients object to this request on the basis that the documents requested are protected by confidentiality pursuant to the settlement agreement

between Clients and JPMorgan. Clients object to this request because it is overly broad, burdensome, vague, and ambiguous and it fails to describe the documents sought with reasonable particularity and specificity as required by Rule 196.1. Moreover, this request is beyond the scope of permissible discovery and constitutes an impermissible request for Clients to marshal their evidence. *Loftin v. Martin*, 776 S.W.2d 145, 148 (Tex.1989) (disapproving a similar request because the request did not identify any particular type of documents; rather, it was merely a request for all evidence the other party might have in support of its allegations); *See also In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. Beaumont 2005, orig. proceeding). Clients also object to the argumentative, improper and misleading manner in which this request is worded; Clients dispute that they owe a contingency fee under the agreements. Subject to and without waiving these objections, Clients are unable to completely respond to this request at this time because Intervenor has not provided Clients with their complete files, although those files have been requested by Clients.

Request No. 6. All documents that support the dollar amount of what you claim you owe to Intervenor, if any, under the contingency agreements and all documents that show how that dollar amount was calculated.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor in this action. Clients dispute that they owe a contingency fee under the agreements; instead, Intervenor may only recover a fee based on quantum meruit. Subject to and without waiving these objections, Clients are unable to completely respond to this request at this time because Intervenor has not provided Clients with their complete files, although those files have been requested by Clients.

Request No. 7. All documents that show when you actually made the decision to terminate the Intervenor—including but not limited to all correspondence with Jeff Levinger, which would establish that the decision was allegedly made six months ago, albeit the termination was not actually done until April 5, 2018.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor in this action. Clients are withholding documents responsive to this request on the basis of the attorney-client privilege. Clients also object to the argumentative, improper and misleading manner in which this request is worded; Clients dispute that the decision to terminate the Intervenor was made six months ago.

Request No. 8. All tape recordings of Lenny Vitullo, Taylor Horton or any other attorney in this case.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor in this action. Subject to and without waiving this objection, Clients have already produced these recordings to Intervenor.

Request No. 9. Your executed settlement agreement with JPMorgan Chase.

Response: Clients object to this request because this dispute is subject to binding arbitration and Clients do not waive their position that the Court must compel arbitration of all claims asserted by Intervenor in this action. Clients object to this request on the basis that the documents requested are protected by confidentiality pursuant to the settlement agreement between Defendants and JPMorgan Chase Bank N.A. ("JPMorgan").

Conclusion

For those reasons set forth herein, the Clients request this Court to quash the Subpoenas, enter a protective order, sustain the objections herein and that the Clients have all other relief, at law or in equity, which the Clients may be entitled.

Respectfully submitted,

s/ James E. Pennington

James E. Pennington

State Bar No. 15758510

LAW OFFICES OF JAMES E. PENNINGTON, P.C.

900 Jackson Street, Suite 440

Dallas, Texas 75202-4473

Telephone: (214) 741-3022

Facsimile: (214) 741-3055

jep@jeplawyer.com

Attorneys for Defendants

Stephen B. Hopper and Laura S. Wassmer

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2018, the foregoing *Motion to Quash and for Protective Order* was filed using the e-filing system which will send notification of such filing to the following parties via email:

Brian P. Lauten

Brian Lauten, P.C.

3811 Turtle Creek Boulevard, Ste. 1450

MOTION TO QUASH AND FOR PROTECTIVE ORDER

7

Dallas, Texas 75219
blauten@brianlauten.com
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Austin, TX 78746
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Attorney for Intervenor, John Malesovas

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Jim L. Flegle
Kerry F. Schonwald
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Attorneys for Defendant, JPMorgan Chase Bank, N.A., as Independent Administrator of the Estate of Max D. Hopper, Deceased, and JPMorgan Chase Bank, N.A., in its Corporate Capacity

Van H. Beckwith
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Attorneys for Defendant, JPMorgan Chase Bank, N.A.

Evan A. Young
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Austin, TX 78701
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evan.young@bakerbotts.com
Attorneys for Defendant, JPMorgan Chase Bank, N.A.

s/ James E. Pennington
James E. Pennington

EMHPC 4418
4/18/18

Subpoena

THE STATE OF TEXAS

COUNTY OF TEXAS

To the sheriff, constable, or any person authorized to serve and execute subpoenas as provided in Rule 176, Texas Rules of Civil Procedure.

Greetings:

You are hereby commanded to subpoena and summon the following witness who may be served as follows:

JEFFREY S. LEVINGER

Levinger, P.C.
1445 Ross Avenue, Suite 2500
Dallas, TX 75202
(214) 855-6817

to appear before on, Tuesday, April 24, 2018, at 9:00 a.m., at the Dallas Probate Court No. 1, Dallas County, 1201 Elm Street, Suite 2400-A, Dallas, Texas 75207, to give testimony at Intervenors' application for a temporary injunction evidentiary hearing in Cause NO. PR-11-3238-1; *In re Estate of Max D. Hopper; Jo N. Hopper v. JPMorgan Chase Bank, et al*; Probate Court No. 1, Dallas County, Texas, to attend from day to day until lawfully discharged.

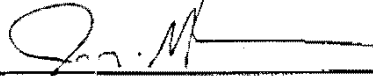
SAID ABOVE NAMED WITNESS IS FURTHER COMMANDED to produce at said time and place set forth above, the following books, papers, documents, or other tangible things, to-wit:

1. all documents reviewed by him to prepare to testify at this deposition.
2. All email, text, electronic, and paper communication between you and any attorney for JP Morgan Chase Bank, N.A. ("JPM") regarding the negotiation and consummation of the settlement between Dr. Stephen Hopper ("Hopper") and Laura Wassmer ("Wassmer") and JPM ("Settlement"), as well as all attachments to any such communication.
3. All email, text, electronic, and paper communication between you and Hopper or Wassmer prior to 10:09 am, April 5, 2018, as well as all attachments to any such communication.
4. All email, text, electronic, and paper communication between you and Jim Pennington regarding the Settlement prior to 10:09 am, April 5, 2018, as well as all attachments to any such communication.
5. All email, text, electronic, and paper communication between you and Steve Block, or his attorney, Robert Toby, regarding Hopper, Wassmer, Intervenors or this case.
6. Any tape recordings you have of Intervenors.

The said witness shall continue in attendance from day to day and time to time until discharged according to law. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued, and may be punished by fine or confinement, or both.

WITNESS MY HAND this the 16th day of April, 2018.

Respectfully submitted,



John L. Malesovas
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Telephone: (512) 708-1777
Telecopier: (512) 708-1779
john@malesovas.com

ATTORNEY FOR INTERVENOR

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on April 16, 2018, in accordance with the Texas Rules of Civil Procedure to:

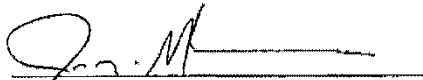
Brian P. Lauten
Brian Lauten, P.C.
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Dallas, TX 75219
blauten@brianlauten.com
Attorneys for Intervenor, Fee Smith Sharp & Vitullo, L.L.P.

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Jim L. Flegle
Kerry F. Schonwald
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*Attorneys for Defendant, JPMorgan Chase Bank, N.A.,
as Independent Administrator of the Estate of Max D. Hopper, Deceased,
and JPMorgan Chase Bank, N.A., in its Corporate Capacity*
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Attorneys for Defendant, JPMorgan Chase Bank, N.A.

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512-322-8306 Facsimile
evan.young@bakerbotts.com
Attorneys for Defendant, JPMorgan Chase Bank, N.A.


John L. Malesovas

OFFICER'S RETURN

Came to hand the _____ day of _____ A.D. 20____ at _____ o'clock _____ .m., and
executed on the _____ day of _____ A.D. 20____ at _____ o'clock
____ .m., by delivering to _____ the within
named witness, in person, a true copy of this Trial Subpoena and tendering him \$10.00 which he
accepted.

FEES:

Serving Subpoena \$ _____
Mileage \$ _____
TOTAL \$ _____

_____ Process Server

_____ County, Texas

Subpoena

THE STATE OF TEXAS

COUNTY OF TEXAS

To the sheriff, constable, or any person authorized to serve and execute subpoenas as provided in Rule 176, Texas Rules of Civil Procedure.

Greetings:

You are hereby commanded to subpoena and summon the following witness who may be served as follows:

LAURA S. WASSMER

c/o James E. Pennington

Law Offices of James E. Pennington, P.C.

900 Jackson Street, Suite 440

Dallas, TX 75202

214-741-3022 (Telephone)

to appear before on, Tuesday, April 24, 2018, at 9:00 a.m., at the Dallas Probate Court No. 1, Dallas County, 1201 Elm Street, Suite 2400-A, Dallas, Texas 75207, to give testimony at Intervenor's application for a temporary injunction evidentiary hearing in Cause NO. PR-11-3238-1; *In re Estate of Max D. Hopper; Jo N. Hopper v. JPMorgan Chase Bank, et al*; Probate Court No. 1, Dallas County, Texas, to attend from day to day until lawfully discharged.

SAID ABOVE NAMED WITNESS IS FURTHER COMMANDED to produce at said time and place set forth above, the following books, papers, documents, or other tangible things, to-wit:

1. All emails and text messages between and among Laura Wassmer, Dr. Stephen Hopper, and/or anyone else including, but not limited to, Jim Pennington and Jeff Levinger (singularly, collectively, and/or disjunctively) regarding settlement of the claims with JPMorgan Chase, up and until the formation of the Rule 11 settlement agreement with JPMorgan Chase, up and until the time the Intervenor's were terminated as the attorneys of record for Ms. Wassmer and Dr. Hopper, which was approximately at 10:00 a.m. on April 5, 2018 – as set forth in Exhibit 3 to the TRO hearing.
2. All documents that support the accusations, allegations, and aspersions cast against Lenny Vitullo and his law firm, Fee, Smith, Sharp & Vitullo, as set forth in the April 5, 2018 termination letter, which was offered into evidence as Exhibit 3 at the TRO hearing.
3. All documents that support your position that the contingency agreements, which were admitted into evidence as Exhibits 1-2 at the TRO hearing are unenforceable – either in whole or in part.
4. Copies of all fee agreements that you have with Jeff Levinger, including all billing statements sent to you by Jeff Levinger – and all checks paid to Jeff Levinger; this request specifically includes, also, any and all collateral agreements reached with Jeff Levinger to

Exhibit B

Page 278

MR:278

aid and abet your termination of Lenny Vitullo and any monies Mr. Levinger received or you have contracted to pay him for saving attorneys' fees that are due and owing to Mr. Vitullo et al., if any.

5. All documents that establish what you claim to be the dollar amount of attorney's fees in dispute, why there is a dispute, why the dispute was not raised until after a settlement was reached, and how those disputed amounts are quantified and the basis for you disputing what you plainly owe in the contingency contracts at issue.
6. All documents that support the dollar amount of what you claim you owe to Intervenors, if any, under the contingency agreements and all documents that show how that dollar amount was calculated.
7. All documents that show when you actually made the decision to terminate the Intervenors -- including but not limited to all correspondence with Jeff Levinger, which would establish that the decision was allegedly made six months ago, albeit the termination was not actually done until April 5, 2018.
8. All tape recordings of Lenny Vitullo, Taylor Horton or any other attorney in this case.
9. Your executed settlement agreement with JPMorgan Chase.

The said witness shall continue in attendance from day to day and time to time until discharged according to law. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued, and may be punished by fine or confinement, or both.

WITNESS MY HAND this the 17th day of April, 2018.

Respectfully submitted,



John L. Malesovas
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john@malesovas.com

ATTORNEY FOR INTERVENOR

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on April 17, 2018, in accordance with the Texas Rules of Civil Procedure to:

Brian P. Lauten
Brian Lauten, P.C.
3811 Turtle Creek Blvd., Suite 1450
Dallas, TX 75219
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Attorneys for Intervenor, Fee Smith Sharp & Vitullo, L.L.P.

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Jim L. Flegle
Kerry F. Schonwald
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Attorneys for Plaintiff Jo Hopper

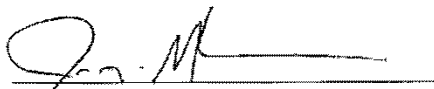
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*Attorneys for Defendant, JPMorgan Chase Bank, N.A.,
as Independent Administrator of the Estate of Max D. Hopper, Deceased,
and JPMorgan Chase Bank, N.A., in its Corporate Capacity*

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Attorneys for Defendant, JPMorgan Chase Bank, N.A.


John L. Malesovas

OFFICER'S RETURN

Came to hand the _____ day of _____ A.D. 20____ at _____ o'clock _____ .m., and
executed on the _____ day of _____ A.D. 20____ at _____ o'clock
____ .m., by delivering to _____ the within
named witness, in person, a true copy of this Trial Subpoena and tendering him \$10.00 which he
accepted.

FEES:

Serving Subpoena	\$ _____
Mileage	\$ _____
TOTAL	\$ _____

_____ Process Server

_____ County, Texas

Subpoena

THE STATE OF TEXAS

COUNTY OF TEXAS

To the sheriff, constable, or any person authorized to serve and execute subpoenas as provided in Rule 176, Texas Rules of Civil Procedure.

Greetings:

You are hereby commanded to subpoena and summon the following witness who may be served as follows:

STEPHEN B. HOPPER

c/o James E. Pennington
Law Offices of James E. Pennington, P.C.
900 Jackson Street, Suite 440
Dallas, TX 75202
214-741-3022 (Telephone)

to appear before on, Tuesday, April 24, 2018, at 9:00 a.m., at the Dallas Probate Court No. 1, Dallas County, 1201 Elm Street, Suite 2400-A, Dallas, Texas 75207, to give testimony at Intervenor's application for a temporary injunction evidentiary hearing in Cause NO. PR-11-3238-1; *In re Estate of Max D. Hopper; Jo N. Hopper v. JPMorgan Chase Bank, et al*; Probate Court No. 1, Dallas County, Texas, to attend from day to day until lawfully discharged.

SAID ABOVE NAMED WITNESS IS FURTHER COMMANDED to produce at said time and place set forth above, the following books, papers, documents, or other tangible things, to-wit:

1. All emails and text messages between and among Laura Wassmer, Dr. Stephen Hopper, and/or anyone else including, but not limited to, Jim Pennington and Jeff Levinger (singularly, collectively, and/or disjunctively) regarding settlement of the claims with JPMorgan Chase, up and until the formation of the Rule 11 settlement agreement with JPMorgan Chase, up and until the time the Intervenor's were terminated as the attorneys of record for Ms. Wassmer and Dr. Hopper, which was approximately at 10:00 a.m. on April 5, 2018 – as set forth in Exhibit 3 to the TRO hearing.
2. All documents that support the accusations, allegations, and aspersions cast against Lenny Vitullo and his law firm, Fee, Smith, Sharp & Vitullo, as set forth in the April 5, 2018 termination letter, which was offered into evidence as Exhibit 3 at the TRO hearing.
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aid and abet your termination of Lenny Vitullo and any monies Mr. Levinger received or you have contracted to pay him for saving attorneys' fees that are due and owing to Mr. Vitullo et al., if any.

5. All documents that establish what you claim to be the dollar amount of attorney's fees in dispute, why there is a dispute, why the dispute was not raised until after a settlement was reached, and how those disputed amounts are quantified and the basis for you disputing what you plainly owe in the contingency contracts at issue.
6. All documents that support the dollar amount of what you claim you owe to Intervenor, if any, under the contingency agreements and all documents that show how that dollar amount was calculated.
7. All documents that show when you actually made the decision to terminate the Intervenor— including but not limited to all correspondence with Jeff Levinger, which would establish that the decision was allegedly made six months ago, albeit the termination was not actually done until April 5, 2018.
8. All tape recordings of Lenny Vitullo, Taylor Horton or any other attorney in this case.
9. Your executed settlement agreement with JPMorgan Chase.

The said witness shall continue in attendance from day to day and time to time until discharged according to law. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued, and may be punished by fine or confinement, or both.

WITNESS MY HAND this the 17th day of April, 2018.

Respectfully submitted,



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ATTORNEY FOR INTERVENOR

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on April 17, 2018, in accordance with the Texas Rules of Civil Procedure to:

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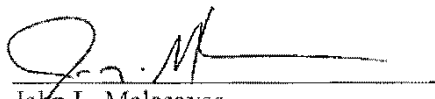
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John L. Malesovas

OFFICER'S RETURN

Came to hand the _____ day of _____ A.D. 20____ at _____ o'clock _____ .m., and
executed on the _____ day of _____ A.D. 20____ at _____ o'clock
____ .m., by delivering to _____ the within
named witness, in person, a true copy of this Trial Subpoena and tendering him \$10.00 which he
accepted.

FEES:

Serving Subpoena	\$ _____
Mileage	\$ _____
TOTAL	\$ _____

_____ Process Server

_____ County, Texas

Respectfully submitted,

s/ Anne M. Johnson

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2018, the foregoing *Amended Notice of Hearing on Motion to Compel Arbitration* was filed using the e-filing system which will send notification of such filing to the following parties via email:

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s/ Anne M. Johnson
Anne M. Johnson

 ORIGINAL

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER, DECEASED,	§	IN THE PROBATE COURT
	§	
	§	
JO N. HOPPER,	§	
	§	
Intervenor,	§	
	§	
v.	§	NO. 1
	§	
JPMORGAN CHASE BANK, N.A.,	§	
STEPHEN B. HOPPER, and LAURA	§	
S. WASSMER,	§	
	§	
Defendants.	§	OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a	§
MALESOVAS LAW FIRM, and	§
FEE, SMITH, SHARP & VITULLO, LLP	§
	§
Intervenors,	§
	§
v.	§
	§
STEPHEN B. HOPPER, LAURA S.	§
WASSMER, individually and as	§
Beneficiaries of the ESTATE OF	§
MAX D. HOPPER, DECEASED,	§
the ESTATE OF MAX D. HOPPER,	§
DECEASED, JPMORGAN CHASE	§
BANK, N.A.,	§
	§
Defendants.	§

TEMPORARY INJUNCTION ORDER

Came to be heard on the 24TH day of April 2018, after appropriate notice to the parties and after the parties presented arguments, Fee Smith Sharp & Vitullo, LLP and John L. Malesovas d/b/a Malesovas Law Firm's (collectively, "Intervenors") *Verified Petition(s) in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief* against, *inter alia*, Stephen Hopper and



Laura Wassmer, individually and as beneficiaries of the Estate of Max D. Hopper, deceased, (hereinafter jointly "Clients") and JPMorgan Chase Bank, N.A. (hereinafter "JPM") (Clients and JPM hereinafter jointly, "Defendants" with respect to the claims now pending in this Intervention).

The Court, after considering the *Intervenors' Collective Verified Original Petition in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief*, the evidence submitted by Intervenors *in camera*, the relevant exhibits, the arguments of counsel, concludes that—unless immediately restrained, Defendants will irreparably injure Intervenors.

This Court has subject matter jurisdiction over the dispute brought before it under both, TEX. ESTATES CODE ANN. § 32.007 et seq. (Vernon 2014), and, TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014) (authorizing declaratory judgment actions in probate court when such relief is germane to an Estate).

Intervenors respective Pleas and application for Injunctive Relief are timely filed, given that this Court has yet to sign a judgment; and, therefore, retains plenary power over this proceeding. See TEX. R. CIV. P. 60 et seq.

This Court has, preliminarily, taken judicial notice, pursuant to Rule 201 of the Texas Rules of Evidence, of the following facts that, in reasonable probability, appear to be true at this preliminary stage of the proceeding:

- 1.) In, around, or about November of 2015, Clients executed a valid and enforceable contingency agreement ("CA") with Intervenors;
- 2.) On or about April 5, 2018, attorneys for Clients and JPM appeared before this Court and announced, without revealing any of the substantive terms, that a confidential settlement had been reached between them in the underlying dispute pending in this Court (hereinafter "Settlement");
- 3.) On or about the same day, April 5, 2018, but—literally what appears to have been within minutes after the Court was informed that a settlement had been reached by the parties in this underlying dispute—Clients terminated their CA with Intervenors by and through their attorney, James Pennington;

- 4.) Intervenors have filed what, by all accounts, appears to be a valid and enforceable First Party Attorney's Fees Lien in the proceeds of the Settlement;
- 5.) Intervenors fully performed; or, at the very least, substantially and materially performed all of their duties, responsibilities, and obligations under the CA at or before the time Clients terminated the CA—as those legal terms are meant in, *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2018, no pet.), *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003), and *Mandell & Wright*, 441 S.W.2d 841, 847 (Tex. 1969); and
- 6.) Given the timing of the termination of Intervenors, Clients are estopped, quasi-estopped, and/or have waived any and all defenses, if any, that could or would be lodged to the CA or the quality of the legal services performed by Intervenors.

The Court finds that Clients have admitted that some of the settlement funds belong to Intervenors, but Clients refuse to identify the amount that belongs to Intervenors and refuse to allow the undisputed amount that belongs to Intervenors to be paid to Intervenors. Based on this, as well as the Court's findings above, Intervenors are entitled to immediate payment of a portion of the settlement funds once they become due and payable under the terms of the settlement. The Court finds that within hours after the Court heard Intervenors' Application for a Temporary Restraining Order where Intervenors were asking this Court to protect the settlement funds in dispute pending the outcome of their Petition in Intervention and after the Court took the matter under advisement, Clients executed a settlement agreement with JPM which required JPM to wire transfer the settlement funds to any location designated by Clients, which would necessarily include a foreign bank account, and further required Intervenors to waive their lien on the settlement funds and to withdraw their Petition in Intervention claiming an interest in the settlement funds, and that Clients still refused to pay

Intervenors any of the settlement funds. The Court finds that this action by Clients was designed to attempt to circumvent this Court's inherent power to protect the disputed funds and to circumvent Intervenors' lien on the Settlement funds.

The Court finds that based on all of the foregoing and all of the other evidence and stipulations presented, the settlement funds are in danger of being lost or depleted unless this Court exercises its inherent power to protect the settlement funds pending the outcome of Intervenors' Petition in Intervention.

Based upon these preliminary findings, this Court is of the opinion that Intervenors have established a probability of success on the merits on their application for, *inter alia*, declaratory relief. See TEX. CIV. PRAC. & REM. CODE § 37.004 et seq. (Vernon 2014). This Court is of the opinion that, unless restrained, one or more Defendants are likely to cause permanent damage to Intervenors, should they be allowed to transfer, hypothecate, assign, or take title to Intervenors' interest in the settlement proceeds before the pleas in Intervention are adjudicated on the merits. Such harm would be irreparable and injury would be imminent because this Court is of the opinion that there is no showing; or, in the alternative, an inadequate showing that Defendants could timely and immediately pay the disputed funds to Intervenors, should Intervenors ultimately prevail in this proceeding, and because Intervenors have a security interest in and lien upon a portion of the settlement proceeds which would be eviscerated by allowing Clients to dispose of 100% of the settlement proceeds as they saw fit and/or by risk that such funds will be lost or depleted or otherwise disposed of. Moreover, given the Court's preliminary findings set forth above in (i)-(vi), Intervenors have established a property right and secured interest in the proceeds at issue, and the loss of such funds and property right would leave Intervenors with no adequate remedy at law.

The Court is, **THEREFORE**, of the opinion that Intervenors are entitled to the issuance of an Order of Temporary Injunction and that such an Order is necessary to protect Intervenors' rights. This **ORDER** is necessary because of the immediate need to enforce the security interest and lien which Intervenors have in a portion of the settlement proceeds and to stop the wrongful flow of funds in the near future from being disseminated to either Clients or their attorneys, or some other third party subject to

Clients' direction and control, upon which Intervenor's would have no adequate remedy at law. Without intervention by this Court, Intervenor's property right, that is Intervenor's security interest in and lien upon the settlement proceeds, would be destroyed and there would be no way to restore that property right in the Settlement proceeds themselves.

It is therefore **ORDERED, ADJUDGED, and DECREED** that Defendants, Stephen Hopper, Laura Wassmer, and JPMorgan Chase, N.A., and any of his, her, their, or its agents, servants, employees, successors, assigns and those persons in active concert or participation therewith, must:

- 1) Deposit all of the settlement proceeds due to Stephen B. Hopper and Laura S. Wassmer, individually and as beneficiaries of the Estate of Max Hopper, Deceased, into a safekeeping account with JPMorgan Chase Bank, NA, to be treated as a deposit in the registry of the Court, and to be held in trust until further order of this Court. Funds in this safekeeping account shall be withdrawn only upon Order of this Court;
- 2) The parties are **ORDERED** to preserve and prevent the destruction of all documents, including electronic data, emails, and notes, that relate in any way to the matters and claims set forth in the Intervenor's' respective Pleas on file—and, moreover, all electronic storage devices must be imaged and preserved.

IT IS FURTHER ORDERED that the \$10,000 corporate or surety cash bond currently deposited with the appropriate clerk of this Court shall remain in place.

BAT **IT IS FURTHER ORDERED** that trial in this matter is set for October 1, 2018 at 9:30 o'clock a.m. *All Parties are Ordered to appear for a scheduling conference on or before June 15, 2018.*
Signed and issued this the 24th day of April 2018, at 2:05 o'clock p.m. 2018,

[Signature]
JUDGE PRESIDING

CAUSE NO. PR-11-03238-1

**IN RE: ESTATE OF
MAX D. HOPPER,
DECEASED**

JO N. HOPPER

Plaintiff,

V.

**JP MORGAN CHASE, N.A.,
STEPHEN B. HOPPER and LAURA S.
WASSMER**

Defendants.

**JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and FEE,
SMITH, SHARP & VITULLO, LLP**

Intervenors,

Y.

STEPHEN B. HOPPER, LAURA S. WASSMER, and JPMORGAN CHASE BANK, N.A.,

Defendants,

IN THE PROBATE COURT

NO. 1

DALLAS COUNTY, TEXAS

**SECOND AMENDED NOTICE OF HEARING ON
MOTION TO COMPEL ARBITRATION**

Please take notice that the hearing on Intervention Defendants' Motion to Compel Arbitration has been re-scheduled for Tuesday, May 8, 2018, at 4:00 p.m., before the Honorable Judge Brenda Hull Thompson in Probate Court No. 1, Dallas County, Texas.

Respectfully submitted,

s/ Anne M. Johnson

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**Attorneys for Intervention Defendants
Stephen B. Hopper and Laura S. Wassmer**

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2018, the foregoing ***Second Amended Notice of Hearing on Motion to Compel Arbitration*** was filed using the e-filing system which will send notification of such filing to the following parties via email:

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s/ Anne M. Johnson
Anne M. Johnson

CAUSE NO. PR-11-3238-1

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and
FEE, SMITH, SHARP & VITULLO, LLP.

Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, individually and as
Beneficiaries of the ESTATE OF
MAX D. HOPPER, DECEASED,
the ESTATE OF MAX D. HOPPER,
DECEASED, JPMORGAN CHASE
BANK, N.A.,

Defendants.

§ IN THE PROBATE COURT

§ NO. 1

§ DALLAS COUNTY, TEXAS

Intervenors' (Lawyers) Consolidated Traditional Rule 166a(c) Motion for Summary Judgment (MSJ) on their Secured and Fully Vested Property and Ownership Rights to the Disputed Funds, Application for Attorney's Fees, and Brief in Support (filed 4.20.18), will be heard on **Wednesday, May 23, 2018 at 2:00 PM** in the front of Judge Brenda Hull Thompson, The Probate Court, Renaissance Tower, 1201 Elm Street, 24th Floor, Suite 2400-A, Dallas, Texas 75270, Dallas County, Texas.

Respectfully Submitted,

BRIAN LAUTEN, P.C.



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Stephen B. Hopper and Laura S. Wassmer**



**BRIAN P. LAUTEN
ATTORNEY FOR INTERVENORS**

CAUSE NO. PR-11-3238-1

JOHN L. MALESOVAS, d/b/a	§	IN THE PROBATE COURT
MALESOVAS LAW FIRM, and	§	
FEE, SMITH, SHARP & VITULLO, LLP	§	
	§	
Intervenors,	§	
	§	
v.	§	NO. 1
	§	
STEPHEN B. HOPPER, LAURA S.	§	
WASSMER, individually and as	§	
Beneficiaries of the ESTATE OF	§	
MAX D. HOPPER, DECEASED,	§	
the ESTATE OF MAX D. HOPPER,	§	
DECEASED, JPMORGAN CHASE	§	
BANK, N.A.,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**JOHN L. MALESOVAS, d/b/a MALESOVAS LAW FIRM AND FEE, SMITH,
SHARP & VITULLO, LLP's CONSOLIDATED SECOND AMENDED PETITION IN
INTERVENTION, APPLICATION FOR DECLARATORY JUDGMENT,
TEMPORARY & PERMANENT INJUNCTION**

COMES NOW, John L. Malesovas, d/b/a Malesovas Law Firm ("MLF") and Fee, Smith, Sharp & Vitullo, LLP ("FSSV") (MLF and FSSV, collectively "Attorneys"), and files this Second Amended Petition in Intervention, Application for Declaratory Judgment, Temporary and Permanent Injunction complaining of Defendants, Stephen B. Hopper ("Hopper"), Laura S. Wassmer ("Wassmer"), individually and as beneficiaries of the Estate of Max D. Hopper (collectively "Clients"), the Estate of Max D. Hopper, deceased and JPMorgan Chase Bank, N.A. ("JPM"), and for cause would show the following:

**I.
DISCOVERY CONTROL PLAN**

1.01 Intervenors requests this lawsuit proceed under a Level 3 Discovery Control Plan pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II.
PARTIES

2.01 John L. Malesovas is an attorney licensed to practice law in the State of Texas and doing business as Malesovas Law Firm.

2.02 FSSV is a limited liability partnership and law firm and doing business as Fee, Smith, Sharp & Vitullo, LLP.

2.03 Hopper, individually and as a beneficiary of the Estate of Max D. Hopper, deceased, was a former client of Attorneys and is being served herewith pursuant to TRCP 21a.

2.04 Wassmer, individually and as a beneficiary of the Estate of Max D. Hopper, deceased, was a former client of Attorneys and is being served herewith pursuant to TRCP 21a. Hopper and Wassmer are hereinafter jointly referred to as "Clients".

2.05 The Estate of Max D. Hopper is an estate in administration under the jurisdiction of this Court, and Clients have asserted claims herein on behalf of the Estate as the beneficiaries of the Estate.

2.06 JPM is also a Defendant in the underlying case and an interested party to this Petition in Intervention and is being served herewith pursuant to TRCP 21a.

III.
JURISDICTION AND VENUE

3.01 Venue is proper in Dallas County, Texas pursuant to §15.002(a)(1), Tex. Civ. Prac. & Rem. Code, as Dallas County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and because venue is proper in the underlying action. This Court has exclusive jurisdiction to adjudicate this

dispute because Intervenor has a secured and fully vested property interest and property right in the settlement proceeds at issue, which are "incident" to the Estate of Max D. Hopper—and JPM is the Independent Administrator of said Estate (and JPM is in exclusive possession of the disputed funds). See TEX. ESTATES CODE ANN. § 32.007 et seq. (Vernon 2014), and, TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014) (authorizing declaratory judgment actions in probate court when such relief is germane to an estate). To the extent that the Estate of Max D. Hopper is a party to the settlement with JPM or to the extent that beneficiaries of the Estate of Max D. Hopper are parties to the settlement with JPM, then this Court and only this Court has exclusive jurisdiction over this matter.

IV. FACTS

4.01 Attorneys represented Clients pursuant to a valid and enforceable contingency fee agreement in the underlying lawsuit pending in this Court. A true and correct copy of the contingent fee agreement was admitted into evidence at the Temporary Injunction hearing (hereinafter, "Agreement"). Intervenor fully performed under the terms of the Agreement. On April 3-4, 2018, Clients' Appellate Counsel, Jeff Levinger, settled Clients' claims against JPM. Clients, through Levinger, caused to be filed a Rule 11 agreement memorializing the fact that a confidential settlement had been reached between Clients on the one hand and JPM on the other hand ("Settlement"). At approximately 9:05 a.m. on April 5, 2018, Anthony L. Vitullo appeared before this Court on Clients' behalf and announced in open court that a confidential settlement had been reached between Clients and JPM. At approximately 10:10 a.m. on April 5, 2018, Clients' attorney, Jim Pennington, terminated Attorneys without cause and advised

Attorneys that Clients would not compensate Attorneys in accordance with the Agreement. Pennington also advised Attorneys that he was going to instruct Levinger to retain an unspecified percentage of the Settlement proceeds in his trust account. On April 6, 2018, FSSV withdrew from representing Clients in the underlying lawsuit. Attorneys own a secured and fully vested property right in the Settlement proceeds (up to the very limits of their contingency interest as set forth in the Agreement). Counsel for Clients and JPM, the latter is the current holder of the Settlement proceeds, have refused to tender any funds directly to the Attorneys, given the pendency of the dispute at hand. Attorneys filed, *inter alia*, a Petition in Intervention to enforce their property rights in the Settlement proceeds. The Court granted Attorneys' request for a TRO and a Temporary Injunction has since been issued.

4.02 Attorneys have a justiciable interest in the pending suit because the disposition of the Settlement proceeds will impact their property rights. This lawsuit is a declaratory judgment action against Clients and JPM to enforce Attorneys' fully vested and secured property rights. As such, pursuant to ***Texas Mut. Ins. Co, v. Ledbetter***, 251 S.W.3d 31 (2008), Attorneys are first party, secured lienholders in the Settlement proceeds of this case, and have an absolute right to intervene. Thus, Attorneys seek a declaration from this Court pursuant to TEX. CIV. PRAC. & REM CODE § 37.001 et. seq. (Vernon 2014), confirming Attorneys' security and property interest in the Settlement proceeds and, ultimately, an order directing JPM and Clients to pay such interest directly to Attorneys.

4.03 Attorneys fully performed under the Agreement and obtained a favorable jury verdict on Clients' behalf. Consequently, Clients were able to later secure a

confidential settlement with JPM. Only after Clients, through their appellate attorney, Jeff Levinger, unilaterally settled with JPM—did Clients terminate Attorneys. Clients accepted, used, and enjoyed the services of Attorneys which resulted in the Settlement—the services were valuable and Clients obtained a benefit. In accordance with *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356 (Tex. App.—Dallas 2001, pet. denied), and *Enochs v. Brown*, 872 S.W.2d 312 (Tex. App. – Austin 1994, no writ), Clients are estopped and, at the very least, quasi-estopped from challenging the validity of the Agreement and the fee due and owing to Attorneys thereunder and the property rights Attorneys have to the Settlement proceeds, which are currently being held by JPM. Moreover, consistent with *Tillery* and *Enochs*, Clients have waived each and every defense, if any, that could otherwise be lodged to the validity of the Agreement, given that Attorneys were terminated only *after* the legal services were accepted, used, and enjoyed by Clients, resulting in a demonstrable benefit to Clients. Further, it would be unconscionable for Clients to be permitted to avoid paying the fees owed, given that Clients have already accepted the benefits of the Attorneys' legal services that were provided under the Agreement. Indeed, by accepting the benefits of the legal services provided under the Agreement, Clients have waived any right to complain about either the quality of those services or the fees that are due and owing as a consequence of those services having been fully provided. Accordingly, Attorneys seek a declaration defining the breadth and scope of their fully secured and vested property rights in the settlement; and, once those rights are declared, an order of disbursement of fees owing to Attorneys consistent with the Court's award of declaratory relief.

4.04 In addition, Attorneys seek the recovery of their attorneys' fees pursuant to TEX. CIV. PRAC. & REM CODE § 37.009 (Vernon 2014)—in enforcing their lien and property rights herein. All conditions precedent to Attorneys' claim for relief have been fully performed, have occurred, accrued, or have been waived.

V.
APPLICATION FOR DECLARATORY RELIEF
UNDER SECTION 37.001

5.01 Attorneys incorporate all of the preceding paragraphs as if they were set forth in their entirety herein.

5.02 Attorneys seek a declaratory judgment pursuant to the TEXAS UNIFORM DECLARATORY JUDGMENT ACT ("UDJA"), TEXAS CIVIL PRACTICE & REMEDIES CODE § 37.001 et seq. (Vernon 2014). An actual and justiciable controversy exists and has arisen between Attorneys, Clients, and JPM. Attorneys seek declaratory relief, a disbursement order, and a judgment against Clients and JPM pursuant to the UDJA declaring the rights, status, and other legal relations of Attorneys *vis a vis* these parties regarding the payment of Attorneys' fees from the Settlement proceeds. Because the Estate is a party to the Settlement, this Honorable Court has exclusive jurisdiction to declare and formally adjudicate Attorneys' ownership rights in the Settlement proceeds.

5.03 Attorneys are entitled to a declaration as follows:

- a. Attorneys own a secured and fully vested property right in the Settlement proceeds currently held by JPM;
- b. Attorneys are entitled to immediate possession of their property rights in the Settlement proceeds currently held by JPM;
- c. This Court has exclusive jurisdiction to declare the rights of the parties to the Settlement proceeds currently held by JPM;
- d. Attorneys are entitled to the full and exclusive use, possession and

enjoyment of their interest in the Settlement proceeds currently held by JPM;

- e. It is in the best interest of the Estate to pay Attorneys their interest in the Settlement proceeds currently held by JPM; and
- f. Clients and JPM be directed to pay Attorneys their fees from the Settlement proceeds currently held by JPM directly to Attorneys.

5.04 Attorneys also seek all legal fees and expenses from Clients and JPM as allowed under the UDJA as this would be fair and equitable given the facts and circumstances of this dispute.

VI. TEMPORARY AND PERMANENT INJUNCTION

6.01 Attorneys seek a permanent injunction. Attorneys have shown a probability of success on the merits because Attorneys have a fully vested and secured property interest in the settlement proceeds. Attorneys fully performed their obligations under the Agreement. Attorneys have a fully vested and secured property interest in the Settlement proceeds and Clients have informed Attorneys that they do not intend to pay or honor Attorneys' interest in the Settlement proceeds—either in whole or in part.

6.02 Unless this Honorable Court immediately restrains Clients and JPM from diverting the Settlement proceeds, the Attorneys will suffer immediate and irreparable injury, for which there is no adequate remedy at law, because in effect, Attorneys will have lost the protection of their security interest in the Settlement proceeds. Moreover, neither of the Defendants are bonded and Clients have established a pattern and practice of terminating their lawyers and refusing to pay their lawyers—either in whole or in part. Attorneys have a first party, secured lien on and fully vested security interest in the Settlement proceeds, the purpose of which is to prevent Clients from taking all of

the Settlement proceeds and unilaterally controlling their use and disposition—to the detriment of Attorneys, who are entitled to be compensated for their services rendered (and their legal expenses advanced and paid on Clients' behalf). Based on the record before this Court, Attorneys have established and will further show on final disposition:

- a) The harm to Attorneys is imminent because Clients and JPM may attempt, if not restrained, to have Attorneys' interest in the Settlement proceeds paid to Clients' attorney, Jeff Levinger.
- b) This imminent harm will cause Attorneys irreparable injury; in that, once Defendants pay the Settlement proceeds to Jeff Levinger, Attorneys will not be able to enforce their lien and security interest because Levinger will be obligated to hold the funds in his trust account, interest free, until the ownership of the fees is resolved. On the contrary, Rule 1.14 et seq. of the Texas Rules of Professional Conduct do not require, nor do they even allow, Clients' attorney to take possession of the Settlement proceeds, over Attorneys' objections, because Attorneys have a fully vested and secured ownership and property right in the Settlement proceeds at issue. To the contrary, Attorneys' first party lien and security interest allow them to take possession of their portion of the Settlement proceeds as duly authorized by the Agreement executed between Clients and Attorneys. Thus, unless a permanent injunction issues, Attorney's lien and security interest in the Settlement proceeds will be eviscerated. In addition, Attorneys' interest in the Settlement proceeds will not be protected from unauthorized distributions, conversion, or bank failure.
- c) There is no adequate remedy at law which will enforce Attorneys' lien and security interest absent action from this Court. Indeed, Clients are not bonded and there has been no showing that Clients could respond and, in fact, pay money damages in the amounts due and owing should they prematurely take possession of the

funds and disburse those funds beyond the jurisdiction of this Court. Clients will simply be unable to respond in—whole or in part—in damages upon final trial from this intervention unless Attorneys' interest in the Settlement proceeds is protected by this Court.

VII.
**BOND HAS BEEN POSTED/
WRITS HAVE BEEN ISSUED, FILED,
AND DULY SERVED**

7.01 Attorneys have posted a reasonable bond in accordance with this Court's order granting a temporary injunction and the appropriate writs have been issued, duly filed, and served on the parties' attorneys of record in accordance with Rule 21a.

VIII.
RELIEF REQUESTED

8.01 Attorneys have obtained a temporary injunction and an order requiring the funds to be deposited with JPM under the exclusive control of this Court, which Attorneys request remain in place and are not waived by this pleading.

8.02 Attorneys request the Court to issue a permanent injunction, consistent with the Court's temporary injunction previously granted, authorizing the following relief, to-wit:

8.02.1 Restraining Clients from taking any action to transfer, liquidate, convert, encumber, pledge, loan, share, sale, market for sale, conceal, hide, secret, dissipate, deplete, neglect, misuse, damage and/or destroy, lease, assign, granting a lien, security interest, or other interest in, allow the use of, or otherwise dispose of any and all part of Attorneys' interest in the Settlement proceeds;

8.02.2 Ordering that Defendants and any of his, her, their, or its agents, servants, employees, successors, assigns and those persons in active concert or participation therewith, must:

1. Deposit into the registry of this Court the portion of Attorneys' interest in the Settlement proceeds which Clients contend they do not owe Attorneys under the Agreement, which shall remain on deposit in the registry until further Order of the Court, when such funds become available and are ripe for distribution from JPM to the underlying Plaintiffs in satisfaction of the confidential settlement agreement reached herein;

2. Pay directly to Attorneys the portion of Attorneys' interest in the Settlement proceeds which Clients do not dispute to be due and owing from the Settlement proceeds immediately when those funds become available under the terms of the Settlement; and

3. Upon final trial and declaration, that the Court enter a disbursement order causing payment to be directed to Attorneys for their legal services rendered in accordance with the Agreement.

8.03 After a final trial on the merits, the Court should immediately disburse all funds due and owing to Attorneys consistent with their ownership rights, as reflected in the Agreement.

IX.

ALTERNATIVELY, UNDER RULE 48, ATTORNEYS MOVE THE COURT FOR AN ORDER REQUIRING THE DISPUTED FUNDS TO BE DEPOSITED INTO THE REGISTRY PENDING A FINAL DISPOSITION ON THE MERITS (WHICH IS A NON-APPEALABLE ORDER)

9.01 Under Rule 48, Attorneys plead in the alternative that this court has the inherent power to order that disputed funds be deposited in the registry of the court. See *Prodeco Exploration, Inc. v. Ware*, 684 S.W.2d 199, 201 (Tex. Civ. App.—Houston [1st Dist.] 1984, no writ) ("The trial court has the inherent authority to direct [a party] to deposit disputed funds into the registry of the court pending the outcome of the litigation."); see also *Castilleja v. Camero*, 414 S.W.2d 431, 433 (Tex. 1967). In

addition, in order to secure an order directing a party to deposit disputed funds in the registry of the Court, a party does *not* have to satisfy the prerequisite for securing a temporary injunction. *Diana River & Assocs., P.C. v. Calvillo*, 986 S.W.2d 795, 797-798 (Tex. App.—Corpus Christi 1999, no pet.) (citing *McQuadev. E.D. Sys. Corp.*, 570 S.W.2d 33, 35 (Tex. Civ. App.—Dallas 1978, no writ)). Orders to deposit money into the registry of the court cannot be characterized as temporary injunctions and are non-appealable. *Prodeco*, 684 S.W.2d at 201; *Alpha Petroleum Co. v. Dunn*, 60 S.W.2d 469, 471 (Tex. Civ. App.—Galveston 1933, writ dismissed).

9.02 Clients have filed a pleading in response to Attorneys' intervention wherein Clients admit that there are disputed funds from the Settlement proceeds. But Clients do not identify the amount of the disputed portion of the Settlement proceeds. Clients suggest that this unidentified amount of funds be kept in their possession, through their attorney, Jeff Levinger, pending the outcome of this dispute. Distilled to its essence, Clients want exclusive control to all of the disputed funds without oversight from this Court and without even identifying the amount they would claim is in dispute. That is obviously unacceptable to Attorneys to let the fox guard the hen house pending the outcome of this matter—and Clients' proposal is inconsistent with Attorney's vested and fully secured property rights in the Settlement proceeds at issue.

9.03 Accordingly, pursuant to this Court's inherent power, Attorneys move this Court, in the alternative under Rule 48, to order that all of the Settlement proceeds be deposited into the registry of this Court (or any other independent escrow account agreed to by the parties that is subject to the jurisdiction of the Court) pending the adjudication of Attorneys' application for a permanent injunction.

WHEREFORE, PREMISES CONSIDERED, Intervenor Attorneys respectfully request a declaratory judgment, a permanent injunction, a disbursement order for their share of the settlement proceeds upon which they are entitled, an award of attorney's fees, and for all such further relief, whether in law or in equity, to which they may show themselves justly entitled.

Respectfully Submitted,

BRIAN LAUTEN, P.C.

A handwritten signature in black ink, appearing to read 'BP Lauten', with a stylized flourish at the end.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on May 1, 2018, in accordance with the Texas Rules of Civil Procedure to:

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NO. PR-11-3238-1

IN RE: ESTATE OF	§	IN THE PROBATE COURT
MAX D. HOPPER,	§	
DECEASED	§	
_____	§	
JO N. HOPPER,	§	
Plaintiff,	§	NO. 1
v.	§	
JPMORGAN CHASE BANK, N.A.,	§	
STEPHEN B. HOPPER and LAURA S.	§	
WASSMER,	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**JPMORGAN CHASE BANK N.A.'S NOTICE
REGARDING APRIL 24, 2018, TEMPORARY INJUNCTION ORDER**

JPMorgan Chase Bank N.A. ("JPMorgan"), in its capacity as the independent administrator of the Estate of Max D. Hopper, deceased, and in its corporate capacity, understands Intervenor have asked the Court to issue a Writ of Injunction on the Court's April 24, 2018, Temporary Injunction Order ("Order"), but as of the date of this Notice, JPMorgan has not been served with such Writ.

JPMorgan, however wishes to keep the Court fully apprised of certain facts relevant to its Order, to explain clearly and unambiguously that JPMorgan has no current obligation to make any settlement payment pursuant to the Confidential Settlement Agreement it entered into with Stephen Hopper and Laura Wassmer (the "Heirs"), and to make clear to the Court that if, and when, the conditions precedent to its payment obligations occur, it will comply with the Court's Order to the extent that Order remains in effect, as well as any other then-existing Court Orders regarding the safe-keeping of any settlement amount JPMorgan has an obligation to pay.

The Confidential Settlement Agreement includes certain conditions precedent to any obligation on the part of JPMorgan to make any settlement payment. Specifically, JPMorgan only becomes obligated to pay the confidential "Settlement Amount"

[w]ithin 10 business days following (i) the execution of this Agreement by all Parties, (ii) *the delivery to JPMorgan of the documents required by Section 2(b)*, and (iii) the delivery to JPMorgan of (x) a completed W9 and (y) wire transfer instructions, on the letterhead of the account owner, of such account or accounts as the Heirs may designate

Section 2(b) requires the following before any payment obligation on JPMorgan's part comes due:

JPMorgan's obligation to pay the Settlement Amount is subject to the Heirs' prior satisfaction and removal of all Attorneys' Liens that have been or may be filed or asserted prior to the date of JPMorgan's obligation to pay the Settlement Amount, including but not limited to the liens asserted and petitions in intervention already filed by Fee, Smith, Sharp & Vitullo, LLP and John L. Malesovas d/b/a Malesovas Law Firm. For purposes of this Section, the Heirs "satisfaction and removal" shall mean that the Heirs have delivered to JPMorgan (i) written waivers as to JPMorgan only, signed by all attorneys who have asserted liens and (ii) to the extent such attorneys have filed actions in any court or petitions to intervene in the Action, documents evidencing that such actions or petitions have been withdrawn or an order from a court or arbitrator permitting JPMorgan to pay the Settlement Amount to the Account(s) and no conflicting order of another court or arbitrator shall be in effect precluding such payment.¹

Because those conditions precedent have not been fully satisfied, JPMorgan has no current obligation to make any Settlement Payment. Thus, until satisfaction and removal of any liens as to JPMorgan only and dismissal of any associated petition in intervention as to JPMorgan only, whether by agreement or Court or arbitration order, no Settlement Payment is due, and none will be made by JPMorgan to the Heirs, their current counsel, or any other party. If, in the future, all conditions precedent to payment are satisfied and JPMorgan becomes obligated to make a Settlement Payment, JPMorgan will abide by all then-existing Court Orders regarding the payment or safe-keeping of any settlement funds.

¹ The parties agree that the cited portion is not confidential and may be disclosed to the Court without waiving the confidential portions of the Confidential Settlement Agreement. Should the Court want to review a copy of the Confidential Settlement Agreement, with the settlement amount redacted, JPMorgan will provide an *in camera* review.

In the meantime, the funds necessary to satisfy any possible future funding of the Confidential Settlement Agreement remain with JPMorgan.

Respectfully submitted,

BAKER & BOTTS L.L.P.

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JPMORGAN CHASE BANK, N.A.
IN ITS CAPACITY AS INDEPENDENT
ADMINISTRATOR OF THE ESTATE
OF MAX D. HOPPER, DECEASED AND
IN ITS CORPORATE CAPACITY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record via the electronic service manager and/or by email on this 4th day of May, 2018.

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Van H. Beckwith

CAUSE NO. PR-11-03238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED

IN THE PROBATE COURT

JO N. HOPPER

Plaintiff,

v.

JP MORGAN CHASE, N.A.,
STEPHEN B. HOPPER and LAURA S.
WASSMER

Defendants.

NO. I

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and FEE,
SMITH, SHARP & VITULLO, LLP

Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK, N.A.,

Defendants.

DALLAS COUNTY, TEXAS

REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION

Defendants Stephen B. Hopper and Laura S. Wassmer ("the Clients") file this Reply in Support of their Motion to Compel Arbitration, and their Supplement to Motion to Compel Arbitration (collectively, the "Motion"), to address arguments raised in Intervenors' (Lawyers) Consolidated Objections and Response to Hopper and Wassmer's (Clients) Motion to Compel Arbitration and Bench Brief in Support of Temporary Orders & Relief (the "Response"). The

Motion is set for hearing on May 8, 2018, at 4:00 pm. The Clients submit the following reply points in support of the Motion:

- A. **This is a fee dispute between the Lawyers and the Clients that falls squarely within the arbitration provision in their Fee Agreements.**

There is no dispute that the Lawyers' Fee Agreements contain a broad, unlimited, and unambiguous arbitration provision:

20. **ARBITRATION:** It is Attorney's goal to maintain at all times a constructive and positive relationship with Client on the matter described above and on future matters in which Attorney may perform services for Client. However, should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, if any controversy or claim arises out of or is related to this agreement, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (including malpractice claims and fee disputes), Attorneys and Client both waive any right to bring a court action or have a jury trial and agree that the dispute shall be submitted to binding arbitration to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas..

(Ex. A-1 § 20; Ex. B-1 § 20) (highlighting added). Indeed, the Lawyers have "fully embrace[d] the language and contractual obligations of the parties as set forth and articulated in [the Fee Agreements] including, specifically, its arbitration provision." (Response at 1.)

The only question, then, is whether the Lawyers' claims fall within the scope of their arbitration provision. *In re Rubiola*, 334 S.W.3d 220, 223 (Tex. 2011) (orig. proceeding). But, on that issue, there really is no question because the scope of the provision is so broad. Section 20, drafted by the Lawyers, covers "any controversy or claim" related to the Fee Agreements, and "any other matter that may arise between Client and Attorney." (Ex. A-1 § 20; Ex. B-1 § 20.) As if that weren't clear enough, Section 20 specifically mentions "fee disputes" as the kind of matter that is covered by the arbitration provision. (*Id.*) Because the intervention proceedings here are a *dispute* over whether the Lawyers are entitled to the *fee* contemplated by the Fee

Agreements, these proceedings fall squarely within the scope of the arbitration provision—and must be compelled to arbitration.

Despite this clear language, the Lawyers assert several arguments to avoid the arbitration provision they drafted. Each argument fails.

First, there is no “non-signatory” issue because there is no request—or need—to compel JP Morgan to arbitration. (*See* Response at 9-10.) JP Morgan is not a party to the fee dispute between the Lawyers and the Clients, and thus will not be part of the arbitration proceeding. Even assuming that JP Morgan had a current obligation to pay any settlement proceeds—and it does not, for reasons discussed in its *Notice Regarding April 24, 2018 Temporary Injunction Order*, filed May 4, 2018 (“JP Morgan Notice”)—JP Morgan would simply stand in the position of an interpleader plaintiff. JP Morgan has indicated that it will pay the settlement proceeds as directed by the arbitrator or a court when all settlement conditions have been satisfied. (*See* Transcript of April 9, 2018 TRO hearing at 50; *see also* JP Morgan Notice at 2.) As a result, the Clients do not (and will not) seek any order against JP Morgan in the arbitration. The *Transamerica* case cited by the Lawyers, which involved the enforcement of an arbitration award against a non-signatory, is entirely irrelevant because no such relief is being sought here. *Transamerica Occidental Life Ins. Co. v. Rapid Settlements, Ltd.*, 284 S.W.3d 385, 392-93 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

Further, as noted above and in the JP Morgan Notice, JP Morgan has no obligation to fund the settlement until certain conditions precedent are met, one of which requires the Lawyers to release their liens as against JP Morgan. (JP Morgan Notice at 2.) Because the Lawyers have refused to satisfy this condition, the Lawyers are preventing the Clients—and themselves—from receiving *any* settlement funds (including undisputed funds). In so doing, the Lawyers are

violating their ethical duties to the Clients and potentially subjecting themselves to State Bar discipline. *See* TEX. DISC. R. PROF. CONDUCT 1.14. But again, these disputes—over any fees due to the Lawyers from the settlement proceeds—do not concern JP Morgan, which will pay the same settlement amount regardless of where the money goes. There is no “non-signatory” issue in applying the arbitration provision to this dispute, and the Lawyers cannot avoid their own provision by trying to concoct one.

Second, the Clients are not “estopped” from enforcing the arbitration provision. (Response at 11.) The Lawyers argue there is “nothing to arbitrate” because they “have vested and secured property and ownership rights” in their contingency fee. (*Id.*) But the extent to which the Lawyers have contingency “rights” under the Fee Agreement is very much in dispute; Clients contend the agreement is unenforceable under Texas law, and that will be the subject of the arbitration. Even assuming the Lawyers were right about the impact of *Tillery* and *Enochs* (and they are not), those cases go to the ultimate question of whether a lawyer is entitled to the fee under a contract—the very issue that is covered by the arbitration provision and therefore must be decided by the arbitrator. *See Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 357 (Tex. App.—Dallas 2001, pet. denied) (holding that lawyer “was not entitled to enforce the contingent fee agreement”); *Enochs v. Brown*, 872 S.W.2d 312, 319-20 (Tex. App.—Austin 1994, no writ) (holding that “the trial court did not err in awarding attorney’s fees to [lawyer] based on the contract”). These are merits arguments that the Lawyers can (and must) assert in the arbitration; they provide no basis to avoid arbitration altogether.

Nor are the Clients taking “irreconcilable positions” by seeking arbitration under an agreement they claim is unenforceable. (Response at 11.) It is black-letter law that an arbitration clause can be valid and enforceable even if it is contained “in a contract that the

arbitrator later finds to be void.” *E.g., Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 448 (2006). Indeed, arbitration provisions are severable from the contracts in which they are contained. *Id.* at 445-46. Thus, unless the challenge is to the validity of the arbitration clause itself—and there is no such challenge in this case by any party (*see* Response at 1)—the issue of the validity of the agreement as a whole must be decided by the arbitrator in the first instance. *Buckeye Check Cashing*, 546 U.S. at 445-46; *see also In re Kaplan Higher Educ. Corp.*, 235 S.W.3d 206, 210 (Tex. 2007) (orig. proceeding). Simply put, there is nothing inconsistent about the Clients’ contention that: (1) the Fee Agreement is unenforceable, but that (2) that decision must be made by the arbitrator, because of the valid arbitration clause.

B. This Court must rule on the Motion immediately because the Lawyers have filed—and set for hearing on May 23—a dispositive summary judgment motion.

For the reasons described above and in the Motion, the Clients believe this case requires an unconditional order compelling the Lawyers’ claims to arbitration. But whatever the Court’s ruling might be, it must be soon.

The Texas Supreme Court has mandated that motions to compel arbitration “should be resolved without delay.” *In re Houston Pipe Line Co.*, 311 S.W.3d 449, 451 (Tex. 2009) (orig. proceeding). As a result, Texas appellate courts often find trial courts to have abused their discretion by deferring a ruling on a motion to compel arbitration—or other related challenges to the forum—in favor of:

- Merits discovery;¹

¹ *In re Houston Pipeline Co.*, 311 S.W.3d at 452 (granting mandamus where trial court ordered merits discovery “rather than ruling on the legal issues raised by the motion to compel [arbitration]”); *In re Susan Newell Home Builders, Inc.*, 420 S.W.3d 459, 462-63 (Tex. App.—Dallas 2014, orig. proceeding) (granting mandamus where trial court ordered discovery that “goes directly to the merits of [plaintiff’s] claims” and deferred ruling on certain motions to compel arbitration); *In re MHI Partnership, Ltd.*, 7 S.W.3d 918, 923 (Tex. App.—Houston [1st Dist.] 1999, orig. proceeding) (granting mandamus where trial court forced parties to litigate before ruling on motion to compel arbitration and holding “the trial judge had no discretion to defer his ruling until after discovery had been completed in the case”).

- Injunctive relief;² and
- Summary judgment proceedings.³

The last point is particularly salient here, as the Lawyers have filed—and set for hearing on May 23rd—a summary judgment motion on the very fee dispute that belongs in arbitration. The mere existence of this motion shows that the Lawyers are seeking to have this Court decide merits issues that can only be decided by the arbitrator. But in any event, the Lawyers' inappropriate summary-judgment filing imposes a short deadline on the Court's arbitration ruling, as the Clients' summary-judgment response will be due on May 16th, a little more than a week after the hearing on the Motion.

If the Clients are forced to file a summary-judgment response in this Court—and thus, to litigate the fee dispute on the merits—they will have been deprived of their contractual right to arbitration. *See MHI Partnership, Ltd.*, 7 S.W.3d at 921 (requiring parties to participate in discovery would deprive them “of the benefits of the arbitration clause . . . and the purpose of providing a rapid, inexpensive alternative to traditional litigation would be defeated”) (quoting *Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 272–73 (Tex. 1992) (orig. proceeding)); *see also Tantrum*, 2017 WL 3275901, at *9 (“Texas law prohibits trial courts from ruling on a case’s merits while a motion to compel arbitration is pending.”); *MetroPCS*, 391 S.W.3d at 340 (allowing case to move forward without ruling on forum challenge “will vitiate and render illusory the subject matter of an appeal—i.e., trial in the proper forum”) (internal quotations

² *In re MetroPCS Comms., Inc.*, 391 S.W.3d 329, 340 (Tex. App.—Dallas 2013, orig. proceeding) (granting mandamus where trial court granted TRO and set temporary injunction for hearing “without first ruling on relators’ motions respecting the forum selection clause in question”); *see also Pinto Tech. Ventures, L.P. v. Sheldon*, 526 S.W.3d 428, 437 (Tex. 2017) (Texas courts may “draw analogies between forum-selection clauses and arbitration clauses, which are ‘a specialized kind of forum-selection clause.’”) (internal citations omitted).

³ *Tantrum Street, LLC v. Carson*, No. 05-16-01096-CV, 2017 WL 3275901, at *9-10 (Tex. App.—Dallas July 25, 2017, orig. proceeding) (granting mandamus where trial court ruled on summary judgment motion while motion to compel arbitration was pending).

omitted). Therefore, unless the Court rules on the Motion by May 10th—or at a minimum, grants a continuance of the May 23rd summary-judgment hearing—the Clients will have no choice but to seek emergency relief from the Dallas Court of Appeals in order to protect their rights to arbitration. *See id.* The Clients therefore respectfully request a ruling on the Motion by no later than May 10th.⁴

CONCLUSION AND PRAYER

The Clients respectfully request that the Court compel the Lawyers/Intervenors to pursue their claims in arbitration; stay or dismiss the Lawyers' claims; and grant the Clients all other relief, at law or in equity, to which they may be entitled.

⁴ In the event the Court denies the Motion, the Clients respectfully request a stay of all discovery and trial proceedings pending an accelerated appeal. *See* TEX. CIV. PRAC. & REM. CODE §§ 51.016, 171.098; TEX. R. APP. P. 29.3 (stay of proceedings pending interlocutory appeal appropriate “to preserve the parties’ rights until disposition of the appeal”). Without a stay, the Clients would be denied the “rapid, inexpensive alternative to traditional litigation” they are entitled to under the arbitration provision, even if the court of appeals ultimately rules in their favor. *See In re Merrill Lynch Trust Co. FSB*, 235 S.W.3d 185, 195 (Tex. 2007); TEX. R. APP. P. 29.5 (trial court “must not make an order” pending an interlocutory appeal that “interferes with or impairs the jurisdiction of the appellate court or any relief sought or that may be granted on appeal”).

Respectfully submitted,

/s/ Anne M. Johnson

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I hereby certify that on this 4th day of May, 2018, the foregoing Reply in Support of Motion to Compel Arbitration was filed using the e-filing system which will send notification of such filing to the following parties via email:

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CAUSE NO. PR-11-3238-1

JOHN L. MALESOVAS, d/b/a	§	IN THE PROBATE COURT
MALESOVAS LAW FIRM, and	§	
FEE, SMITH, SHARP & VITULLO, LLP	§	
	§	
Intervenors,	§	
	§	
v.	§	NO. 1
	§	
STEPHEN B. HOPPER, LAURA S.	§	
WASSMER, individually and as	§	
Beneficiaries of the ESTATE OF	§	
MAX D. HOPPER, DECEASED,	§	
the ESTATE OF MAX D. HOPPER,	§	
DECEASED, JPMORGAN CHASE	§	
BANK, N.A.,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**AMENDED NOTICE OF HEARING ON INTERVENORS' CONSOLIDATED
TRADITIONAL RULE 166a(c) MOTION FOR SUMMARY JUDGMENT**

Intervenors' (Lawyers) Consolidated Traditional Rule 166a(c) Motion for Summary Judgment (MSJ) on their Secured and Fully Vested Property and Ownership Rights to the Disputed Funds, Application for Attorney's Fees, and Brief in Support (filed 4.20.18), will be heard on **Monday, June 11, 2018 at 9:00 AM** in the front of Judge Brenda Hull Thompson, The Probate Court, Renaissance Tower, 1201 Elm Street, 24th Floor, Suite 2400-A, Dallas, Texas 75270, Dallas County, Texas.

Respectfully Submitted,

BRIAN LAUTEN, P.C.

A handwritten signature in black ink, appearing to read 'BP Lauten', with a stylized flourish at the end.

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This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on May 9, 2018, in accordance with the Texas Rules of Civil Procedure to:

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**BRIAN P. LAUTEN
ATTORNEY FOR INTERVENORS**

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER, DECEASED	§	IN THE PROBATE COURT
	§	
	§	
JO N. HOPPER	§	
Plaintiff,	§	NO. 1
v.	§	
	§	
JPMORGAN CHASE BANK, N.A.	§	
STEPHEN B. HOPPER AND LAURAS.	§	
WASSMER,	§	
Defendants.	§	DALLAS COUNTY, TEXAS

PLAINTIFF'S UNOPPOSED MOTION TO SEVER HEIRS' CLAIMS AND
INTERVENTION CLAIMS

Plaintiff Jo N. Hopper ("Plaintiff" or "Mrs. Hopper") files this Unopposed Motion to Sever Heirs' Claims and Intervention Claims ("Motion") as follows:

1. In September 2011, Plaintiff filed suit against JPMorgan Chase Bank, N.A. (the "Bank") for, *inter alia*, declaratory judgment, breach of fiduciary duty, and breach of contract regarding the Bank's actions related to the administration of the Estate of Max D. Hopper. Mrs. Hopper also sued Stephen B. Hopper and Laura S. Wassmer (collectively, the "Heirs") for declaratory judgment. The suit against the Bank and the Heirs is the "Underlying Action." Broadly speaking, Mrs. Hopper asserted two categories of declaratory judgment claims in the Underlying Action. The first generally related to rights regarding the home she shared with her husband on Robledo Drive, as well as other personal property, including but not limited to whether the Bank or the Heirs could force a sale or partition of the home and other personal property (the "Robledo Declaratory Judgment Claims"). Summary judgment rulings related to the Robledo Declaratory Judgment Claims were appealed in 2012, and in 2014, the El Paso Court of Appeals ruled in Mrs. Hopper's favor regarding those claims. The second category of

declaratory judgment claims sought a declaration from the Court that Mrs. Hopper does not owe the Bank, the Estate of Max D. Hopper (the "Estate"), or the Heirs for any professional fees incurred by the Bank in connection with the administration of her late husband's estate, including but not limited to attorney's fees (the "Hunton & Williams Fees Claims"). Prior to the commencement of the trial, the Court granted Plaintiff's Motion for Partial Summary Judgment regarding the Hunton & Williams Fees Claims.

2. The Heirs also asserted claims against the Bank, including for breach of fiduciary duty, breach of contract, fraud, money had and received, conversion, negligence, and gross negligence (the "Heirs' Claims").

3. Trial commenced on the August 28, 2017 on the remaining claims. The case was submitted to the jury on September 25, 2017, and on that date, the Court accepted the jury's verdict.

4. The Court held hearings on post-trial motions on January 4, 2018 and April 4 and 5, 2018. Prior to the commencement of the April 4, 2018 hearing, counsel for the Heirs, Lenny Vitullo, announced that the Heirs had settled the Heirs' Claims with the Bank and that the Heirs were withdrawing their Motion for Entry of Final Judgment. As a result, the only currently outstanding motions before the Court are: (1) Plaintiff's Motion for Entry of Final Judgment and (2) the Bank's Amended Motion for JNOV, and, alternatively, Motion to Disregard Jury Findings or Suggestion of Remittitur.

5. Shortly after Mr. Vitullo announced the Heirs' settlement with the Bank on the record, the Heirs terminated their fee agreements with Mr. Vitullo's firm, Fee Smith, Sharp & Viutllo ("FSSV") and co-counsel the Malesovas Law Firm ("Malesovas"). On April 4, 2018, Malesovas filed a Petition in Intervention in the above-styled action. On April 6, 2018, FSSV

filed its Petition in Intervention, Application for Declaratory Relief, Request for TRO and Temporary Injunction. On April 9, 2018, FSSV and Malesovas filed a Consolidated First Amended Joint Petition in Intervention and Petition for Declaratory Judgment, Application for Temporary Restraining Order, for Temporary Injunction, and Motion to Deposit Funds in the Registry. FSSV and Malesovas are, collectively, the “Intervenors.” On May 1, 2018, the Intervenors filed their Consolidated Second Amended Petition in Intervention, Application for Declaratory Judgment, Temporary and Permanent Injunction (the “Intervention Claims”).

6. Pursuant to Texas Rule of Civil Procedure 41, “[a]ny claim against a party may be severed and proceeded with separately.” The Rule “grants the trial court broad discretion in the matter of severance . . . of causes.” *Guaranty Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 658 (Tex. 1990). *See also Liberty Nat’l Fire Insur. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex. 1996) (“Severance of claims under the Texas Rules of Civil Procedure rests within the sound discretion of the trial court.”)

7. Plaintiff requests a severance of the Heirs’ Claims and the Intervention Claims so that Plaintiff may go forward to a final judgment against the Bank and the Heirs and to avoid further delay and hardship.

8. Severance of the Heirs’ Claims and the Intervention Claims will serve justice, avoid prejudice, and contribute to the prompt resolution of this cause by allowing Plaintiff to proceed to final judgment with her claims against the Bank and the Heirs. *See In re State*, 355 S.W.3d 611, 613-614 (Tex. 2011); *F.F.P. Oper. Partners v. Duenez*, 237 S.W.3d 680, 693 (Tex. 2007).

WHEREFORE, Plaintiff requests that the Court order that the Heirs’ Claims and the Intervention Claims be severed, made the subject of a separate cause, and assigned a separate

cause number on the docket of this Court, in accordance with the terms of the proposed Order granting severance. Plaintiff further requests the Court grant her such additional relief to which she is justly entitled.

Dated: May 9, 2018

Respectfully submitted,

LOEWINSOHN FLEGLE DEARY SIMON LLP

By: /s/ Alan S. Loewinsohn

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COUNSEL FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

Counsel for the Bank, the Heirs, and the Intervenor have all stated that they are unopposed to the relief sought in this Motion.

/s/ Kerry Schonwald

Kerry Schonwald

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served upon the following counsel of record this 9th day of May, 2018 via e-service.

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ALAN S. LOEWINSOHN

LFDS

LOEWINSOHN FLEGLE
DEARY SIMON LLP

May 9, 2018

VIA E-FILING

Clerk, Probate Court No. 1
1201 Elm Street, Suite 2400-A
Dallas, TX 75270

Re: Cause No. PR-11-3238-1; *Estate of Max D. Hopper; Jo N. Hopper v. Stephen Hopper and Laura Wassmer v. JPMorgan Chase Bank* pending in Probate Court No. 1, Dallas County, Texas

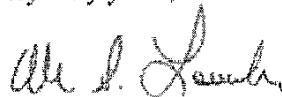
Dear Clerk:

Enclosed please find the proposed Unopposed Order on Plaintiff's Motion to Sever Heirs' Claims and Intervention Claims.

Please present this Order for the Court's consideration.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



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ASL:bsa

Enclosure

cc: John C. Eichman, Brian P. Lauten, Van H. Beckwith, Jessica B. Pulliam,
Jeffrey S. Levinger, J. Carl Cecere (all with enclosures via e-filing)

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MR:339

THE PROBATE COURT
DOCKET SHEET
CASE NO. PR-11-03238-1

IN THE MATTER OF
MAX HOPPER, DECEDENT

§
§
§
§
§

Location: Probate Court
Judicial Officer: THOMPSON, BRENDA H
Filed on: 09/21/2011
Case Number History: PR-11-03238-3

CASE INFORMATION

Related Cases
PR-10-01517-1 (ANCILLARY LAWSUIT)
PR-18-01390-1 (SEVERED)






Case Type: ANCILLARY
Subtype: DECLARATORY
JUDGMENT

Bonds
CASH BOND \$10,000.00
4/11/2018 POSTED
Counts:

DATE	CASE ASSIGNMENT
	<p>Current Case Assignment</p> <p>Case Number PR-11-03238-1 Court Probate Court Date Assigned 01/21/2016 Judicial Officer THOMPSON, BRENDA H</p>

PARTY INFORMATION

DECEDENT	HOPPER, MAX D.	Lead Attorneys
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DATE	EVENTS & ORDERS OF THE COURT	INDEX
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09/27/2011	 ISSUE CITATION Party: DEFENDANT JP MORGAN CHASE, N.A. PRIVATE PROCESS	2 pages
09/27/2011	ISSUE CITATION JP MORGAN CHASE, N.A. Unserved RTN	2 pages
10/06/2011	 COUNTER CLAIM Party: DEFENDANT JP MORGAN CHASE, N.A.; DEFENDANT HOPPER, STEPHEN B.; DEFENDANT WASSMER, LAURA S. ORIGINAL ANSWER, SPECIAL EXCEPTIONS, COUNTERCLAIM AND CROSS-CLAIM (E-FILE)	

THE PROBATE COURT
DOCKET SHEET
CASE NO. PR-11-03238-1


















10/06/2011	 CORRESPONDENCE - LETTER TO FILE
10/13/2011	 CORRESPONDENCE - LETTER TO FILE (E-FILE)
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10/17/2011	 ORIGINAL ANSWER STEPHEN HOPPER'S AND LAURA WASSMER'S ORIGINAL ANSWER TO JO HOOPER'S ORIGINAL PETITION
10/17/2011	 ORIGINAL ANSWER STEPHEN HOOPER'S AND LAURA WASSMER'S ORIGINAL ANSWER TO JPMORGAN CHASE BANK, N.A.'S PETITION
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10/20/2011	 CORRESPONDENCE - LETTER TO FILE
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10/21/2011	 CORRESPONDENCE - LETTER TO FILE
10/31/2011	CANCELED SPECIAL EXCEPTIONS (1:50 PM) (Judicial Officer: MILLER, MICHAEL E) REQUESTED BY ATTORNEY/PRO SE reset to Nov 9th @ 9:30
11/02/2011	 NOTICE - HEARING / FIAT CORRESPONDENCE LETTER
11/07/2011	 AMENDED ANSWER PLAINTIFF JO N. HOPPER'S AMENDED RESPONSE TO JPMORGAN CHASE BANK, N.A.'S SPECIAL EXCEPTIONS
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THE PROBATE COURT
DOCKET SHEET
CASE NO. PR-11-03238-1

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11/28/2011	 RULE 11 AGREEMENT -MARK ENOCH	Vol./Book 2, Page 46, 3 pages
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11/30/2011	 AMENDED PETITION PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION FOR: DECLARATORY JUDGMENT, BREACH OF CONTRACT, BREACH OF FIDUCIARY DUTY, FRAUD, ET AL. FOR REMOVAL OF INDEPENDENT ADMINISTRATOR, AND JURY DEMAND	
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12/20/2011	 COUNTER CLAIM Party: DEFENDANT HOPPER, STEPHEN B.; DEFENDANT WASSMER, LAURA S. AND CROSS CLAIM FOR DECLARATORY JUDGMENT	
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THE PROBATE COURT
DOCKET SHEET
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12/21/2011	LETTER TO COURT <i>JAMES ALBERT JENNINGS.</i>
12/21/2011	 CORRESPONDENCE - LETTER TO FILE
12/21/2011	 CORRESPONDENCE - LETTER TO FILE
12/23/2011	MOTION - CONTINUANCE (11:45 AM) (Judicial Officer: MILLER, MICHAEL E)
12/23/2011	 RESPONSE Party: PLAINTIFF HOPPER, JO N. <i>TO STEPHEN B. HOPPER'S AND LAURA WASSMER'S MOTION FOR CONTINUANCE</i>
12/23/2011	 MOTION <i>TO DISQUALIFY RECENTLY-NAMED OPPOSING COUNSEL GERRY W. BEYER</i>
12/23/2011	 CORRESPONDENCE - LETTER TO FILE
12/30/2011	CANCELED MOTION - PARTIAL SUMMARY JUDGMENT (9:00 AM) (Judicial Officer: MILLER, MICHAEL E) <i>REQUESTED BY ATTORNEY/PRO SE</i>
01/09/2012	 MOTION - PARTIAL SUMMARY JUDGMENT Party: DEFENDANT HOPPER, STEPHEN B.; DEFENDANT WASSMER, LAURA S. <i>FIRST AMENDED (E-FILE)</i>
01/10/2012	 MOTION - PARTIAL SUMMARY JUDGMENT Party: DEFENDANT HOPPER, STEPHEN B.; DEFENDANT WASSMER, LAURA S. <i>SECOND AMENDED (E-FILE)</i>
01/10/2012	 CORRESPONDENCE - LETTER TO FILE
01/12/2012	CORRESPONDENCE - LETTER TO FILE <i>JUDGE DID NOT SIGN OFF ON THIS - ORDER GRANTING STEPHEN HOPPER'S AND LAURA WASSMER'S UNOPPOSED MOTION OFR SUBSTITUTION OF COUSEL</i>
01/13/2012	 MOTION - PARTIAL SUMMARY JUDGMENT Party: DEFENDANT HOPPER, STEPHEN B.; DEFENDANT WASSMER, LAURA S. <i>SECOND AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT</i>
01/13/2012	 CORRESPONDENCE - LETTER TO FILE
01/17/2012	 NOTICE <i>OF WITHDRAWAL AS COUNSEL FOR NO. N. HOPPER (GERRY W. BEYER'S)</i>
01/17/2012	RULE 11 AGREEMENT
01/17/2012	 NOTICE <i>STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S NOTICE OF WITHDRAWAL OF MOTION WITH PREJUDICE</i>
01/17/2012	 MOTION - QUASH Party: PLAINTIFF HOPPER, JO N.










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AND OR FOR PROTECTIVE ORDER OF DEFENDANTS' NOTICE OF INTENTION TO
TAKE ORAL AND VIDEOTAPED DEPOSITION OF JO N. HOPPER

01/17/2012	 MOTION - QUASH Party: PLAINTIFF HOPPER, JO N. AND OR FOR PROTECTIVE ORDER OF DEFENDANTS' NOTICE OF INTENTION TO TAKE ORAL AND VIDEOTAPED DEPOSITION OF CELIA DORIS KING AND SUBPOENA DUCES TECUM
01/17/2012	 CORRESPONDENCE - LETTER TO FILE
01/17/2012	 CORRESPONDENCE - LETTER TO FILE
01/17/2012	 CORRESPONDENCE - LETTER TO FILE
01/17/2012	 CORRESPONDENCE - LETTER TO FILE
01/17/2012	 CORRESPONDENCE - LETTER TO FILE
01/20/2012	 NOTICE - APPEARANCE OF PROFESSOR THOMAS M. FEATHERSTON, JR.
01/20/2012	 MOTION MOTION TO CONTINUE HEARING AND OBJECTION ON AND AS TO STEPHEN HOPPER'S
01/23/2012	CANCELED MOTION - PARTIAL SUMMARY JUDGMENT (2:00 PM) (Judicial Officer: MILLER, MICHAEL E) REQUESTED BY ATTORNEY/PRO SE
01/23/2012	RESPONSE RESPONSE OF STEPHEN B. HOOPER AND LAURA S. WASSMER TO JO HOPPER'S MOTION FOR PARTIAL SUMMARY JUDGMENT
01/24/2012	MOTION - PARTIAL SUMMARY JUDGMENT SUBJECT TO PLAINTIFF'S MOTION TO CONTINUE HEARING AND OBJECTIONS, ET AL. FILED 1/20/12 PLAINTIFF JO N. HOPPER'S OBJECTION TO STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S AFFIDAVITS OFFERED IN SUPPORT OF THEIR SECOND AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT
01/24/2012	MOTION - PARTIAL SUMMARY JUDGMENT SUBJECT TO PLAINTIFF'S MOTION TO CONTINUE HEARING AND OBJECTIONS FILED 1/20/12 PLAINTIFF JO N. HOPPER'S RESPONSE TO STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S SECOND AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT
01/24/2012	 AMENDED ANSWER DEFENDANT JPMORGAN CHASE BANK, N.A.'S FIRST AMENDED ANSWER, SPECIAL EXCEPTION, COUNTERCLAIM AND CROSS-CLAIM IN RESPONSE TO JO N. HOPPER'S FIRST AMENDED ORIGINAL PETITION
01/24/2012	ORIGINAL ANSWER DEFENDANT JPMORGAN CHASE BANK, N.A.'S ORIGINAL ANSWER AND, SPECIAL EXCEPTIONS TO STEPHEN HOOPER'S AND LAURA WASSMER'S COUNTERCLAIM




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AND CROSS CLAIM FOR DECLORATORY JUDGMENT





01/24/2012	RESPONSE JPMORGAN CHASE BANK, N.A.'S RESPONSE TO JO HOPPER'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND STEPHEN HOPPER'S AND LAURA WASSMER'S SECOND AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT
01/24/2012	AFFIDAVIT AFFIDAVIT OF SUSAN H. NOVAK IN SUPPORT OF INDEPENDENT ADMINISTRATOR'S RESPONSE TO MOTIONS FOR PARTIAL SUMMARY JUDGMENT - CONFIDENTIAL FILED UNDER SEAL
01/25/2012	CANCELED MOTION - PARTIAL SUMMARY JUDGMENT (9:00 AM) (Judicial Officer: MILLER, MICHAEL E) REQUESTED BY ATTORNEY/PRO SE
01/25/2012	CANCELED MOTION - HEARING (2:30 PM) (Judicial Officer: MILLER, MICHAEL E) BY COURT ADMINISTRATOR
01/25/2012	MOTION - QUASH Party: PLAINTIFF HOPPER, JO N. AMENDED MOTION TO QUASH AND OR FOR PROTECTIVE ORDER OF DEFENDANTS' NOTICE OF INTENTION TO TAKE ORAL AND VIDEOTAPED DEPOSITION OF CELIA DORIS KING AND SUBPOENA DUCES TECUM
01/25/2012	MOTION - QUASH Party: PLAINTIFF HOPPER, JO N. AMENDED MOTION TO QUASH AND OR FOR PROTECTIVE ORDER OF DEFENDANT'S NOTICE OF INTENTION TO TAKE ORAL AND VIDEOTAPED DEPOSITION OF JO. N. HOPPER
01/25/2012	MOTION TO ALLOW WITHIN 24 DAYS OF HEARING, SERVICE AND FILING OF STEPHEN HOPPER'S AND LAURA WASSMER'S, FIRST AND SECOND AMENDED MOTIONS FOR PARTIAL SUMMARY JUDGMENT FILED WITH THE COURT ON JAN. 9 AND 10, 2012 (E-FILED)
01/27/2012	RESPONSE Party: PLAINTIFF HOPPER, JO N. TO MOTION TO ALLOW, WITHIN 24 DAYS OF HEARING, SERVICE AND FILING OF STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S FIRST AND SECOND AMENDED MOTIONS FOR PARTIAL SUMMARY JUDGMENT FILED WITH THE COURT ON 1/9/12 AND 1/10/12
01/27/2012	RESPONSE RESPONSE TO PLAINTIFF'S MOTION TO QUASH DEPOSITIONS AND, IN THE ALTERNATIVE, MOTION TO POSTPONE MEDIATION
01/30/2012	 CORRESPONDENCE - LETTER TO FILE
01/30/2012	 VACATION LETTER MARK C. ENOCH (3/9/12--3/27/12) AND (7/13/12--8/7/12)
01/30/2012	 MOTION - PARTIAL SUMMARY JUDGMENT HEARING NOTEBOOK
01/30/2012	MOTION - CONTINUANCE SUBJECT TO PLAINTIFF'S MOTION TO CONTINUE HEARING AND OBJECTIONS (FILED JANUARY 20, 2012)

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01/30/2012	 MISC. EVENT <i>AUTHORITIES AND STATUTES</i>
01/30/2012	 MOTION <i>PLAINTIFFS AND DEFENDANT CHILDREN'S JOINT MOTION TO STAY</i>
01/31/2012	MOTION - PARTIAL SUMMARY JUDGMENT (2:30 PM) (Judicial Officer: MILLER, MICHAEL E) <i>Mr. Enoch Motion Partial S.J set second filed Dec 19 2011</i>
01/31/2012	MOTION - PARTIAL SUMMARY JUDGMENT (2:30 PM) (Judicial Officer: MILLER, MICHAEL E) <i>Mr. Jennings Lead Counsel. Motion Partial SJ filed Nov 30, 2011 is set first</i>
01/31/2012	MOTION - HEARING (2:30 PM) (Judicial Officer: MILLER, MICHAEL E) <i>Plntf Jo N. Hoppers Mot to continue Hrg and Obj on and as to Stephen Hoppers & Laura Wassmers 2nd Amd Mot Partial Summary Judgment with Affidavits</i>
01/31/2012	MOTION - HEARING (2:30 PM) (Judicial Officer: MILLER, MICHAEL E) <i>Motion Allow Service & Filing within 24 days</i>
01/31/2012	ORIGINAL ANSWER Party: PLAINTIFF HOPPER, JO N. <i>AND AFFIRMATIVE DEFENSES TO DEFENDANT JPMORGAN CHASE BANK, N.A.</i>
01/31/2012	 ORIGINAL ANSWER Party: PLAINTIFF HOPPER, JO N. <i>AND AFFIRMATIVE DEFENSES TO DEFENDANTS STEPHEN HOPPER AND LAURA WASSMER</i>
01/31/2012	MISC. EVENT Party: PLAINTIFF HOPPER, JO N. <i>REPLY TO THE DEFENDANT STEPCHILDREN'S RESPONSE TO PLAINTIFFS MOTION TO QUASH DEPOSITIONS AND, IN THE ALTERNATIVE, MOTION TO POSTPONE MEDIATION</i>
01/31/2012	 MISC. EVENT <i>PLAINTIFFS ADDITIONAL MATERIALS/SUPPLEMENTAL MATERIALS FOR MOTION FOR: PARTIAL SUMMARY JUDGMENT HEARING NOTEBOOK</i>
02/03/2012	MOTION - QUASH (9:15 AM) (Judicial Officer: MILLER, MICHAEL E)
02/03/2012	MOTION - QUASH (9:15 AM) (Judicial Officer: MILLER, MICHAEL E) <i>Response to Motion to Quash</i>
02/06/2012	MOTION - QUASH (9:00 AM) (Judicial Officer: MILLER, MICHAEL E) <i>Response to Motion Quash</i>
02/06/2012	MOTION - QUASH (9:05 AM) (Judicial Officer: MILLER, MICHAEL E) <i>Response to Motion Quash</i>
02/06/2012	MOTION - QUASH (9:10 AM) (Judicial Officer: MILLER, MICHAEL E) <i>Response to Motion Quash</i>
02/06/2012	MOTION - QUASH (9:15 AM) (Judicial Officer: MILLER, MICHAEL E) <i>Response to Motion Quash</i>
02/06/2012	MOTION - QUASH (9:20 AM) (Judicial Officer: MILLER, MICHAEL E) <i>Response Motion Quash</i>

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02/06/2012	MOTION - QUASH (9:25 AM) (Judicial Officer: MILLER, MICHAEL E) <i>Response to Motion Quash</i>	
02/07/2012	MISC. EVENT SUBPOENA DUCES TECUM FOR VIDEOTAPED DEPOSITION ISSUED IN THE NAMED OF THE STATE OF TEXAS TO CELIA DORIS KING	
02/07/2012	NOTICE OF HEARING MARK ENOCH	
02/09/2012	CORRESPONDENCE - LETTER TO FILE	
02/13/2012	MOTION Party: DEFENDANT JP MORGAN CHASE, N.A. TO ENFORCE MEDITATION ORDER	
02/13/2012	NOTICE - HEARING / FIAT EFILED. NOTICE OF HEARING (NO FIAT)	
02/14/2012	 ORDER - SUMMARY JUDGMENT MOTIONS FOR SUMMARY JUDGMENT AND ORDER TO MEDIATION	Vol./Book 18, Page 297, 2 pages
02/14/2012	 MOTION PLAINTIFF JO N. HOPPER'S MOTION TO MODIFY THE COURT'S FEBRUARY 14, 2012 ORDER ON THE MOTIONS FOR SUMMARY JUDGMENT, AND, ALTERNATIVELY, FOR NEW TRIAL, PER T.R.C.P., RULE 329B; AND, MOTION TO SEVER	25 pages
02/17/2012	MOTION - HEARING (9:10 AM) (Judicial Officer: MILLER, MICHAEL E) <i>Motion to Quash, Response in Alternative postpone mediation</i>	
02/17/2012	MOTION - ENFORCE (9:10 AM) (Judicial Officer: MILLER, MICHAEL E) <i>the Mediation Order</i>	
03/05/2012	ORDER - MISCELLANEOUS -ORDER-ORDER ON THE MOTION TO ALLOW, WITHIN 24 DAYS OF HEARING, SERVICE AND FILING OF STEPHEN HOPPER'S AND LAURA WASSMER'S FIRST AND SECOND AMENDED MOTIONS FOR PARTIAL SUMMARY JUDGMENT FILED WITH THE COURT ON JANUARY 9 AND 10, 2012, AND AFTER HEARING ARGUMENTS OF COUNSEL AND REVIEWING THE PLEADINGS AND NOTING THE FILING DATES, THE COURT FINDS THAT THE MOTION IS WELL TAKEN AND SHOULD BE GRANTED.	Vol./Book 21, Page 458, 2 pages
03/05/2012	RULE 11 AGREEMENT	Vol./Book 34, Page 450, 3 pages
03/14/2012	 MOTION - NEW TRIAL RECONSIDERATION, CLARIFICATION, AND MODIFICATION.	
03/15/2012	VACATION LETTER	1 pages
03/19/2012	MOTION - PROTECT Party: PLAINTIFF HOPPER, JO N.	
03/20/2012	NOTICE OF HEARING	
03/20/2012	 CORRESPONDENCE - LETTER TO FILE	11 pages 2 pages

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03/23/2012	 LETTER TO COURT	
04/06/2012	 MOTION - COMPEL <i>PLAINTIFF JO N. HOPPER'S MOTION TO COMPEL</i>	
04/10/2012	 MOTION - SEVER Party: DEFENDANT HOPPER, STEPHEN B.; DEFENDANT WASSMER, LAURA S.	
04/10/2012	 CORRESPONDENCE - LETTER TO FILE <i>(MULTIPLE COURT JUDGMENTS)</i>	4 pages
04/11/2012	 RESPONSE <i>JPMORGAN CHASE BANK, N.A.'S RESPONSE TO JO HOPPER'S MOTION TO MODIFY ORDER AND FOR NEW TRIA, AND STEPHEN HOPPER'S AND LAURA WASSMER'S MOTION FOR NEW TRIAL RECONSIDERATION, CLARIFICATION, AND MODIFICATION.</i>	
04/13/2012	MOTION - NEW TRIAL (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) <i>Reconsideration, Clarification & Modification(Mark Enoch motion)</i>	
04/13/2012	MOTION - SEVER (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) <i>Motion to Modify Feb 14th 2012 order in the Alternative Mottion New Trial and Motion Sever (Jim Jennings motion)</i>	
04/13/2012	MOTION - SEVER (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) <i>Stephen Hopper's & Laura Wassmer's Motion Sever</i>	
04/13/2012	 RESPONSE Party: PLAINTIFF HOPPER, JO N. <i>TO JPMORGAN CHASE BANK RESPONSE TO JO HOPPER'S MOTION TO MODIFY ORDER AND FOR NEW TRIAL, AND STEPHEN HOPPER'S AND LAURA WASSMER'S MOTION FOR NEW TRIAL, RECONSIDERATION, CLARIFICATION AND MODIFICATION</i>	
04/18/2012	 MOTION - PROTECT Party: DEFENDANT HOPPER, STEPHEN B.; DEFENDANT WASSMER, LAURA S.	5 pages
04/19/2012	 SUPPLEMENTAL: MOTION <i>PLAINTIFF JO N. HOPPER'S FIRST SUPPLEMENT TO MOTION TO COMPEL</i>	
04/19/2012	 RESPONSE <i>PLAINTIFF JO N. HOPPER'S RESPONSE TO STEPHEN HOPPER'S AND LAURA WASSMER'S MOTION FOR PROTECTION</i>	
04/24/2012	 RESPONSE <i>OF STEPHEN B. HOPPER AND LAURA S. WASSMER TO PLAINIFF'S MOTION AND FIRST SUPPLEMENTAL MOTION TO COMPEL DISCOVERY.</i>	
04/24/2012	 LETTER TO COURT <i>THE GRAHAM LAW FIRM</i>	
04/25/2012	MOTION - COMPEL (11:00 AM) (Judicial Officer: MILLER, MICHAEL E) <i>Planitiff Jo N. Hopper's Motion to Compel (Mr. Jennings)</i>	
04/25/2012	 LETTER TO COURT	2 pages

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JOHN C. EICHMAN



04/25/2012	 ORDER -ORDER DECLARING NULL PRIOR ORDER: ON THIS DAY ON THE COURT'S OWN MOTION, THE COURT REVISITED AND AS A RESULT THEREOF, HEREBY DECLARES NULL AND VOID THE ORDER ENTITLED "ORDER" WHICH WAS SIGNED BY THE COURT ON FEBRUARY 14, 2012
04/26/2012	 LETTER TO COURT
05/03/2012	 VACATION LETTER 5/25/12--6/1/12 (ATTY. JOHN C. EICHMAN)
05/04/2012	MOTION - ENTER ORDER PLAINTIFF JO N. HOPPER'S MOTION TO ENTER SCHEDULING ORDER
05/07/2012	 LETTER TO COURT
05/08/2012	 NOTICE OF HEARING
05/08/2012	 VACATION LETTER 5/10/12 & 5/11/12-5/18/12 & 6/4/12-6/8/12 (MICHAEL L. GRAHAM)
05/08/2012	 MOTION - STAY STEPHEN HOPPER'S AND LAURA WASSMER'S MOTION TO STAY
05/08/2012	 LETTER TO COURT
05/09/2012	 LETTER TO COURT HUNTON WILLIAMS
05/10/2012	 RESPONSE Party: PLAINTIFF HOPPER, JO N. TO STEPHEN HOPPER'S AND LAURA WASSMER'S IMPROPERLY SET AND FILED MOTION TO STAY
05/11/2012	SCHEDULING CONFERENCE (11:30 AM) (Judicial Officer: MILLER, MICHAEL E) Motion to Enter Scheduling Order
05/11/2012	MOTION - STAY DISCOVERY (11:30 AM) (Judicial Officer: MILLER, MICHAEL E)
05/18/2012	 ORDER - SUMMARY JUDGMENT -ORDER ON MOTIONS FOR SUMMARY JUDGMENT
06/08/2012	MOTION Party: PLAINTIFF HOPPER, JO N. AMENDED MOTION TO ENTER SCHEDULING ORDER- PLAINTIFF11
06/15/2012	MOTION - NEW TRIAL MOTION FOR NEW TRIAL, RECONSIDERATION, CLARIFICATION, AND MODIFICATION OF THE MAY 18, 2012 ORDER ON MOTIONS FOR PARTIAL SUMMARY JUDGMENT

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06/18/2012	MOTION - SEVER Party: PLAINTIFF HOPPER, JO N. SUBJECT TO PLAINTIFF JO N. HOPPER'S MOTION TO MODIFY AND RECONSIDER THE COURT'S MAY 18TH ORDER, OR ALTERNATIVELY, MOTION FOR NEW TRIAL
06/18/2012	MOTION PLAINTIFF JO N. HOPPER'S DESIGNATION OF CO-COUNSEL (E-FILE)
06/19/2012	VACATION LETTER (JAMES ALBERT JENNINGS) 6/22/12-6/25/12 AND 8/23/12-9/4/12
06/21/2012	MOTION -FOR PARTITION AND DISTRIBUTION PURSUANT TO TEXAS PROBATE CODE SECTION 149B (E-FILE)
06/22/2012	TRO HEARING (10:00 AM) (Judicial Officer: MILLER, MICHAEL E)
06/22/2012	 MOTION -STEPHEN HOPPER'S AND LAURA WASSMER'S FIRST AMENDED MOTION TO SEVER (E-FILE)
06/22/2012	MOTION - CONTINUANCE PLAINTIFF JO N. HOPPER'S MOTION TO CONTINUE HEARING ON STEPHEN HOPPER'S AND LAURA WASSMER'S MOTION FOR NEW TRIAL, RECONSIDERATION, CLARIFICATION, AND MODIFICATION OF THE MAY 18, 2012 ORDER ON MOTION FOR SUMMARY JUDGMENT, AND THEIR MOTION TO SERVE,
06/22/2012	RESPONSE TO PLAINTIFF'S MOTION FOR CONTINUANCE OF JUNE 27, 2012 HEARING (E-FILE)
06/25/2012	MISC. EVENT STEPHEN HOPPER'S AND LAURA WASSMER'S FIRST AMENDED CROSS CLAIM (E- FILE)-DATED-JUNE 22, 2012
06/27/2012	SCHEDULING CONFERENCE (11:30 AM) (Judicial Officer: MILLER, MICHAEL E) <i>Plntfs Partially opposed Amended Motion Enter Scheduling Ord.</i>
06/27/2012	MOTION - SEVER (11:30 AM) (Judicial Officer: MILLER, MICHAEL E) <i>& Motion To Stay Two Different Motions</i>
06/27/2012	MOTION - NEW TRIAL (11:30 AM) (Judicial Officer: MILLER, MICHAEL E) <i>& Motion Reconsideration 1 document. (Mark Enoch Motion)</i>
06/27/2012	 ORDER - SCHEDULING -LEVEL 3 SCHEDULING ORDER
07/30/2012	MOTION - HEARING (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) <i>Application for Partition and Distribution</i>
08/02/2012	NOTICE - HEARING / FIAT
08/02/2012	MISC. EVENT STEPHEN HOOPER'S AND LAURA WASSMER'S MOTION TO ORDER PLAINTIFF TO ALLOW THE HEIRS TO INSURE THEIR CURRENT YET DEISPUTED UNDIVED INTEREST IN ROBLEDO AND TO PROHIBIT INTERFERENCE OF PLAINTIFF WITH THE HEIR'S ATTEMPTS TO OBTAIN PROPERTY AND LIABILITY INSURANCE
08/02/2012	RESPONSE EC057J017006389- JP MORGAN CHASE BANK, N.A.'S RESPONSE TO MOTION FOR

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NEW TRIAL, MOTION TO SERVE, MOTION TO STAY, AND MOTION FOR PARTITION
AND DISTRIBUTION. (E-FILED)














08/03/2012	 MISC. EVENT PLAINTIFF JO N. HOPPER'S OPPOSITION TO : STEPHEN HOPPER'S AND LAURA WASSMER'S MOTION TO ORDER PLAINTIFF TO ALLOW THE HEIRS TO INSURE THEIR CURRENT YET DISPUTED UNDIVIDED INTEREST IN ROBLEOD AND PROHIBIT INTERFERENCE OF PLAINTIFF WITH THE HEIRS' ATTEMPTS TO OBTAIN PROPERTY AND LIABILITY INSURANCE
08/03/2012	 MISC. EVENT PLAINTIFF JO N. HOPPER'S BRIEF IN OPPOSITION TO ORDER'S POINTS NOS. SIX ("6") AND SEVEN("7")
08/03/2012	 MISC. EVENT PLAINTIFF JO N. HOPPER'S BRIEF IN OPPOSITION TO ORDER'S POINT NO. "2"
08/03/2012	MISC. EVENT PLAINTIFF JO N. HOPPER'S OPPOSITION TO MOTION FOR PARTITION AND DISTRIBUTION PURSUANT TO TEXAS PROBATE CODE SECTION 149B
08/06/2012	MOTION - NEW TRIAL (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) & Motion to Sever
08/06/2012	MOTION - SEVER (1:30 PM) (Judicial Officer: MILLER, MICHAEL E)
08/06/2012	MOTION - NEW TRIAL (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) Plaintiffs Motion to Modify New Trial & Motion to Sever
08/06/2012	MOTION - HEARING (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) Motion To Stay
08/06/2012	MOTION - HEARING (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) Motion Stay (Graham)
08/06/2012	APPLICATION TO EXTEND TIME TO FILE (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) to file 149A (Demand Accounting)
08/06/2012	MOTION - HEARING (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) Application for Partition and Distribution filed 6-21-12
08/06/2012	MOTION - HEARING (1:30 PM) (Judicial Officer: MILLER, MICHAEL E) Motion to order Plnif to allow Heirs to Insure theier current Yet Disputed undiveded interest- --etc.....,filed 8-2-12 by Mark Enoch office
08/07/2012	 LETTER TO COURT
08/08/2012	 LETTER TO COURT
08/13/2012	 LETTER TO COURT
08/15/2012	 NOTICE - APPEAL (E-FILE)
08/15/2012	 ORDER -SECOND REVISED ORDER ON MOTINS FOR SUMMARY JUDGMENT

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08/15/2012	 ORDER -ORDER TO SERVER	Vol./Book 52, Page 733, 1 pages
08/15/2012	 ORDER -ORDER ON WRITTEN AND ORAL MOTIONS	Vol./Book 52, Page 739, 3 pages
08/15/2012	 ORDER -ORDER ON WRITTEN AND ORAL MOTIONS	Vol./Book 54, Page 764, 3 pages
08/15/2012	 ORDER -SECOND REVISED ORDER ON MOTIONS FOR SUMMARY JUDGMENT	Vol./Book 54, Page 767, 2 pages
08/16/2012	 CORRESPONDENCE - LETTER TO FILE	
08/30/2012	 MOTION PLAINTIFF'S AND DEFENDANT CHILDREN'S JOINT MOTION TO STAY	
08/30/2012	 CORRESPONDENCE - LETTER TO FILE THERE WAS NO JUDGE THAT SIGN OFF ON THIS ORDER - ORDER RE: PLAINTIFF'S AND DEFENDANT CHILDREN'S (UNOPPOSED) JOINT MOTION TO STAY	
08/30/2012	 MOTION PLAINTIFF AND DEFENDANT CHILDREN'S JOINT MOTION TO STAY	
09/10/2012	 NOTICE - APPEAL PLAINTIFF JO N. HOPPER'S NOTICE OF NOTICE	
09/10/2012	 NOTICE - APPEAL	
09/12/2012	 MOTION - ENTER ORDER PLAINTIFF JO N. HOPER'S MOTION TO ENTER NEW ORDER OF SEVERANCE.	
09/18/2012	 MISC. EVENT JPMORGAN CHASE BANK, N.A.'S REQUEST FOR ADDITIONAL ITEMS TO BE INCLUDED IN REPORTER'S RECORD (E-FILE)	3 pages
09/21/2012	 NOTICE OF INDEPENDENT ADMINISTRATOR'S COMPLIANCE WITH THE COURT'S AUGUST 15, 2012 ORDER	
09/27/2012	 LETTER TO COURT	
09/28/2012	CANCELED MOTION - HEARING (2:15 PM) (Judicial Officer: MILLER, MICHAEL E) REQUESTED BY ATTORNEY/PRO SE	
10/03/2012	 LETTER TO COURT	
10/05/2012	 LETTER TO COURT	

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10/08/2012	 CLERKS RECORDS
10/11/2012	 CLERKS RECORDS CORRESPONDENCE LETTERS (ADDITIONS)
10/12/2012	 LETTER TO COURT
10/17/2012	CLERKS RECORDS 2nd. SUPPLEMENTAL FILED BY- MICHAEL A. YANOF (THOMPSON COE ATTORNEYS AND COUNSELORS)
10/17/2012	 ORDER - CONSOLIDATE -CONSOLATED ORDER RE: MOTIONS TO SEVER AND ASSIGNING NEW CAUSE NUMBER
10/17/2012	 CORRESPONDENCE - LETTER TO FILE
10/19/2012	CANCELED MOTION - HEARING (2:00 PM) (Judicial Officer: MILLER, MICHAEL E) REQUESTED BY ATTORNEY/PRO SE
10/25/2012	 MISC. EVENT DESIGNATION OF TRANSCRIPTS.
10/31/2012	 MOTION STEPHEN HOPPER'S AND LAURA WASSMER'S UNOPPOSED MOTION FOR SUBSTITUTION OF COUNSEL.
11/01/2012	 CORRESPONDENCE - LETTER TO FILE LETTER TO JUDGE MILLER (E-FILE)
11/02/2012	MOTION - HEARING (3:00 PM) (Judicial Officer: MILLER, MICHAEL E) Plaintiffs and Children Joint Motions to stay filed 8-30-12
11/02/2012	 MOTION - EMERGENCY EMERGENCY MOTION TO ENFORCE RULE 11 AGREEMENT AND FOR SANCATIONS
11/02/2012	 ORDER -ORDER GRANTING STEPHEN HOPPER'S AND LAURA WASSMER'S UNOPPOSED MOTION FOR SUBSTITUTION OF COUNSEL-CHRISTOPHER M. MCNEILL AND STEVEN R. BLOCK ARE HEREBY SUBSTITUTED AS COUNSEL OF RECORD FOR STEPHEN HOPPER AND LAURA WASSMER
11/02/2012	 MISC. EVENT NOTICE OF APPEAL AND CLERKS RECORD TRANSFERRED TO THE EIGHT COURT OF APPEALS IN EL PASO, TX. : DENISE PACHECO, CLERK EIGHT COURT OF APPEALS, 500 EAST SAN ANTONIO, SUITE 1203 EL PASO, TEXAS 79901-2421 PHONE # (915) 546-2240
11/02/2012	 CORRESPONDENCE - LETTER TO FILE
11/06/2012	 LETTER TO COURT LETTER BRIEF, AND, SUBMISSION OF WRITTEN ORDER TO VACATE SCHEDULING ORDER

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DOCKET SHEET
CASE NO. PR-11-03238-1

11/07/2012	 LETTER TO COURT FROM JOHN C.EICHMAN
11/07/2012	 LETTER TO COURT RESPONSE TO MR. EICHMAN LETTER OF NOVEMBER 7TH
11/07/2012	 LETTER TO COURT RESPONSE TO MR. JENNINGS' and MR. EICHMAN'S -LETTER
11/08/2012	 LETTER TO COURT RESPONSE TO MR. MCNEILL'S E-FILED LETTER NOVEMBER 7TH
11/09/2012	 ORDER VACATING THE LEVEL 3 SCHEDULING ORDER DATED JUNE 27, 2012
11/13/2012	 ORDER PLAINTIFF'S AND DEFENDANT CHILDREN'S (UNOPPOSED) JOINT MOTION TO STAY
11/13/2012	 ORDER FIFTH COURT OF APPEALS- (DENIED)
11/16/2012	 MISC. EVENT COURT OF APPEALS EIGHT DISTRICT OF TEXAS
11/26/2012	 CLERKS RECORDS SUPPLEMENTAL- TRANSFERRED TO THE EIGHT COURT OF APPEALS IN EL PASO
12/28/2012	 CORRESPONDENCE - LETTER TO FILE
01/16/2013	 VACATION LETTER TOM CANTRILL, ATTY
07/19/2013	 LETTER TO COURT -FROM HUNTON AND WILLIAMS (JOHN C. EICHMAN(A DISK IS INCLUDED IN ENVELOPE)
12/03/2014	 OPINION JUDGMENT- COURT OF APPEALS EIGHT DISTRICT OF TEXAS- EL PASO
12/10/2014	 OPINION -JUDGMENT ON OPINION FROM COURT OF APPEALS EIGHT DISTRICT OF TEXAS- EL PASO, TEXAS (COPY)
09/10/2015	 MOTION - SUBSTITUTION OF COUNSEL WITH PROPOSED ORDER ATTACHED
09/10/2015	 MISC. EVENT AMENDED CERTIFICATE OF SERVICE
09/14/2015	 CORRESPONDENCE - LETTER TO FILE PAYMENT FOR PROPOSED ORDER TO SUB COUNSEL

















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DOCKET SHEET
CASE NO. PR-11-03238-1

09/21/2015	 ORDER -ORDER ON PLAINTIFFS UNOPPOSED MOTION FOR SUBSTITUTION OF COUNSEL
10/27/2015	 NOTICE OF HEARING
10/29/2015	 NOTICE - APPEARANCE - ANTHONY L. VITULLO
11/11/2015	 NOTICE OF HEARING AMENDED NOTICE OF HEARING
11/17/2015	CANCELED CONFERENCE (2:30 PM) (Judicial Officer: JOHNSON, MARGARET JONES) REQUESTED BY ATTORNEY/PRO SE
11/18/2015	 MOTION - CONSOLIDATE MOTION FOR CONSOLIDATION AND LIFT STAY
11/19/2015	 NOTICE OF HEARING
11/25/2015	 MOTION PLAINTIFF'S MOTION TO DETERMINE LENGTH OF DEPOSITION
11/30/2015	 NOTICE OF HEARING
11/30/2015	 MOTION AMENDED MOTION TO LIFT STAY
11/30/2015	 NOTICE OF HEARING
12/02/2015	 NOTICE - APPEARANCE - JAMES S. BELL
12/04/2015	 RESPONSE JPMORGAN CHASE BANK N.A.'S RESPONSE TO N. HOPPER'S MOTION TO DETERMINE LENGTH OF DEPOSITIONS
12/07/2015	 AMENDED PETITION PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION FOR: DECLARATORY JUDGMENT, BREACH OF CONTRACT, BREACH OF FIDUCIARY DUTY, FRAUD, ET. AL, AND JURY DEMAND
12/08/2015	SCHEDULING CONFERENCE (2:30 PM) (Judicial Officer: JOHNSON, MARGARET JONES) Events: 11/25/2015 MOTION 11/30/2015 MOTION & MOTION TO LIFT STAY & MOTION TO DETERMINE LENGTH OF DEPOSITION
12/16/2015	 CORRESPONDENCE - LETTER TO FILE
12/16/2015	 CORRESPONDENCE - LETTER TO FILE LETTER TO HONORABLE MARGARET JONES-JOHNSON
01/04/2016	













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	 ORDER -ORDER OF RECUSAL AND REFERRAL FOR ASSIGNMENT-IT IS FURTHERED ORDERED ADJUDGED AND DECREED THAT ALL MATTERS IN THIS CAUSE BY REFERRED TO THE HONORABLE GUY HERMAN, PRESIDING JUDGE, STATUTORY PROBATE COURTS OF THE STATE OF TEXAS ETC.
01/04/2016	 APPLICATION APPLICATION FOR DISTRIBUTION OF PROPERTY AND MOTION FOR PROTECTIVE ORDER
01/05/2016	 ISSUE CITATION Party: DEFENDANT QUAGMIRE, LLC ISSUED ON 1/5/16
01/05/2016	ISSUE CITATION QUAGMIRE, LLC Served: 01/11/2016 RTN:2/29/2016
01/08/2016	 RULE 11 AGREEMENT
01/11/2016	 AMENDED ANSWER DEFENDANT JPMORGAN CHASE BANK, N.A.???S FIRST AMENDED ANSWER TO STEPHEN HOPPER???S AND LAURA WASSMER???S FIRST AMENDED CROSS CLAIM
01/11/2016	 AMENDED ANSWER DEFENDANT JPMORGAN CHASE BANK, N.A.???S SECOND AMENDED ANSWER, SPECIAL EXCEPTIONS, COUNTERCLAIM AND CROSS-CLAIM IN RESPONSE TO JO N. HOPPER???S SECOND AMENDED ORIGINAL PETITION
01/12/2016	 ORDER -MINUTE ORDER 2016-003-IT IS THEREFORE ORDERED THAT THE DALLAS COUNTY CLERK RANDOMLY REASSIGN THE ABOVE REFERENCED CASE TO A JUDGE OF ONE OF THE STATUTORY PROBATE COURTS LOCATED IN THE COUNTY, OTHER THAN THE JUDGE OF DALLAS COUNTY PROBATE COURT NO. 3 (ORDER FROM PRESIDING STATUTORY PROBATE JUDGE OF THE STATE OF TEXAS-JUDGE GUY S. HERMAN
01/12/2016	 ORDER AMENDED MINUTE ORDER 2016-001-IT IS THEREFORE ORDERED THE APPOINTMENT OF THE HONORABLE JOE LOVING, A SENIOR STATUTORY PROBATE JUDGE ON JANUARY 6, 2016 IS SET ASIDE AND THAT THE ABOVE MATTERS ARE RANDOMLY REASSIGNED TO A JUDGE OF ONE OF THE OTHER STATUORY PROBATE COURTS LOCATED IN THE COUNTY, ETC. (THIS ORDER IS FROM JUDGE GUY S. HERMAN
01/21/2016	 CORRESPONDENCE - LETTER TO FILE FROM JUDGE GUY S. HERMAN-PRESIDING STATUTORY PROBATE JUDGE
01/21/2016	 CORRESPONDENCE - LETTER TO FILE FROM JUDGE GUY S. HERMAN, PRESIDING STATUTORY PROBATE JUDGE
01/21/2016	 NOTICE OF HEARING ON APPLICATION FOR DISTRIBUTION OF PROPERTY AND MOTION FOR PROTECTIVE ORDER
















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01/26/2016	 NOTICE - HEARING / FIAT
01/26/2016	 AMENDED CROSS CLAIM - AMENDED COUNTER PETITION <i>STEVEN HOOPER'S AND LAURA WASSMER'S SECOND AMENDED CROSS CLAIM</i>
01/27/2016	 MOTION - COMPEL <i>PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO REQUESTS FOR PRODUCTION SERVED ON JPMORGAN CHASE BANK, N.A.</i>
01/27/2016	 NOTICE OF HEARING <i>AMENDED NOTICE OF HEARING</i>
01/27/2016	 OBJECTION <i>JPMORGAN CHASE BANK, N.A. S OBJECTIONS TO JO HOPPER S NOTICE OF INTENT TO TAKE DEPOSITION OF CORPORATE REPRESENTATIVE AND MOTION FOR PROTECTIVE ORDER</i>
01/28/2016	 NOTICE OF HEARING
01/28/2016	 MOTION - DISMISS <i>DEFENDANT LAURA S. WASSMER S MOTION TO DISMISS</i>
01/28/2016	 MOTION - DISMISS <i>DEFENDANT STEPHEN B. HOOPER'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED PETITION PURSUANT TO CHAPTER 27 OF THE TEXAS CIVIL PRACITCE AND REMEDIES CODE</i>
01/29/2016	 MISC. EVENT <i>LAURA S. WASSMER AND STEPHEN B. HOPPER S JOINDER TO PLAINTIFF S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO REQUEST FOR PRODUCTION SERVED ON JP MORGAN CHASE BANK, N.A.</i>
02/01/2016	 NOTICE OF HEARING
02/02/2016	 MOTION <i>PLAINTIFF'S MOTION FOR RESETTNG OF HEARING ON MOTION TO DISMISS</i>
02/03/2016	 VACATION LETTER
02/03/2016	 NOTICE OF HEARING
02/03/2016	 RESPONSE <i>DEFENDANT LAURA S. WASSMER'S AND STEPHEN B. HOPPER'S RESPONSE TO PLAINTIFF'S MOTION FOR RESETTNG OF HEARING ON MOTIONS TO DISMISS</i>
02/03/2016	 RESPONSE <i>DEFENDANT LAURA S. WASSMER'S AND STEPHEN B. HOPPER'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL</i>
02/03/2016	 RESPONSE <i>DEFENDANT LAURA S. WASSMER'S AND STEPHEN B. HOPPER'S RESPONSE TO PLAINTIFF'S MOTION TO DETERMINE LENGTH OF DEPOSITIONS</i>















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02/05/2016	 APPLICATION -AMENDED <i>FIRST AMENDED APPLICATION FOR DISTRIBUTION OF PROPERTY AND MOTION FOR PROTECTIVE ORDER</i>
02/05/2016	 RESPONSE <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSE TO DEFENDANTS AFFIDAVIT IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER</i>
02/08/2016	 MOTION <i>Party: DEFENDANT JP MORGAN CHASE, N.A. DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION TO EXTEND TIME TO SERVE AFFIDAVIT IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL OR TO CONTINUE HEARING AND MOTION TO SHORTEN TIME FOR NOTICE OF HEARING</i>
02/08/2016	 RESPONSE <i>Party: DEFENDANT JP MORGAN CHASE, N.A. DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO REQUEST FOR PRODUCTION</i>
02/10/2016	CONFERENCE (2:00 PM) (Judicial Officer: THOMPSON, BRENDA H)
02/10/2016	 RESPONSE <i>DEFENDANT LAURA S. WASSMER S AND STEPHEN B. HOPPER S SUPPLEMENTED RESPONSE TO PLAINTIFF S MOTION FOR RESETING OF HEARING ON MOTIONS TO DISMISS</i>
02/10/2016	 ORIGINAL ANSWER - GENERAL DENIAL <i>DEFENDANTS LAURA S. WASSMER'S AND STEPHEN B. HOPPER'S GENERAL DENIAL TO PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION</i>
02/16/2016	 RULE 11 AGREEMENT
02/17/2016	 MOTION <i>MOTION FOR SUBSTITUED SERVICE</i>
02/23/2016	 MOTION - QUASH <i>JPMORGAN CHASE BANK, N.A.'S MOTION TO QUASH DEPOSITION, OBJECTIONS TO JO HOPPER'S NOTICE OF INTENT TO TAKE DEPOSITION OF CORPORATE REPRESENTATIVE, AND MOTION FOR PROTECTIVE ORDER</i>
02/25/2016	 MOTION - QUASH <i>DEFENDANTS MOTION TO QUASH NOTICE OF INTENT TO TAKE THE ORAL AND VIDEOTAPED DEPOSITION OF GARY STOLBACH AND MOTION FOR PROTECTIVE ORDER</i>
02/25/2016	 CORRESPONDENCE - LETTER TO FILE <i>REGARDING NOTICE OF HEARING - 04/04/2016 AT 3:00 P.M. - JPMC'S MOTION TO QUASH DEPOSITION, OBJECTIONS TO JO HOPPER'S NOTICE OF INTENT TO TAKE DEPOSITION OF CORPORATE REPRESENTATIVE, AND MOTION FOR PROTECTIVE ORDER</i>
02/26/2016	 NOTICE OF INTENT TO TAKE DEPOSITION <i>NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF GARY STOLBACH</i>

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02/29/2016	 RETURN PERSONAL CITATION Party: DEFENDANT QUAGMIRE, LLC
03/01/2016	 MOTION PLAINTIFF JO N. HOPPER AND DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR ENTRY OF AMENDED SCHEDULING ORDER
03/03/2016	 RETURN OF SERVICE RETURN OF SERVICE - ACCEPTANCE OF SERVICE OF NON-PARTY GARY STOLBACH DEPOSITION SUBPOENA
03/04/2016	 NOTICE OF HEARING
03/09/2016	 VACATION LETTER - ALAN S. LOEWINSOHN
03/10/2016	 MOTION - COMPEL PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO FIRST AND SECOND REQUESTS FOR PRODUCTION SERVED ON STEPHEN B. HOPPER AND LAURA S. WASSMER
03/14/2016	 NOTICE OF HEARING - MARCH 25, 2016 @ 9:30AM
03/15/2016	 MOTION - DEFAULT JUDGMENT PLAINTIFF S MOTION FOR INTERLOCUTORY DEFAULT JUDGMENT
03/16/2016	 ORIGINAL ANSWER - GENERAL DENIAL
03/16/2016	 SUBPOENA SUBPOENA DUCES TECUM (W/O EXHIBIT 1) - LOCKE LORD LLP - MEMORANDUM OF ACCEPTANCE SIGNED MARCH 16, 2016
03/18/2016	 RESPONSE REPLY TO DEFENDANTS' RESPONSE TO FIRST AMENDED APPLICATION FOR DISTRIBUTION OF PROPERTY AND MOTION FOR PROTECTIVE ORDER
03/21/2016	 VACATION LETTER
03/22/2016	 RESPONSE PLAINTIFF'S RESPONSE TO STEPHEN B. HOPPER AND LAURA S. WASSMER'S APPLICATION FOR DISTRIBUTION OF PROPERTY AND MOTION FOR PROTECTIVE ORDER
03/22/2016	 RESPONSE DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSE TO DEFENDANTS' FIRST AMENDED APPLICATION FOR DISTRIBUTION OF PROPERTY AND MOTION FOR PROTECTIVE ORDER
03/22/2016	 MISC. EVENT DEFENDANTS LAURA WASSMER, STEPHEN HOPPER, AND QUAGMIRE, LLC'S PRIVILEGE LOG

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03/22/2016	 CORRESPONDENCE - LETTER TO FILE
03/22/2016	 RESPONSE <i>DEFENDANTS STEPHEN B. HOPPER AND LAURA S. WASSMER'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO FIRST AND SECOND REQUESTS FOR PRODUCTION SERVED ON STEPHEN B. HOPPER AND LAURA S. WASSMER</i>
03/24/2016	 CORRESPONDENCE - LETTER TO FILE <i>LETTER TO THE JUDGE</i>
03/25/2016	SPECIAL SETTINGS (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>(2) Motions to Dismiss- F 1/28/16; Application for Distribution of Property and Motion for Protective Order- F 1/4/2016; (2) Motions to Compel- F 4/6/12 & 3/10/16; Plaintiff's Motion to Determine Length of Deposition- F 11/25/15; Plaintiff's Amended Motion to Lift Stay- F 11/30/15</i>
03/25/2016	 ORDER <i>-ORDER ON DEFENDANTS STEPHEN B. HOPPER AND LAURA S. WASSMER'S FIRST AMENDED APPLICATION FOR DISTRIBUTION OF PROPERTY AND MOTION FOR PROTECTIVE ORDER ETC.</i>
03/25/2016	 ORDER <i>-ORDER ON MOTION TO LIFT STAY</i>
03/28/2016	 NOTICE OF HEARING <i>-AMENDED NOTICE - APRIL 4, 2016 @ 3:00PM</i>
03/29/2016	 CORRESPONDENCE - LETTER TO FILE
03/29/2016	 ORDER - SCHEDULING <i>AMENDED SCHEDULING ORDER</i>
04/01/2016	 NOTICE OF HEARING <i>SECOND AMENDED NOTICE OF HEARING</i>
04/01/2016	 CORRESPONDENCE - LETTER TO FILE
04/04/2016	CANCELED MOTION - QUASH (3:00 PM) (Judicial Officer: THOMPSON, BRENDA H) <i>REQUESTED BY ATTORNEY/PRO SE F 2/23/16</i>
04/04/2016	 NOTICE OF INTENT TO TAKE DEPOSITION <i>W/SUBPOENA</i>
04/04/2016	 MOTION - LEAVE <i>DEFENDANTS STEPHEN B. HOPPER AND LAURA S. WASSMER'S MOTION FOR LEAVE TO AMEND PETITION</i>
04/06/2016	 MOTION <i>SECOND AMENDED MOTION</i>
04/07/2016	 NOTICE OF HEARING

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
- APRIL 18, 2016 @ 3:00PM

04/08/2016	 MOTION - MODIFY DEFENDANTS STEPHEN B. HOPPER AND LAURA S. WASSMER'S MOTION TO MODIFY CERTAIN PRETRIAL DEADLINES
04/13/2016	 OBJECTION PLAINTIFF'S OBJECTION TO STEPHEN B. HOPPER AND LAURA S. WASSMER'S AMENDED MOTION FOR LEAVE TO AMEND PETITION
04/13/2016	 MOTION DEFENDANTS STEPHEN B. HOPPER AND LAURA S. WASSMER'S SECOND AMENDED MOTION FOR LEAVE TO AMEND PETITION
04/18/2016	CANCELED MOTION - DISMISS (3:00 PM) (Judicial Officer: THOMPSON, BRENDA H) REQUESTED BY ATTORNEY/PRO SE (2)- F 1/28/2016
04/18/2016	MOTION - COMPEL (3:00 PM) (Judicial Officer: PEYTON, JOHN B) F 4/6/12
04/19/2016	 VACATION LETTER - ALAN S. LOEWINSOHN
04/20/2016	 NOTICE OF HEARING
04/21/2016	 MOTION - COMPEL PLAINTIFF'S MOTION TO COMPEL ADDITIONAL DEPOSITION OF A CORPORATE REPRESENTATIVE OF JPMORGAN CHASE BANK, N.A.
04/22/2016	 ORDER - COMPEL ORDER GRANTING PLAINTIFF JOHN HOPPER'S MOTION TO COMPEL
04/25/2016	 NOTICE OF INTENT TO TAKE DEPOSITION CROSS-NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF CELIA DORIS KING
04/27/2016	 RESPONSE DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSE TO DEFENDANTS STEPHEN HOPPER AND LAURA WASSMER'S MOTION TO MODIFY CERTAIN PRE- TRIAL DEADLINES
05/02/2016	MOTION - HEARING (3:00 PM) (Judicial Officer: THOMPSON, BRENDA H) Defendants Stephen B. Hopper and Laura S. Wassmer's Motion to Modify Certain Pre-Trial Deadlines- F 4/8/16
05/03/2016	 MISC. EVENT DEFENDANTS/CROSS- CLAIMANTS STEPHEN H. HOPPER AND LAURA S. WASSMER'S REQUEST DE NOVO HEARING
05/06/2016	 NOTICE OF HEARING
05/09/2016	 NOTICE OF INTENT TO TAKE DEPOSITION AMENDED NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF GARY STOLBACH
05/09/2016	















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	 NOTICE OF INTENT TO TAKE DEPOSITION <i>AMENDED CROSS-NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF CELIA DORIS KING</i>
05/12/2016	 CORRESPONDENCE - LETTER TO FILE <i>W/PROPOSED AGREED ORDER APPOINTING MEDIATOR</i>
05/12/2016	 ORDER <i>-AGREED ORDER APPOINTING MEDIATOR</i>
05/16/2016	 NOTICE OF HEARING <i>AMENDED NOTICE OF HEARING</i>
05/23/2016	 MOTION - COMPEL <i>PLAINTIFF'S MOTION TO COMPEL ADDITIONAL DEPOSITION OF SUSAN NOVAK AND FOR COSTS</i>
05/25/2016	 CERTIFICATE - DEPOSITION <i>ORAL & VIDEOTAPED DEPOSITION - ALAN S. LOEWINSOHN \$2,338.70</i>
05/25/2016	 CERTIFICATE - DEPOSITION <i>ORAL & VIDEOTAPED DEPOSITION- ALAN S. LOEWINSOHN- \$777.60</i>
05/25/2016	 CERTIFICATE - DEPOSITION <i>STEPHEN B. HOPPER -\$973.75</i>
05/25/2016	 CERTIFICATE - DEPOSITION <i>REPORTER'S CERTIFICATE OF STEPHEN B. HOPPER - \$2395.90</i>
05/25/2016	 CERTIFICATE - DEPOSITION <i>LAURA WASSMER-VOL 1</i>
05/25/2016	 CERTIFICATE - DEPOSITION <i>LAURA WASSMER-VOLUME 2</i>
05/27/2016	 NOTICE OF HEARING
05/31/2016	 AMENDED ANSWER <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S SUPPLEMENT TO ITS SECOND AMENDED ANSWER TO JO N. HOPPER'S SECOND AMENDED PETITION</i>
05/31/2016	 AMENDED ANSWER <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S SUPPLEMENT TO ITS FIRST AMENDED ANSWER TO HEIRS' FIRST AMENDED CROSS CLAIM</i>
05/31/2016	 APPLICATION -AMENDED <i>STEVEN HOPPER'S AND LAURA WASSMER'S THIRD AMENDED CROSS CLAIM AND COUNTER CLAIM</i>
05/31/2016	 ORIGINAL ANSWER <i>STEVEN HOPPER'S AND LAURA WASSMER'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES</i>

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06/07/2016	 MOTION - COMPEL <i>DEFENDANTS STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S MOTION TO COMPEL CONTINUATION OF THE DEPOSITION OF TOM CANTRILL</i>
06/09/2016	 RESPONSE <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL ADDITIONAL DEPOSITION OF SUSAN NOVAK AND FOR COSTS</i>
06/14/2016	 NOTICE <i>NON-PARTY NOTICE OF INTENT TO ISSUE SUBPOENA FOR PRODUCTION OF DOCUMENTS TO MICHAEL L. GRAHAM, P.C.</i>
06/14/2016	 NOTICE <i>NON-PARTY NOTICE OF INTENT TO ISSUE SUBPOENA FOR PRODUCTION OF DOCUMENTS TO BAKER STREET ADVISORS, LLC</i>
06/15/2016	 NOTICE OF HEARING <i>AUGUST 9, 2016</i>
06/15/2016	 NOTICE <i>NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF SARAH WILLIAMSON (NON-PARTY)</i>
06/16/2016	 NOTICE OF HEARING
06/17/2016	 NOTICE - APPEARANCE
06/20/2016	 CERTIFICATE - DEPOSITION <i>-JO N. HOPPER'S ORAL DEPOSITION VOL 1-\$1522.05</i>
06/20/2016	 CERTIFICATE - DEPOSITION <i>-JO N. HOPPER'S ORAL DEPOSITION VOL 2- \$1175.75</i>
06/20/2016	 MOTION - QUASH <i>MOTION TO QUASH THE ORAL DEPOSITION OF LAURA S. WASSMER</i>
06/20/2016	 MOTION - QUASH <i>MOTION TO QUASH THE ORAL DEPOSITION OF STEPHEN B. HOPPER</i>
06/21/2016	 CERTIFICATE - DEPOSITION <i>-THOMAS H. CANTRILL'S ORAL DEPOSITION-\$2956.90</i>
06/21/2016	 CERTIFICATE - DEPOSITION <i>-SUSAN H. NOVAK'S ORAL DEPOSITION VOL 1-\$2271.55</i>
06/21/2016	 CERTIFICATE - DEPOSITION <i>-SUSAN H. NOVAK'S ORAL DEPOSITION VOL 2-\$1726.40</i>
06/21/2016	 MOTION - COMPEL <i>PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM STYEPHEN B. HOPPER AND LAURA S. WASSMER AND FOR SANCTIONS</i>

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06/21/2016	 MOTION - COMPEL <i>PLAINTIFF'S MOTION TO COMPEL ADDITIONAL DEPOSITION OF STEPHEN B. HOPPER AND LAURA S. WASSMER</i>
06/22/2016	 MOTION <i>JPMORGAN CHASE BANK, N.A.'S MOTION TO QUASH DEPOSITION OF JOHN C. EICHMAN, OBJECTIONS AND MOTION FOR PROTECTIVE ORDER</i>
06/23/2016	 NOTICE OF HEARING
06/24/2016	 CORRESPONDENCE - LETTER TO FILE
06/28/2016	STATUS CONFERENCE (4:30 PM) (Judicial Officer: THOMPSON, BRENDA H)
06/28/2016	 NOTICE OF HEARING <i>HEARING SET AUGUST 1, 2016 AT 3:00PM</i>
06/28/2016	 ORDER - SCHEDULING <i>AGREED SECOND AMENDED SCHEDULING ORDER</i>
07/01/2016	 ORIGINAL ANSWER <i>SECOND AMENDED ANSWER AND AFFIRMATIVE DEFENSES</i>
07/05/2016	 CORRESPONDENCE - LETTER TO FILE <i>W/ PROPOSED ORDER</i>
07/05/2016	 MOTION - SUBSTITUTION OF COUNSEL
07/08/2016	 ORIGINAL ANSWER <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S THIRD AMENDED ANSWER, SPECIAL EXCEPTIONS, COUNTERCLAIM AND CROSS-CLAIM IN RESPONSE TO JO N. HOPPER'S SECOND AMENDED ORIGINAL PETITION</i>
07/08/2016	 ORIGINAL ANSWER <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S ANSWER TO STEPHEN HOPPER'S AND LAURA WASSMER'S THIRD AMENDED CROSS CLAIM</i>
07/11/2016	CANCELED MOTION - COMPEL (1:30 PM) (Judicial Officer: THOMPSON, BRENDA H) <i>REQUESTED BY ATTORNEY/PRO SE Plaintiff's Motion to Compel Additional Deposition of a Corporate Representation of JPMorgan Chase Bank, N.A. - F 4/21/16</i>
07/19/2016	 NOTICE <i>NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF MICHAEL L. GRAHAM (NON-PARTY)</i>
07/19/2016	 ORDER - SUBSTITUTION OF COUNSEL <i>Party: ATTORNEY LOEWINSOHN, ALAN S IT IS, THEREFORE, FURTHER ORDERED THAT THE LAW FIRM OF LOEWINSOHN FLEGLE DEARY LLP ARE PERMITTED TO WITHDRAW AND ARE HEREBY DISCHARGED AS ATTORNEYS OF RECORD FOR PLAINTIFF</i>
07/19/2016	 MOTION - COMPEL <i>-DEFENDANT JPMORGAN CHASE BANK MOTION TO COMPEL THE PRODUCTION</i>

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OF DOCUMENTS

















07/20/2016	 MOTION - PARTIAL SUMMARY JUDGMENT -STEPHEN HOPPERD AND LAURA WASSMER'S MOTION FOR PARTIAL SUMMARY JUDGEMENT
07/20/2016	 MOTION -JPMORGAN CHASE BANK, N.A.'S MOTION FOR LEAVE TO DESIGNATE RESPONSIBLE THIRD PARTIES
07/21/2016	 OBJECTION NON-PARTY J.P. MORGAN SECURITIES, LLC???S OBJECTIONS TO SUBPOENA AND MOTION FOR PROTECTIVE ORDER
07/21/2016	 MOTION DEFENDANT JPMORGAN CHASE BANK, N.A.'???S JOINDER IN NON-PARTY J.P. MORGAN SECURITIES, LLC???S MOTION FOR PROTECTIVE ORDER
07/22/2016	 MOTION - PARTIAL SUMMARY JUDGMENT DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING ATTORNEYS' FEES AS DAMAGES
07/25/2016	 MOTION - PARTIAL SUMMARY JUDGMENT DEFENDANT JPMORGAN CHASE BANK'S TRADITIONAL AND NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING JO HOPPER'S MENTAL ANGUISH DAMAGES
07/27/2016	 NOTICE OF HEARING 2016-08-09 HEARING NOTICE FOR JPMC'S MOTION FOR LEAVE TO DESIGNATE RESPONSIBLE THIRD PARTIES AND JPMC'S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS
07/27/2016	 NOTICE OF HEARING SEPTEMBER 14, 2016 @ 2:00 P.M.
07/28/2016	 MOTION PLAINTIFF'S MOTION FOR LEAVE TO SERVE PLAINTIFF'S FOURTH SET OF INTERROGATORIES TO DEFENDANT STEPHEN B. HOPPER AND LAURA S. WASSMER
08/01/2016	MOTION - COMPEL (3:00 PM) (Judicial Officer: THOMPSON, BRENDA H) Plaintiff Jo N. Hopper's Motion to Compel Production of Documents from Stephen B. Hopper and Laura S. Wassmer and for Sanctions- F 6/21/16
08/01/2016	 NOTICE OF HEARING
08/02/2016	 RESPONSE PLAINTIFF'S RESPONSE TO DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS
08/03/2016	 MOTION - COMPEL RESPONSE TO DEFENDANT JPMORGAN CHASE MOTION TO COMPEL RESPONSE TO REQUEST FOR DISCLOSURE
08/03/2016	 NOTICE OF HEARING HEARING SET SEPTEMBER 14, 2016

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08/03/2016	 OBJECTION <i>STEPHEN HOPPER'S AND LAURA WASSMER'S OBJECTION TO JPMORGAN CHASE BANK, N.A.'S MOTION TO LEAVE TO DESIGNATE RESPONSIBLE THIRD PARTIES</i>
08/04/2016	 CERTIFICATE - DEPOSITION <i>REPORTER'S CERTIFICATION - GARY STOLBACH (AMOUNT \$1255.70)</i>
08/04/2016	 RESPONSE <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSE TO DEFENDANTS STEPHEN HOPPER'S AND LAURA WASSMER'S MOTION TO COMPEL THE CONTINUATION OF THE DEPOSITION OF TOM CANTRILL</i>
08/05/2016	 MOTION - SUMMARY JUDGMENT <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT REGARDING TEMPORARY ADMINISTRATION CLAIMS</i>
08/08/2016	 RESPONSE <i>N.A.'S REPLY TO DEFENDANTS' OBJECTION</i>
08/08/2016	 NOTICE OF HEARING <i>HEARING SET SEPTEMBER 1, 2016 AT 1:30 PM</i>
08/08/2016	 NOTICE OF HEARING <i>HEARING NOTICES FOR SEPTEMBER 1, 2016 (3-5 P.M.) AND SEPTEMBER 14, 2016 (2-4 PM)</i>
08/08/2016	 NOTICE <i>HEARING REMOVE FROM COURT'S DOCKET</i>
08/08/2016	 NOTICE OF HEARING <i>AMENDED NOTICE HEARING</i>
08/09/2016	MOTION - COMPEL (2:00 PM) (Judicial Officer: THOMPSON, BRENDA H) <i>Defendants Stephen B. Hopper's and Laura S. Wassmer's Motion to Compel Continuation of the Deposition of Tom Contrill- F 6/7/16; Defendant JPMorgan Chase Bank, N.A.'s Motion to Compel the Production of Documents- F 7/19/16; JPMorgan Chase Bank, N.A.'s Motion for Leave to Designate Responsible Third Parties- F 7/20/16; Plaintiff's Motion for Leave to Serve Plaintiff's Fourth Set of Interrogatories to Defendants Stephen B. Hopper and Laura S. Wassmers- F 7/28/16 (only if time allows)</i>
08/09/2016	 NOTICE OF HEARING <i>HEARING RE-SET SEPTEMBER 1, 2016 AT 3:00 P.M.</i>
08/12/2016	 NOTICE OF HEARING <i>JPMORGAN MULTIPLE HEARING NOTICE FOR 9/14/2016 & 9/26/2016</i>
08/12/2016	 CORRESPONDENCE - LETTER TO FILE
08/12/2016	 MOTION - STRIKE <i>PLAINTIFF'S MOTION TO STRIKE STEVEN HOPPER AND LAURA WESSMER'S SECOND AMENDED ANSWER AND AFFIRMATIVE DEFENSES</i>
08/16/2016	 NOTICE OF HEARING








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-NOTICE OF HEARING ON 9/14/2016 @2PM

08/16/2016	 NOTICE OF HEARING 2016-10-04 JPMORGAN'S AMENDED HEARING NOTICE (MOVING 3 HEARINGS SET FOR 9/26 TO 10/4 PER PLAINTIFF'S REQUEST AND AGREEMENT OF THE PARTIES)
08/18/2016	 NOTICE NOTICE OF INTENT TO ISSUE SUBPOENA FOR PRODUCTION OF DOCUMENTS
08/18/2016	 NOTICE NOTICE OF INTENT TO TAKE DEPOSITION ON WRITTEN QUESTIONS OF CORPORATE REPRESENTATIVE OF GT NEXUS, INC.
08/24/2016	 CERTIFICATE - DEPOSITION TODD A. BAIRD-\$1801.00
08/24/2016	 CERTIFICATE - DEPOSITION JOHN K. ROUND-\$1431.10
08/24/2016	 CERTIFICATE - DEPOSITION KAL GRANT-\$1882.60
08/24/2016	 MOTION - PARTIAL SUMMARY JUDGMENT
08/25/2016	 NOTICE NOTICE OF FILING OF SUBSTITUTE EXHIBIT 9 TO JPMORGAN CHASE BANK, N.A.'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING TEMPORARY ADMINISTRATION CLAIMS
08/25/2016	 NOTICE OF HEARING
08/26/2016	 MOTION - COMPEL PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND INTERROGATORY RESPONSES FROM STEPHEN B. HOPPER AND LAURA S. WASSMER AND ADDITIONAL DEPOSITION OF GARY STOLBACH
08/29/2016	 NOTICE OF HEARING -NOTICE OF HEARING ON SEPTEMBER 14, 2016 @1:30PM
08/29/2016	 AMENDED ANSWER DEFENDANT JPMORGAN CHASE BANK, N.A.'S FOURTH AMENDED ANSWER, SPECIAL EXCEPTIONS, COUNTERCLAIM AND CROSS-CLAIM IN RESPONSE TO JO N. HOPPER'S SECOND AMENDED ORIGINAL PETITION
08/30/2016	 JURY TRIAL DEMAND
08/30/2016	 NOTICE OF HEARING -NOTICE OF HEARING ON SEPTEMBER 14, 2016 @2PM
08/30/2016	 NOTICE OF HEARING
08/30/2016	 NOTICE OF HEARING HEARING NOTICE UPDATE RE: 9/14/2016 HEARING ON JPMC'S SPECIAL











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EXCEPTIONS (AS FILED 8/29/2016)















09/01/2016	 MOTION - COMPEL DEFENDANTS STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S MOTION TO COMPEL AGAINST PLAINTIFF JO N. HOPPER
09/07/2016	 NOTICE OF HEARING HEARING NOTICE - JPMORGAN'S FIRST AMENDED MOTION FOR SUMMARY JUDGMENT REGARDING TEMPORARY ADMINISTRATION CLAIMS - 10/4/2016 at 9:30 a.m.
09/07/2016	 MOTION - SUMMARY JUDGMENT DEFENDANT JPMORGAN CHASE BANK, N.A.'S FIRST AMENDED MOTION FOR SUMMARY JUDGMENT REGARDING TEMPORARY ADMINISTRATION CLAIMS
09/07/2016	 RESPONSE PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR PARTIAL SUMMARY JUDGMENT
09/07/2016	 RESPONSE DEFENDANTS STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S RESPONSE TO DEFENDANT JPMORGAN CHASE BANK
09/07/2016	 ORIGINAL ANSWER -PLAINTIFF'S RESPONSE IN OPPOSITION TO STEPHEN HOPPER AND LAURA WASSMER'S MOTION FOR PARTIAL SUMMARY JUDGMENT
09/08/2016	 AMENDED PETITION PLAINTIFF'S THIRD AMENDED PETITION FOR: DECLARATORY JUDGMENT, BREACH OF CONTRACT, BREACH OF FIDUCIARY DUTY, FRAUD, ET AL, AND, JURY DEMAND
09/08/2016	 RESPONSE DEFENDANTS' STEPHEN HOPPER AND LAURA WASSMER'S CONTINUATION OF THEIR RESPONSE TO JPMORGAN CHASE BANK, N.A., PART 3 EXHIBITS P; PART 4 THROUGH EXHIBIT Y
09/08/2016	 RESPONSE -Def SH and LW resp to JPMC MSJ on atty fees Part 3
09/08/2016	 CORRESPONDENCE - LETTER TO FILE W/ PART TWO OF PLAINTIFF JO HOPPER'S RESPONSE IN OPPOSITION TO STEPHEN HOPPER AND LAURA WASSMER'S
09/08/2016	 MOTION - SUMMARY JUDGMENT DEFENDANT JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT ON STEPHEN HOPPER AND LAURA WASSMER'S CLAIMS FOR ATTORNEYS' FEES
09/08/2016	 MOTION - SUMMARY JUDGMENT DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING JO HOPPER'S CLAIMS FOR REIMBURSEMENT OF PROPERTY TAXES OR FOR REPAIRS
09/08/2016	 MOTION - SUMMARY JUDGMENT

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DEFENDANT JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE
MOTION FOR SUMMARY JUDGMENT ON MRS. HOPPER'S CLAIM FOR BREACH OF
CONTRACT REGARDING THE DISTRIBUTION OF ROBLEDO

09/08/2016	 RESPONSE -DEFENDANTS' STEPHEN HOPPER AND LAURA WASSMER'S CONTINUATION OF THE RESPONSE TO JPMORGAN CHASE BANK, N.A. PART 2 EXHIBITS E-O
09/09/2016	 RESPONSE DEFENDANT JPMORGAN CHASE BANK
09/12/2016	 MOTION -DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ATTORNEYS FEES INCURRED BY PLAINTIFF MRS. HOPPER REGARDING DECLARATORY JUDGMENTS IN THE SEVERED SUIT
09/12/2016	 RESPONSE RESPONSE TO PLAINTIFF JO HOPPER'S MOTION TO STRIKE THEIR SECOND AMENDED ANSWER AND AFFIRMATIVE DEFENSES
09/12/2016	 MOTION - SUMMARY JUDGMENT DEFENDANT JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE MOTIONS FOR PARTIAL SUMMARY JUDGMENT REGARDING STEPHEN HOPPER'S AND LAURA WASSMER'S CLAIMS FOR FRAUD, FRAUDULENT INDUCEMENT, AND FRAUD BY NONDISCLOSURE
09/12/2016	 MOTION DEFENDANT JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE MOTIONS FOR PARTIAL SUMMARY JUDGMENT REGARDING JO HOPPER'S FRAUD AND DTPA CLAIMS
09/12/2016	 MOTION DEFENDANTS LAURA S. WASSMER AND STEPHEN B. HOPPER'S NO EVIDENCE MOTION FOR SUMMARY JUDGMENT
09/13/2016	 RULE 11 AGREEMENT NOTICE OF RULE 11 AGREEMENT
09/14/2016	SPECIAL SETTINGS (1:30 PM) (Judicial Officer: THOMPSON, BRENDA H) <i>Defendants/Cross-Claimants Stephen H. Hopper and Laura S. Wassmer's Request for De Novo Hearing on Jo Hopper's Motion to Compel- F 5/3/16; Stephen Hopper and Laura Wassmer's Motion for Partial Summary Judgment- F 7/20/16; Defendant JPMorgan Chase Bank, N.A.'s Motion for Partial Summary Judgment Regarding Attorney's Fees as Damages- F 7/22/2016; JPMorgan Chase Bank, N.A.'s Special Exceptions- F 7/8/16; Plaintiff's Motion for Leave to Serve Plaintiff's Fourth Set of Interrogatories to Defendants Stephen B. Hopper and Laura S. Wassmers- F 7/28/16 (only if time allows); Plaintiff's Motion to Strike Steven Hopper and Laura Wassmer's Second Amended Answer and Affirmative Defenses- F 8/12/16 (only if time allows)</i>
09/14/2016	 NOTICE OF HEARING
09/14/2016	 DESIGNATION - EXPERT WITNESS -FIRST AMENDED DESIGNATION
09/15/2016	 NOTICE OF HEARING -FIRST AMENDED NOTICE OF HEARING ON 9/20/16 @9:30

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09/15/2016	 CORRESPONDENCE - LETTER TO FILE <i>-W/ PROPOSED ORDERS GRANTING JPMORGAN'S SPECIAL EXCEPTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING ATTORNEY'S FEES AS DAMAGES</i>
09/15/2016	 CORRESPONDENCE - LETTER TO FILE <i>-W/PROPOSED ORDER</i>
09/16/2016	 NOTICE <i>NOTICE OF HEARING - SEPTEMBER 26, 2016 AT 9:30AM</i>
09/16/2016	 CORRESPONDENCE - LETTER TO FILE
09/16/2016	 MOTION - COMPEL <i>DEFENDANT JPMORGAN CHASE BANK, N.A. S MOTION TO COMPEL THE HEIRS TO ANSWER INTERROGATORIES</i>
09/16/2016	 MOTION - COMPEL <i>DEFENDANT JPMORGAN CHASE BANK, N.A. S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS BY MRS. HOPPER</i>
09/16/2016	 RESPONSE <i>PLAINTIFF'S RESPONSE TO DEFENDANTS</i>
09/16/2016	 NOTICE <i>NOTICE OF FILING OF AMENDED AFFIDAVIT</i>
09/19/2016	 CERTIFICATE - DEPOSITION <i>JPMORGAN CHASE BANK- \$1339.55</i>
09/19/2016	 RESPONSE <i>-RESPONSE TO JPMC'S MOTION TO COMPEL</i>
09/19/2016	 CERTIFICATE - DEPOSITION <i>MICHAEL L. GRAHAM-\$1,474.85</i>
09/20/2016	MOTION - COMPEL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>Defendant JPMorgan Chase Bank, N.A.'s Motion to Compel the Production of Documents- F 7/19/16; Plaintiff's Motion to Compel Production of Documents and Interrogatory Responses from Stephen B. Hopper and Laura S. Wassmer and Additional Deposition of Gary Stolbach- F 8/26/16; Defendants Stephen B. Hopper's and Laura S. Wassmer's Motion to Compel Against Plaintiff Jo N. Hopper- F 9/1/16</i>
09/21/2016	 MOTION <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION TO EXCLUDE TESTIMONY OF JOHN T. COX III, JERRY JONES, AND ANTHONY L VITULLO</i>
09/22/2016	 MISC. EVENT <i>STIPULATION</i>
09/22/2016	 NOTICE OF INTENT TO TAKE DEPOSITION <i>REPORTER'S CERTIFICATION - DEPOSITION ON WRITTEN QUESTIONS OF KEVIN J. TAYLOR</i>

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09/27/2016	 AFFIDAVIT -PLAINTIFF'S RESPONSE IN OPPOSITION TO JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING JO HOPPER'S MENTAL HEALTH ANGUISH DAMAGES
09/27/2016	 AMENDED PETITION PLAINTIFF'S FOURTH AMENDED PETITION
09/27/2016	 RESPONSE PLAINTIFF'S RESPONSE IN OPPOSITION TO JPMORGAN CHASE BANK, N.A.'S FIRST AMENDED MOTION FOR SUMMARY JUDGMENT REGARDING TEMPORARY ADMINISTRATION CLAIMS
09/27/2016	 CORRESPONDENCE - LETTER TO FILE -LETTER TO THE COURT
09/27/2016	 RESPONSE -DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
09/27/2016	 RESPONSE -RESPONSE TO JPMC'S TRADITIONAL AND NO EVIDENCE MSJ ON FRAUD CLAIMS I
09/27/2016	 RESPONSE -RESPONSE TO JPMC'S TRADITIONAL AND NO EVIDENCE MSJ ON FRAUD CLAIMS PART 2
09/27/2016	 RESPONSE -RESPONSE TO JPMC'S TRADITIONAL AND NO EVIDENCE MSJ ON FRAUD CLAIMS W COVERS PART 3
09/27/2016	 RESPONSE 2016-09-27 D'S RESP TO JPMC MSJ TEMP ADMIN CLAIM
09/28/2016	 RESPONSE -PLAINTIFF'S RESPONSE IN OPPOSITION TO JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE MOTIONS FOR PARTIAL SUMMARY JUDGMENT REGARDING JO HOPPER'S FRAUD AND DTPA CLAIMS
09/28/2016	 RESPONSE PLAINTIFF'S RESPONSE TO DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ATTORNEYS' FEES REGARDING DECLARATORY JUDGMENTS
09/28/2016	 RESPONSE
09/28/2016	 RESPONSE PLAINTIFF'S RESPONSE IN OPPOSITION TO JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT OF BREACH OF CONTRACT CLAIM REGARDING DISTRIBUTION OF ROBLEDO
09/28/2016	 RESPONSE -STEPHEN B. HOPPER AND LAURA WASSMER'S RESPONSE TO DEFENDANT JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE MOTION FOR








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SUMMARY JUDGEMENT TO CLAIMS FOR ATTORNEY'S FEES









09/28/2016	 ORIGINAL ANSWER <i>PLAINTIFF'S RESPONSE IN OPPOSITION TO JPMORGAN CHASE BANK, N.A.'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING JO HOPPER'S CLAIMS FOR REIMBURSEMENT OF PROPERTY TAXES OR FOR REPAIRS</i>
09/29/2016	 CERTIFICATE - DEPOSITION <i>ORAL DEPOSITION - ATTORNEY ALAN LOEWINSOHN FOR \$1147.75</i>
09/29/2016	 CERTIFICATE - DEPOSITION
09/29/2016	 APPLICATION - AMENDED <i>STEPHEN HOPPER'S AND LAURA WASSMER'S FOURTH AMENDED CROSS CLAIM AGAINST JP MORGAN CHASE BANK, N.A.</i>
09/29/2016	 RESPONSE <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S REPLY IN SUPPORT OF ITS TRADITIONAL AND NO EVIDENCE MOTIONS FOR PARTIAL SUMMARY JUDGMENT REGARDING THE HEIRS' CLAIMS FOR FRAUD, FRAUDULENT INDUCEMENT, AND FRAUD BY NONDISCLOSURE</i>
09/29/2016	 RESPONSE <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S REPLY IN SUPPORT OF ITS TRADITIONAL AND NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING JO HOPPER???S MENTAL ANGUISH DAMAGES</i>
09/30/2016	 MOTION <i>PLAINTIFF'S 1ST MOTION IN LIMINE</i>
09/30/2016	 MOTION - IN LIMINE <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION IN LIMINE</i>
09/30/2016	 RESPONSE <i>PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT</i>
09/30/2016	 MOTION <i>-PLAINTIFF'S MOTION FOR LEAVE OF COURT TO SUPPLEMENT PLAINTIFF'S SUMMARY JUDGMENT EVIDENCE</i>
10/03/2016	 RESPONSE <i>PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION TO EXCLUDE TESTIMONY OF JOHN T. COX, III, JERRY JONES, AND ANTHONY L. VITULLO</i>
10/03/2016	 RESPONSE <i>DEFENDANTS RESPONSE TO JPMORGAN CHASE BANK, N.A.'S MOTION TO EXCLUDE TESTIMONY OF JERRY JONES AND ANTHONY L. VITULLO</i>
10/03/2016	 AFFIDAVIT AS TO LEGAL SERVICES AND FEES <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S NOTICE OF FILING OF BUSINESS RECORDS AFFIDAVITS AND RECORDS</i>
10/03/2016	 ORDER - SPECIAL EXCEPTIONS

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OVER OVERRULING JPMORGAN CHASE BANK, N.A.'S SPECIAL EXCEPTION NO 2















10/03/2016	 ORDER ACCORDINGLY, DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR LEAVE TO DESIGNATE RESPONSIBLE THIRD PARTIES IS HEREBY GRANTED
10/04/2016	SPECIAL SETTINGS (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>Defendant JPMorgan Chase Bank, N.A.'s Traditional and No-Evidence Motion for Partial Summary Judgment Regarding Jo Hopper's Mental Anguish Damages- F 7/25/16; Defendant JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment Regarding Temporary Administration Claims- F 8/5/16; Plaintiff's Motion for Partial Summary Judgment- F 8/24/16; Defendant JPMorgan Chase Bank, N.A.'s Motion for Partial Summary Judgment Regarding Jo Hopper's Claims for Reimbursement of Property Taxes or for Repairs- F 9/8/16; Defendant JPMorgan Chase Bank, N.A.'s Motion for Partial Summary Judgment on Attorneys' Fees Incurred by Plaintiff Mrs. Hopper Regarding Declaratory Judgments in the Severed Suit- F 9/12/16</i>
10/04/2016	 CERTIFICATE - DEPOSITION JOHN T. COX, III-\$1656.00
10/04/2016	 OBJECTION DEFENDANT JPMORGAN CHASE BANK, N.A.'S OBJECTION TO STEPHEN HOPPER'S AND LAURA WASSMER'S SUMMARY JUDGMENT EVIDENCE
10/04/2016	 OBJECTION DEFENDANTS STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S OBJECTIONS TO JPMORGAN'S TRIAL EXHIBIT LIST
10/05/2016	SPECIAL SETTINGS (10:00 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>Defendant JPMorgan Chase Bank, N.A.'s Traditional and No-Evidence Motion for Summary Judgment on Mrs. Hopper's Claim for Breach of Contract Regarding the Distribution of Robledo- F 9/8/16; Defendant JPMorgan Chase Bank, N.A.'s Traditional and No-Evidence Motion for Summary Judgment on Stephen Hopper and Laura Wassmer's Claims for Attorneys' Fees- F 9/8/16; Defendant JPMorgan Chase Bank, N.A.'s Traditional and No-Evidence Motions for Partial Summary Judgment Regarding Jo Hopper's Fraud and DTPA Claims- F 9/12/16; Defendant JPMorgan Chase Bank, N.A.'s Traditional and No-Evidence Motions for Partial Summary Judgment Regarding Stephen Hopper's and Laura Wassmer's Claims for Fraud, Fraudulent Inducement, and Fraud by Nondisclosure- F 9/12/16; Defendants Laura S. Wassmer and Stephen B. Hopper's No Evidence Motion for Summary Judgment- F 9/12/16; Defendant JPMorgan Chase Bank, N.A.'s Motion to Exclude Testimony of John T. Cox III, Jerry Jones, and Anthony L. Vitullo- F 9/21/16</i>
10/05/2016	SPECIAL SETTINGS (1:30 PM) (Judicial Officer: THOMPSON, BRENDA H) <i>Continuation from Morning Docket</i>
10/06/2016	PRE-TRIAL HEARING (1:30 PM) (Judicial Officer: THOMPSON, BRENDA H)
10/07/2016	 CORRESPONDENCE - LETTER TO FILE REVISED PROPOSED ORDER GRANTING MOTION TO EXCLUDE TESTIMONY OF JERRY JONES
10/11/2016	SPECIAL SETTINGS (4:15 PM) (Judicial Officer: THOMPSON, BRENDA H)
10/11/2016	 CERTIFICATE - DEPOSITION LOIS A. STANTON-\$4,962.45
10/11/2016	 CERTIFICATE - DEPOSITION MARK K. SALES-\$3,279.50

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10/11/2016	 CERTIFICATE - DEPOSITION <i>MICHAEL V. BOURLAND-\$1,769.65</i>
10/13/2016	 CERTIFICATE - DEPOSITION <i>JERRY JONES-\$1345.85</i>
10/17/2016	CANCELED JURY TRIAL (1:30 PM) (Judicial Officer: THOMPSON, BRENDA H) <i>OTHER REASONS</i>
10/18/2016	CANCELED JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>OTHER REASONS</i>
10/19/2016	CANCELED JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>OTHER REASONS</i>
10/20/2016	CANCELED JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>OTHER REASONS</i>
10/21/2016	CANCELED JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>OTHER REASONS</i>
10/24/2016	CANCELED JURY TRIAL (1:30 PM) (Judicial Officer: THOMPSON, BRENDA H) <i>OTHER REASONS</i>
10/25/2016	CANCELED JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>OTHER REASONS</i>
10/26/2016	CANCELED JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>OTHER REASONS</i>
10/27/2016	CANCELED JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>OTHER REASONS</i>
10/28/2016	CANCELED JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>OTHER REASONS</i>
11/15/2016	 CERTIFICATE - DEPOSITION <i>STEPHEN B. HOPPER-\$597.15</i>
11/15/2016	 NOTICE OF HEARING
11/22/2016	 NOTICE OF HEARING <i>AMENDED NOTICE OF HEARING</i>
11/29/2016	 CERTIFICATE - DEPOSITION <i>ORAL DEPOSITION OF ANTHONY L. VITULLO- \$1147.85</i>
11/30/2016	TELEPHONE CONFERENCE (10:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
12/06/2016	 VACATION LETTER <i>-TAYLOR A. HORTON</i>
12/19/2016	 RULE 11 AGREEMENT <i>NOTICE OF RULE 11 AGREEMENT</i>
01/05/2017	 VACATION LETTER

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VACATION LETTER - ATTORNEY ALAN LOEWINSOHN


01/05/2017	 MOTION - STRIKE
01/05/2017	 NOTICE OF HEARING
01/06/2017	 NOTICE OF HEARING -NOTICE OF HEARING ON 2/13/17 @3PM
01/09/2017	TELEPHONE CONFERENCE (2:00 PM) (Judicial Officer: THOMPSON, BRENDA H)
01/13/2017	 NOTICE -NOTICE OF SETTLEMENTS AND INTENT TO SEEK SETTLEMENT CREDIT
01/23/2017	 NOTICE OF HEARING -NOTICE OF HEARING ON 1/31/17 @1:30PM
01/31/2017	TELEPHONE CONFERENCE (1:30 PM) (Judicial Officer: THOMPSON, BRENDA H)
02/10/2017	 RESPONSE DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE THE DESIGNATION OF GLAST, PHILLIPS & MURRAY AND GARY STOLBACH AS RESPONSIBLE THIRD PARTIES AS TO PLAINTIFF'S DAMAGES
02/10/2017	 RESPONSE RESTRICTED-CONTAINS SENSITIVE/CONF DATA - APPENDIX TO DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE THE DESIGNATION OF GLAST, PHILLIPS & MURRAY AND GARY STOLBACH AS RESPONSIBLE THIRD PARTIES AS TO PLAINTIFF'S DAMAGES
02/13/2017	 PLEA TO JURISDICTION DEFENDANT JPMORGAN CHASE BANK, N.A.'S PLEA TO THE JURISDICTION
02/14/2017	 NOTICE OF HEARING NOTICE OF HEARING - PLEA TO THE JURISDICTION 2/20/2017 @ 1:30 P.M.
02/14/2017	 RESPONSE -REPLY IN SUPPORT OF MOTION TO STRIKE
02/15/2017	MOTION - STRIKE (3:00 PM) (Judicial Officer: THOMPSON, BRENDA H) <i>Plaintiff's Motion to Strike the Designation of Glast, Phillips & Murray and Gary Stolbach as Responsible Third Parties as to Plaintiff's Damages- F 1/5/17</i>
02/15/2017	 AFFIDAVIT - CHRIS MCNEILL
02/15/2017	 AFFIDAVIT - CINDY FERTITTA
02/15/2017	 AFFIDAVIT - MORRISA COSTANZO
02/17/2017	 RESPONSE -PLAINTIFF'S RESPONSE TO THE BANK'S PLEA TO THE JURISDICTION


THE PROBATE COURT
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CASE NO. PR-11-03238-1


02/20/2017	PRE-TRIAL HEARING (1:30 PM) (Judicial Officer: THOMPSON, BRENDA H) <i>Defendant JPMorgan Chase Bank, N.A. s Plea to the Jurisdiction- F 2/13/17 (only if time allows)</i>
02/20/2017	 RESPONSE <i>DEF STEPHEN HOPPER & LAURA WASSMER RESPONSE</i>
02/20/2017	 CORRESPONDENCE - LETTER TO FILE <i>W/ PROPOSED ORDER</i>
02/20/2017	 NOTICE OF HEARING <i>-NOTICE OF HEARING ON 2/22/17 @1PM</i>
02/22/2017	 NOTICE OF HEARING <i>HEARING SET FEBRUARY 24, 2017 AT 11:00 AM</i>
02/27/2017	 NOTICE OF HEARING
03/13/2017	 VACATION LETTER
03/31/2017	 ORDER - SUMMARY JUDGMENT <i>ORDER ON PLAINTIFF JO HOPPER'S MOTION FOR SUMMARY JUDGMENT</i>
03/31/2017	 MOTION - PARTIAL SUMMARY JUDGMENT <i>ORDER ON DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING ATTORNEYS' FEES AS DAMAGES</i>
03/31/2017	 ORDER <i>-ON PLAINTIFF JO HOPPER'S MOTION TO STRIKE THE DESIGNATION OF GLAST, PHILLIPS & MURRAY AND GARY STOLBACH AS RESPONSIBLE THIRD PARTIES AS TO PLAINTIFF'S DAMAGES</i>
03/31/2017	 ORDER <i>-ON DEFENDANT JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT ON MRS. HOPPER'S CLAIM FOR BREACH OF CONTRACT REGARDING THE DISTRUBUTION OF ROBLEDO</i>
03/31/2017	 ORDER <i>-ON DESIGNATION OF RESPONSIBLE THIRD PARTY</i>
03/31/2017	 ORDER <i>-ON PLEA TO JURISDICTION</i>
03/31/2017	 ORDER <i>- ON PLAINTIFF JO HOPPER'S REQUEST FOR LEAVE TO SERVE FOURTH SET OF INTERROGATORIES ON STEPHEN B. HOPPER AND LAURA S. WASSMER</i>
03/31/2017	 ORDER <i>-ON PLAINTIFF JO HOPPER'S MOTION FOR ADDITIONAL DEPOSITION OF GARY STOLBACH</i>
03/31/2017	 ORDER


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- ON DEFENDANT JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE PARTIAL SUMMARY JUDGMENT REGARDING STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S CLAIMS FOR FRAUD, FRAUDULENT INDUCEMENT, AND FRAUD BY NONDISCLOSURE


03/31/2017  ORDER
-ON DEFENDANT JPMORGAN CHASE BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT REGARDING JO HOPPER'S MENTAL ANGUISH DAMAGES


03/31/2017  ORDER
-ON REQUEST FOR FOR DE NOVO HEARING


03/31/2017  ORDER
-ON DEFENDANT JPMORGAN BANK, N.A.'S TRADITIONAL AND NO-EVIDENCE MOTION FOR UMMARY JUDGMENT ON STEPHEN HOPPER'S AND LAURA WASSMER'S CLAIMS FOR ATTORNEYS' FEES


03/31/2017  ORDER
-ON DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING JO HOPPER'S CLAIMS FOR REIMBURSEMENT ON PROPERTY TAXES OR FOR REPAIRS


03/31/2017  ORDER
-ON DEFENDANT JBMORGAN CHASE BANK, N.A.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ATTORNEYS' FEES INCURRED BY PLAINTIFF MRS. HOPPER REGARDING DECLARATORY JUDGMENTS IN THE SEVERED SUIT


03/31/2017  ORDER
-ON DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION TO EXCLUDE TESTIMONY OF JOHN T. COX, III, JERRY JONES AND ANTHONY L. VITULLO


03/31/2017  ORDER - COMPEL
-ON DEFENDANT JPMPRGAN CHASE BANK, N. A. 'S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS


04/04/2017  ORDER - COMPEL
ORDER ON DEFENDANTS STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S MOTION TO COMPEL CONTINUATON OF THE DEPOSITION OF TOM CANTRILL

04/06/2017  MOTION
JOINT MOTION FOR PRE-ADMISSION OF CERTAIN EXHIBITS















04/06/2017  CORRESPONDENCE - LETTER TO FILE

04/18/2017  VACATION LETTER
-JAMES S. BELL














05/17/2017  CORRESPONDENCE - LETTER TO FILE
W/ PROPOSED ORDER

06/06/2017  LETTER TO COURT
FILING OF LETTER HAND DELIVERED TO JUDGE THOMPSON 5/16/2017 FROM JOHN EICHMAN











THE PROBATE COURT
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CASE NO. PR-11-03238-1

06/06/2017	 NOTICE <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S NOTICE OF FILING OF BUSINESS RECORDS AFFIDAVIT AND RECORDS OF D.W. SKELTON & ASSOCIATES</i>
06/08/2017	 CORRESPONDENCE - LETTER TO FILE <i>-WITH AMENDED TRIAL SETTING ORDER</i>
07/12/2017	 PLEA TO JURISDICTION <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S PLEA TO THE JURISDICTION REGARDING THE HEIRS' INDIVIDUAL CLAIMS, AND, IN THE ALTERNATIVE, SPECIAL EXCEPTION TO THE HEIRS' FOURTH AMENDED CROSS CLAIM</i>
07/12/2017	 NOTICE OF HEARING <i>HEARING NOTICE - 7/25/17 AT 9:30 A.M. - DEFENDANT JPMORGAN CHASE BANK, N.A.'S PLEA TO THE JURISDICTION REGARDING THE HEIRS' INDIVIDUAL CLAIMS, AND, IN THE ALTERNATIVE, SPECIAL EXCEPTIONS TO THE HEIRS' FOURTH AMENDED CROSS CLAIM, FILED JULY 12, 2017</i>
07/18/2017	 MISC. EVENT <i>RULE 166 - JOINT PRE TRIAL REPORT</i>
07/19/2017	 ORIGINAL ANSWER
07/21/2017	 RESPONSE <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S REPLY IN SUPPORT OF ITS PLEA TO THE JURISDICTION AND SPECIAL EXCEPTION</i>
07/21/2017	 NOTICE <i>DEFENDANTS' AMENDED NOTICE OF FILING AFFIDAVIT</i>
07/21/2017	 NOTICE <i>DEFENDANTS' AMENDED NOTICE OF FILING AFFIDAVIT</i>
07/21/2017	 NOTICE <i>AMENDED NOTICE OF FILING</i>
07/25/2017	PRE-TRIAL HEARING (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>& Defendant JPMorgan Chase Bank, N.A.'s Plea to the Jurisdiction Regarding the Heirs' Individual Claims, and, in the Alternative, Special Exception to the Heirs' Fourth Amended Cross Claim- F 7/12/17</i>
07/26/2017	 CORRESPONDENCE - LETTER TO FILE <i>W/ PROPOSED ORDERS</i>
08/01/2017	 NOTICE OF HEARING
08/03/2017	 MOTION <i>JP MORGAN CHASE BANK, N.A.'S MOTION TO EXCLUDE EVIDENCE AND STRIKE STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S FIFTH SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCLOSURE</i>
08/04/2017	 NOTICE OF HEARING <i>NOTICE OF HEARING - JPMC'S MOTION TO EXCLUDE EVIDENCE, ET AL. SET FOR 8/9/17 AT 9:30 A.M.</i>

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



08/07/2017	 MOTION <i>DEFENDANTS LAURA S. WASSMER AND STEPHEN B. HOPPER'S MOTION FOR CLARIFICATION OF THE COURT'S RULING AND REQUEST FOR LEAVE TO REPLEAD</i>
08/08/2017	 RESPONSE <i>RESPONSE TO JP MORGAN CHASE BANK, N.A. S MOTION TO EXCLUDE EVIDENCE AND STRIKE</i>
08/09/2017	 NOTICE OF HEARING <i>NOTICE OF RE-SET HEARING - 8/16/17 at 10:30 a.m. - ALL PARTIES MOTIONS IN LIMINE and JPMC'S MOTION TO EXCLUDE EVIDENCE</i>
08/16/2017	MOTION - HEARING (10:30 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>Plaintiff's First Motion in Limine- F 9/30/16; Defendant JPMorgan Chase Bank, N.A.'s Motion in Limine- F 9/30/16; Stephen B. Hopper and Laura S. Wassmer's Motion in Limine JPMorgan Chase Bank, N.A.'s Motion to Exclude Evidence and Strike Stephen B. Hopper's and Laura S. Wassmer's Fifth Supplemental Response to Request for Disclosure- F 8/3/17; Defendants Laura s. Wassmer and Stephen B. Hopper's Motion for Clarification of the Court's Ruling and Request for Leave to Replead- F 8/7/17</i>
08/18/2017	 MOTION - IN LIMINE <i>PLAINTIFF'S AMENDED MOTION IN LIMINE NO.7</i>
08/18/2017	 AMENDED CROSS CLAIM - AMENDED COUNTER PETITION <i>S HOPPER AND L WASSMER FIFTH AMENDED CROSS CLAIM AGAINST JPMC</i>
08/18/2017	 DEPUTY REPORTER STATEMENT
08/21/2017	 ORDER <i>- ON DEFENDANT JPMORGAN CHASE BANK, N.A. 'S MOTION TO EXCLUDE EVIDENCE AND STRIKE STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S FIFTH SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCLOSURE</i>
08/21/2017	 ORDER <i>- ON DEFENDANTS LAURA S. WASSMER AND STEPHEN B. HOPPER'S MOTION FOR CLARIFICATION OF THE COURT'S RULING AND REQUEST FOR LEAVE TO REPLEAD</i>
08/22/2017	 EXHIBIT LIST <i>DEFENDANT STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S THIRD SUPPLEMENTAL EXHIBIT LIST</i>
08/23/2017	 MOTION - STRIKE <i>JP MORGAN CHASE BANK, N.A.'S MOTION TO STRIKE STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S FIFTH AMENDED CROSS CLAIM, AND IN THE ALTERNATIVE, SPECIAL EXCEPTION</i>
08/24/2017	 LETTER TO COURT
08/28/2017	JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
08/28/2017	 NOTICE <i>-DEFENDANTS' NOTICE OF AMENDED CROSS DEPOSITION DESIGNATIONS</i>
08/28/2017	 BRIEF FILED

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08/29/2017	JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
08/30/2017	JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
08/30/2017	 MOTION - IN LIMINE <i>PLAINTIFF'S SUPPLEMENTAL MOTION IN LIMINE</i>
08/31/2017	JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/01/2017	JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/01/2017	 MOTION - IN LIMINE <i>PLAINTIFF'S SUPPLEMENTAL MOTION IN LIMINE</i>
09/05/2017	JURY TRIAL (9:00 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/05/2017	 OBJECTION <i>STEPHEN HOPPER AND LAURA WASSMER'S OBJECTIONS TO JP MORGAN CHASE BANK, N.A.'S SEVENTH SUPPLEMENTAL TRIAL EXHIBIT LIST</i>
09/06/2017	JURY TRIAL (9:00 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/06/2017	 BRIEF FILED <i>PLAINTIFF'S TRIAL BRIEF ON THE ADMISSIBILITY OF THE GARTNER STOCK</i>
09/07/2017	JURY TRIAL (9:00 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/08/2017	JURY TRIAL (9:00 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/11/2017	JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/11/2017	 MOTION <i>MOTION FOR LEAVE TO SUBSTITUTE ONE OF PLAINTIFF'S TRIAL</i>
09/11/2017	 AMENDED PETITION <i>PLAINTIFF'S AMENDED DRAFT PROPOSED JURY CHARGE</i>
09/11/2017	 MISC. EVENT
09/11/2017	 MOTION <i>PMORGAN CHASE BANK, N.A.'S MOTION FOR RELIEF FROM RULING ON PLAINTIFF'S MOTION IN LIMINE NUMBER 24</i>
09/12/2017	JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/13/2017	JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/13/2017	 MOTION <i>JP MORGAN CHASE BANK, N.A.'S MOTION FOR DIRECTED VERDICT ON PLAINTIFF'S CLAIMS</i>
09/14/2017	JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/14/2017	 JURY TRIAL DEMAND

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PLAINTIFF'S SECOND AMENDED DRAFT PROPOSED JURY CHARGE
















09/14/2017	 MISC. EVENT DEFENDANTS STEPHEN B. HOPPER'S AND LAURA WASSMER'S FIRST AMENDED PROPOSED JURY CHARGE
09/14/2017	 MISC. EVENT -PLAINTIFF'S THIR AMENDED DRAFT PROPOSED JURY CHARGE
09/15/2017	JURY TRIAL (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/18/2017	JURY TRIAL (9:00 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/18/2017	 MOTION PLAINTIFF'S MOTION TO ENFORCE TRIAL SUBPOENA
09/18/2017	 RESPONSE NON-PARTY HUNTON AND WILLIAMS, LLP'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO ENFORCE TRIAL SUBPOENA
09/18/2017	 CORRESPONDENCE - LETTER TO FILE PROPOSED DOCUMENTS
09/19/2017	JURY TRIAL (9:00 AM) (Judicial Officer: THOMPSON, BRENDA H)
09/20/2017	 MISC. EVENT DEFENDANTS STEPHEN B. HOPPER'S AND LAURA WASSMER'S SECOND AMENDED POPOSED JURY CHARGE
09/20/2017	 BRIEF FILED PLAINTIFF'S BENCH BRIEF ON JURY CHARGE
09/20/2017	 CORRESPONDENCE - LETTER TO FILE DEFENDANT JPMORGAN CHASE BANK, N.A.'S FIRST AMENDED PROPOSED JURY CHARGE
09/20/2017	 CORRESPONDENCE - LETTER TO FILE PLAINTIFF'S FIFTH AMENDED DRAFT PROPOSED JURY CHARGE
09/20/2017	 BRIEF FILED JPMORGAN CHASE BANK, N.A.'S BENCH BRIEF RE: CHAPTER 33 AND ESTATES CODE ??? 404.0037 AND 352.051
09/21/2017	 MISC. EVENT THIRD AMENDED PROPOSED JURY CHARGE
09/21/2017	 BRIEF FILED LAURA S. WASSMER AND STEPHEN B. HOPPER'S TRIAL BRIEF ON JPMORGAN CHASE BANK, N.A.'S SELF-DEALING
09/22/2017	 MISC. EVENT DEFENDANTS STEPHEN B. HOPPER AND LAURA WASSMER'S SUPPLEMENTAL QUESTION AND INSTRUCTION TO THE HEIRS' THIRD AMENDED PROPOSED JURY CHARGE

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09/22/2017	 MOTION <i>JPMORGAN CHASE BANK, N.A.'S MOTION FOR DIRECTED VERDICT ON STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S CLAIMS</i>
09/25/2017	 MISC. EVENT <i>JPMORGAN CHASE BANK, N.A.'S ADDITIONAL REQUESTED JURY INSTRUCTIONS REGARDING (1) ESTATES CODE 404.0037 AND (2) RESIGNATION OF A PERSONAL REPRESENTATIVE</i>
09/25/2017	 MOTION <i>JPMORGAN CHASE BANK, N.A.'S FIRST AMENDED MOTION FOR DIRECTED VERDICT ON PLAINTIFF'S CLAIMS</i>
09/25/2017	 MOTION <i>JPMORGAN CHASE BANK, N.A.'S FIRST AMENDED MOTION FOR DIRECTED VERDICT ON STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S CLAIM</i>
09/25/2017	 MOTION <i>STEPHEN B. HOPPER AND LAURA WASSMER'S MOTION FOR DIRECTED VERDICT</i>
09/25/2017	 RESPONSE <i>PLAINTIFF'S OPPOSITION TO DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR DIRECTED VERDICT ON PLAINTIFF'S CLAIMS</i>
09/25/2017	 MOTION - IN LIMINE <i>DEFENDANT JPMORGAN CHASE BANK, N.A.'S SUPPLEMENTAL MOTION IN LIMINE REGARDING CLOSING ARGUMENTS</i>
09/25/2017	 MISC. EVENT <i>DEFENDANTS STEPHEN B. HOPPER'S AND LAURA WASSMER'S SECOND SUPPLEMENTAL QUESTIONS AND INSTRUCTIONS TO THE GEIRS' THIRD AMENDED PROPOSED JURY CHARGE</i>
09/25/2017	 MOTION <i>HEIRS' SUPPLEMENTAL MOTION FOR INSTRUCTED /DIRECTED VERDICT</i>
09/25/2017	 RESPONSE <i>DEFENDANTS STEPHEN B. HOPPER'S AND LAURA S. WASSMER'S OPPOSITION TO DEFENDANT JPMORGAN CHASE BANK, N.A.'S FIRST AMENDED MOTION FOR DIRECTED VERDICT</i>
09/25/2017	 MISC. EVENT <i>DEFENDANTS STEPHEN B. HOPPER'S AND LAURA WASSMER'S THIRD SUPPLEMENTAL QUESTIONS AND INSTRUCTIONS TO THE HEIRS' THIRD AMENDED PROPOSED JURY CHARGE</i>
09/25/2017	 CHARGE OF COURT
09/25/2017	 ORDER <i>PLAINTIFF'S TENDERED JURY CHARGE QUESTION</i>
09/25/2017	 ORDER <i>DEFENDANTS STEPHEN B. HOPPER AND LAURA WASSMER SUBMIT THE</i>

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FOLLOWING REQUESTED INSTRUCTIONS AND OUST

09/27/2017	 CORRESPONDENCE - LETTER TO FILE LETTER TO THE JUDGE
10/06/2017	 RESPONSE DEFENDANTS/CROSS CLAIMANTS LAURA WASSMER AND STEPHEN HOPPER'S MOTION FOR ENTRY OF FINAL JUDGMENT
10/06/2017	 RESPONSE CROSS CLAIMANTS BRIEF IN SUPPORT OF MOTION FOR ENTRY OF FINAL JUDGMENT
10/09/2017	 MOTION PLAINTIFF'S MOTION FOR LEGAL RULINGS RE ATTORNEY'S FEES
10/20/2017	 MOTION LAURA'S AGREED MOTION TO WITHDRAW
10/20/2017	 MOTION STEPHEN'S AGREED MOTION TO WITHDRAW
10/26/2017	 ORDER - GRANTING MOTION TO WITHDRAW Party: ATTORNEY BELL, JAMES S; DEFENDANT HOPPER, STEPHEN B. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT JAMES S. BELL, ESQ. OF THE LAW FIRM JAMES S. BELL, P.C. IS PERMITTED TO WITHDRAW AS COUNSEL OF RECORD FOR THE HEIRS AND IS RELIEVED FROM ANY ALL RESPONSIBILITY IN THIS CASE. AGREED: STEPHEN B. HOPPER
10/26/2017	 ORDER - GRANTING MOTION TO WITHDRAW Party: ATTORNEY BELL, JAMES S; DEFENDANT WASSMER, LAURA S. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT JAMES S. BELL, ESQ. OF THE LAW FIRM JAMES S. BELL, P.C. IS PERMITTED TO WITHDRAW AS COUNSEL OF RECORD FOR THE HEIRS AND IS RELIEVED FROM ANY ALL RESPONSIBILITY IN THIS CASE. AGREED: LAURA S. WASSMER
10/30/2017	 NOTICE - APPEARANCE
11/02/2017	 NOTICE OF HEARING
11/02/2017	 NOTICE OF HEARING
11/02/2017	 NOTICE OF HEARING
11/03/2017	 NOTICE OF HEARING
11/09/2017	 MOTION JPMORGAN CHASE BANK, N.A.'S MOTION FOR JNOV AND, ALTERNATIVELY, MOTION TO DISREGARD JURY FINDINGS OR SUGGESTION OF REMITTITUR
11/10/2017	 CORRESPONDENCE - LETTER TO FILE LETTER TO JUDGE THOMPSON RE UPCOMING 11/13/17 TELEPHONIC CONFERENCE TO DISCUSS SCHEDULING OF THE PARTIES' POST-TRIAL MOTIONS













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11/13/2017	TELEPHONE CONFERENCE (3:00 PM) (Judicial Officer: THOMPSON, BRENDA H)
11/13/2017	 NOTICE - APPEARANCE
11/15/2017	 NOTICE OF HEARING
12/06/2017	 MOTION JOINT MOTION FOR ADMISSION OF SUPPLEMENTAL TRIAL EXHIBITS & PROPOSED ORDER
12/06/2017	 LETTER TO COURT LETTER TO COURT REPORTER REQUESTING RECORD OF TRIAL
12/11/2017	 ORDER GRANTING JOINT MOTION FOR ADMISSION OF SUPPLEMENT TRAIL EXHIBITS
12/18/2017	 RESPONSE JPMORGAN CHASE BANK, N.A.'S RESPONSE TO JO HOPPER'S MOTION FOR LEGAL RULINGS REGARDING ATTORNEYS' FEES FOR DECLARATORY JUDGMENT CLAIMS
12/29/2017	 MOTION JOINT MOTION FOR ADMISSION OF SUPPLEMENTAL TRIAL EVIDENCE AND EXHIBIT
12/29/2017	 CORRESPONDENCE - LETTER TO FILE -LETTER TO THE JUDGE
01/03/2018	 MISC. EVENT JPMORGANS' OPPOSITION TO JOINT MOTION FOR ADMISSION OF SUPPLEMENTAL TRIAL EVIDENCE AND EXHIBIT
01/04/2018	SPECIAL SETTINGS (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) Plaintiffs Motion for Legal Rulings Regarding Attorneys' Fees for Declaratory Judgment Claims- F 10/9/17
01/05/2018	CANCELED SPECIAL SETTINGS (9:30 AM) (Judicial Officer: THOMPSON, BRENDA H) OTHER REASONS Continuation Hearing from 1/4/18
01/08/2018	 CORRESPONDENCE - LETTER TO FILE W/ EXHIBIT
01/09/2018	 LETTER TO COURT
01/16/2018	 CORRESPONDENCE - LETTER TO FILE LETTER TO THE JUDGE
01/16/2018	 BRIEF FILED LETTER BRIEF TO JUDGE THOMPSON
01/19/2018	 CORRESPONDENCE - LETTER TO FILE LETTER TO JUDGE THOMPSON


















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01/29/2018	 LETTER TO COURT <i>W/ EXHIBITS</i>
02/01/2018	 CORRESPONDENCE - LETTER TO FILE <i>LETTER TO THE JUDGE</i>
02/23/2018	 MOTION <i>JPMORGAN CHASE BANK, N.A.'S MOTION TO RESET THE MARCH 7-8, 2018 HEARING TO MAY 23-24, 2018 AND REQUEST FOR SCHEDULING CONFERENCE</i>
02/27/2018	TELEPHONE CONFERENCE (2:00 PM) (Judicial Officer: THOMPSON, BRENDA H)
02/27/2018	 NOTICE OF HEARING <i>REVISED NOTICE OF HEARINGS FOR APRIL 5-6, 2018</i>
03/14/2018	 OBJECTION <i>JPMORGAN CHASE BANK, N.A.'S OBJECTIONS TO PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR LEGAL RULINGS REGARDING ATTORNEYS' FEES FOR DECLARATORY JUDGMENT CLAIMS</i>
03/14/2018	 REQUEST FOR FINDING OF FACT / CONCLUSIONS OF LAW <i>REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW</i>
03/14/2018	 CORRESPONDENCE - LETTER TO FILE <i>-W/PROPOSED ORDER</i>
03/19/2018	 RESPONSE <i>HEIRS' OBJECTIONS TO PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR LEGAL RULINGS RE ATTORNEYS' FEES FOR DECLARATORY JUDGMENT CLAIMS</i>
03/27/2018	 MOTION - EMERGENCY <i>JPMORGAN CHASE BANK N.A.'S EMERGENCY MOTION TO SET BRIEFING SCHEDULE</i>
03/27/2018	 CORRESPONDENCE - LETTER TO FILE <i>W/PROPOSED DOCUMENTS</i>
03/28/2018	 ORDER <i>ORDER GRANTING PLAINTIFF'S MOTION FOR LEGAL RULINGS REGARDING ATTORNEYS' FEES FOR DECLARATORY JUDGMENT CLAIMS</i>
03/30/2018	 MOTION <i>MOTION FOR ENTRY OF FINAL JUDGEMENT</i>
04/02/2018	 RESPONSE <i>HOPPER AND WASSMER'S RESPONSE TO JPMORGAN CHASE'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT</i>
04/02/2018	 SUPPLEMENTAL: MOTION <i>JPMORGAN CHASE BANK, N.A.'S AMENDED MOTION FOR JNOV AND, ALTERNATIVELY, MOTION TO DISREGARD JURY FINDINGS OR SUGGESTION OF REMITTITUR</i>

THE PROBATE COURT
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CASE NO. PR-11-03238-1












04/02/2018	 MOTION <i>JPMORGAN CHASE BANK N.A.'S JNOV BRIEF RELATING TO LIABILITY</i>
04/02/2018	 MOTION <i>JPMORGAN CHASE BANK N.A.'S JNOV BRIEF RELATING TO PUNITIVE DAMAGE</i>
04/04/2018	 RULE 11 AGREEMENT
04/05/2018	SPECIAL SETTINGS (9:00 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>Defendants/Cross Claimants Laura Wassmer and Stephen Hopper's Motion for Entry of Final Judgment- F 10/6/17; Plaintiff's Motion for Entry of Final Judgment; JPMorgan Chase Bank, N.A.'s Motion for JNOV and, Alternatively, Motion to Disregard Jury Findings or Suggestion of Remittitur- F 11/9/17</i>
04/06/2018	SPECIAL SETTINGS (9:00 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>Continuation Hearing from 4/5/18</i>
04/06/2018	 MOTION - WITHDRAW ATTORNEY <i>MOTION FOR WITHDRAWAL OF COUNSEL OF RECORD</i>
04/06/2018	 COUNTER CLAIM <i>COUNTER CLAIM/CROSS ACTION/INTERPLEADER/INTERVENTION/THIRD PARTY/CONTEST</i>
04/06/2018	 MISC. EVENT <i>ORDER ON MOTION FOR WITHDRAWAL OF COUNSEL</i>
04/06/2018	 ORDER - WITHDRAW ATTORNEY <i>Party: ATTORNEY VITULLO, ANTHONY LEONARD ORDER ON MOTION FOR WITHDRAWAL OF COUNSEL-ANTHONY L. VITULLO OF THE LAW FIRM FEE, SMITH, SHARP & VITULLO IS PERMITTED TO WITHDRAW AS COUNSEL OF RECORD FOR THE HEIRS AND IS RELIEVED FROM ANY AND ALL RESPONSIBILITY IN THIS CASE</i>
04/06/2018	 ADVERSE ACTIONS <i>FEE, SMITH, SHARP & VITULLO, LLP'S PETITION IN INTERVENTION, APPLICATION FOR DECLARATORY RELIEF, REQUEST FOR TRO AND TEMPORARY INJUNCTION</i>
04/09/2018	TRO HEARING (4:00 PM) (Judicial Officer: THOMPSON, BRENDA H)
04/09/2018	 RESPONSE <i>OBJECTION TO PETITIONS</i>
04/09/2018	 AMENDED PETITION <i>JOHN L. MALESOVAS, D/B/A MALESOVAS LAW FIRM AND FEE, SMITH SHARP & VITULLO, LLP'S CONSOLIDATED FIRST AMENDED JOINT PETITION IN INTERVENTION AND PETITION FOR DECLARATORY JUDGMENT, APPLICATION FOR TEMPORARY RESTRAINING ORDER, FOR TEMPORARY INJUNCTION, AND MOTION TO DEPOSIT FUNDS IN THE REGISTRY</i>
04/10/2018	 LETTER TO COURT
04/10/2018	 ORDER - TEMPORARY RESTRAINING ORDER <i>---TEMPORARY RESTRAINING ORDER</i>

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CASE NO. PR-11-03238-1

04/11/2018	RETURN OF SERVICE <i>TEST</i>
04/11/2018	 MOTION - COMPEL <i>MOTION TO COMPEL ARBITRATION</i>
04/11/2018	 LETTER TO COURT
04/11/2018	 NOTICE <i>JPMORGAN CHASE BANK, N.A.'S NOTICE OF RECEIPT OF TEMPORARY RESTRAINING ORDER</i>
04/12/2018	 LETTER TO COURT
04/13/2018	 NOTICE OF HEARING
04/13/2018	 LETTER TO COURT <i>W/PROPOSED DOCUMENTS</i>
04/13/2018	 CORRESPONDENCE - LETTER TO FILE <i>LETTER TO THE JUDGE</i>
04/16/2018	 MOTION - QUASH <i>MOTION TO QUASH AND FOR PROTECTIVE ORDER AND OBJECTION TO SUBPOENA DUCES TECUM</i>
04/18/2018	 RETURN OF SERVICE <i>RETURN OF SERVICE</i>
04/18/2018	 RETURN OF SERVICE <i>RETURN OF SERVICE</i>
04/18/2018	 RETURN OF SERVICE <i>RETURN OF SERVICE</i>
04/20/2018	 RESPONSE <i>OBJECTION & RESPONSE TO HOPPER AND WASSMER'S MOTION TO COMPEL</i>
04/20/2018	 SUPPLEMENTAL MOTION <i>SUPPLEMENT TO MOTION TO COMPEL ARBITRATION</i>
04/20/2018	 RESPONSE <i>JPMORGAN CHASE BANK, N.A.'S RESPONSE LETTER BRIEF</i>
04/20/2018	 LETTER TO COURT <i>LETTER TO JUDGE</i>
04/20/2018	 MOTION - SUMMARY JUDGMENT <i>INTERVENOR'S MOTION FOR SUMMARY JUDGMENT</i>
04/23/2018	 MOTION - QUASH <i>MOTON TO QUASH AND FOR PROTECTIVE ORDER AND OBJECTION TO HEARING</i>





THE PROBATE COURT
DOCKET SHEET
CASE NO. PR-11-03238-1

SUBPOENAS DUCES TECUM

04/24/2018	TEMPORARY INJUNCTION (9:00 AM) (Judicial Officer: THOMPSON, BRENDA H) <i>& Defendants' Motion to Compel Arbitration- F 4/11/18</i>
04/24/2018	 NOTICE TO CREDITORS
04/24/2018	 ORDER - TEMPORARY INJUNCTION (OCA) <i>TEMPORARY INJUNCTION ORDER</i>
04/25/2018	 NOTICE OF HEARING <i>SECOND AMENDED NOTICE OF HEARING</i>
04/26/2018	 FINDINGS OF FACT / CONCLUSIONS OF LAW <i>NOTICE OF PAST DUE FINDINGS OF FACT AND CONCLUSIONS OF LAW</i>
04/26/2018	 NOTICE OF HEARING <i>NOTICE OF HEARING ON INTERVENORS' MOTION FOR SUMMARY JUDGMENT</i>
04/30/2018	 WRIT Party: DEFENDANT HOPPER, STEPHEN B. <i>WRIT OF TEMPORARY INJUNCTION - ON HOLD</i>
04/30/2018	ISSUE CITATION HOPPER, STEPHEN B. Unserved RTN:
04/30/2018	 WRIT Party: DEFENDANT WASSMER, LAURA S. <i>WRIT OF TEMPORARY INJUNCTION - ON HOLD</i>
04/30/2018	ISSUE CITATION WASSMER, LAURA S. Unserved RTN:
04/30/2018	 WRIT Party: DEFENDANT JP MORGAN CHASE, N.A. <i>WRIT OF TMEPORARY INJUNCTION - ON HOLD</i>
04/30/2018	ISSUE CITATION JP MORGAN CHASE, N.A. Unserved RTN:
04/30/2018	 NOTICE - CHANGE OF ADDRESS <i>NOTICE OF CHANGE OF FIRM NAME</i>
05/01/2018	 APPLICATION -AMENDED <i>SECOND AMENDED PETITION IN INTERVENTION, APPLICATION FOR DECLARATORY JUDGMENT, TEMPORARY & PERMANENT INJUNCTION</i>
05/04/2018	 NOTICE <i>JPMORGANCHASE BANK, N.A.'S NOTICE REGARDING APRIL 24, 2018, TEMPORARY</i>




THE PROBATE COURT
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IMJUNCTION ORDER

05/04/2018	 MOTION - COMPEL <i>REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION</i>
05/08/2018	MOTION - COMPEL (4:00 PM) (Judicial Officer: THOMPSON, BRENDA H) <i>Defendants' Motion to Compel Arbitration- F 4/11/18</i>
05/09/2018	 CORRESPONDENCE - LETTER TO FILE
05/09/2018	 MOTION - WITHDRAW ATTORNEY
05/09/2018	 NOTICE OF HEARING <i>AMENDED NOTICE OF HEARING ON INTERVENORS' CONSOLIDATED TRADITIONAL RULE 166a(c) MOTION FOR SUMMARY JUDGMENT</i>
05/09/2018	 MOTION <i>PLAINTIFF'S UNOPPOSED MOTION TO SEVER HEIRS' CLAIMS AND INTERVENTION CLAIMS</i>
05/09/2018	 CORRESPONDENCE - LETTER TO FILE
05/10/2018	 ORDER <i>ORDER GRANTING INTERVENTION DEFENDANTS' MOTION TO COMPEL ARBITRATION</i>
05/11/2018	 RESPONSE <i>PLAINTIFFS RESPONSE TO DEFENDANT JPMORGAN CHASE BANK, N.A.'S REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW</i>
05/14/2018	 CERTIFICATE - DEPOSITION <i>FURTHER CERTIFICATION OF THE ORAL AND VIDEOTAPED DEPOSITION OF LAURA WASSMER</i>
05/14/2018	 CORRESPONDENCE - LETTER TO FILE <i>FURTHER CERTIFICATION OF THE ORAL AND VIDEOTAPED DEPOSITION OF LAURA WASSMER</i>
05/14/2018	 NOTICE - APPEAL <i>INTERVENTION DEFENDANTS' NOTICE OF ACCELERATED APPEAL</i>
05/14/2018	 REQUEST FOR CLERK PREPARED RECORD <i>REQUEST FOR PREPARATION OF CLERK'S RECORD IN AN ACCELERATED APPEAL</i>
05/14/2018	 REQUEST REPORTER RECORD <i>REQUEST FOR PREPARATION OF REPORTER'S RECORD IN AN ACCELERATED APPEAL</i>
05/15/2018	 RULING <i>RULING ON DEFENDANT JPMORGAN CHASE BANK, N.A.'S REQUEST FOR FINDING OF FACT AND CONCLUSIONS OF LAW</i>
05/17/2018	 CERTIFICATE - DEPOSITION

THE PROBATE COURT
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FURTHER CERTIFICATION OF ORAL AND VIDEOTAPED DEPOSITION OF STEPHEN HOPPER

05/17/2018	 CORRESPONDENCE - LETTER TO FILE
05/21/2018	 NOTICE NOTICE OF CANCELLING INTERVENOR'S MSJ
05/22/2018	 VACATION LETTER
06/11/2018	CANCELED MOTION - SUMMARY JUDGMENT (9:00 AM) (Judicial Officer: THOMPSON, BRENDA H) REQUESTED BY ATTORNEY/PRO SE <i>Intervenors' (Lawyers) Consolidated Traditional Rule 166a(c) Motion for Summary Judgment (MSJ) on Their Secured and Fully Vested Property and Ownership Rights to the Disputed Funds, Application for Attorney's Fees, and Brief in Support- F 4/20/18</i>

DATE	FINANCIAL INFORMATION
	ATTORNEY LOEWINSOHN, ALAN S
	Total Charges 338.00
	Total Payments and Credits 0.00
	Balance Due as of 5/25/2018 338.00
	DECEDENT HOPPER, MAX D.
	Total Charges 997.00
	Total Payments and Credits 997.00
	Balance Due as of 5/25/2018 0.00
	DEFENDANT HOPPER, STEPHEN B.
	Total Charges 66.00
	Total Payments and Credits 66.00
	Balance Due as of 5/25/2018 0.00
	DEFENDANT JP MORGAN CHASE, N.A.
	Total Charges 68.00
	Total Payments and Credits 68.00
	Balance Due as of 5/25/2018 0.00
	DEFENDANT WASSMER, LAURA S.
	Total Charges 6.00
	Total Payments and Credits 6.00
	Balance Due as of 5/25/2018 0.00
	INTERVENOR Fee, Smith, Sharp & Vitullo, LLP
	Total Charges 116.00
	Total Payments and Credits 116.00
	Balance Due as of 5/25/2018 0.00
	INTERVENOR Malesovas, John L.
	Total Charges 85.00
	Total Payments and Credits 85.00
	Balance Due as of 5/25/2018 0.00
	PLAINTIFF HOPPER, JO N.
	Total Charges 367.00
	Total Payments and Credits 367.00
	Balance Due as of 5/25/2018 0.00
	ATTORNEY VITULLO, ANTHONY LEONARD
	PROBATE RESTRICTED DESPOSIT Balance as of 5/25/2018 10,000.00

THE PROBATE COURT
DOCKET SHEET
CASE NO. PR-11-03238-1

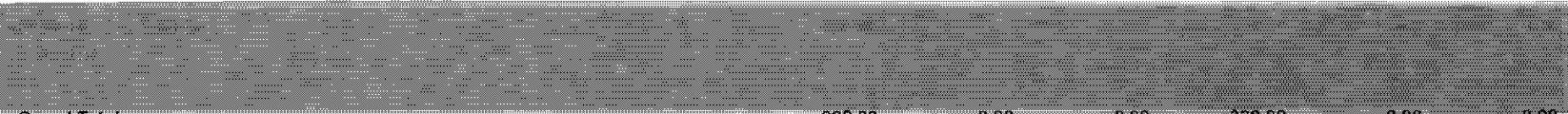
Transaction Detail for LOEWINSOHN, ALAN S on Case# PR-11-03238-1

TXDALLASPROD

Recipients :

Report Options : Incl. Trans. w/o Recipients

IN THE MATTER OF

Date	Reference	Payor	Charges	Payments	Credits	Balance	Disbursed	Escrow
								
Grand Total :			338.00	0.00	0.00	338.00	0.00	0.00

CLERK'S CERTIFICATE

THE STATE OF TEXAS §
COUNTY OF DALLAS §

I, JOHN F. WARREN,

Clerk of the County Court of Dallas County, Texas do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellant procedure 34.5 (a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5 (b). In the cause of PR-11-03238-1.

GIVEN UNDER MY HAND AND SEAL at my office in Dallas County, Texas this 31st day of May, 2018.



JOHN F. WARREN,
Clerk County Court
Dallas County, Texas

TRINIDAD PIMENTEL, Deputy Clerk

REPORTER'S RECORD
VOLUME 1 OF 5
COURT OF APPEALS NO. 05-18-00558-CV
CAUSE NO. PR-11-3238-1

IN THE ESTATE OF
MAX D. HOPPER,
DECEASED

THE PROBATE COURT

JO N. HOPPER
Plaintiff,

v.

JPMORGAN CHASE BANK N.A.
STEPHEN B. HOPPER,
LAURA S. WASSMER
Defendants.

NUMBER ONE

JOHN L. MALESOVAS d/b/a
MALESOVAS LAW FIRM, and FEE
SMITH, SHARP & VITULLO, LLP
Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK N.A.,
Defendants.

DALLAS COUNTY, TEXAS

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MASTER INDEX

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No. 3	Letter dated 4/5/18 From Mr. Pennington To Mr. Lauten	28	37	2

DEFENDANTS

No. 1	Letter dated 4/6/18 From Mr. Pennington To Mr. Malesovas and Mr. Lauten	36	58	2
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REPORTER'S RECORD
VOLUME 2 OF 5
CAUSE NO. PR-11-3238-1
COURT OF APPEALS NO. 05-18-00558-CV

IN THE ESTATE OF
MAX D. HOPPER,
DECEASED

THE PROBATE COURT

JO N. HOPPER
Plaintiff,

v.

JPMORGAN CHASE BANK N.A.
STEPHEN B. HOPPER,
LAURA S. WASSMER
Defendants.

NUMBER ONE

JOHN L. MALESOVAS d/b/a
MALESOVAS LAW FIRM, and FEE
SMITH, SHARP & VITULLO, LLP
Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK N.A.,
Defendants.

DALLAS COUNTY, TEXAS

=====

TEMPORARY RESTRAINING ORDER HEARING

=====

On the 9th day of April, 2018, A.D., the
following proceedings came on for hearing in the above-
entitled and numbered cause before the HONORABLE COURT,
BRENDA HULL THOMPSON, Judge Presiding, held in Dallas,
Dallas County, Texas.

Proceedings reported by oral stenography.

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ALSO PRESENT:

GRAYSON L. LINYARD, Attorney

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 <u>Defendants</u>			
No. 1	Letter dated 4/6/18 From Mr. Pennington To Mr. Malesovas and Mr. Lauten	36	58

1 [P R O C E E D I N G S]

2 THE COURT: All right, this is PR-11-3238
3 the Estate of Max Hopper versus Jo Hopper versus
4 JPMorgan Chase and John L. Malesovas versus Stephen
5 Hopper, et al. All right so, let's start with the
6 announcements over here.

7 MR. LAUTEN: Good afternoon Your Honor,
8 Brian Lauten appearing on behalf of John Malesovas and
9 Lenny Vitullo of Fee Smith Sharp & Vitullo, the
10 interveners.

11 MR. PENNINGTON: Good afternoon Your
12 Honor, I'm Jim Pennington I'm here appearing on behalf
13 of Stephen Hopper and Laura Wassmer as defendants to the
14 intervention filed by Mr. Malesovas and the Fee Smith
15 Sharp and Vitullo law firm.

16 MR. LEVINGER: Your Honor, my name is
17 Jeff Levinger together with Mr. Cecere here, sitting
18 behind me and we represent Laura Wassmer and Stephen
19 Hopper in the Estate, in connection with their claims
20 against JPMorgan Chase, that have now settled, effective
21 last Wednesday, according to the Court's hearings on
22 Thursday and Friday.

23 MR. BECKWITH: Your Honor, Van Beckwith
24 and Jessica Pulliam on behalf of JPMorgan Chase N.A.
25 Your Honor, we're here just simply to make sure that the
26 ~~settlement agreement, proposed settlement agreement, the~~

1 terms of which are protected and remain confidential,
2 which one of the key terms. So, we'll enter an
3 appearance for that purpose.

4 MR. TOBEY: Your Honor, Robert Tobey for
5 Block Garden & McNeill. That is another law firm for
6 the Plaintiffs in this lawsuit.

7 THE COURT: For the Plaintiffs?

8 MR. TOBEY: For the -- I'm sorry, we're
9 in a different lawsuit. For Ms. Wassmer and Dr. Hopper.
10 And we're not a party to this case but, we're here as an
11 interested observer.

12 THE COURT: All right so what other case
13 are you talking about?

14 MR. TOBEY: The primary case that was
15 pending against JPMorgan.

16 THE COURT: So are you replacing --

17 MR. TOBEY: We are not replacing anybody.

18 THE COURT: Which side are you joining
19 on?

20 MR. TOBEY: We're an interested observer
21 in this hearing. My clients have a contingent fee
22 agreement with the clients --

23 THE COURT: All right well --

24 MR. TOBEY: -- Mrs. Wassmer and Dr.
25 Hopper.

1 THE COURT: All right, so your client is
2 who?

3 MR. TOBEY: Our client is the law firm of
4 Block Garden & McNeill.

5 THE COURT: Sir?

6 MR. LOEWINSOHN: And way in the back,
7 Your Honor, Alan Loewinsohn is here representing Mrs.
8 Hopper. I don't anticipate I will be participating but,
9 not knowing the direction of the hearing, I thought I
10 needed to make sure that I didn't need to participate.
11 So, I will be here but probably relatively quiet in the
12 back.

13 THE COURT: Thank you. All right so what
14 I have set today is the Application for Temporary
15 Restraining Order; is that correct?

16 MR. LAUTEN: Yes, Your Honor.

17 THE COURT: All right.

18 MR. LAUTEN: Your Honor, I'll try to be
19 really brief. Let me tell you four things: The facts,
20 the law, what we want, and why we're entitled to it.
21 First, on April 4th, a confidential settlement was
22 reached in this case, and as this Court is undoubtedly
23 aware, Mr. Vitullo has lived and breathed this case for
24 two years or so. He tried a jury trial in this Court
25 for a month.

1 On April 5th I believe he was in this
2 Court and actually had a conversation with the Court off
3 the record, and said look there's a confidential
4 settlement, enjoyed being in here. Literally, within an
5 hour of that announcement, we get a letter terminating
6 us, as the lawyer for the clients, in this case. After
7 all the works been done, within minutes of the
8 settlement, we're terminated and we're told that the
9 agreement, the contingency agreement is unenforceable;
10 we're not going to pay you for your work. They won't
11 tell us the exact amount that's in dispute but, they say
12 you know what, we'll take the entire contingency fee
13 interest and we'll put it in our new lawyer's trust
14 account.

15 Let me tell you first and foremost what
16 the law is on that. I've got these cases and I'll
17 approach in a minute and ask you if I can and give them
18 to you highlighted. I've done a bunch of fee disputes;
19 this is what I do. A big part of my practice is
20 representing lawyers, in these kind of cases. The law's
21 real clear. Once an attorney under a contingency fee
22 agreement has performed, substantially performed or
23 completed his work, at that moment in time, the clients
24 are estopped to not pay the lawyer. That's *Tillery v.*
25 *Zurich*.

1 Actually Dale Tillery who's the Judge in
2 the 134th District Court, when he was a lawyer he had
3 this issue in the *Enoch's* case. They say look, if you
4 could do this Your Honor, people would do it. I just
5 settled this big contingency case; I've got a great
6 idea. I'm going to fire my lawyer and not pay him. You
7 lose all of your defenses under the agreement, if the
8 client does that. As a matter of law, once there's
9 substantial performance, the lawyer's entitled to his
10 fee. That's the law; I've got those cases.

11 So what do we want? What we're asking
12 the Court to do, number one is, they need to tell us
13 what's in dispute. Are they saying we're entitled to 20
14 percent of the fee, 30 percent of the fee? 45 percent
15 is what the agreement says. I'm happy to tender the
16 contingency agreement in camera. I'm happy to tender
17 the termination letter in camera. They won't tell us
18 that.

19 What we're asking the Court to do,
20 therefore, to keep the status quo, is to deposit
21 whatever they say the disputed funds are, with respect
22 to the contingency fee interest at issue, into the
23 registry of the Court; we can do it under seal. We're
24 not here to violate the confidential agreement; the
25 Court doesn't need to know what that is. But we want

1 the money put in the registry of the Court, if they're
2 going to take the position, we get to keep your work and
3 we don't get to pay you.

4 They've raised this point, I think, which
5 is: Does the Court have jurisdiction to do this? The
6 Court absolutely, has jurisdiction to do it. The Court
7 has the inherit power to do it. Those cases are *Prodego*
8 *v. Ware*, *Diana River v. Calvillo* and the Supreme Court's
9 case in *Castilleja*. I've got those cases highlighted
10 and before I finish, if I can, I'll approach and give
11 them to you. And here's what they say. They say the
12 Court absolutely has jurisdiction, under its inherit
13 authority, to put money in the registry of the Court
14 especially, in Probate Court 37.005 of the Civil
15 Practice and Remedies Code, that says this Court has
16 declaratory judgment relief to decide money that's
17 ancillary to an estate.

18 It gets better, Your Honor. You don't
19 have to grant a TRO today, you don't have to grant an
20 injunction today because what these cases say is that
21 putting money into the registry of the Court that's in
22 dispute, which this is, we have a property right. We've
23 earned the money; we did the work; is a non-appealable
24 order. It cannot be appealed. The Court has inherent
25 authority to do it and the Court can put that money into

1 the registry. Can I approach and show you these cases?

2 THE COURT: Yes.

3 MR. LAUTEN: And I've got copies for the
4 other side. The first one is *River*, and the second is
5 *Prodego* and I've got copies. Can I approach, Your
6 Honor?

7 THE COURT: Yes.

8 MR. LAUTEN: In other cases exactly like
9 this one that was put in dispute. So, we want the
10 disputed funds put in the registry and we want the Court
11 to enter an expedited discovery order. I'd like to go
12 depose these Plaintiffs. And I want to come back and
13 next month and I want a summary judgment, because we're
14 entitled to be paid; it's just that simple. Now let me
15 briefly respond to what the position of the clients is.
16 And just look at this from the optics of fairness.

17 You did all the work. You got a
18 favorable jury verdict. You successfully defended a
19 three-million-dollar counter claim. We're not going to
20 pay you, now that the case is settled. We want you to
21 put the money in our lawyer's, our new lawyer's trust
22 account, where you can't get it outside the registry of
23 the Court. And we want to go to arbitration, under the
24 agreement we say, is unenforceable. That doesn't work.
25 So at the end of the day what we're -- oh, and they made

1 one argument: Oh, we've waived the right to be here.
2 The Court -- you can't waive subject matter
3 jurisdiction, Your Honor.

4 So here's what we're asking the Court to
5 do. Number one, the precedent of allowing a client to
6 allow a lawyer to allow a lawyer to spend two years
7 working on a file, to terminate the day they did the
8 settlement, allow the client to take the money into
9 their new lawyer's trust account and say 'we'll get it
10 back to you in a couple of years after arbitration' is
11 absolutely preposterous and it's offensive. We're
12 asking the Court to put the money in the registry up to
13 the disputed percentage; they need to say what that is.

14 The Court can enter that order under seal
15 so there's no prejudice of the confidentiality. I want
16 an expedited discovery order, which this Court can
17 grant, under the TRO rules germane to fee disputes, and
18 this Court has jurisdiction because the corpus is
19 germane to an estate, and I want to come back in 30 days
20 and have a summary judgment and my client needs to be
21 paid. That's what I'm asking the Court to do. I'm
22 happy to answer any of your questions and again, I've
23 got these cases.

24 I'd like to approach if I could give you
25 the Enoch's case because this case stands for a

1 proposition that, they can talk about their defenses all
2 they want. Once you perform, it's over. You can't eat
3 the cake at the restaurant and say, God I just didn't
4 like it; I'm not going to pay for it. That's the
5 situation we're in. We wanted a TRO. The money needs
6 to be put in the registry. We can do all this under
7 seal. And we want to depose these people and we want to
8 get to the bottom of it, and we're entitled to be paid.

9 I'm happy to answer any of your questions
10 you've got but that's the situation we're in. I also
11 have a copy of 37.005, which is the Civil Practice and
12 Remedies Code provision that gives this Court
13 jurisdiction over DEC actions germane to the estate.
14 And subject to any of the questions you've got, I
15 appreciate the time. I'm happy to respond to whatever
16 they come up with.

17 MR. PENNINGTON: May I respond, Your
18 Honor?

19 THE COURT: Yes, sir.

20 MR. PENNINGTON: Your Honor, have you had
21 an opportunity to read our objection that we filed, with
22 the Court, earlier today?

23 THE COURT: No sir, I've been on this
24 bench all day long.

25 MR. PENNINGTON: I understand Your Honor.

1 I just ask so I'll know ahead of time, how much detail I
2 wanted to go into with you, with respect to our
3 objection and response. If I could approach the bench?

4 THE COURT: Yes.

5 MR. PENNINGTON: Thank you, Your Honor.
6 Your Honor, we have raised a number of objections in our
7 response. The first, foremost objection is that the
8 contingency fee agreement that their trying to enforce
9 in this case, contains an arbitration clause. And when
10 we claim the Court does not have jurisdiction, as I put
11 in my objection my response, the reason why we put that
12 in there is because Mr. Vitullo and his law firm, waived
13 their right to pursue any action, in Court. It doesn't
14 specify all the different types of action but, it was
15 clear the language in there, I've quoted it in my
16 response on page 2, but this is the exact wording taken
17 out of the contingency fee agreement, which they are now
18 seeking to enforce, in this Court.

19 The clear language of this provision
20 shows, that they waived their right to pursue any claim
21 in Court. Any action at all. The case law is very
22 clear, with respect to this issue, and because of that,
23 I think that this case does not belong to this Court; it
24 belongs in arbitration. We have asked the Court to
25 sustain our objection and to compel Mr. Vitullo, his

1 firm, and Mr. Malesovas to pursue their claims in
2 arbitration, if they wish to pursue those. But, those
3 claims are not ripe, this Court does not have -- should
4 not have allowed them to pursue this claims before this
5 Court.

6 And Your Honor, a copy of the contingency
7 fee agreement was actually attached to one of the, it
8 was the initial intervention filed by Mr. Malesovas. He
9 attached the copy of the fee agreement to his petition
10 in intervention, as an exhibit, which is why I did not
11 attach it to my response. But it is in the Court's
12 record. Now, I might add, Your Honor that the
13 attorney's at Fee Smith, including Mr. Vitullo, were the
14 ones who actually drafted this agreement so, I don't
15 think they can claim that they weren't aware of it or
16 that the arbitration provision is somehow unfair.

17 The other objection that I have raised
18 Your Honor, is that with respect to the request for
19 temporary restraining order, subject to our objections
20 of this matter going forward in this Court, we had
21 pointed out in our response, there is no imminent harm
22 here. That is obviously, one of their requisite
23 elements that they have to satisfy, in order to get any
24 type of injunctive relief. And the reason why there is
25 no imminent harm Your Honor, is because we have offered,

1 I have offered specifically, on behalf of my clients, to
2 allow the disputed portion of the settlement proceeds to
3 remain in a trust account, specifically Mr. Levinger's
4 trust account. If they're not happy with that, I've
5 offered to receive the funds, disputed portion of the
6 funds, in my trust account.

7 THE COURT: All right well, I guess I'm
8 not understanding; what is the disputed portion of the
9 funds that we're talking about?

10 MR. LAUTEN: Good question.

11 MR. PENNINGTON: Well they claim, they
12 claim --

13 THE COURT: I'm sorry. Excuse me. Sir?

14 MR. BECKWITH: Oh, I didn't say anything
15 it yet, Your Honor but I do want to be really careful
16 just on behalf of JPMorgan Chase. We haven't agreed to
17 pay anybody anything, yet. I mean, we're still working
18 through the terms of the settlement agreement. And we
19 certainly haven't agreed to pay money in the registry of
20 the Court. So, I do want to be careful that if Your
21 Honor ordered something to be placed into the registry
22 of the Court, we worry about the confidentiality of the
23 settlement agreement, which is inviolate is not supposed
24 to be disclosed to anyone.

25 Mr. Loewinsohn and I, as Your Honor

1 knows, and Your Honor spent a lot of time last Thursday
2 and Friday working though Ms. Hopper's request for
3 judgment, and I do have concerns that if the value or
4 amount of this settlement agreement, the one between the
5 heirs and JPMorgan Chase, was disclosed even to Your
6 Honor, given where we find ourselves with a pending
7 request for a judgment, that that would be potentially
8 prejudicial to and certainly objected to by JPMorgan
9 Chase.

10 I just want to make sure we're crystal
11 clear on that. We have no agreement to pay any money
12 right now, into a registry of the Court. And we have no
13 agreement, right now signed, to pay the heirs money. I
14 do join though, in Mr. Pennington's request, and Mr.
15 Levinger's request; I know you asked to see Mr. Vitullo
16 and Mr. Levinger in Court so, here we are. But it does
17 seem that, since a lawyer's bar license is tied to their
18 trust account, that that would be the most logical place
19 to place this money.

20 So, I just wanted to make that objection
21 clear, Your Honor.

22 THE COURT: Well, things disappear from
23 trust accounts too but I'm willing to listen so, go
24 ahead.

25 MR. PENNINGTON: Well, Your Honor with

1 respect to that issue, I have put my request in writing
2 to the extent that there's any dispute about that and
3 I'm happy to offer that letter and will do so into
4 evidence. But, on April 6th I sent a letter to Mr.
5 Lauten and Mr. Malesovas, offering to place the entire
6 45 percent interest, that they claim as a contingency
7 fee, to allow that to remain in Mr. Levinger's trust
8 account.

9 And to be clear, I cited the ethical
10 obligations, under Rule 1.14 of any attorney receiving
11 funds, that he knows are in dispute. That rule makes it
12 clear, that any lawyer in possession of funds, has an
13 obligation to place those funds into his trust account
14 and not to disburse those funds, until the matter has
15 been finally, resolved. So, I cited the rule, assured
16 Mr. Lauten that we would comply with that rule, and
17 alternatively, if they weren't happy with that Your
18 Honor, we even offered to place those funds into another
19 escrow account, maintained by an independent third
20 party.

21 And so, we're not, by any means we're not
22 trying to just make a quick grab for the settlement,
23 then pay the money all directly to my clients. What
24 we're trying to do is we acknowledge that the dispute
25 exists, we're trying to comply with the remedy that's

1 set forth in Rule 1.14 of the Texas Disciplinary Rules,
2 which govern all attorney's, and we've suggested that we
3 would comply with all of those obligations. And if
4 there's a dispute about whether it's Mr. Levinger or my
5 trust account, as I mentioned, we're willing to agree to
6 a third party to set up a different trust account, to
7 place those funds until the matter is resolved.

8 One thing is clear Your Honor, is that
9 they also, under that rule, there's actually case law on
10 point, with respect to this issue, to emphasize how
11 important an attorney's obligation is under Rule 1.14
12 but, if Mr. Levinger received those funds and he paid
13 them out knowing there's a dispute, his bar license
14 would be on the line. And I can cite the Court the case
15 law but, if that is a concern notwithstanding that, as
16 I've mentioned, we've offered to alleviate that concern,
17 by putting them into a third parties trust account.

18 In addition to that Your Honor, there has
19 been no threat; no one has actually threatened to pay
20 out those funds to anyone. And one of the things I
21 pointed out in my response was that, just the fear alone
22 that someone may do something, is not enough. That's
23 insufficient to support the Court entering a temporary
24 restraining order. You have to have actual evidence,
25 that someone has threatened to do something against the

1 law or inappropriate with your property, and that simply
2 does not exist, in this case.

3 To the contrary, we have shown the other
4 side that we are willing not to pay those funds, or
5 disburse those funds to the clients, until the matter
6 has been finally resolved. The other problem with this
7 matter pending in this Court Your Honor is that there's
8 an extreme risk of a violation of Rule 1.05. Rule 1.05
9 has to do with the confidentiality of information
10 regarding clients, and this goes back to our claim for
11 arbitration. If this case goes forward in this Court,
12 or the Court allows that to happen, then the problem is
13 that there's a risk that all of this disclosure of
14 confidential information will end up happening in this
15 Court, and will be a matter of public record.

16 And not only that, but, it'll leave
17 something to the adverse parties, to which my clients
18 were previously, on the opposite side of the case from.
19 And there is an exception in Rule 1.05, which I'm sure
20 Mr. Lauten would address with you but the exception
21 under that rule says that under certain circumstances,
22 when a lawyer is trying to recover a fee, he can, to the
23 extent reasonably necessary, reveal confidential
24 information but there are limitations on that. The rule
25 itself says, to the extent reasonably necessary.

1 In our position, in this case, is that it
2 is not reasonable or necessary to disclose any
3 information in this Court, regarding the merits of the
4 fee dispute claim. All that should be taken in an
5 arbitration setting, where the privacy interest of the
6 parties, can be protected. And so for that reason, we
7 feel, in addition to all the other reasons that we set
8 forth in our response, that this case has no place in
9 this Court, and the Court should compel arbitration and
10 compel Mr. Vitullo and his firm to seek their claims in
11 arbitration. They simply have another place to do that.

12 In addition to that, Your Honor, by going
13 forward in this case, they threaten to change the status
14 quo. The whole purpose of a temporary restraining order
15 is to preserve the status quo of the parties, until the
16 dispute can be resolved, or there could be a further
17 hearing. In this case, by them taking the actions they
18 have, they're actually endangering and jeopardizing the
19 very settlement that my clients have reached, with
20 JPMorgan Chase. If they wanted to pursue their fee
21 dispute claim, they can do it in arbitration, under the
22 protection of the privacy interest, which would serve to
23 protect all of the parties and would also not jeopardize
24 the settlement, because all of those matters would be
25 protected, under the stroke of the arbitration statute.

1 Your Honor, after they filed their
2 initial request for a temporary restraining order, then
3 we filed our objection and our response, and then they
4 shifted their strategy. And now their strategy, what
5 they put in their amended petition and intervention, is
6 now they've asked the Court to deposit the funds in the
7 registry of the Court.

8 THE COURT: I'm not following you, sir.

9 MR. PENNINGTON: I'm sorry.

10 THE COURT: What are you saying the
11 initial strategy was and what is the shift?

12 MR. PENNINGTON: The initial strategy
13 Your Honor, was they asked for a temporary restraining
14 order and injunctive relief. And their initial papers
15 they filed, with respect to the intervention, they
16 mentioned nothing about putting the funds in the
17 registry of the Court, under a motion to deposit the
18 funds. They have now amended their petition in
19 intervention and actually, filed a motion to deposit the
20 funds in the registry of the Court. And they've cited
21 these cases that Mr. Lauten handed to you just a moment
22 ago.

23 The River case, and I've forgotten the
24 other cases he mentioned but, there are a series of
25 cases that he cites in his motion and that he provided

1 to you just a moment ago, that allows for, in certain
2 instances, for funds to be put into the registry of the
3 Court. The problem that Mr. Lauten has though, in this
4 case, is that his client and Mr. Malesovas, have waived
5 their right to seek any kind of action in Court, under
6 the arbitration clause.

7 So, they cannot even come into Court and
8 request those funds to be put in the registry of the
9 Court. They would have to do that under the --with the
10 Triple A or some other arbitration panel but one thing
11 is clear they cannot do it in this Court. But separate
12 and apart from that Your Honor, they have another even
13 bigger problem, and that is those cases require, before
14 this Court can order funds to be paid under the registry
15 of the Court, they have to present evidence that the
16 funds are in danger of being lost or depleted. And
17 there simply is no evidence of that in this case.

18 And if I can approach Your Honor, I have
19 a case I'd like to show the Court that stands for that
20 very proposition. May I approach, Your Honor?

21 THE COURT: Yes.

22 MR. PENNINGTON: This is a Dallas Court
23 of Appeals case, that actually deals with this very
24 issue, and in that case, the Applicant sought both a
25 temporary restraining order and asked the Court to

1 deposit funds in the registry of the Court. That went
2 up on appeal and the Dallas Court of Appeals said that
3 it was an abuse of discretion for the Court in that
4 case, to order the funds to be paid in the registry of
5 the Court, because there was no evidence that the funds
6 were in danger of being lost or depleted. And that is
7 the exact situation, here. We are not -- there's no
8 threat that my clients are going to run away with the
9 money. Instead, it's just the opposite.

10 We have offered to take the disputed
11 portion of the funds, and whether we put them in my
12 trust account, or in Mr. Levinger's account, or some
13 other third party, we've offered a remedy to them under
14 Rule 1.14 and they have remedy of law under that same
15 rule. So, they just don't like it but, they do have a
16 remedy. In addition to that Your Honor, they can also
17 go to the arbitration association the American
18 Arbitration Association and obtain the same relief with
19 the Triple A if they want but, they haven't done that.

20 So, for all of those reasons Your Honor,
21 we would request that their motion be denied, and we
22 would request that this Court compel this matter, compel
23 Mr. Vitullo, his firm, and Mr. Malesovas to pursue their
24 claims in arbitration and to strike the interventions
25 and to otherwise, deny all their relief.

1 MR. LAUTEN: Can I respond, Your Honor?

2 THE COURT: Yes.

3 MR. LAUTEN: First of all, there is no
4 Motion to Compel binding arbitration, before you or set
5 for hearing today, at all, point number one; it's not
6 even before you. Point number two, is you asked a great
7 question and it's a question that I have emailed them
8 about and I've asked them about. What is the dispute?
9 What's the amount in dispute? What's the dispute? He
10 can't even tell you that. What's in dispute is simply
11 his clients don't want to pay. That's it. That's all
12 I've heard.

13 He offered into evidence the termination
14 letter. I have no objection to that. I hope you'll
15 admit it because what you'll find in that letter is that
16 he's taking the position, that the agreement that he now
17 want to enforce in arbitration, he terminated on the
18 basis that it probably, wasn't enforceable.

19 THE COURT: All right. I have not seen
20 the termination letter and I'm looking through what I
21 have here, and I don't have any contingency fee
22 agreement.

23 MR. LAUTEN: And I brought that to admit
24 into evidence, in camera. I figured they would say, oh,
25 that's confidential, you can't enforce your rights,

1 which they're now doing. They're saying well, we hold
2 all the cards, we get to keep your money, you can't try
3 to get your money because you breaching confidentiality.
4 I anticipate that argument. I've got the contingency
5 agreements. I'll offer them into evidence right now, as
6 Exhibits 1 and 2, in camera. If they want a foundation
7 or a predicate, I'll put Mr. Vitullo on the stand right
8 now, we can prove them up; I brought them.

9 If he's got a problem with
10 confidentiality, let's kick everybody out, we'll do it
11 in camera, and I'll put Mr. Vitullo on the stand right
12 here, Your Honor.

13 MR. PENNINGTON: Your Honor I --

14 MR. LAUTEN: Tell me what you want to do.

15 MR. PENNINGTON: If I could see a copy of
16 the agreement, I doubt very seriously, that I would
17 dispute the authenticity of the agreement. But, it was
18 attached and I can show the Court a copy, with the
19 attachment.

20 THE COURT: I'm just saying I don't have
21 it.

22 MR. PENNINGTON: I understand, Your
23 Honor.

24 THE COURT: All right.

25 MR. PENNINGTON: I was going to show you

1 a copy, that was actually attached, to the petition in
2 intervention.

3 THE COURT: Well I need to know whether
4 or not there's an offering to admit it into evidence and
5 if there's an objection. And if the offer is in camera,
6 whether or not that makes a difference to you.

7 MR. LAUTEN: I'd offer into evidence
8 right now Exhibits 1 and 2, which are the signed
9 agreements of the client. If he has an objection of
10 confidentiality, then I'm happy to offer them, subject
11 to in camera, in camera of evidentiary finding.

12 MR. PENNINGTON: Your Honor, I have no
13 objection to the authenticity of these documents. I
14 would prefer that they be submitted in camera.
15 Although, this one, as I said was -- it's my
16 understanding it was attached to the petition in
17 intervention so it's already a public record.

18 MR. LAUTEN: No, it's -- the two
19 agreements are different, Your Honor and I'm offering
20 two separate exhibits, Exhibits 1 and 2. If I could
21 approach, I can give you copies.

22 THE COURT: All right, let me see what
23 you're talking about.

24 MR. LAUTEN: Do you have stickers?

25 [Exhibits marked]

1 Your Honor, I've handed you what I've
2 already marked, pre-marked for identification, as
3 Exhibits 1 and 2 to the hearing, and I'd offer those
4 into evidence now.

5 [Intervenors Exhibits 1 and 2 offered]

6 THE COURT: Mr. Pennington?

7 MR. PENNINGTON: No objection, Your
8 Honor.

9 MR. LAUTEN: Your Honor, I'd offer the
10 termination letter, as Exhibit 3 into evidence, dated
11 April 5, 2018.

12 [Intervenors Exhibit 3 offered]

13 THE COURT: All right. Now, let me
14 understand that your Exhibit 1 is a contingency contract
15 of representation and then, we have the same caption on
16 Exhibit 2. Are they the same thing or--?

17 MR. LAUTEN: Good question, Your Honor.
18 Exhibits 1 and 2 are signed by each client. They're the
19 same underlying agreement but, different signatures on
20 both but it's really important that the Court
21 understands this is a big deal. If you look at Ms.
22 Wassmer's interlineations on the contingency agreement,
23 she said we're responsible for defending the counter
24 claims. Why is that important? Because there was a
25 three-million-dollar defense of those claims. We're

1 entitled to a contingency fee on those claims, above the
2 45 percent. I've been trying to find out for three
3 days, what is in dispute.

4 THE COURT: All right. Well my question
5 is -- as I said, are both of these documents the
6 operative documents?

7 MR. LAUTEN: Correct, your Honor.

8 THE COURT: All right so, -- Sir?

9 MR. PENNINGTON: Your Honor, with respect
10 to Exhibit 3, I do not --

11 THE COURT: Let's not move to three.
12 Let's stay with one and two okay?

13 MR. PENNINGTON: I understand.

14 THE COURT: All right, I need to
15 understand. Exhibit 1 has some interlineations and it
16 looks like they're initialed by at least, Laura Wassmer.
17 And then Exhibit 2 doesn't have any -- All right Exhibit
18 1 is not dated; Exhibit 2 seems to be dated so --

19 MR. LAUTEN: I'd offer Exhibit's 1 and 2.
20 If there's a problem with the foundation, I'm happy to
21 put Mr. Vitullo up on the stand right now. I'm happy to
22 prove it up, if that's what you want me to do.

23 MR. PENNINGTON: Your Honor, we don't
24 object to the authenticity of either of those exhibits.
25 We believe those to be duplicate copies of the

1 contingency fee agreements that were signed by my
2 clients.

3 THE COURT: Okay. So, I guess the
4 question is: Were these two signed at two different
5 times, or what?

6 MR. PENNINGTON: My understanding, Your
7 Honor, is I think that one client signed one version,
8 and the other client made some interlineations, and then
9 signed -- it's the same contract. At least, that's my
10 understanding but, that the, one of the clients made
11 some notes, on their version that they signed, then they
12 sent it back.

13 MR. LAUTEN: That's correct. I agree
14 with that.

15 THE COURT: Okay so one client agrees on
16 a different scope of representation than the other
17 client?

18 MR. LAUTEN: That's my position, Your
19 Honor. My position is that Laura Wassmer is at risk for
20 an additional contingency fee for the successful defense
21 of the claims, based on the very interlineations she
22 wrote. That would only go to show one thing, the 45
23 percent they want escrow, is insufficient under the
24 agreements they signed, if that's what they want to do.
25 But be that as it may, all we're really here -- what

1 that documents prove is this.

2 THE COURT: Well, I'm not asking you
3 that. I'm just asking the question. Am I to understand
4 that we are operating under one agreement for Laura
5 Wassmer, and another agreement for Stephen Hopper?

6 MR. LAUTEN: That's my position, Your
7 Honor, yes. Albeit, they're the same with respect to
8 the contingency, on the affirmative claims.

9 MR. PENNINGTON: Your Honor, the more
10 important matter is that both of these agreements
11 contain an arbitration clause.

12 THE COURT: Well, I'm just trying to get
13 my question answered, okay?

14 MR. PENNINGTON: I'm sorry.

15 THE COURT: I see that they both have an
16 arbitration clause.

17 MR. VITILLO: Your Honor, I can speak to
18 that question, since I'm the one that presented the
19 contingency fee contracts, to both my clients. If I
20 may, without revealing any -- I want to make sure I
21 don't reveal any confidential information; I don't
22 believe it is but the first contract, Your Honor, was
23 signed by Stephen Hopper. The second contract, which is
24 the same contract, was signed by Laura Wassmer, which
25 she may interlineations, but she made changes to that

1 contract to include the defense of the JPMorgan Chase
2 counterclaims.

3 After those two contracts were signed,
4 first by Stephen Hopper and the Laura Wassmer, I then had
5 a conversation, a phone conversation with both of them,
6 to make sure all of us were on the same page, okay? So,
7 that's how those contracts evolved. And so, it was
8 first signed by Stephen Hopper, then it was signed and
9 changed by Laura Wassmer, and then I had a conference
10 call with Stephen and Laura to make sure that my scope
11 of representation does, in fact, include defending the
12 counterclaims of JPMorgan Chase.

13 THE COURT: Okay. And is there
14 documentation of that?

15 MR. VITULLO: Of me defending the
16 counterclaims, yes, Your Honor. But, -- absolutely.

17 THE COURT: All right. I'm sorry I
18 interrupted you.

19 MR. PENNINGTON: That's all right, Your
20 Honor.

21 THE COURT: Okay what was your --

22 MR. LAUTEN: Before you do that -- I'm
23 sorry to interrupt. Can I please get a ruling on
24 offering Exhibit 3 into evidence, Your Honor? I offered
25 Exhibit 3, the termination letter and I didn't get a

1 ruling on that.

2 THE COURT: Well, I'm going to get to it
3 but I'm trying to get finished with 1 and 2 --

4 MR. LAUTEN: Sure.

5 THE COURT: -- okay? So, I think I've
6 gotten my questions answered with respect to 1 and 2.
7 Do you have anything you want to add?

8 MR. PENNINGTON: With respect to 1 and 2,
9 Your Honor, the only thing is what I've just pointed out
10 which is, that they both contain an arbitration
11 provision.

12 THE COURT: All right.

13 MR. PENNINGTON: So, it's now undisputed
14 that both of the agreements they're trying to enforce,
15 contain that arbitration clause, which requires this
16 matter to go to arbitration. And it contains the
17 language that I quoted in my response.

18 THE COURT: Okay.

19 MR. PENNINGTON: Are you ready for me to
20 respond to the rest of the arguments or are you --

21 THE COURT: No, just a minute.

22 MR. PENNINGTON: Yes, Your Honor.

23 THE COURT: All right. Now, the Court's
24 going to admit Exhibits 1 and 2. And then, with respect
25 to Exhibit 3?

1 [Intervenors Exhibits 1 and 2 admitted]

2 MR. PENNINGTON: Your Honor, with respect
3 to Exhibit 3, which I believe is the termination letter,
4 I don't dispute -- I would agree to the authenticity of
5 this letter. The authenticity of it is not disputed.
6 The only objection I have, with respect to this exhibit
7 being admitted into evidence, is that it does contain
8 what is information I consider not to be or to be
9 confidential. And this goes back to my previous claim,
10 about part of the problem why this case should be in
11 arbitration and not in your Court is because, we're now
12 getting into matters which are confidential.

13 If I have to start explaining why my
14 clients terminated Mr. Vitullo to justify their
15 termination, that opens up a whole can of worms and
16 matters, which should not be disclosed to the public.
17 They are private and especially, in light of the fact
18 that all the parties signed an arbitration provision,
19 those matters should be decided in arbitration and not
20 here in this Court.

21 But, I have no objection to this Exhibit
22 3 being admitted into evidence, provided that there's
23 some, that it's done under seal or under some order of
24 confidenti --

25 THE COURT: What portion of this letter

1 is confidential?

2 MR. PENNINGTON: It's in the first
3 paragraph where we start getting into the decision, the
4 reason for the --

5 THE COURT: Well, just tell me exactly,
6 what language you consider to be confidential.

7 MR. PENNINGTON: Well, Your Honor, if I
8 may, if I point that language out on the record, counsel
9 for JPMorgan Chase is here in the courtroom, and I don't
10 want to reveal any confidential information that might
11 have an adverse effect on the settlement. So, that's my
12 concern. I feel like I'm being put in a box right now.

13 THE COURT: Well, I mean I appreciate
14 what you're saying but, you know, I guess you know --

15 MR. PENNINGTON: Well maybe I could do it
16 this way, Your Honor. If I start with the sentence that
17 I believe, contains the confidential information but,
18 this is on the -- it's the third sentence that says:
19 "Their decision to terminate this relationship is based
20 on a number of factors." That sentence all the way
21 through the next-to-last sentence, which says: "As a
22 result, I'm notifying you that my clients are, effective
23 immediately, terminating the relationship." Everything
24 in between that, I believe, is confidential. And I
25 would ask the Court to have that be admitted, just in

1 camera.

2 THE COURT: Mr. Lauten?

3 MR. LAUTEN: I don't have any objection
4 to it being admitted either under seal or in camera but,
5 I would like it to be before the Court, for the purpose
6 of this hearing so, it's up to you.

7 THE COURT: Well, it's before the Court;
8 I'm holding it.

9 MR. LAUTEN: Well I'm offering it into
10 evidence but, I don't want someone to, you know, have
11 some basis to file a grievance against us. So, if
12 that's what the implication is, I'm happy to offer it
13 into evidence, you know, in camera, outside the presence
14 of parties that are adverse, to us. But, at the same
15 time, my point though obviously, is there's nothing
16 confidential in here.

17 THE COURT: Mr. Beckwith?

18 MR. BECKWITH: Your Honor, I just want to
19 make sure, since I've been shown this letter and I've
20 been told I shouldn't see the letter, that it doesn't
21 say anything about the terms of the settlement and the
22 amount of the settlement. That's my biggest concern,
23 Your Honor. I don't think anybody wants to --

24 MR. PENNINGTON: I'll represent to you
25 it's not.

1 MR. PENNINGTON: Okay. Then with that
2 representation, Your Honor, I'll sit back down.

3 THE COURT: All right. So, the Court is
4 going to admit Exhibit 3.

5 [Intervenors Exhibit 3 admitted]

6 MR. PENNINGTON: Is it going to be
7 admitted in camera, Your Honor or for all purposes?

8 THE COURT: I think I'm going to admit
9 Exhibit 3, for all purposes.

10 MR. PENNINGTON: So, my objection is
11 overruled, Your Honor?

12 THE COURT: Yes.

13 MR. LAUTEN: I don't know exactly where
14 we are but could I make a big point here? Were you -- I
15 can't remember where we left it.

16 MR. PENNINGTON: I'm sorry but I wasn't
17 through.

18 MR. LAUTEN: Oh, go ahead, that's fine.

19 MR. PENNINGTON: Your Honor, in response
20 to that letter, I would like to offer Exhibit 4.

21 [Exhibit No. 4 offered]

22 MR. LAUTEN: Object hearsay, object
23 relevance.

24 MR. PENNINGTON: Your Honor, Exhibit 4, I
25 mean, if I have to -- if they won't stipulate to the

1 authenticity of this, I will represent to the Court that
2 this is a true and correct copy of a letter that was
3 sent to Mr. Lauten on April 6, 2018. And I would
4 request that this document be admitted, at this time.

5 MR. LAUTEN: My objection is not to
6 authenticity. My objection is to relevance and hearsay.

7 MR. PENNINGTON: Your Honor, the
8 relevance is that this letter shows that I have agreed
9 to put the funds into either Mr. Levinger's trust
10 account, my trust account or that of an offer to put it
11 into that of a third party. And it goes to the very
12 heart, I mean, they have to show that there's some
13 imminent harm that the funds will be lost or depleted or
14 removed. And if those funds -- if I'm agreeing on
15 behalf of my client, to put those funds and to hold them
16 at the Trust, until the settlement or until this matter
17 is finally resolved, there is no danger or imminent
18 threat of the funds being lost or depleted because
19 they're going to remain in a trust account, either mine
20 Mr. Levinger's or some other third parties.

21 MR. LAUTEN: This is important point,
22 Your Honor, and this is the big issue here. This is why
23 we're in a separate box. This is an ownership issue at
24 this point and Mr. Loewinsohn, back there, had this
25 issue in the Hunton Hill fee dispute and that is this:

1 On the one hand you have the Mandal right line of cases
2 that say, if you terminate your contingency fee lawyer
3 without cause, you get the entire contingency fee
4 interest but, if with cause, you get quantum meruit.

5 We're not under that body of case law.
6 The reason is because we've done the work. The case is
7 over. It's our property. We own those funds. We have
8 a vested interest. There's no dispute here. They
9 can't wait until aha, we've got a settlement now and we
10 don't want to pay you. And when they argue we want to
11 put it in Mr. Levinger's account, he's the one that is
12 criticizing Mr. Vitullo in Exhibit 3, that you've just
13 admitted.

14 Why should we surrender control of our
15 money that we own? We have a property right per Exhibit
16 1 and 2 and they're in evidence. And those contingency
17 fee agreements, the moment we do the work, we own it.
18 Not their portion, our portion. It works both ways. We
19 can't hold their money any more than they can hold our
20 money. And if they think that it's all protected
21 because lawyers are subject to bar rules, well then,
22 give it to us and let us put it in our trust account.

23 I mean under the rule of *Goose v. Gander*,
24 it works both ways. So, but that's the big issue here,
25 these aren't disputed funds. We own the property right,

1 because we've done the work. The *Tillery* case and the
2 *Enoch* case that I handed you, say they are estopped. If
3 you could do this Your Honor, every time Mr. Branson or
4 Ted Lyon or somebody went and got a thirty or forty-
5 million dollar-settlement, it would be malpractice for
6 the client to say, I'm firing you. Let me keep the
7 money we'll go arbitrate. Let me see if I can get a
8 discount on what I already owe you. People would do
9 that if you could do that. You can't. And that's what
10 *Enoch* said.

11 If we were six months before trial or
12 three months before trial or a year before trial,
13 absolutely. But they can't tie up the money that we now
14 own. That is the distinction between the former and the
15 latter is we have done the work and now that Exhibits 1
16 through 3 are in evidence, it is undisputed in this
17 courtroom, that they terminated on the very day the
18 settlement was announced, in here. You've got
19 undisputed proof that they terminated the day the case
20 ended, for all practical purposes.

21 MR. PENNINGTON: Your Honor --

22 THE COURT: All right. It's almost 5
23 O'clock so let's wrap it up.

24 MR. PENNINGTON: I'll make it quick, Your
25 Honor. You know, Rule 1.14 gives the Court the exact

1 remedy that needs to be applied in this case and that
2 is, I mean, they don't like it but, the ethical rules
3 require that any disputed funds, be held in a large
4 trust account or escrow account. We've agreed to comply
5 with that. The only disagreement we're having is the
6 place where those funds are going to be held.

7 And Your Honor, I mean they may not, you
8 know, he's citing this good for the goose, good for the
9 gander rule but, the bottom line here is, Rule 1.14 says
10 exactly what the remedy is and that's, it's held in
11 trust or escrow. If they don't like it, they can go to
12 the Triple A, the arbitration panel, and ask them for
13 some kind of injunctive relief or ask them to put the
14 funds into the registry of the arbitration panel.

15 They have many other remedies available
16 to them but, they don't have the remedy of coming into
17 this Court and asking for the funds to be deposited into
18 the registry. They waived it when they signed the
19 arbitration agreement. And the problem I've got right
20 now is, I can't fairly defend my client and explain to
21 you, why they terminated their clients, and give you a
22 full explanation, which I think if I could give it to
23 you, I think it might affect whether or not you believe
24 that they're entitled to their fee or not.

25 I'm in a box right now and I shouldn't be

1 here, because we should be in arbitration where I can
2 explain to an arbitrator why my clients are disputing
3 the fee. Mr. Lauten is trying to put the burden on me
4 and say that I have the burden to tell this Court the
5 amount that's in dispute. I don't have that burden.
6 He's the one who's trying to have the Court put funds in
7 the registry.

8 He's got to come forward and tell the
9 Court how much those funds are, without disclosing any
10 settlement amount. That's why I said we would withhold
11 the entire 45 percent. I'm not going to give you an
12 amount but, I'll tell you the percentage and I've also
13 asked them to tell me if they've got any expenses that
14 they've incurred, and we'll withhold those, too. But
15 all that can be done under the arbitration umbrella, and
16 not in this Court.

17 Now, I did move to compel, in my
18 response, on page three, at the bottom of my objection,
19 I specifically asked this Court to compel that their
20 claims be submitted to binding arbitration. So, Mr.
21 Lauten is incorrect on that. They filed their petition
22 in intervention at noon on Friday so, I have had all
23 weekend, that's it, to get ready. But I did ask for
24 that relief in my papers, my objection I filed, I asked
25 the Court to compel this matter to arbitration.

1 His other point about, he continues to
2 repeat this line of cases, the *Tillery* case, which say
3 that my plan is estopped, once they fully perform. Well
4 first of all, it's a disputed issue about whether they
5 have fully performed. We have put that in our response
6 that if that agreement is enforceable, which we have an
7 issue over but, if it is enforceable, we believe that
8 Mr. Vitullo's firm breached that agreement. And, I
9 can't go into the details as to why, because that would
10 breach confidentiality and so forth but, one thing I can
11 tell you is that the case law he relies upon, the
12 *Tillery* case and the *Enoch's* case, both of those cases
13 were questioned by a more recent case, a Dallas Court of
14 Appeals case, called *Neece v. Lyon*.

15 And this is a 2015 case, where the Dallas
16 Court of Appeals specifically, addressed this issue, and
17 they said that -- and this was a fight between a client
18 and a lawyer over some fees, and then that case, the
19 Court recognized that the clients could, even after the
20 lawyer fully performed, the clients could assert a claim
21 for restitution and rescission of the agreement, after
22 the fact, and that they did have those defenses
23 available to them.

24 MR. LAUTEN: I'm the lawyer in that case.
25 That was a barratry case; still pending and that's not

1 what it says. I represent Mr. Lyon in that case. If
2 you want to talk about it, that's not what it says.
3 It's a barratry case.

4 MR. PENNINGTON: Well, I --

5 MR. LAUTEN: In fact, Rod Phelan and I
6 did that case.

7 THE COURT: Excuse me, sir. I don't
8 allow --

9 MR. LAUTEN: I apologize for the
10 interruption. I'm sorry.

11 MR. PENNINGTON: I've got a copy of the
12 case Your Honor, if you want it.

13 THE COURT: All right, thank you.

14 MR. PENNINGTON: But the bottom line,
15 Your Honor is whatever the remedy is and whatever
16 defenses my clients may or may not have, those are all
17 issues that should be decided in arbitration and not in
18 this Court. Your Honor, I just want to make sure before
19 I finish, if I could get a ruling on my offer of exhibit
20 four.

21 THE COURT: Uh, let's see --

22 MR. PENNINGTON: That was the April 6th
23 letter, Your Honor.

24 THE COURT: Any objection?

25 MR. LAUTEN: I object to relevance and

1 hearsay.

2 MR. PENNINGTON: Your Honor, I apologize,
3 I misspoke. I said Exhibit 4, It's Defendants Exhibit
4 1, that I handed to you, I apologize.

5 THE COURT: Sir?

6 MR. LAUTEN: Here's the problem with the
7 relevance: 1.14 that he keeps citing you about putting
8 the money in the lawyer's trust account, that's this
9 lawyer's trust account. Not the person criticizing is
10 over here. If he wants us to put the disputed money in
11 Mr. Vitullo's trust account as 1.14 says, and hold it
12 there, I have no problem with that.

13 MR. PENNINGTON: Your Honor, but --

14 MR. LAUTEN: Hold on, let me finish.

15 MR. PENNINGTON: Sorry.

16 MR. LAUTON: But, what he's trying to say
17 is, the ethical rule when there's a dispute between a
18 lawyer and a client, it goes in that lawyer's trust
19 account. That's Mr. Vitullo. What he's saying is put
20 the money in this lawyer's account, who follows our
21 instructions, not yours. Well what happens when that
22 happens, Your Honor? Who's going to tell Mr. Levinger
23 what to do with that money? A Court's going to have to
24 tell him to give it back. He's not going to give it
25 back to us because he thinks it's right. It's our

1 property.

2 THE COURT: Okay. Mr. Beckwith?

3 MR. BECKWITH: Yes, Your Honor, just
4 briefly. The status quo as we are here today, is we
5 have a Rule 11 Agreement that's been filed with the
6 Court, there was an announcement that announced that the
7 heirs and JPMorgan had reached a settlement. There is a
8 definitive, confidential term sheet and the parties are
9 negotiating a final definitive settlement agreement.
10 The money that is part of the settlement, is at JPMorgan
11 today. A material term of the settlement is
12 confidentiality and I don't think Mr. Vitullo, Mr.
13 Lauten, Mr. Pennington, Mr. Levinger or anybody wants to
14 violate that. But the material term of the settlement
15 is the confidentiality.

16 I've expressed to you my deep concern
17 that after all of the time that you invested in the
18 judgment hearing last week, I do think it would be
19 inappropriate for Your Honor to gain knowledge of the
20 heirs' settlement, as you're trying to weigh the
21 decision on the judgment of that important decision.
22 Here's what -- I did say earlier that I joined in Mr.
23 Pennington's request for the trust account. I join in
24 Mr. Lauten's request, too. There are five lawyers in
25 front of the bar here, all of whom are duty bound to

1 keep money in their trust account subject to licensure
2 literally, their state bar license hangs on the line.
3 And so any of the five lawyers ought to be able to take
4 the money, Mr. Vitullo, Mr. Lauten, anybody.

5 The other thing I suggested, when I was
6 on the phone this morning trying to solve this is, there
7 are a ton of banks and title companies and trust
8 companies. Your Honor could say, you-all go find one
9 and send it there. But I think those are the simple
10 solutions here. So then, we can keep the settlement on
11 track, and then let the lawyers go fight about it as
12 they need to fight about it in arbitration, or in Your
13 Honors Court. But let's just find a place to put the
14 money. There are five trust accounts here that we could
15 put it in or, in a bank or, a title or, a trust company.
16 I hope that's helpful.

17 MR. LAUTEN: And to Mr. Beckwith's point,
18 we're happy to agree to an independent third party to
19 hold this money, as long as, it's subject to your order
20 on when it gets released. If you simply just tell us to
21 leave and put it in Mr. Levinger's trust account, we're
22 never going to get that money back until we go to you or
23 a different court and say give it back. That's why we
24 need the Court to maintain jurisdiction over the corpus.
25 But I don't have a problem with Mr. Beckwith's

1 suggestion, if it's a third-party escrow agent or bank
2 or whoever.

3 But Mr. Levinger, he's a great lawyer,
4 dear friend of mine; he answers to his clients as we all
5 do. He doesn't answer to me and he doesn't answer to
6 Mr. Vitullo. If you want to do a third party, that's'
7 duty bound to follow the order of you or this Court, I'm
8 fine with that.

9 THE COURT: All right. We need to wrap
10 up. We're past the allocated time. Can you hear me?

11 MR. PENNINGTON: I'm sorry?

12 THE COURT: I said can you hear me?

13 MR. PENNINGTON: Yes, Your Honor.

14 THE COURT: Okay. This is my concern and
15 you know we have invested a considerable amount of time
16 in this Hopper case. And, I guess, Mr. Pennington, I
17 believe that your clients have created a problem that
18 jeopardizes all the work that's in this case. And I'm
19 concerned that, I mean based on what I'm hearing from
20 Mr. Beckwith, I'm just kind of reading between the lines
21 and basically, he's saying that they're negotiating the
22 terms of the agreement.

23 And so, I guess one of my concerns is,
24 that the agreement may fall apart, which would be
25 problematic for your clients and possibly, for this

1 case. And also, there's an intervention that was filed,
2 which means that it may be problematic, in terms of
3 getting a final judgment on all of the work that has
4 already been done. And with respect to your client's
5 concerns about -- I mean, there's something here that I
6 don't understand.

7 I don't understand how Mr. Levinger and
8 Mr. Cecere were the Appellate Counsel on a case with Mr.
9 Vitullo and now they're on opposite sides. So, that's
10 not clear to me how that works and I find that an odd
11 posture. And I find it an odd posture to suggest that
12 given that circumstance, that Mr. Levinger should be the
13 person that I should trust to hold the funds. Because
14 it appears that his interest now, is adverse to Mr.
15 Vitullo.

16 And, of course, you've got the Court in
17 the position of, you don't want me to understand what
18 the settlement is because of the effect on the
19 confidentiality, and Mr. Beckwith doesn't want the Court
20 to know or doesn't want it put into the Court registry
21 because, somebody can do the math and figure out what
22 they paid. And so, you know, when I look at the root
23 cause of all this problem, it comes back to your clients
24 and your client's decisions.

25 And I'm concerned that, I mean, I

1 understand that there's an issue with respect to whether
2 or not the arbitration agreement is enforceable but, I
3 don't think that the issue should be whether or not the
4 Court has authority to protect whatever assets are in
5 the case or not in the case. And you know, I'm really
6 challenged to understand why this issue cannot be worked
7 out because of the risk to all of the work that we have
8 put into this case. And I --

9 MR. PENNINGTON: As to that point, Your
10 Honor, and I'm not trying to interrupt you, I apologize
11 but, as to that very issue, I mean, I heard Mr. Lauten
12 just agree on behalf of his clients, that they would do
13 that, with a third party.

14 THE COURT: Well, I have been party to
15 cases, in fact, I probably have some cases down here
16 where there's been some funny business with trust
17 accounts, so I'm not persuaded that that's the most
18 protection that I can give, okay because, even if I put
19 funds in a trust account, that person is not bonded.
20 And that law firm may not be bonded sufficiently or
21 insured sufficiently if that person decides to take a
22 permanent vacation on that money.

23 And so, I mean, I'm very concerned about
24 the protection of everyone's interest but, I think that,
25 you know, I'm kind of in a box too, without knowing what

1 I'm protecting. I mean, as I said, this whole thing has
2 developed from your clients' decisions. And your
3 clients are not providing the Court, in my judgment, an
4 appropriate resolution. So, I mean, I'm willing to give
5 you a chance to talk with Mr. Lauten but, I mean, maybe
6 the resolution is that Chase Bank keeps the money, until
7 you-all work out your disputes.

8 MR. BECKWITH: That's what I was just
9 asking my client, Your Honor, but the settlement --

10 MR. LAUTEN: I think we're okay with
11 that.

12 MR. BECKWITH: The final terms of the
13 settlement is that we have finality, you can sign the
14 settlement agreement and then, the money can be funded,
15 once the arbitration is solved.

16 THE COURT: Well, I'm not --

17 MR. LAUTEN: Well, I'm not agreeing to
18 that part. But, I was with you until you said
19 arbitration.

20 THE COURT: I'm not going to say whether
21 or not -- I need to read this stuff -- but I'm not going
22 to say whether or not I'm going to refer you to
23 arbitration today. But I am saying to you that I think
24 it's disingenuous to suggest that the assets will be
25 protected. And no disrespect to Mr. Levinger or any of

1 you-all but, I just, -- You know, the bar rules, and I
2 teach ethics all the time, are, you know, they're the
3 rules but they're not the protection.

4 MR. BECKWITH: Your Honor, I didn't mean
5 to suggest arbitration order, Your Honor, but we are
6 happy to finalize settlement and the money will just sit
7 there and someday, be funded upon the proper orders of
8 the arbitrators or the Court.

9 MR. LEVINGER: Well, for clarity, the
10 portion of the money that indisputably belongs to the
11 clients, should go to the clients.

12 THE COURT: Well, sir, I mean, they have
13 created this problem. And so, why should I put them in
14 a better position than they were in, before they created
15 this problem?

16 MR. PENNINGTON: Your Honor, with all due
17 respect, I mean, my clients haven't really been afforded
18 an opportunity to explain their position.

19 THE COURT: Well, but you come down here,
20 I mean, I guess my frustration is I've spent a huge
21 amount of time on this case, and I would expect, that as
22 officers of the Court, that issues like this would have
23 been worked out. I understand that they haven't and
24 that's why you're here but, as I said, I'm really
25 concerned about the impact on getting to a point of

1 final judgment on the underlying case. And what you're
2 doing is basically, you're taking the Court's time away
3 from that case, moving into this issue.

4 MR. PENNINGTON: Well Your Honor, we're
5 not doing that. That's what Mr. Vitullo's doing.

6 THE COURT: Well, you are doing it.

7 MR. LAUTEN: We got terminated, yeah,
8 sorry.

9 THE COURT: Okay, you are doing it. I
10 mean I have a mountain of stuff to read from the last
11 couple days of the hearing and now, I'm having to turn
12 my attention to this issue and that's a problem.

13 MR. PENNINGTON: Well and I regret that
14 you're having to do that, Your Honor and that's why I've
15 asked for this matter to be compelled in arbitration.

16 THE COURT: Well and as I said, I have to
17 even read a lot of stuff to decide whether or not that
18 makes sense to me. And, you know, I haven't been fully
19 informed on that issue because, I mean, this is just
20 basically, a TRO hearing. And I'm sure that you have
21 more information to provide me on whether or not the
22 arbitration provision is enforceable, or whether or not
23 there's waiver.

24 I'm not in a position to make that
25 decision, today but, I need a resolution that protects

1 the alleged property interest that Mr. Vitullo or Mr.
2 Lauten is asserting and I want to come up with something
3 that is fair to your clients, as well as protect the
4 interest of JPMorgan Chase, and hopefully not damage Ms.
5 Hopper's interest.

6 MR. PENNINGTON: Your Honor, if Mr. --

7 MR. LOEWINSOHN: Your Honor, if I may
8 state on that. Your Honor raises obviously, a very
9 important procedural point. I'm just going to put all
10 parties on the notice here that, we're going to need to
11 figure out procedurally how to remove this action from
12 the rest of the actions because, it will prejudice Mrs.
13 Hopper from obtaining her final judgment. And I will be
14 speaking to all counsel here about dealing with these
15 proceedings and separating them out.

16 MR. PENNINGTON: We can sever. We'll
17 agree to severance. It's no problem. Don't worry
18 Allan.

19 MR. LEVINGER: Further, Your Honor, --

20 THE COURT: I don't know that The Court's
21 going to agree to it so we just need to -- I need to
22 have all of the information before I make that decision.
23 I mean you're piling the decisions that I need to make
24 pretty high that's what I'm saying to you. And I'm
25 willing to make the decisions but, I think that you

1 can't -- you can't expect me to just agree with you.

2 MR. PENNINGTON: Your Honor, what I heard
3 Mr. Beckwith offer just a moment ago was that his client
4 would be willing to retain the funds, the disputed
5 amount and that --

6 THE COURT: If I agree that Mr.
7 Beckwith's client retain the funds, he's going to retain
8 all of it.

9 MR. PENNINGTON: Well Your Honor --

10 MR. BECKWITH: Your Honor, we are not --
11 I'm not retaining them in some sort of special escrow
12 account. I'm just agreeing not to pay them until
13 somebody tells me the settlement is scheduled.

14 MR. PENNINGTON: Your Honor, --

15 MR. BECKWITH: When the settlement
16 agreement is done, it's going to be signed. But then
17 the funding of the settlement can depend upon
18 appropriate orders of the Court or the arbitrators.

19 THE COURT: I mean, why should I put your
20 clients in a better position and they've created this
21 issue?

22 MR. PENNINGTON: Your Honor, the reason
23 why is because Rule 1.14 is --

24 THE COURT: Sir, I'm very familiar with
25 1.14. And as I said, I don't agree that a trust account

1 just of --

2 MR. PENNINGTON: And no, I'm not talking
3 about that right now, Your Honor. What I was going to
4 say was Rule 1.14 addresses the portion that's
5 undisputed.

6 THE COURT: Well but, you're unwilling to
7 tell me what's disputed or undisputed or why there is a
8 dispute and so, I am without sufficient information to
9 make an informed decision.

10 MR. PENNINGTON: I'm sorry Your Honor,
11 but as to that issue, I think my letter, Defendant's
12 Exhibit 1, the April 6th letter says that the amount, we
13 can calculate the amount without telling the Court
14 because we know that they're claiming a 45 percent
15 interest. So what I'm suggesting is that if Mr.
16 Beckwith wants to retain 45 percent of the settlement
17 proceeds, and not pay that portion --

18 THE COURT: I'm not --

19 MR. LAUTEN: I can't agree to that.

20 THE COURT: We're not saying the same
21 thing, sir. If I have to order Mr. Beckwith to retain
22 the settlement, I'm going to order him to retain all of
23 it --

24 MR. PENNINGTON: Can I just point out one
25 other thing?

1 THE COURT: -- if that's the option I
2 select.

3 MR. PENNINGTON: The other part of that
4 is that, what you're saying now is you're going to order
5 the entire amount --

6 THE COURT: I said if I make that
7 decision, it's going to be the entire amount.

8 MR. PENNINGTON: And the only reason -- I
9 disagree with that Your Honor position --

10 THE COURT: I understand.

11 MR. PENNINGTON: And I just want to
12 specifically point out that Rule 1.14 does say
13 specifically, that if there's any amount that is not in
14 dispute, that at least that portion, should be paid to
15 the client.

16 THE COURT: All right well they're not
17 telling me that any of that is not in dispute. Are you
18 saying that it's all in dispute or not?

19 MR. LAUTEN: That's exactly right, Your
20 Honor.

21 MR. PENNINGTON: That is not true, Your
22 Honor.

23 MR. LAUTEN: I'm telling you my position.

24 MR. PENNINGTON: Well, they put in their
25 papers that they're only disputing the percentage that

1 they're owed, under the contract.

2 THE COURT: Well, as I said, I don't have
3 any information to respond to. I'm not saying yes or
4 no. I don't know what I am dealing with. And I'm
5 prohibited from knowing what I'm dealing with so, you
6 know, you've kind of got me in a difficult spot. Well I
7 haven't read all this. I will look at it and I'll look
8 at your cases.

9 MR. LAUTEN: May I leave my proposed
10 order, Your Honor?

11 THE COURT: If there's something else
12 that you think you can tell me that would be helpful,
13 I'm open to that.

14 MR. PENNINGTON: Your Honor, before we
15 leave, can I just get a formal ruling on my offer of
16 Defendant's Exhibit 1?

17 THE COURT: All right. I'll admit
18 Defendant's 1.

19 [Defendant's Exhibit No. 1 admitted]

20 MR. LAUTEN: Can I approach, Your Honor?

21 THE COURT: Yes.

22 MR. LAUTEN: This is a proposed TRO and a
23 proposed order for deposit into the registry. And if
24 you want, I've got it on a thumb drive in Word so,
25 you're welcome to it or however, you want.

1 THE COURT: All right.

2 MR. BECKWITH: And Your Honor, I do
3 object to the temporary restraining order to the extent
4 that it calls for certain amount of money to be placed
5 into the registry of the Court. I think that ruling
6 will jeopardize these proceedings, jeopardize Your Honor
7 as you are trying to work out the judgment with respect
8 to Mrs. Hopper and the JNOV take nothing judgment that I
9 requested or the judgment Mr. Loewinsohn requested and
10 so, we would object.

11 Perhaps, an easier solution is to simply
12 order that the funds be placed in some other well-known
13 bank. Bank of America could take the funds I'm sure,
14 Wells Fargo could take the funds, somebody could take
15 the funds or you could order these parties to sit down
16 and try to find a place to put these funds but, we would
17 object to Your Honor and the registry.

18 MR. LEVINGER: I join in that objection
19 for a slightly different reason, Your Honor and that is
20 if a certain percentage goes into the registry of the
21 Court, that would allow the public to determine what the
22 amount of the settlement is and that's confidential.

23 MR. BECKWITH: I hope I was making that
24 clear but that is the principal objection.

25 MR. LAUTEN: We're happy to let JPMorgan

1 Chase hold all of it as long as it takes.

2 THE COURT: Any redaction or anything
3 new?

4 MR. PENNINGTON: Nothing new, Your Honor.
5 I think it would be improper to order that they hold all
6 of it.

7 THE COURT: Well, thank you very much.

8 MR. LAUTEN: Thank you for your time,
9 Your Honor.

10 MR. PENNINGTON: Thank you, Your Honor.

11
12 [End of Proceedings]

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STATE OF TEXAS X

COUNTY OF DALLAS X

I, Jackie Galindo, Deputy Official Court Reporter for the Probate Court Number One, Dallas County, Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this request in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings does truly and correctly reflects the exhibits, if any, offered by the respective parties.

WITNESS MY OFFICIAL HAND, this the 1st day of June, 2018.

—
/S/: *Jackie Galindo*

Jackie Galindo, Texas CSR #7023
Expiration Date: 12/31/19
Official Court Reporter
The Probate Court,
Renaissance Tower, 2400-A
Dallas County, Texas
214-653-6066

REPORTER'S RECORD
VOLUME 3 OF 5
CAUSE NO. PR-11-3238-1
COURT OF APPEALS NO. 05-18-00558-CV

IN THE ESTATE OF
MAX D. HOPPER,
DECEASED

THE PROBATE COURT

JO N. HOPPER
Plaintiff,

v.

JPMORGAN CHASE BANK N.A.
STEPHEN B. HOPPER,
LAURA S. WASSMER
Defendants.

NUMBER ONE

JOHN L. MALESOVAS d/b/a
MALESOVAS LAW FIRM, and FEE
SMITH, SHARP & VITULLO, LLP
Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK N.A.,
Defendants.

DALLAS COUNTY, TEXAS

=====

TEMPORARY INJUNCTION HEARING

=====

On the 24th day of April, 2018, A.D., the
following proceedings came on for hearing in the above-
entitled and numbered cause before the HONORABLE COURT,
BRENDA HULL THOMPSON, Judge Presiding, held in Dallas,
Dallas County, Texas.

Proceedings reported by oral stenography.

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EXHIBITS

<u>INTERVENORS</u>	<u>DESCRIPTION</u>	<u>Offered</u>	<u>Admitted</u>
No. 1	Contingency Fee Contract signed by Laura Wassmer	24	25
No. 2	Contingency Fee Contract signed by Stephen Hopper	25	25
No. 3	Charge of the Court Filed Sept. 25, 2017	25	25
No. 6	Rule 11 Letter Filed April 4, 2018	28	31
No. 7	Letter to Mr. Lauten From Mr. Pennington Dated April 5, 2018	29	31
No. 8	Letter to Mr. Malesovas From Mr. Pennington Dated April 5, 2018	29	31

EXHIBITS, cont'd.

<u>INTERVENORS</u>	<u>DESCRIPTION</u>	<u>Offered</u>	<u>Admitted</u>
No. 11	Letter to Mr. Eichman From Mr. Vitullo Dated October 8, 2015	29	31
No. 13	Email to Mr. Vitullo From Mr. Stephen Hopper Dated Jan. 25, 2016	30	31
No. 66	Order Granting Plaintiff's Motion for Legal Rulings Dated March 28 2018	30	31
No. 70	Email to Mr. Vitullo From Mr. Levinger Dated April 3, 2018	31	31
No. 14	Email to Mr. Vitullo From Ms. Laura Wassmer Dated Jan. 25, 2016	34	33
 <u>DEFENDANTS</u>	 <u>DESCRIPTION</u>	 <u>Offered</u>	 <u>Admitted</u>
No. 2	Letter from Mr. Pennington To Mr. Vitullo and Mr. Malesovas dated 4/6/18	36	38

1 P R O C E E D I N G S

2 THE COURT: This is PR-11-3238 in the
3 Estate of Max D. Hopper. May I have the attorneys
4 announce, please?

5 MR. LAUTEN: Good Morning, Your Honor,
6 Brian Lauten appearing on behalf of the Intervenors,
7 Fee, Smith, Sharp & Vitullo and John Malesovas.

8 MS. JOHNSON: Your Honor, Anne Johnson
9 and Jim Pennington and Andrew Guthrie here on behalf of
10 the intervention Defendant Stephen Hopper and Laura
11 Wassmer.

12 THE COURT: Your last name is Johnson?

13 MS. JOHNSON: Johnson; thank you, Your
14 Honor.

15 THE COURT: And Mr. Pennington.

16 Sir?

17 MR. LOEWINSOHN: And Your Honor, Alan
18 Loewinsohn, here on behalf of the Plaintiff Jo Hopper.

19 MR. BECKWITH: Your Honor, good morning,
20 Van Beckwith and Jessica Pulliam on behalf of JPMorgan
21 Bank in its corporate capacity as well as in its
22 independent administrator capacity.

23 THE COURT: All right. We're here on the
24 matter of the Temporary Injunction as well as the
25 Defendant's Motion to Compel Arbitration. All right,

1 let's proceed.

2 MS. JOHNSON: Your Honor, in terms of the
3 order that we take the arguments today, I wanted to
4 request that we do consider the Motion to Compel
5 Arbitration first, and --

6 THE COURT: No, ma'am.

7 MS. JOHNSON: Okay.

8 THE COURT: That was not set first.

9 MS. JOHNSON: Okay, Your Honor, can I
10 just be heard for 30 seconds, because I think we can
11 short circuit the temporary injunction issue because
12 they are now moving for injunctive relief pursuant to
13 the Texas Arbitration Act, so if this Court doesn't
14 order arbitration, then the statute that they are now
15 relying on really doesn't apply. We could cover the
16 arbitration issue very quickly, Your Honor.

17 THE COURT: Thank you.

18 MS. JOHNSON: Okay.

19 THE COURT: Yes, sir.

20 MR. LAUTEN: Good Morning, Your Honor,
21 I'd like the chance to fully open, if I could, before we
22 start the injunction.

23 THE COURT: All right, how long do you
24 need?

25 MR. LAUTEN: Just a couple of minutes.

1 THE COURT: All right.

2 MR. LAUTEN: There's three things we have
3 to prove to you today: We've got to prove a probability
4 of success on the merits; we've got to prove a
5 irreparable harm; and we've got to prove no adequate
6 remedy and law. That's if you grant an injunction, but
7 germane to all of that, is your power to simply, put
8 money in the registry, which is a non-appealable order,
9 which doesn't even require injunctive relief.

10 Let me start with this issue, because
11 this seems to be the issue primarily in dispute, and
12 that is this argument out there that we have nothing to
13 fear about dissipation of assets. Let me start with
14 that. Number one: Albeit the settlement's confidential,
15 I think it's important that the Court in camera, looks
16 at that amount, for the simple reason if no other,
17 number one: We've got to show that they got a benefit
18 by our representation and two; the more important issue
19 is they're not bonded. Nobody in this Court is bonded
20 with respect to the settlement.

21 This is really important. Mr. Vitullo is
22 the seventh, the seventh lawyer hired by these clients
23 in this case. All seven were fired. Six out of the
24 seven, including Mr. Vitullo, were not paid in whole or
25 in part, what they were owed when they were fired. The

1 one that was paid was smart enough to get his money up
2 front. We find out earlier this week that this isn't a
3 legitimate business dispute, Judge. It's not. This was
4 a long, thought out and planned attempt to avoid paying
5 Mr. Vitullo.

6 In August of 2017, Dr. Hopper starts
7 surreptitiously recording Mr. Vitullo, his lawyer. He
8 starts tape recording him, right after the verdict and
9 he's tape recording him all the way through February 23rd
10 of 2018, behind his back. We find this out earlier this
11 week. Meanwhile, we find out that Mr. Pennington, he
12 wasn't brought in at the last minute to make this
13 termination. He was hired in October. October. He's
14 the legal malpractice lawyer. Then we find out -- you
15 made a great point of the TRO -- why is it that Mr.
16 Levinger, the appellate lawyer, is sitting at one table,
17 seemingly adverse to trial counsel, whose supposed to be
18 working with him, at the other table.

19 Meanwhile, the termination letter is
20 offered to evidence in the expert, who says that Mr.
21 Vitullo made mistakes and should be paid as the
22 appellate lawyer, Mr. Levinger. Well let me tell you
23 what we find out this week. As early as October, Mr.
24 Levinger is interfacing with Mr. Pennington, the legal
25 malpractice lawyer. And in his billing records, Mr.

1 Levinger is constantly talking to Mr. Pennington,
2 despite the fact that Mr. Levinger never even went and
3 got the entire trial transcript, it's his opinions to
4 the legal malpractice lawyer in the termination letter
5 as to why the guy he's supposed to be helping affirm the
6 verdict should be fired.

7 And this is what is so disturbing to me
8 and I'll prove this to you. Mr. Levinger reaches a
9 settlement in the afternoon of April 3rd. He knows he's
10 got a settlement, it's in an email and we've got those
11 emails. After Mr. Levinger knows he's got a settlement,
12 he emails Mr. Vitullo and says, hey what's our argument
13 going to be on these jury charge responses? Why in the
14 thunder is the appellate lawyer for six months, talking
15 to the legal malpractice lawyer, when my clients are
16 surreptitiously being tape recorded?

17 And after he knows he's got a settlement,
18 instead of saying let's go celebrate, let's all get
19 together and go have a cocktail, he's emailing Mr.
20 Vitullo asking what his arguments are going to be. Why?
21 Because he's trying to set him up because he knows the
22 next day, he's going to be fired. Your Honor, and let
23 me tell you what else happened. While your TRO was
24 pending, after we had a restraining order hearing, these
25 clients go huddle up with JPMorgan Chase to enter into a

1 more comprehensive settlement agreement and there's
2 language in there, we're convinced, deals with our lien
3 rights.

4 I had to deal with three different
5 lawyers in two different states to try to get my hands
6 on this settlement agreement, which I have not seen. I
7 talked to this guy Bob Sax in Los Angeles, he's not even
8 admitted in this case, who gives me a bunch of grief and
9 we go round and round. I said look, I'll make this real
10 simple. You redact out all of the confidential parts of
11 the settlement, you can designate it's highly
12 confidential under the protective order, no problem.
13 They won't do that. So I haven't even seen the
14 settlement agreement.

15 I got a nasty letter from Mr. Beckwith
16 yesterday that I'm making misrepresentations to the
17 Court, because I had a chance to go see the settlement
18 and I just turned them down. The bottom line is these
19 people have, in my opinion committed a fraud, because
20 the entire time Mr. Vitullo is trying to do his job and
21 protect the record on appeal, he doesn't know that
22 surreptitiously these clients are tape recording him for
23 six months. They have lawyers that I think knew while
24 Mr. Vitullo is on the pleadings that they were being
25 tape recorded, because when I asked those questions, oh

1 that's privilege.

2 I said Mr. Pennington, please tell me you
3 didn't know this; he wouldn't answer that question. So
4 absolutely, there's a fear of dissipation of assets.
5 Absolutely, if the money goes to these people, we'll
6 never see it again and like I said, this is a legitimate
7 business disagreement. They're sitting outside the bank
8 in the getaway car waiting to go. That's what's
9 happened since the beginning. Probability of success on
10 the merits.

11 I would just beg you to allow us to play
12 the video tape of Ms. Wassmer and Dr. Hopper from their
13 depositions. I'll limit it to ten minutes and here's
14 what they've admitted to. They've admitted to the
15 things that they have to admit to, to not have anything
16 to arbitrate, nothing to complain about and get us paid.
17 We have a summary judgment that we've already filed.
18 They've admitted they accepted the benefits of Mr.
19 Vitullo's hard work.

20 That includes the DEC action that Mrs.
21 Hopper filed on the attorney's fees claim that you ruled
22 on, the multi-million dollar deal. Mr. Vitullo wasn't
23 even retained on that, but he came down there and
24 handled it. He represented these people to a verdict.
25 He represented these people through settlement. He

1 stood by them the entire time. They accepted those
2 benefits. They admitted that he performed a valuable
3 service.

4 I can't talk to you right now about the
5 settlement offers. I can't talk to you right now about
6 the settlement they got for I guess the third set of
7 lawyers they fired, on their behalf. I can't talk to
8 you right now about the great result, because it's all
9 confidential, but let me tell you what I can tell you.
10 They can't use it as a sword and shield. They can't
11 argue to you oh, well he didn't do a good job and then
12 not tell us or not have the Court know what that result
13 was, but they admit they accepted the work and admitted
14 it was valuable.

15 That's all I have to prove under *Tillery*.
16 Under *Enochs*, once they accept the work, they're
17 completely estopped. They're not only estopped to avoid
18 paying, they're estopped to go argue about it. There's
19 nothing to arbitrate. We'll get to that in a minute,
20 but they're estopped, period.

21 So, at the end of the day there is
22 absolutely a probability of success on the merits, there
23 is irreparable harm, and the reason there is no adequate
24 remedy at law is because a judgment to these people
25 means nothing, if you can't collect it. They're not

1 bonded. They can't respond in damages or they simply
2 won't. And if I need to call all six lawyers, who have
3 been stiffed by these people, I'll do it. Thank you.

4 MR. PENNINGTON: Your Honor, for the
5 record, we do object the proceeding on the injunction
6 while the Motion to Compel is pending, but I will
7 address the temporary injunction argument.

8 THE COURT: Okay, I need to have you
9 speak up. I have some background noise here.

10 MR. PENNINGTON: Very well, Your Honor.

11 THE COURT: All right.

12 MR. PENNINGTON: Just for the record,
13 Your Honor, I was objecting to the proceeding on the
14 temporary injunction, without an opportunity to argue
15 the Motion to Compel, but --

16 THE COURT: Well, I didn't say that you
17 don't have an opportunity, I was just commenting on the
18 fact that this was set first and then the Motion to
19 Compel Arbitration was set second, so I'm just following
20 the order.

21 MR. PENNINGTON: Understood, Your Honor
22 and I just wanted to note our objection on the record
23 and the procedural way that this hearing is taking
24 place. I think the law does make it clear that the
25 Motion to Compel Arbitration should be heard first, but

1 I just wanted to put it on the record, that's all. With
2 respect to the injunction, Your Honor, we disagree with
3 a number of things Mr. Lauten said, but most
4 importantly, he told you there were three things he has
5 to prove in order to prevail on the temporary injunction
6 hearing.

7 The probability of success on the merits,
8 we dispute that issue. I don't think that Mr. Lauten
9 can meet his burden, but the other two elements are even
10 more glaring in this case. There is no evidence of any
11 imminent harm at all. And in fact, as one of the things
12 that we'll get into is Mr. Lauten mentioned was that he
13 received this letter from Mr. Beckwith yesterday, with
14 respect to the hearing today, and some of the pleadings
15 that Mr. Lauten has filed.

16 I know Mr. Beckwith has offered to show
17 the compromise settlement agreement to Mr. Lauten and
18 all he asked was that he sign a Rule 11 Agreement,
19 confirming that he would agree to maintain the
20 confidentiality of that agreement, and I believe there
21 may have been a few other terms. But Mr. Lauten was
22 given an opportunity to look at the confidential
23 settlement agreement between my clients and JPMorgan
24 Chase.

25 But, as Mr. Beckwith pointed out to Mr.

1 Lauten very clearly in a letter just yesterday, he
2 advised Mr. Lauten that one of the conditions precedent
3 to any funding by JPMorgan of the settlement is that the
4 -- One of the conditions precedent is that the funding
5 of the actual settlement amount is contingent upon
6 JPMorgan Chase receiving a release of lien from Mr.
7 Vitullo and his law firm.

8 THE COURT: Say that again, please.

9 MR. PENNINGTON: That one of the
10 conditions that has to be satisfied before JPMorgan
11 Chase will fund any part of the settlement, is that
12 JPMorgan Chase must be provided with a release of lien
13 of the attorney's lien, that's been asserted by Mr.
14 Vitullo's firm and Mr. Malesovas' firm in this case.
15 And, Mr. Beckwith made it clear to Mr. Lauten that
16 JPMorgan Chase has no intent on funding the settlement
17 until they receive a release of lien from Mr. Vitullo
18 and his law firm, in this case.

19 So, until that event happens, there will
20 be no funding of the settlement and there is no imminent
21 harm that anybody is going to receive any money, in this
22 case. So, and we'll get into that in the case, later
23 into the case in chief, but I did want to make the Court
24 aware of that. So, the position that the intervention
25 Plaintiffs have asserted in this case is they're trying

1 to show that there is some imminent danger that the
2 settlement funds are going to be paid and that they
3 won't be able to get their interest in the money. That
4 argument is just a fallacy. There is no -- that's not
5 going to happen.

6 The only person right now that controls
7 whether the funding will go through is Mr. Vitullo and
8 his law firm. So, until he provides that release of his
9 lien that he's asserted in this case, there will be no
10 funding of the settlement. JPMorgan is not obligated to
11 pay the settlement under the agreement.

12 Your Honor, the other evidence that I
13 believe that we've previously discussed at the TRO
14 hearing is the fact that, for a separate reason there's
15 no imminent harm, because Plaintiff's, or excuse me, the
16 Defendant's in this case, my clients have offered to
17 place the disputed fee amount into a separate trust
18 account, whether it's one of the attorney's trust
19 account or an independent third party escrow account or
20 trust account. We've offered to do that and to give
21 those assurances to Mr. Vitullo and his firm and Mr.
22 Malesovas so that they know that those funds will not be
23 paid to my clients, until this fee dispute matter has
24 been resolved.

25 THE COURT: Are you talking about all the

1 funds or just the alleged disputed amount of the funds?

2 MR. PENNINGTON: Well, as to that
3 particular offer, it applies only to the disputed amount
4 of the funds. The attorney's fees that are in dispute
5 as well as their expenses. But to be clear, Your Honor,
6 so there's no confusion on this issue, the letter and
7 the condition precedent of the entire settlement being
8 funded, that goes to the entire amount of the
9 settlement.

10 So JPMorgan Chase has said they're not
11 funding anything, not one penny of the settlement, until
12 they receive a release of lien from Mr. Vitullo and his
13 firm. You know, the other, the third element that Mr.
14 Lauten has to show is that he has no adequate remedy at
15 law, and that's just simply not the case here. They do
16 have an adequate remedy. They're actually suing for
17 breach of contract, trying to enforce the contract and
18 they claim an amount of money, a certain amount of fees
19 and expenses that they're claiming as damages, so they
20 do have adequate remedy in this case.

21 Mr. Lauten made a point about the fact
22 that nobody is bonded. There's no requirement that
23 anybody be bonded but more importantly, the funds are
24 not being paid, so that shouldn't even be an issue for
25 the Court in this case. Mr. Lauten mentioned about that

1 there were seven different attorney's that my clients
2 fired in this case and you know, there were -- it's
3 ironic because Mr. Vitullo represented my clients with
4 respect to at least one of those claims and he is the
5 one who advised the clients with respect to that fee.
6 But, if we have to get into all of the evidence that
7 they intend to, I'll object to much of that coming into
8 evidence because, I think they're just trying to show
9 evidence of other bad acts to show that my clients
10 conformed with that same behavior in this case so, I
11 don't think that that's admissible.

12 With respect to Dr. Hopper's recorded
13 conversations, I think what you're going to hear about
14 that is that the reason Dr. Hopper started recording
15 these conversations, in August of 2017, was because he
16 received a frantic phone call from Taylor Horton, an
17 associate who worked for Fee Smith. Mr. Horton was one
18 of the attorney's at that law firm who had been working
19 on the case and he was responsible for getting the case
20 ready for trial.

21 Mr. Horton called Dr. Hopper and told him
22 he was very concerned about the case because he was
23 actually unable to get a hold of Mr. Vitullo. He had no
24 idea of where he was, trial was coming up in and a week
25 or a week-and-a-half and Mr. Horton was panicking

1 because he didn't know how to get the case ready for
2 trial or what to do. So, Dr. Hopper became concerned
3 and started recording the conversation with Mr. Horton
4 at that point. There were also some other matters that
5 Mr. Horton told Dr. Hopper that he was concerned about,
6 about the way the case was being handled.

7 Under the contract, the contingency fee
8 contract, the clients, it's very clear in the contract
9 that the clients are not supposed to be paying for any
10 of the expenses, but yet, they were being charged with
11 all of the expenses in the case and they were being
12 required to pay a large, not just a large number, but
13 large amounts of expenses in the case and Mr. Horton was
14 concerned about that and he basically, didn't think that
15 the clients should be paying those expenses.

16 So, he had some concerns about that so
17 based on that, those are the reasons, some of the
18 reasons why Dr. Hopper began recording the
19 conversations. It's interesting that Mr. Lauten
20 accuses me of somehow knowing about this, these recorded
21 conversations, I mean obviously, based on the timing
22 that started happening before I was ever hired in the
23 case. And when this issue came up in my clients'
24 depositions, the way questions were asked by Mr. Lauten
25 he was basically, asking whether the clients told me

1 that they had recorded the conversations for other
2 evidence. And I objected to that because that is
3 attorney-client privilege. Whatever the client
4 communicates to me, during the course of the
5 representation, is privileged.

6 But, I will represent to the Court that
7 while that was going on, I did not have knowledge that
8 my clients were tape recording conversations with Mr.
9 Vitullo or anyone at his firm.

10 THE COURT: As of when?

11 MR. PENNINGTON: I'm sorry, Your Honor?

12 THE COURT: When did you learn that they
13 were taping him?

14 MR. PENNINGTON: Well, again Your Honor,
15 when I learned was much later and while I was -- I mean
16 I hesitate to be able to answer that question because I
17 think that that's privileged, about the timing of when I
18 learned, but --

19 THE COURT: All right, well, you don't
20 have to --

21 MR. PENNINGTON: But it was after the
22 fact.

23 THE COURT: You don't have to answer.

24 MR. PENNINGTON: Your Honor, the last
25 thing is Mr. Lauten makes a lot about this *Tillery* case

1 and that he believes my clients are estopped from being
2 able to dispute whether they owe a contingency fee under
3 this contract. As I have mentioned before though at the
4 previous hearing, that issue is an issue that must be
5 decided by an arbitrator, ultimately. I mean, that has
6 to do with whether, with the enforceability of the fee
7 provision of the contract and we are challenging that
8 fee provision of the contract because I believe the
9 evidence will show that prior to the time that Mr.
10 Vitullo entered into this contingency fee agreement, he
11 had already been representing the clients for a long
12 period of time.

13 And in fact, there was a prior contract
14 that Mr. Vitullo entered into with the clients -
15 actually, there were several contracts that Mr. Vitullo
16 entered into with my clients, before he entered into the
17 contingency agreement that is before you today. And so,
18 what essentially, he did was he changed the terms of the
19 agreement with the clients, regarding his fee in
20 midstream. While he's representing the clients, he
21 actually negotiated a deal for himself, with my clients
22 and that is the reason why we're challenging the
23 enforceability of the fee provision.

24 MR. LAUTEN: Your Honor, I'd call Dr.
25 Hopper by video. I've edited it down to 17 minutes.

1 I've got a copy of the designations,
2 Jim, if you want a copy.

3 THE COURT: All right.

4 MR. LAUTEN: Do you want us to dim the
5 lights, Your Honor, or can you see that okay, on the
6 projector.

7 THE COURT: I can see it.

8 MR. LAUTNE: Okay.

9 THE COURT: And I will take a copy, also.

10 MR. LAUTEN: Okay. Can I approach, Your
11 Honor?

12 THE COURT: Thank you.

13 MR. VITULLO: Thank you.

14 [VIDEO CLIP PLAYED]

15 MR. LAUTEN: Your Honor, we call Laura
16 Wassmer via video tape. We've edited that down to about
17 ten minutes; it's pretty quick.

18 Here are the designations Jim.

19 [VIDEO CLIP PLAYED]

20 MR. PENNINGTON: Your Honor, at --

21 THE COURT: Stop for just a moment.

22 [VIDEO CLIP STOPPED]

23 MR. PENNINGTON: At this point, I'm going
24 to object to any evidence regarding other attorneys that
25 my clients hired and the circumstances surrounding that.

1 I think he's going to get into the fact that my clients
2 had previously terminated some other lawyers and I
3 object to that. I think it's irrelevant and it's
4 inadmissible under Rule 404, 403 of the Texas Rules of
5 Civil Evidence.

6 THE COURT: I don't believe I can
7 determine that without hearing it. I mean I understand
8 what your representation is.

9 Sir?

10 MR. LAUTEN: Sure, 404b says you can't
11 show bad acts to show conforming there with, but one of
12 the exceptions to 404b is motive and knowledge. That's
13 why it's being offered for number one and number two, in
14 order to prove dissipation of assets, what's at the
15 forefront of this, is the credibility of the people that
16 are trying to get the money. And certainly germane to
17 that is the fact that they have not paid six out of
18 seven lawyers, and I'm entitled to explore that and put
19 on that evidence.

20 THE COURT: Well, I'll overrule the
21 objection.

22 [VIDEO CLIP CONTINUED]

23 MR. LAUTEN: Your Honor, I'd like to
24 offer some exhibits at this time.

25 THE COURT: I have a question.

1 MR. LAUTEN: Sure.

2 THE COURT: On Exhibit 12, she referred
3 to Jo. Who is she referring to?

4 MR. LAUTEN: Jo Hopper, Mr. Loewinsohn's
5 client.

6 THE COURT: All right.

7 MR. LAUTEN: Your Honor, at this time I'd
8 like to offer some exhibits, if that's okay.

9 THE COURT: All right.

10 MR. LAUTEN: I'd offer Exhibit 1, which
11 is the contingency fee contract signed by Laura Wassmer.

12 [Intervenors Exhibit 1 is offered]

13 THE COURT: Any objection?

14 MR. PENNINGTON: I haven't seen it, Your
15 Honor.

16 MR. LAUTEN: I'll get another set of
17 exhibit stickers. I only marked it as Exhibit 1 for the
18 hearing.

19 MR. PENNINGTON: They're marked at the
20 bottom.

21 MR. LAUTEN: Yeah, that's my handwriting.
22 We'll do a clean copy. Subject to the clean copy, I
23 offer Exhibit 1.

24 MR. PENNINGTON: No objection, Your
25 Honor.

1 THE COURT: All right. Exhibit 1 is
2 admitted.

3 [Intervenors Exhibit 1 is admitted]

4 MR. LAUTEN: Your Honor, I offer into
5 evidence Exhibit 2, which is the contingency agreement
6 signed by Dr. Hopper.

7 [Intervenors Exhibit 2 is offered]

8 THE COURT: Any objection?

9 Mr. PENNINGTON: No objection, Your
10 Honor.

11 THE COURT: Admitted.

12 [Intervenors Exhibit 2 is admitted]

13 MR. LAUTEN: I offer Exhibit 3, which is
14 the Charge of the Court and the verdict form, answered
15 by the jury, on September 25, 2017.

16 [Intervenors Exhibit 3 is offered]

17 MR. PENNINGTON: No objection, Your
18 Honor.

19 THE COURT: Admitted.

20 [Intervenors Exhibit 3 is admitted]

21 MR. LAUTEN: I offer Exhibit 4 -- sorry.
22 Your Honor, I'd offer into evidence Exhibit 4 and I'll
23 let the record reflect that I've redacted out the
24 settlement amount.

25 [Intervenors Exhibit 4 is offered]

1 [Counsel confer about Exhibit 4]

2 MR. BECKWITH: Your Honor, on behalf of
3 JPMorgan, I do object and I object for all the reasons
4 that I raised and the temporary restraining order
5 hearing. I have a concern about Your Honor seeing any
6 portion of this confidential settlement agreement. It's
7 confidential. This is the foundational term sheet that
8 then makes its way into the confidential settlement
9 agreement. We also worry that while Your Honor is
10 considering the JNOV motion that I made and the judgment
11 motion Mr. Loewinsohn made, that seeing any information
12 about this settlement could taint the process Your Honor
13 of working diligently towards and making a decision on
14 that.

15 And so, for those reasons, Your Honor, we
16 would object to any disclosure, whatsoever, of this term
17 sheet, this information about the settlement as well as
18 to follow along any requests Mr. Lauten to reveal the
19 settlement agreement, itself.

20 MR. LAUTEN: I think I can fix this and
21 massage this so everybody's comfortable. What I'll do
22 is I'll withdraw Exhibit 4 as offered and instead, what
23 I'll offer is simply, page 3 of Exhibit 4 and only the
24 first two lines where it says "Bob my clients are in
25 agreement" and the purpose of this to tie up the

1 relevance, is that this ties in my opening statement
2 with Mr. Levinger has reached a settlement at time X,
3 but the next exhibit will show he's emailing Mr. Vitullo
4 later, asking what his appellate argument is going to
5 be; that's the relevance. So, all I'm offering is the
6 time stamp and those first two sentences on the third
7 page as Exhibit 4.

8 MR. BECKWITH: Then perhaps, Your Honor,
9 I mean, I think first of all, some of the testimony you
10 already heard, puts much of that into the record, so I
11 don't think it's a disputed fact, perhaps even too,
12 there could be a stipulation on this point. I don't
13 think you need this document at all. I mean, I do --
14 there is a serious risk to Your Honor, to the Court, and
15 to the process, you're undertaking.

16 THE COURT: All right, well I'm going to
17 take a 10-minute break. You all can talk about it and
18 I'll be right back.

19 MR. BECKWITH: Okay.

20 [Short break taken]

21 MR. LAUTEN: Your Honor, just to kind of
22 give you a road map, I'm almost finished with our case
23 if chief. If you'll just hang with me for another
24 minute or two, I've got about a half a dozen exhibits I
25 want to admit.

1 THE COURT: All right, well what did we
2 determine on Exhibit No. 4?

3 MR. LAUTEN: On Exhibit 4, I'm going to
4 withdraw the exhibit, subject to the stipulation, open
5 court stipulation, between the lawyers on this side and
6 the clients on this side, subject to any objection JP
7 would have that on Tuesday, April 3, 2018, at 4:05 p.m.,
8 Jeff Levinger emailed Bob Sax, a lawyer on behalf of
9 JPM, and that that email reflects that there was in
10 process, was an agreement to be reached on certain
11 times. That would be my proposed stipulation.

12 MR. PENNINGTON: I'll stipulate that,
13 Your Honor.

14 MR. BECKWITH: We have no objection to
15 that stipulation, Your Honor.

16 MR. LAUTEN: So, I'll withdraw four.

17 THE COURT: All right.

18 MR. LAUTEN: The next exhibit that I'll
19 offer is the April 4, 2018 Rule 11 Agreement that was
20 filed as Exhibit 6.

21 [Intervenors Exhibit 6 is offered]

22 THE COURT: All right, so it will be
23 Exhibit 6?

24 MR. LAUTEN: Yes ma'am, I can re-mark
25 them, but they were already marked, so if it's okay,

1 even though they're out of order, that's the way I would
2 propose to do it unless --

3 THE COURT: All right, so there's no
4 five?

5 MR. LAUTEN: No five, that's correct.

6 MR. PENNINGTON: No objection to Exhibit
7 6, Your Honor.

8 THE COURT: All right.

9 MR. LAUTEN: Offer into evidence Exhibit
10 7, and this is the April 5, 2018 termination letter as
11 to Fee, Smith, Sharp & Vitullo.

12 [Intervenors Exhibit 7 is offered]

13 MR. PENNINGTON: No objection, to Exhibit
14 7, Your Honor.

15 MR. LAUTEN: Offer Exhibit 8, it's the
16 same letter to as to John Malesovas.

17 [Intervenors Exhibit 8 is offered]

18 MR. PENNINGTON: No objection as to
19 Exhibit 8.

20 MR. LAUTEN: I offer Exhibit 11; this is
21 the October 8, 2015 letter to John Eichman.

22 [Intervenors Exhibit 11 is offered]

23 THE COURT: Now that's Exhibit 8 or 9?

24 MR. LAUTEN: I'm sorry, Your Honor. It's
25 been pre-marked for identification as Exhibit 11.

1 THE COURT: 11?

2 MR. LAUTEN: I'd offer Exhibit 11.

3 MR. BECKWITH: I have no objection.

4 MR. LAUTEN: I offered 11.

5 MR. PENNINGTON: No objection to Exhibit
6 11, Your Honor.

7 THE COURT: Go ahead.

8 MR. LAUTEN: Did you admit 11?

9 THE COURT: I'm just writing down which
10 ones you are -- okay.

11 MR. LAUTEN: Okay, we can come back to it
12 at the end if that's what you want to do. I offer
13 Exhibit 13.

14 [Intervenors Exhibit 13 is offered]

15 MR. PENNINGTON: No objection.

16 MR. LAUTEN: I would offer Exhibit 66.

17 [Intervenors Exhibit No. 66 offered]

18 MR. PENNINGTON: No objection.

19 MR. LAUTEN: And Your Honor, at this time
20 I would ask the Court to take judicial notice under Rule
21 201 of its March 28, 2018 order of the disbursement of
22 attorney's fees under the DEC action.

23 THE COURT: What's the date?

24 MR. LAUTEN: March 28, 2018. I'd ask the
25 Court to take judicial notice under Rule 201 of its

1 order regarding the declaratory judgment action. I
2 offer Exhibit 70. We offer Exhibit 70.

3 [Intervenors Exhibit 70 is offered]

4 MR. PENNINGTON: No objection as to
5 Exhibit 70.

6 MR. LAUTEN: So I would offer those
7 exhibits at this time, Your Honor.

8 THE COURT: All right, what I have is
9 Exhibit 1, 2, 3, No. 4 is withdrawn, no Exhibit 5,
10 Exhibit 6, 7, 8, 11, 13, 66, and 70. And you're asking
11 me to take judicial notice under Rule 201 of the March
12 28, 2018 order of the Court?

13 MR. LAUTEN: Yes, Your Honor. That's
14 been pre-marked as Exhibit 66.

15 THE COURT: That is Exhibit 66?

16 MR. LAUTEN: Correct, Your Honor.

17 THE COURT: All right, and the Court, not
18 hearing any objections, Mr. Beckwith and Mr. Loewinsohn?

19 MR. LOEWINSOHN: No objection, Your
20 Honor.

21 MR. BECKWITH: No objections, Your Honor.

22 MR. PENNINGTON: No objection, Your Honor

23 THE COURT: All right, the Court will
24 admit.

25 [Intervenors Exhibits 1-3, 6-8, 11, 13, 66, 70 admitted]

1 MR. LAUTEN: Your Honor, before I publish
2 these exhibits to the Court, I would just like to
3 briefly spend two minutes walking you through what the
4 significance of these exhibits are, in our view to our
5 case in chief. Exhibits 1 and 2 are fully executed
6 contingency agreements that were signed in writing by
7 Dr. Hopper and Ms. Wassmer. And I'm going to approach
8 and give you these after I -- may I approach?

9 THE COURT: Yes.

10 MR. LAUTEN: Exhibits 1 and 2 that were
11 admitted are the signed contingency agreements. Exhibit
12 3 is the jury charge and verdict form with the numbers
13 that the jury found.

14 THE COURT: You said they're pre-marked?

15 MR. LAUTEN: They've been admitted. Yes,
16 they're marked.

17 THE COURT: Okay, well as long as we can
18 follow what they are, then you don't need to re-do them.

19 MR. LAUTEN: Okay.

20 THE COURT: Okay.

21 MR. LAUTEN: Exhibit 6 is the Rule 11
22 Agreement that was filed on April 4th. April 5th are the
23 two termination letters that came after the Rule 11 that
24 was executed, which is germane to our position that the
25 lawyers fully perform. Exhibit 11 establishes that the

1 pre-trial initial settlement demand of the clients was
2 1.6 million and as the Court's aware from tab 3, the
3 verdict was significantly above that.

4 Exhibit 13 is Dr. Hopper telling how much
5 he appreciates the work Mr. Vitullo's doing. Exhibit 66
6 is the order where this Court found that Ms. Wassmer and
7 Dr. Hopper owed no monies on Ms. Hopper's claim for
8 attorney's fees, which you heard M. Vitullo represent
9 her on. And Exhibit 70 is really important to us
10 because the timing of this is after the stipulation you
11 just heard between Mr. Levinger, where he's writing Mr.
12 Vitullo about what arguments are going to be in the jury
13 charge questionnaire when he at least knows in his head
14 according to stipulation, he's about to reach an
15 agreement.

16 And when you look at that Exhibit 70 and
17 you reconcile it with the termination letter, which has
18 been admitted as Exhibit 5, you'll see that the
19 foundational basis for terminating Mr. Vitullo and
20 Malesovas is Mr. Levinger's complaint that there's not a
21 good record on appeal and that's the email that Mr.
22 Levinger is sending about what's our argument going to
23 be on these jury charge questions. So, subject to that
24 -- and Your Honor, before I rest and close I got one
25 more exhibit and I've redacted out all the other stuff,

1 which I'll mark as Exhibit 14.

2 MR. PENNINGTON: What was, I'm sorry,
3 what was --?

4 MR. LAUTEN: I offer Exhibit 14.

5 [Intervenors Exhibit 14 offered]

6 MR. PENNINGTON: But what was redacted?

7 MR. LAUTEN: The rest of it that could be
8 arguably confidential. I don't think you're going to
9 want us to offer the entire email, but we're happy to do
10 so if you don't have an objection.

11 MR. PENNINGTON: I just wanted to
12 understand that this is a redacted copy, that's all, and
13 I have no objection to this exhibit.

14 MR. LAUTEN: May I approach, Your Honor?

15 THE COURT: Yes.

16 MR. LAUTEN: This is Exhibit 14.

17 THE COURT: All right. Exhibit 14 will
18 be admitted.

19 [Intervenors Exhibit 14 admitted]

20 MR. LAUTEN: Your Honor, subject to any
21 rebuttal, Plaintiff's Intervenors rest and close.

22 THE COURT: One more question: With
23 respect to the exhibits referenced in these depositions,
24 are these the same? I'm not --

25 MR. MALESOVAS: Your Honor, the exhibits

1 that are admitted have the exhibit stickers from the
2 deposition on them and then down at the bottom, they
3 have the way they have been marked for purposes of this
4 hearing. So when you see the actual sticker, for
5 example, I think on Exhibit No. 1 if you look at Exhibit
6 No. 1, there's an Exhibit No. 2 sticker on it. That was
7 Exhibit No. 2, in the deposition.

8 THE COURT: All right.

9 Sir?

10 MR. PENNINGTON: Your Honor, before I
11 begin, can I just ask how much time we have remaining
12 for the hearing today?

13 THE COURT: Approximately, 30 minutes, 30
14 to 40 minutes.

15 MR. PENNINGTON: Total?

16 THE COURT: Well, this is scheduled for
17 two hours, and today is the day that I have the Probate
18 Section meeting, and so it's Professor Byers speaking
19 today and so everybody wants to hear Professor Byers.
20 And then I have another obligation, so if you need more
21 time I'll have to schedule that but that's all that we
22 have today.

23 MR. PENNINGTON: Okay, and so a total of
24 how much time remaining then?

25 THE COURT: About 30 minutes.

1 MR. PENNINGTON: 30 minutes, okay. I
2 just want to make sure that we have time remaining to
3 hear the Motion to Compel Arbitration. Your Honor, let
4 me just speed this up and get to a couple of exhibits
5 and see if we can -- I'll just introduce these and if
6 there's no objection, then --

7 MR. LAUTEN: Yeah, I object to relevance,
8 hearsay.

9 MR. PENNINGTON: Your Honor, let me, just
10 for the record, mark this.

11 THE COURT: And just so you know, don't
12 feel like I'm giving your arguments not enough
13 attention. I've read most of the materials that were
14 previously submitted to the Court.

15 MR. LAUTEN: Thank you, Your Honor.

16 THE COURT: I was up pretty late last
17 night reading that. You don't have to take me through
18 everything. All right, so Exhibits 1 and 2?

19 MR. PENNINGTON: Exhibits 1 and 2, Your
20 Honor, we'll offer those at this time.

21 [Defendant's Exhibits 1 and 2 offered]

22 THE COURT: Any objection?

23 MR. LAUTEN: I object to it as irrelevant
24 and hearsay. And just to put it in context with respect
25 to the Baker Botts letter, I have a tremendous amount of

1 respect for that firm and Mr. Beckwith and to put that
2 in the proper context, I would really have to cross-
3 examine one of the lawyers and I'm not willing to do
4 that. I don't think that's appropriate. The letter is
5 irrelevant and its hearsay and I'd ask that my objection
6 be sustained.

7 THE COURT: Well I'm in a position where
8 if this is offered, I haven't read them, so I, you know,
9 if I don't to read them I won't know whether or not
10 they're hearsay, so...

11 MR. PENNINGTON: Your Honor, I can put
12 Mr. Beckwith on the stand if I need to prove up the fact
13 that he authored this letter and sent it to Mr. Lauten,
14 yesterday but I think it is relevant, because it goes to
15 the issue of the condition precedent to the settlement.

16 MR. LAUTEN: My objection is not
17 authentication, I don't want to speak with Mr. Beckwith
18 (inaudible) or sent it; my objection is hearsay. It's
19 an out of court statement offered for the truth of the
20 matter asserted, and its hearsay.

21 THE COURT: Is it offered for the truth
22 of the matters asserted in here?

23 MR. PENNINGTON: No, Your Honor. It's
24 actually offered to show that there's no pending, or no
25 imminent harm or no pending payment of any settlement

1 because there has been no release of the lien by Mr.
2 Vitullo or his firm.

3 MR. LAUTEN: That's the truth of the
4 matter asserted.

5 THE COURT: Sir?

6 MR. PENNINGTON: Well, then I can put Mr.
7 Beckwith on the stand if I need to.

8 THE COURT: Well, I mean, I told you how
9 much time we have left. You can decide how you want to
10 use your time.

11 MR. PENNINGTON: All right. I'll come
12 back to this issue, Your Honor. And I'll offer Exhibit
13 2 then, the April 6th letter.

14 [Defendant's Exhibit No. 2 offered]

15 MR. LAUTEN: No objection, Your Honor.

16 THE COURT: All right, the Court will
17 admit Exhibit 2, Defendant's 2.

18 [Defendant's Exhibit No. 2 admitted]

19 MR. PENNINGTON: And Your Honor, at this
20 time I would call Mr. Vitullo to the stand.

21 ANTHONY L. VITULLO,
22 having been first duly sworn, testified as follows:

23 THE COURT: Be seated, please.

24 DIRECT EXAMINATION,

25 BY MR. PENNINGTON:

1 Q. Mr. Vitullo, you represented Stephen Hopper
2 and Laura Wassmer in the underlying lawsuit, correct?

3 A. Yes, sir.

4 Q. And, you're in Court today, seeking to enforce
5 the terms of a contingency fee agreement that you
6 entered into, with both of those clients, correct?

7 A. Yes, sir.

8 Q. And those agreements have been offered into
9 evidence as Exhibits 1 and 2, correct?

10 A. Yes, sir.

11 Q. At the time you entered into those contingency
12 fee agreements with Ms. Wassmer and Dr. Hopper, you were
13 already their attorney, correct?

14 A. Yes, sir.

15 Q. Okay, and you were, prior to entering into
16 these contingency agreements, you were representing both
17 Ms. Wassmer and Dr. Hopper on an hourly basis, correct?

18 A. For a very limited purpose.

19 Q. But you were representing them on an hourly
20 basis?

21 A. On an hourly basis for a limited purpose of
22 attending the mediation and getting ready for the
23 mediation.

24 Q. And that was --

25 A. That was the scope of representation in that

1 agreement.

2 Q. And that mediation was the mediation that took
3 place in this very lawsuit that we're here about today?

4 A. It took place on November the 9th of 2015.

5 Q. In the probate case, correct?

6 A. Correct.

7 Q. All right. And before that, how long had you
8 known Dr. Hopper and Ms. Wassmer?

9 A. I had met Dr. Hopper in Oklahoma City, in
10 2012.

11 Q. And you actually referred both Ms. Wassmer and
12 Dr. Hopper to another law firm here in town, Block &
13 Garden, correct?

14 A. Yes.

15 Q. For the purpose of representing Ms. Wassmer
16 and Dr. Hopper in the probate proceeding, correct?

17 A. For a very limited purpose.

18 Q. But you're the attorney that referred them to
19 Block & Garden, correct?

20 A. Correct.

21 Q. And you're aware that following your referral
22 of Dr. Hopper and Ms. Wassmer to the Block & Garden Law
23 Firm, that they actually entered into a fee contract
24 with that law firm, correct?

25 A. Correct.

1 Q. And --

2 THE COURT: Excuse me. One minute, just
3 a second. I have to take that call.

4 [Brief interruption]

5 THE COURT: All right, I'm sorry. I had
6 to take that call.

7 Q. Mr. Vitullo, are you aware that you were
8 actually named as an attorney in the Block & Garden fee
9 agreement?

10 A. I found that out later, after the fact.

11 Q. Have you seen the Block & Garden fee agreement
12 before?

13 A. Yes, I have.

14 MR. PENNINGTON: Your Honor, I'm going to
15 offer the Block and Garden fee agreement as Exhibit 3.

16 [Defendant's Exhibit 3 offered]

17 MR. LAUTEN: Objection hearsay and
18 there's been foundation to prove up that document
19 through this witness.

20 Q. (By Mr. Pennington) Mr. Vitullo, I'll show you
21 Exhibit 3 --

22 THE COURT: I'll allow him some latitude
23 to see if we have a foundation.

24 Go ahead.

25 Q. (By Mr. Pennington) Have you seen Exhibit 3

1 before?

2 A. Yes.

3 Q. Okay, and is it your understanding that that's
4 a copy of the fee agreement between Block & Garden and
5 Ms. Wassmer and Dr. Hopper?

6 A. I believe this is a copy but I'm not sure if
7 this is the version that Stephen Hopper and Laura
8 Wassmer received on October the 8th, of 2012. I cannot
9 testify to that, because on October the 8th of 2012 when
10 this exhibit was presented to Stephen Hopper and Laura
11 Wassmer, I was not copied with this, at all.

12 Q. But do you have any reason to dispute that
13 that's a true copy of the agreement between Block &
14 Garden and Ms. Wassmer and Dr. Hopper?

15 A. What I'm saying is this is an exhibit that's
16 been presented to me as being a copy of the Block &
17 Garden fee agreement. This -- what I'm saying is as of
18 October the 8th of 2012, I'm not sure if this is the
19 entire copy that was given to Stephen Hopper and Laura
20 Wassmer, because I did not see this on October the 8th of
21 2012, or during that time period.

22 Q. Did you draft any part of that agreement, sir?

23 A. No.

24 Q. Did you send any language to Steve Block at
25 Block & Garden for him to include as part of the

1 agreement that he entered into with the clients?

2 A. Not as to this agreement. What I had -- what
3 I had done in the past, prior to 2012, I had entered
4 into contingency fee agreements with other clients, with
5 the Block & Garden Law Firm, and Mr. Block and Chris
6 McNeill had a copy of my form contingency fee contract
7 that they had used in the past.

8 Q. Okay.

9 A. So, there's language in this copy Exhibit 3
10 that is similar to the contingency fee agreement form
11 that I've used in the past that Mr. Block and Mr.
12 McNeill had in the past.

13 Q. All right. But ultimately, you knew that Dr.
14 Hopper and Ms. Wassmer were going to retain Block &
15 Garden?

16 A. Correct. But I did not know that they were
17 going to retain Block & Garden and use a hybrid fee. My
18 understanding, at the time, was that they were retained
19 on a flat fee.

20 MR. PENNINGTON: I'll offer Exhibit 3,
21 Your Honor.

22 [Defendant's Exhibit No. 3 offered]

23 MR. LAUTEN: Your Honor, I object. It's
24 hearsay and it's no foundation so it's an exhibit
25 created by a different law firm that he can't prove up.

1 MR. PENNINGTON: Due to the time, Your
2 Honor, I don't have any --

3 THE COURT: I'll sustain the objection.

4 MR. PENNINGTON: Your Honor, at this
5 time, due to the time constraints of the Court, I have
6 no further questions.

7 MR. LAUTEN: I'll pass the witness, Your
8 Honor. I don't have any questions.

9 THE COURT: Does anyone else have some
10 questions?

11 MR. LOEWINSOHN: No, Your Honor.

12 MR. BECKWITH: No, Your Honor.

13 THE COURT: You may step down.

14 MR. VITULLO: Thank you, Your Honor.

15 THE COURT: Call your next witness.

16 MR. PENNINGTON: Your Honor, at this
17 time, based on the time that's remaining, that we do
18 need time remaining to argue the Motion to Compel
19 Arbitration, I have no further witnesses at this time.

20 THE COURT: Well, I want to say this. I
21 am willing to hear the Motion to Compel Arbitration;
22 this was added after the Temporary Injunction was
23 scheduled, and so I'm not trying to not give you
24 adequate time to argue your motion. It's just that I
25 couldn't promise you that you would have enough time

1 today to argue that motion and, I mean, I'm perfectly
2 willing to give you another opportunity at some other
3 time, it's just that, you know, basically, you're
4 crowding the docket today. So, you know, if you want to
5 do this another day, we can do it another day. It's
6 just that I'm not able to expend the time today. So, I
7 mean, it's up to you.

8 MS. JOHNSON: Your Honor, can I just
9 address that? We're willing to come back on the Motion
10 to Compel Arbitration. The problem we have is that
11 there's been a summary judgment motion filed that's set
12 for May 4th and our response to that would be due this
13 Friday.

14 THE COURT: It can't possibly be set for
15 May 4th because I'm out of town May 4th.

16 MS. JOHNSON: Okay. I thought Mr. Lauten
17 represented that he was going to try to --

18 MR. LAUTEN: I was going to try and I've
19 been unsuccessful, so now it's officially not set for
20 May 4th; how's that?

21 MS. JOHNSON: Okay, Your Honor --

22 THE COURT: I apologize. I'm the
23 curriculum chair for the National College of Probate
24 Judges annual meeting and so, I have to be there. So
25 I'm not going to be here; I'm leaving on the first.

1 MS. JOHNSON: Your Honor, we're happy to
2 come back on the Motion to Compel Arbitration, as long
3 as we can get an agreement from Mr. Lauten that we'll
4 have that motion heard before any response is due to the
5 summary judgment motion.

6 THE COURT: Well, I haven't seen the
7 summary judgment motion. I can't make a judgment on
8 what that is and I'm certainly, not a party to any
9 agreements that the lawyers make.

10 MR. PENNINGTON: The biggest concern,
11 Your Honor, is that in the temporary restraining order
12 that you signed that you said that they could file their
13 motion for summary judgment on 14 days' notice and I
14 think we're required to file our response five days
15 before the hearing.

16 THE COURT: I recall.

17 MR. PENNINGTON: And so, the concern here
18 is that we haven't had an opportunity to conduct any
19 discovery. We haven't been able to get all of my
20 clients' files from Mr. Vitullo's firm and that's in
21 dispute. But we haven't received any files from Mr.
22 Malesovas' firm and there's some other lawyers' files
23 we're waiting to receive, at the time. So we haven't
24 had time to really flesh out this argument, but the
25 Motion to Compel Arbitration is the most pressing issue

1 from our perspective.

2 THE COURT: I understand. It's just
3 that, as I said, I set this for the temporary
4 conjunction hearing and I didn't set it for the Motion
5 to Compel Arbitration. I mean, you could have gotten a
6 different date this week; it's just that you've chose to
7 put it on this docket and it's not working.

8 MR. PENNINGTON: Well, with all due
9 respect, Your Honor, when I had contacted your Court
10 Coordinator, we sent a couple of letters in and I
11 received a phone call from her and she said that, after
12 she spoke with you, this was the earliest possible day
13 that we could get it set so we just asked for it to be
14 set, at that time.

15 THE COURT: I understand. I'm just
16 trying to be fair, okay? And so, I don't want you to
17 feel like I'm not willing to give you equal time or
18 adequate time to explain your motion to me or argue your
19 motion to me. It's just that today was crowded and so,
20 that's the situation.

21 Sir, did you have something that you
22 wanted to say?

23 MR. LAUTEN: No, Your Honor.

24 THE COURT: Okay, go ahead.

25 MS. JOHNSON: So, Your Honor, we're happy

1 to proceed today. About how much time do we have,
2 approximately?

3 THE COURT: About eight minutes.

4 MS. JOHNSON: Your Honor, I guess I would
5 ask that we be able to reschedule this hearing, but with
6 the understanding that it's not going to be until --

7 THE COURT: That's an agreement you can
8 make with the lawyers.

9 MS. JOHNSON: Okay. All right.

10 THE COURT: I'm not going to be --

11 MS. JOHNSON: Okay. I'm going to do this
12 in eight minutes, Your Honor.

13 MR. LAUTEN: Okay, wait, can we -- I'm
14 not going to interrupt you but --

15 MS. JOHNSON: Sure.

16 MR. LAUTEN: -- procedurally the record
17 does not reflect that they've rested and closed yet and
18 I'm going to -- they need to either rest and close or we
19 need to move on.

20 MR. PENNINGTON: We rest and close.

21 MR. LAUTEN: Okay. So much for that.

22 THE COURT: Mr. Beckwith?

23 MR. BECKWITH: Your Honor, I do think we
24 need to make a couple of points very quickly, before
25 they actually make their closing arguments, Your Honor.

1 First of all, we've advised Your Honor that we have a
2 confidential settlement agreement and I would ask that
3 Your Honor take judicial notice of the notice that I
4 filed and what it was was JPMorgan's Notice of Receipt
5 of Temporary Restraining Order. I believe I filed it on
6 April 11 of 2018. I'm looking here and I'll find it for
7 Your Honor.

8 I'd ask that you take judicial notice of
9 it because what it establishes is that there is a
10 confidential settlement agreement that's been entered
11 into and that the conditions precedent for payment have
12 not been fulfilled. But if those conditions precedent
13 are fulfilled, that JPMorgan will abide by any temporary
14 restraining order that might exist at the time the
15 conditions precedent are fulfilled. So we want to make
16 sure that Your Honor take judicial notice of that notice
17 that we filed.

18 THE COURT: When was it filed?

19 MR. BECKWITH: It was filed on April 11,
20 2018. And I want to make sure Your Honor, as a part of
21 that -- I'm still trying to find it. Yes, it is April
22 11, 2018 at 3:26 p.m. And I could read it to Your Honor
23 if it would help. It just advises on the Rule 11
24 Agreement, pending negotiations on the Settlement and
25 Release Agreement, and that the conditions precedent

1 payment that had not been made.

2 THE COURT: All right, I don't -- I'm
3 sure if you said that you filed it, it hasn't -- I don't
4 think I have it.

5 MR. BECKWITH: It does have a file stamp
6 of 3:08 p.m. Your Honor. If I could, can I read it into
7 the record just so that Your Honor can hear it.

8 THE COURT: All right.

9 MR. BECKWITH: "At 3:08 p.m. on April 11,
10 2018, JPMorgan Chase Bank N.A, JPMorgan in its capacity
11 as the Independent Administrator of the Estate of Max D.
12 Hopper, Deceased and in its corporate capacity has
13 received this Courts April 10, 2018 temporary
14 restraining order. As the Court is aware, the parties
15 signed and filed on April 4, 2018, a Rule 11 Agreement
16 announcing that's their settlement pursuant to a
17 confidential term sheet." I believe the Rule 11 was put
18 into evidence by Mr. Lauten, and so that's the reference
19 there, Your Honor.

20 "JPMorgan notifies the Court that as of
21 today, the parties have not yet signed their Settlement
22 and Release Agreement. Once signed, JPMorgan notifies
23 the Court that certain conditions precedent must occur
24 before JPMorgan has any obligation to make any
25 settlement payment. JPMorgan writes simply to inform

1 the Court that it is aware of, and will abide by the
2 temporary restraining order, if it remains in effect, of
3 JPMorgan's obligations to make a settlement payment
4 arises."

5 So that was the notice that we provided
6 to Your Honor. Your Honor, I think it also is incumbent
7 that it protects JPMorgan's rights to the confidential
8 settlement that we see if we can obtain a stipulation
9 that, as of today, there is a confidential settlement
10 agreement that exists between JPMorgan and the Heirs. I
11 don't think that was disputed between either of the
12 parties, so I'd ask the parties to confirm that.

13 MR. PENNINGTON: We'll stipulate to that
14 Your Honor.

15 MR. LAUTEN: Your Honor, just to be real
16 clear procedurally here, I don't have a problem with the
17 Court taking judicial notice that they filed something
18 and the filing says what it says, but I need -- I want
19 to make sure the record is clear, I've never seen this
20 settlement agreement, ever. It's been subpoenaed to be
21 here. I'm not picking a fight over it, but I'm not in a
22 position to agree or disagree as to what JPM's
23 obligations are under an agreement that I haven't
24 signed, that I haven't seen and that my clients aren't
25 even a party to that contract, so I don't agree or

1 disagree. But if the Court wants to simply take
2 judicial notice that they filed something and that's
3 what it says, I don't have a problem with that.

4 MR. BECKWITH: And here's the issue, Your
5 Honor. I need to make sure that the record is clear
6 that there is a confidential settlement agreement in
7 place, to protect JPMorgan's rights. I thought that was
8 part of the hearing that both Mr. Lauten and Mr.
9 Pennington established. And then I have represented to
10 the Court as an officer of the Court that conditions
11 precedent exist to payment. The money stays, as of
12 right now is at JPMorgan, and that conditions precedent
13 exist prior to any payment to the Heirs.

14 And so if I need to put on further
15 evidence on that I will, but those are the only two
16 points, I think, that should Your Honor make a decision
17 and JPMorgan need to seek review of that decision that
18 we need to establish. As for Mr. Lauten, Mr. Lauten and
19 I exchanged a number of messages last week, trying to
20 provide Mr. Lauten the chance to go read the settlement
21 agreement and the dispute broke down on whether Mr.
22 Lauten could obtain a copy of the settlement agreement.

23 THE COURT: Read the settlement agreement
24 un-redacted or in full or just read --

25 MR. BECKWITH: Read the settlement in

1 full, un-redacted, right. And so Your Honor knows my
2 concerns with Your Honor reading the settlement in full,
3 with all due respect to the Court, and so that is the
4 only concern that we have with respect to that. We want
5 to make sure that our record is established that there's
6 a confidential settlement agreement and conditions
7 precedent that exist to payment of any money.

8 MR. LAUTEN: Just so this is clear, Your
9 Honor, it is true that we talked about me going over and
10 looking at the settlement without taking it, but then
11 they wanted me to sign an agreement on confidentiality,
12 and I'm not going to put myself in a position to be
13 sued. I don't have a contract with these people; my
14 clients don't have a contract with these people.

15 My alternative proposal is a Rule 11 that
16 I signed and it says send it to me, you can redact
17 whatever you want with confidentiality and I'll agree
18 it's protected, and if I don't abide by it, you can
19 sanction me, but you're not going to enter a contract
20 with me unless you pay me to enter a contract with you.
21 So that's how the disagreement broke down. But even as
22 we sit here today, I don't even know what they're
23 claiming is confidential. Is it the payment amount? Is
24 it the payment instructions? Is it the entire thing?
25 Every settlement I've ever seen has an exception for a

1 subpoena or Court order.

2 So, anyway I'm not in a position to agree
3 or disagree because I simply haven't seen it. And I'll
4 take ownership of my share of the fault for the
5 disagreement breaking down, but as a practical matter, I
6 haven't seen it; that's the point.

7 MR. BECKWITH: And to be clear, the
8 entire settlement agreement is confidential. That's the
9 way it was negotiated and signed by the parties as a
10 confidential settlement agreement.

11 THE COURT: Well, I will tell you the
12 Court is in a curious position. There seems to be a
13 whole body of information that the Court is not privy
14 to, which is problematic. In my view, it's hard for me
15 to feel secure in any decision that I'm going to make
16 without sufficient information. I mean, I'm just
17 astounded at the absence of information that I am
18 operating with and I'm expected to make a decision.
19 However, that's the way you choose to operate so, --

20 MR. BECKWITH: Well, the information --

21 THE COURT: I'll take judicial notice of
22 the fact that you have filed a piece of paper that
23 indicates that you have a settlement agreement. I'm not
24 representing to you or saying that I agree that it is a
25 confidential settlement agreement because I don't know

1 that it is because I've not seen it. So I can't
2 acknowledge it as a confidential settlement agreement.
3 And of course, I don't know whether or not it is an
4 enforceable settlement agreement. I have not seen the
5 terms of the condition precedent, and so I don't know
6 anything about those terms, other than what you've told
7 me.

8 And so, I have merely the representation
9 that you will abide by an agreement that I've not seen
10 and conditions that I've not reviewed. And that I am
11 supposed to rely on Chase not to release the funds until
12 or unless these unknown conditions are performed, I
13 mean, that's from my advantage point.

14 MR. BECKWITH: And part of what puts us
15 in this situation is the prior points that I raised last
16 time, which is Your Honor is still considering our
17 pending JNOV as well as Mr. Loewinsohn's motion for
18 judgment as to Mrs. Hopper. And JPMorgan believes it
19 would be prejudicial to the process, prejudicial to the
20 Court, prejudicial to JPMorgan and perhaps, Mrs. Hopper
21 for Your Honor to receive in the settlement agreement,
22 to see it's terms, to see any payment amount, and then
23 to be, with all of that information, also be deciding
24 the JNOV and the motion for judgment.

25 We do think that's problematic. I've

1 raised that with Your Honor before and so that is the
2 awkward situation I think we all find ourselves in. I
3 tried to raise it last time, or perhaps these parties
4 could agree to some escrow agent or some bank or some
5 lawyer to take these funds so that we wouldn't even have
6 to bother Your Honor but that apparently, wasn't taken
7 up. I'm kind of in the box Your Honor is in, at this
8 point.

9 THE COURT: Mr. Loewinsohn?

10 MR. LOEWINSOHN: A couple of points, Your
11 Honor. First of all, if it is helpful to the process, I
12 want to make clear whatever the Court decides regarding
13 the settlement agreement or settlement amount, Ms.
14 Hopper and myself are not seeking to know that amount.
15 We don't need to know that amount and so I want to make
16 that clear if the Court ends up looking at something in
17 camera, I'm not going to take the position because we're
18 a party in the lawsuit, we need to see it. So I wanted
19 to make that clear.

20 Second, just for the record, I think Mr.
21 Beckwith's suggestion that the Court is not able to
22 divorce whatever information it learns in this
23 proceeding, from its consideration of the motion for
24 judgment by Mrs. Hopper and motion for JNOV, I think
25 that it does not give the Court enough credit.

1 Court's all the time find out about
2 settlements between one set of parties and still have to
3 decide what to do about the remainder set of the
4 parties. As long as the Court is honest and focused on
5 the materials before them, which I greatly expect that
6 this Court would be, I don't agree with Mr. Beckwith's
7 suggestion and I can assure you, we don't believe it
8 would prejudice Mrs. Hopper as the suggestion was made
9 because I believe the Court would give no consideration
10 to that, and will make its decisions independently,
11 based on the information presented to you. Thank you,
12 Your Honor.

13 MR. LAUTEN: If I could just make one
14 final point, because this really, really bothers me
15 immensely. These parties can enter into whatever
16 agreement they want. I'm not a party to that contract.
17 They can walk out of here and tear it up and enter a new
18 agreement. What they've agreed to amongst themselves is
19 of no moment as to my clients. The only way my clients'
20 rights are going to be protected is by this Court making
21 a decision to protect those rights.

22 THE COURT: Okay. Anything else?

23 MR. BECKWITH: Your Honor, I think if
24 that's the position the parties are going to take then I
25 think I should take a stand and testify to the

1 confidential settlement agreement, that it exists and
2 that there are conditions precedent to payment under it
3 so that you have that record.

4 MR. LAUTEN: Well I don't have a problem
5 with that but if he's going to testify then we're going
6 to have to get the agreement out and we're going to have
7 to see it. I'm not going to take -- I have a tremendous
8 amount of respect for Mr. Beckwith. I know he's a
9 fantastic lawyer and good person. But like any other
10 witness, I'm not going to take a witness's word on it on
11 what a document says that I don't have in Court. So if
12 we're going to put on some evidence we're going to have
13 to get it out or the Court's going to have to look at it
14 in camera. I don't care how we do it, but I gotta be
15 able to cross-examine somebody about a document if it's
16 going to be proven up without me seeing it.

17 MR. BECKWITH: What we've just heard is
18 the parties are entitled to have a confidential
19 settlement agreement. The fact that a fee dispute has
20 broken out between the parties, one of the parties that
21 are lawyers does not abrogate our confidential
22 settlement agreement and does not expose it to public
23 view, Your Honor.

24 THE COURT: Well, I'm not trying to make
25 you do anything you don't want to do. I'm just trying

1 to figure out what is reasonable and equitable in this
2 particular situation. And as I said, I seem to be
3 making a decision without very much information, so I
4 mean, of course, I guess I've been put in that position
5 before so I will do the best that I can do.

6 MR. BECKWITH: But I've tried to
7 represent to Your Honor as a member of this Bar and
8 member of this Court, Your Honor precisely what's
9 happened here, which is that there is a confidential
10 settlement agreement that exists between the parties.
11 All indicia of evidence that was put in by Mr. Lauten
12 and that was discussed by Mr. Pennington, points towards
13 that fact, but as a member of the Bar I'm telling you
14 there is a confidential settlement agreement in place
15 and I have filed a notice again, as a member of the Bar
16 that that confidential settlement agreement has
17 conditions precedent to payment.

18 And lastly, I'm telling you that the
19 money that is associated with the settlement agreement
20 remains today at JPMorgan Chase Bank. So, I'm making
21 all of those representations to the Court; I don't think
22 they're refuted representations, Your Honor.

23 THE COURT: Well --

24 MR. BECKWITH: I might be --

25 THE COURT: I understand that. I guess

1 in the back of my mind, I mean, I have seen people make
2 confidential settlement agreements and I've seen people
3 brought back out of them. I've seen people figure ways
4 around them and I mean, lawyers do what lawyers do and
5 so you know, there are a lot of agreements that are
6 presented in the morning and that are, you know, torn up
7 in the afternoon. So, you know, I'm in the position of
8 being aware of that fact; now, I haven't heard you say
9 that the confidential settlement agreement is not
10 subject to revocation or modification or something else.

11 MR. BECHWITH: Whether it is or isn't
12 Your Honor, I can tell you it is in existence today
13 that, no doubt about it, it exists today.

14 THE COURT: I understand.

15 MR. BECKWITH: What effect the parties
16 make up, the Heirs and their lawyers and this dispute
17 may have on that confidential settlement agreement
18 remains to be seen, but what I can tell you is there is
19 a condition precedent to payment.

20 THE COURT: I heard that. What I'm
21 saying to you is that what you're not telling me is that
22 there's no way that that settlement might not change, or
23 might not be modified or that JPMorgan Chase may decide
24 to walk away from it.

25 MR. BECKWITH: Your Honor, that doesn't

1 change the fact that today, there's a confidential
2 settlement agreement is in place, --

3 THE COURT: I understand --

4 MR. BECKWITH: -- fully in writing, fully
5 integrated, fully in existence.

6 THE COURT: All right.

7 MR. LAUTEN: I know we're running out of
8 time. I do want two minutes for final argument if I can
9 get it before we run out.

10 MS. JOHNSON: Your Honor, can I just say
11 first -- I'm sorry.

12 THE COURT: Just a minute.

13 MS. JOHNSON: Okay.

14 THE COURT: So everybody can hear what
15 you have to say.

16 MS. JOHNSON: I'm sorry, Your Honor. I
17 just wanted to say for the record that we will reset our
18 Motion to Compel Arbitration.

19 THE COURT: I understand.

20 MS. JOHNSON: We understand the Court's
21 time constraints. I do want to make clear our position
22 on the record that if anything further goes on in this
23 litigation, while there is a pending Motion to Compel
24 Arbitration that that cannot happen. That will be an
25 abuse of discretion.

1 THE COURT: Ma'am, I'll decide that.

2 Thank you.

3 MS. JOHNSON: Okay. Thank you, Your
4 Honor.

5 MR. BECKWITH: Your Honor, I will further
6 represent that we will not -- I know Mr. Pennington
7 would bear the same representation -- We will not
8 change, alter or revoke the settlement agreement without
9 notifying Your Honor, so you now have the confidential
10 settlement agreement exist, conditions precedent to
11 payment exist that have not been fulfilled so there's no
12 payment obligation. And as officer of the Court I'm
13 representing to you we will not change, revoke, or alter
14 it without notifying the Court, in advance.

15 MR. PENNINGTON: I agree with that on
16 behalf of my clients, Your Honor.

17 THE COURT: Okay. All right. Thank you.

18 MR. PENNINGTON: Your Honor, may I at
19 this point, request a stay of any further proceedings
20 until we have a hearing on our Motion to Compel
21 Arbitration?

22 MR. LAUTEN: It's not before you today,
23 Your Honor.

24 MR. PENNINGTON: Well it is part of our
25 Motion to Compel and because we're unable to have a

1 hearing on our Motion to Compel, all I'm asking Your
2 Honor is that nothing else be set or no further
3 discovery or no further motions are set before you until
4 we've had an opportunity to have a hearing on a Motion
5 to Compel Arbitration.

6 THE COURT: Well, I can't promise you
7 that, sir, I mean, I don't know what's going to happen
8 tomorrow okay, but you're free to reach that agreement
9 with counsel if they choose to agree with you.

10 MR. LAUTEN: I just want to leave you
11 with one thought without even getting into it. There's
12 one issue before you today and that's the ownership and
13 property rights of my clients with funds held by
14 JPMorgan Chase. We don't have an arbitration agreement
15 with JPMorgan. We don't have an agreement of any kind
16 with them.

17 THE COURT: I understand, sir.

18 MR. LAUTEN: Okay.

19 THE COURT: All right. Anything else?

20 MS. JOHNSON: I just want to be clear.
21 The Court is denying our Motion to Stay the Proceedings
22 pending our Motion to Compel Arbitration.

23 THE COURT: I'm not doing anything but
24 moving that hearing at the moment, okay? I'm going to
25 think about what I've heard and I'm going to have to

1 make some kind of decision pretty quickly, so I need to
2 think about what I've heard and I'll be sending you
3 something, shortly.

4 MR. PENNINGTON: Can we get a hearing
5 date Your Honor on our Motion to Compel, while we're
6 here?

7 THE COURT: You can talk to Amanda.

8 MR. LAUTEN: But before we adjourn Your
9 Honor, I've got a flash drive with our proposed orders.
10 I know you're extremely busy. The only thing I would
11 ask the Court is to at least consider if it's going to
12 be awhile, extending the TRO because it expires by its
13 terms under 14 days.

14 MS. JOHNSON: And Your Honor, our position
15 is that is an absolute abuse of discretion. This Court
16 may not extend a TRO while there is a pending Motion to
17 Compel Arbitration.

18 MR. LAUTEN: Okay, well --

19 MS. JOHNSON: This Court may not order
20 discovery. This Court may not deny our summary
21 judgment.

22 THE COURT: Ma'am?

23 MS. JOHNSON: Sorry, Your Honor.

24 THE COURT: Thank you.

25 Sir.?

1 MR. LAUTEN: My point is I would ask the
2 Court to extend the TRO until the injunction is entered
3 and I think the Court can decide on its own what the law
4 is and isn't and I've got an order for the Court that I
5 will leave you with the flash drive, if I can approach.

6 THE COURT: All right. Is this the 14th
7 day?

8 MR. LAUTEN: Yes, it is, Your Honor.

9 THE COURT: All right. I'm sorry ma'am,
10 I don't mean to cut you off. It's just that you know, I
11 need to move along.

12 MS. JOHNSON: I understand, Your Honor,
13 but I just have to be very clear. I think you are being
14 lead into error, here. It is absolutely black letter
15 law in the State of Texas that if there is a pending
16 Motion to Compel Arbitration, the Court cannot extend
17 the TRO, can't enter an injunction, you can't order
18 discovery, you can't hear a summary judgment motion.
19 And I'm sorry to be so forceful, Your Honor, but you are
20 being lead into error by these lawyers.

21 MR. LAUTEN: Your Honor? Your Honor,
22 that is simply untrue. We have a statute that
23 specifically gives you jurisdiction, Chapter 171, before
24 and even during an arbitration. And it is simply wrong
25 for a lawyer to come in here and tell you you're

1 committing error when it's not true.

2 MS. JOHNSON: No, I didn't say the Court
3 was committing error. I'm telling you, you are being
4 lead into error.

5 MR. LAUTEN: Okay, that's not true.

6 MS. JOHNSON: The statute that he is
7 referring to is the Texas Arbitration Act.

8 THE COURT: Thank you.

9 MS. JOHNSON: Thank you, Your Honor.

10 MR. LAUTEN: Thank you, Your Honor.

11 MR. PENNINGTON: Thank you.

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15 [End of proceedings]
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THE STATE OF TEXAS X

COUNTY OF DALLAS X

I, Jackie Galindo, Deputy Official Court Reporter for the Probate Court Number One, Dallas County, Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this request in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

WITNESS MY OFFICIAL HAND, this the 1st day of June, 2018.

/s/: Jackie Galindo
 Jackie Galindo, Texas CSR #7023
 Expiration Date: 12/31/19
 Official Court Reporter
 Probate Court, Dallas County, Texas
 Renaissance Tower, 2400-A
 Dallas Texas
 214-653-6066

REPORTER'S RECORD
VOLUME 4 OF 5
CAUSE NO. PR-11-3238-1
COURT OF APPEALS NO. 05-18-00558-CV

IN THE ESTATE OF
MAX D. HOPPER,
DECEASED

THE PROBATE COURT

|
JO N. HOPPER
Plaintiff,

v.

JPMORGAN CHASE BANK N.A.
STEPHEN B. HOPPER,
LAURA S. WASSMER
Defendants.

NUMBER ONE

JOHN L. MALESOVAS d/b/a
MALESOVAS LAW FIRM, and FEE
SMITH, SHARP & VITULLO, LLP
Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK N.A.,
Defendants.

DALLAS COUNTY, TEXAS

=====

MOTION TO COMPEL ARBITRATION

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On the 8th day of May, 2018, A.D., the
following proceedings came on for hearing in the above-
entitled and numbered cause before the HONORABLE COURT,
BRENDA HULL THOMPSON, Judge Presiding, held in Dallas,
Dallas County, Texas.

Proceedings reported by oral stenography.

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Exhibits
[None]

1 P R O C E E D I N G S

2 THE COURT: All right. This is PR-11-
3 3238 in the Matter of Max Hopper. May I have the
4 attorneys announce, please?

5 MS. JOHNSON: Yes, Your Honor, Ann
6 Johnson, Jim Pennington and Andrew Guthrie for the
7 intervention Defendants, Stephen Hopper and Laura
8 Wassmer.

9 MR. LAUTEN: Good afternoon, Your Honor,
10 Brian Lauten on behalf of Fee Smith and John Malesovas,
11 and Michelle, my paralegal, is here, too.

12 MS. PULLIAM: Your Honor, Jessica Pulliam
13 of Baker Botts on behalf of JPMorgan. We do not
14 anticipate participating today. I just wanted to let
15 you know we are here.

16 THE COURT: All right, what's your last
17 name?

18 MS. PULLIAM: Pulliam. P-u-l-l-i-a-m.

19 THE COURT: Anyone else?

20 MR. TOBEY: Your Honor, Robert Tobey for
21 the law firm of Block Garden & McNeill. I'm an
22 interested observer today.

23 THE COURT: All right, what -- Block --

24 MR. TOBEY: Block, B-l-o-c-k.

25 THE COURT: Oh, okay.

1 MR. TOBEY: Garden, G-a-r-d-e-n and
2 McNeill, M-c-N-e-i-l-l. It's a law firm.

3 THE COURT: Yes.

4 MR. TOBEY: They're counsel for Dr.
5 Hopper and Ms. Wassmer, also. They're filing a motion
6 in order to withdraw.

7 THE COURT: Your clients are filing a
8 motion to withdraw?

9 MR. TOBEY: They are.

10 THE COURT: Okay.

11 MR. TOBEY: We'll e-file that. I do not
12 anticipate participating in this hearing.

13 THE COURT: All right.

14 How long do you anticipate, Ms.
15 Johnson?

16 MS. JOHNSON: Your Honor, I think I have
17 about 10 or 15 minutes.

18 THE COURT: All right. Proceed.

19 MS. JOHNSON: Your Honor, we're here
20 today on the Motion to Compel Arbitration of Stephen
21 Hopper and Laura Wassmer. We're asking the Court today
22 for an order enforcing the arbitration provisions, in
23 the fee agreements that were drafted by the attorneys,
24 in the case, and we're asking the Court to compel
25 arbitration and stay all proceedings in this Court. I'd

1 like to start by talking about the arbitration
2 provision. May I approach, Your Honor?

3 THE COURT: Yes.

4 MS. JOHNSON: Your Honor, this is a copy
5 of the arbitration provision. I know the Court has seen
6 it before. It's contained in the fee agreements that
7 are in the record. The fee agreements here, it's
8 undisputed that they contain unambiguous, broad,
9 unlimited, arbitration provisions that cover all matters
10 that may arise between attorneys and clients, including
11 fee disputes.

12 And the highlighted language here, Your
13 Honor if I could just read that. "Any controversy or
14 claim arises out of or is related to this agreement, any
15 services provided by attorneys to client in connection
16 with clients' claims or any other matter that may arise
17 between client and attorney including malpractice claims
18 and fee disputes. Attorneys and client both waive any
19 right to bring a court action or have a jury trial and
20 agree that the dispute shall be submitted to binding
21 arbitration."

22 Then it goes on to give details about how
23 that arbitration should be conducted. Your Honor,
24 there's no challenge to the enforceability of this
25 provision. In fact, quite the opposite, the lawyer's

1 pleadings in this case state and I quote, that they
2 fully embrace the fee agreements, including
3 specifically, this arbitration provision. Nor is there
4 any argument about the broad and unambiguous scope of
5 this agreement, Your Honor.

6 They are not taking the position that the
7 dispute at issue here is not within the scope of the
8 agreement. They're not saying this is not a fee
9 dispute, which it most certainly is. They're not saying
10 that this is not a matter that has arisen between
11 clients and attorneys, which it most certainly is.
12 Having shown a valid arbitration clause -- this was our
13 burden, Your Honor, we had to show a valid arbitration
14 clause and we have to show that the fee dispute at issue
15 in this proceeding, is within the scope of that clause.

16 Having met that burden, Your Honor, the
17 Court should compel arbitration. The attorneys do not
18 raise any defenses to arbitration. They do not claim
19 that this cause is unconscionable. They do raise a
20 number of arguments in an effort to avoid arbitration
21 and I want to address those, briefly. The first
22 argument they raise is that the Court cannot compel
23 arbitration against a non-signatory. Certainly, there
24 are a lot of issues when the Court is presented with an
25 issue of arbitration as to a non-signatory but, none of

1 those are flagged here because there is no one -- we are
2 not trying to compel a non-signatory, that is, JPMorgan
3 to this dispute.

4 I would refer the Court to JPMorgan's
5 filing on Friday, which was a notice to the Court about
6 their position related to the temporary injunction. And
7 here is what they said. They said we are not holding
8 disputed funds and there is no need -- we are not
9 holding disputed funds because we have no obligation to
10 make a settlement payment until certain conditions
11 precedent are met, right, and the Court knows that. The
12 release of the liens and order from this Court saying
13 that they can do so.

14 So, none of those conditions have been
15 met and as a practical matter Your Honor, none of those
16 conditions will be met until this fee dispute is
17 resolved between the lawyers and the clients, in
18 arbitration. They are not holding disputed funds and
19 there is no need for this Court to compel them to do
20 anything. They are akin to an interpleader Plaintiff.
21 They're not a party to dispute, and we are not seeking
22 to compel them to arbitrate.

23 The second argument that the lawyers have
24 made to avoid arbitration is an estoppel argument and
25 there are really two pieces to this. The first, they

1 say that we can't enforce an arbitration provision in
2 the contract. You can't do that if you're also claiming
3 that the contract is void or invalid. And Your Honor,
4 that precise argument has been rejected by the United
5 States Supreme Court, in the 2006 case of *Buckeye Check*
6 *Cashing*.

7 What the Court held there was that an
8 arbitration provision in a contract is severable and of
9 course, that is true here. We have a severance
10 provision in this contract, its paragraph 15, which says
11 that if any part of this contract is held unenforceable,
12 it doesn't make the remainder of the contract
13 unenforceable. In addition, the Court held explicitly
14 in that case that any challenge to the enforceability of
15 a contract should be decided by the arbitrator and not
16 the Court.

17 What that means is that the situation we
18 have here will happen, and it's not uncommon, which is
19 that a court may enforce an arbitration provision in an
20 agreement that an arbitrator may later find to be void.
21 In fact, the lawyers, if anyone has taking any
22 consistent position here, Your Honor, we submit that it
23 is intervention Plaintiffs, because they are saying we
24 fully embrace this contract that we drafted, that
25 contains an arbitration provision yet, the arbitration

1 provision is invalid. There is absolutely no case
2 authority for this inconsistency. If this were
3 permitted Your Honor, it would render arbitration
4 provision meaningless.

5 THE COURT: All right, tell me the case
6 you cited, again?

7 MS. JOHNSON: Yes, Your Honor, I have a
8 copy if you'd like it.

9 THE COURT: All right.

10 MS. JOHNSON: Thank you. The case is
11 *Buckeye Check Cashing*. The other kind of estoppel
12 argument they're making Your Honor, is really a quasi
13 estoppel argument that goes to the merits of dispute and
14 has no bearing on whether or not this Court should
15 compel arbitration. Essentially, they're saying our
16 right to recover a 45 percent fee is vested and secured
17 and so there's nothing for an arbitrator to decide and
18 there is no issue that should go to arbitration.

19 Well, Your Honor, that's belied by their
20 own summary judgment filing. They filed a summary
21 judgment motion in this court that is asking this Court,
22 improperly asking this Court, to rule on the merits of
23 the dispute. They've set that summary judgment motion
24 for May 23rd and they're asking this Court for a merits
25 ruling that should be decided by the arbitrator. And

1 that summary judgment filing, in their own petition,
2 confirms that this is a merits issue. They give you --
3 they cite these cases, *Tillery* and *Enochs* and they
4 really go to the merits, Your Honor, about what amount
5 should be paid to these lawyers and they have nothing to
6 do with arbitration and they are not arbitration cases.

7 And Your Honor, I would remind the Court
8 of the testimony that I think you heard at the temporary
9 injunction hearing, which is that our clients do not
10 dispute that compensation is owed to these lawyers.
11 That has never been a dispute. The issue, the merits
12 issue that should be decided in arbitration is the
13 amount of that compensation. That is the disputed
14 issue. That is the disputed issue that must be decided,
15 according to the lawyer's own agreement, by an
16 arbitrator.

17 Your Honor, I also want to point out the
18 timing issues related, that we have relevant to this
19 issue, which is, we had a Texas Supreme Court opinion
20 that's very clear that motions to compel arbitration
21 must be resolved without delay and that a court abuses
22 its discretion if it delays ruling on a Motion to Compel
23 Arbitration. We have a particular urgency here, which
24 has been created by the lawyer's filings. They have
25 filed a merit summary judgment motion which is set for

1 May 23rd; our Response to that is due next week, May 16,
2 and the Dallas Court of Appeals has been very clear in
3 cases -- The Dallas Court of Appeals --, it's cited in
4 our brief, Your Honor, the Dallas Court of Appeals has
5 been very clear that a court cannot rule on -- its
6 *Tantrum* is the name of the case, Your Honor.

7 A court cannot rule on a summary judgment
8 motion while a Motion to Compel Arbitration is pending.
9 Nor, can it force a party to litigate by filing a
10 response to the summary judgment motion because to do so
11 would deprive that party of its contractual right to
12 arbitration. Let me just make two final points Your
13 Honor, just so you're up to speed on what developments
14 in the case since we were last here on the temporary
15 injunction hearing.

16 First, you heard from Mr. Tobey Block &
17 Garden, which is another law firm that is seeking to
18 recover their fees. They have filed a demand for
19 arbitration so I just want to let the Court know that.
20 They have a similar arbitration provision in their
21 contract. The second development obviously, is that the
22 Court has entered a temporary injunction and I want to
23 remind the Court that when we were here the temporary
24 injunction hearing, the authority that was proffered to
25 the Court for the Court's ability to enter an injunction

1 was the Texas Arbitration Act.

2 The provision was 171.086 and what that
3 provision says is that this Court, in support of
4 arbitration, may sign various orders that promote case
5 resolution, through arbitration. The other authority
6 the Court was given was the *Center* case from the Dallas
7 Court of Appeals. What that case said is that this
8 Court can only render an injunction in support of
9 arbitration.

10 So, we submit Your Honor, that the basis
11 for the injunction that was proffered to you by the
12 attorneys and on which this court entered injunction,
13 was that this case would proceed to arbitration. Your
14 Honor, in conclusion, all paths here lead to
15 arbitration. We have an undisputed arbitration clause.
16 We have a broad unambiguous scope. We have lawyer's
17 filings saying that they are embracing that arbitration
18 clause.

19 We have a summary judgment motion that
20 tees up the merits that should be decided by the
21 arbitrator, and we have this Court's own temporary
22 injunction, which was rendered based on authority that
23 presumes this issue is being decided in arbitration.
24 So, we ask this Court to grant the Motion to Compel
25 Arbitration and stay all of the proceedings in this

1 case, pending arbitration.

2 THE COURT: All right.

3 MR. LAUTEN: Good afternoon, Your Honor.

4 First, no disrespect intended, Ms. Johnson was nice
5 enough to move this hearing to accommodate a conflict I
6 had and unfortunately, Mr. Vitullo is on vacation, and
7 couldn't get back in time. So, no disrespect intended
8 by him not being here. There are three reasons why this
9 motion should be denied. And I'll talk about those in a
10 second.

11 The first thing she did say that was
12 correct is there's absolutely an enforceable arbitration
13 clause in this dispute, no question. But its prong two
14 of the analysis as to why this motion should be denied
15 today, as the pleadings currently stand, without
16 prejudice. The first issue is: Are there actually
17 claims on file today that are within the course and
18 scope in the umbrella of the arbitration provision?
19 There are not. And there are three reasons why this
20 motion should be denied.

21 First, there is no claim before this
22 Court that is subject to the arbitration provision at
23 issue. Number two, they're fully estopped; there is
24 nothing to arbitrate right now. And three, they've
25 taken irreconcilable positions. Let me start with the

1 first issue. What Ms. Johnson didn't talk about is what
2 is actually plead. We filed a second amended plea in
3 intervention. There's only one claim pending before
4 this Court and it's an application for declaratory
5 relief under 37.005, JPM remains the Independent
6 Administrator of the Estate.

7 Under 37.005, this Court has exclusive
8 jurisdiction to dispose of property incident to the
9 Estate and that is the settlement proceeds. The
10 settlement proceeds, albeit it hasn't been funded, are
11 entirely with JPM. Our DEC action complaint -- there's
12 no breach of contract that's been filed. There's no
13 legal malpractice case that's been filed. There's no
14 breach of fiduciary duty case that's been filed. All of
15 the claims that would fall within the orbit of an
16 arbitration clause, none of that has been filed.

17 Our dispute primarily, is with who has
18 the property, and that's JPM. We have no agreement with
19 JPM. JPM's not only a non-signatory to an arbitration
20 agreement, the lawyers have no agreement on any kind
21 with JPM. The jurisdiction, the corpus at issue is in
22 the hands of a party before you, who is not bound by any
23 agreement, much less an arbitration agreement. I've got
24 a case for you that's right on point. I've got copies
25 of it and it's cited in our brief, if I can approach?

1 THE COURT: Yes.

2 MR. LAUTEN: Let the record reflect this
3 is *Transamerica v. Rapid Settlements*, 284S.W.3d 385 and I
4 would submit to you that that case is on all fours with
5 the *Instant* (phonetic) case. Let me tell you what
6 happened. That was a situation where you had a personal
7 injury Plaintiff, injured in a car accident or something
8 like that; they enter into a settlement agreement and
9 instead of taking the cash, the lump sum for the
10 settlement, the Plaintiff, which is, you know what
11 happens all the time, is they structured the settlement
12 to get an annuity over a certain amount of years.

13 Well the Plaintiff in that case decided
14 that he wanted the money; that he didn't want to wait
15 for the annuity stream. So, what happened, which is not
16 wholly uncommon, is the Plaintiff reached out to this
17 company called Rapid Settlements, which is one of these
18 factoring companies and it enters it -- the Plaintiff,
19 who settled this case, structures a settlement; the
20 annuity provider was Transamerica. The Plaintiff enters
21 into this agreement with Rapid Settlements and agrees
22 that Rapid Settlements in going to write him a check for
23 \$5,000 and he's going to give him the annuity rights to
24 \$100,000.

25 So, he's got a contract with Rapid

1 Settlements with an arbitration agreement. But the
2 people who actually have the money Transamerica, they're
3 not a party to any agreement. They're the JPM in this
4 fact pattern. What happens? They go to arbitration and
5 they simply, the client who entered the agreement with
6 Rapid, but not the person that actually had the money
7 Transamerica, they weren't a party to that contract.
8 They go arbitrate. They move to compel the arbitration
9 award. The Plaintiff loses. The arbitrator says you
10 entered into an agreement; you gave up your rights on
11 that annuity; you're bound by that.

12 Well, then they move to confirm the
13 award, like coming back to this Court. The JPM in that
14 particular scenario, Transamerica, who had no
15 arbitration agreement with them said we're not bound by
16 that, we're a non-signatory, you couldn't compel us to
17 arbitration; we didn't go to arbitration. We're not
18 going to comply with the arbitrator's award. We don't
19 care about your arbitration award. Our contract's with
20 the Plaintiff and that's what we're going to honor. And
21 in that case, the Court said, that's right.

22 And in the Houston case, they held that
23 it was reversible error to confirm the arbitration award
24 because the person that actually had the money, the
25 person that actually had the settlement, was not bound

1 by an arbitration award and they weren't privy to an
2 agreement. That's exactly what we have here. We have a
3 confluence. We have three parties. It's not just
4 client and lawyer. It's client, lawyer and JPM and
5 JPM's got the money. We had no agreement with them.
6 They're not moving to compel arbitration with respect to
7 JPM.

8 And furthermore, I would disagree that
9 this is just a fee dispute; it's not. It's an ownership
10 and property right dispute. We're entitled to that
11 property right now. We own it. We have filed a DEC
12 action and we're only seeking six findings. No legal
13 malpractice claim, no breach of fiduciary duty claim.
14 Why in the thunder would we go to arbitration and take a
15 dozen depositions and spend three months to a year in
16 arbitration when we're entitled to the property right
17 now, in the hands of a party who is not subject to any
18 arbitration agreement.

19 So, that's issue one, is there is no
20 claim subject to the arbitration agreement as things
21 currently stand. I totally agree with her. If we were
22 to amend and sue them for breach of contract and all
23 kinds of other things, yeah, I get that. If they were
24 to sue us for legal malpractice, I get that. None of
25 that is on file today. Point number two: They are

1 fully estopped. There's nothing to arbitrate. That's
2 what *Tillery* says; that's what *Enochs* says. Those
3 findings have been made in the injunction order, those
4 cases are cited in your order, and lastly, they have
5 taken a reconcilable position.

6 She is absolutely, right; I do not
7 disagree with *Buckeye*. She is correct and she is
8 telling you the truth when she says, that generally,
9 that's up to the arbitrator, that the arbitration
10 agreement can be severed from the contract. She's
11 absolutely telling the truth on that. But there's a
12 bigger point to be made here and that is simply this:
13 The policy of this is absolutely, awful. They have
14 accepted all of the benefits of this work, they
15 terminate the lawyers literally within minutes of the
16 settlement being reached; they fire the lawyers.

17 They say we agree the lawyers should be
18 paid but they say we're not going to tell you what that
19 number is nor are we going to pay any of it until an
20 arbitrator or court tells us otherwise. And they want
21 to be in a better position than they were before they
22 did all of this and they created this mess and that is
23 simply wrong.

24 I'm just telling you, Your Honor, if you
25 were to allow -- if a personal injury Plaintiff was

1 allowed to simply wait until the case is settled, until
2 the Frank Bransons and Ted Lyons and Windle Turleys of
3 the world, we're just not going to pay you. We're going
4 to go to arbitration now and spend a year there. That's
5 simply not the law. They are fully estopped. Lastly, I
6 want to leave you if I could, with a copy of the DEC
7 action statute. Can I approach?

8 THE COURT: Yes.

9 MR. LAUTEN: And this is not just a DEC
10 action statute, this is a unique provision of Chapter 37
11 that gives a Probate Court exclusive jurisdiction over
12 this type of claim. In the Civil Rights and Remedies
13 Code it says: "Declarations relating to trusts or
14 estate". This is the statute that we plead in the only
15 claim before this Court. And under 37.005 one, you have
16 exclusive jurisdiction as the Probate Court to deal with
17 a class of creditors who have an interest in funds
18 germane to the Estate. We're a creditor. We're owed
19 this money. We have a vested property right.

20 The Fifth Circuit applied Texas
21 substantive law has held the minute the contingency fee
22 is earned, it's a vested secured, fully vested estopped
23 ownership right. That's it. Under this provision, the
24 Court maintains exclusive jurisdiction to dispose of the
25 corpus. I will just remind the Court this, JPM again,

1 who we have no agreement with, they have no agreement
2 with, other than the settlement agreement -- by the way,
3 I would love to see what the choice of law or forum
4 selection is in that agreement, which we haven't seen.

5 But be that as it may, nobody has any
6 agreement with them that they're the Independent
7 Administrator. They got the property and they are not
8 bound by any agreement to arbitrate. So, therefore, for
9 these reasons we would ask the Court to do this: Deny
10 the Motion to Compel Arbitration without prejudice as it
11 stands right now, if the pleadings are later amended and
12 broadened, it has to be re-analyzed to see if claims
13 fall in the scope of that arbitration provision.

14 The bottom line is this, no, we're not
15 running from our agreement. Our agreement's our best
16 friend. Our agreement's why this case is over before it
17 starts. Number one, there is no claim to arbitrate as
18 things are currently plead. I'd ask the Court to
19 consider and take judicial notice of our second amended
20 petition in intervention. Number two, they are fully
21 estopped under *Enochs* and *Tillery*. There is nothing to
22 go back in time and litigate.

23 THE COURT: Just a second. The second
24 amended petition is --

25 MR. LAUTEN: Yes, Your Honor, if you want

1 I can give you a copy of mine, a file-stamped copy. We
2 filed it on May 1st at 1:13 if I could approach?

3 I don't have an extra copy for you
4 Anne, but --

5 MS. JOHNSON: I got it.

6 THE COURT: So, you're asking for
7 judicial notice of that?

8 MR. LAUTEN: Take judicial notice of the
9 only pleading that could possibly be before the Court
10 with respect to their motion is one claim for
11 declaratory relief.

12 THE COURT: Any objection?

13 MS. JOHNSON: Uh, no, Your Honor.

14 MR. LAUTEN: And so, that's my argument.
15 I appreciate your time. I know that we've taken a
16 tremendous amount of your time away from how busy you
17 are on Mr. Loewinsohn's side of the case. I'm happy to
18 answer any questions you've got, but again, I'd ask the
19 Court to deny the Motion to Compel Arbitration without
20 prejudice at this time. I got a proposed order if the
21 Court wants me to leave it.

22 THE COURT: All right. The Court's going
23 to take judicial notice of the second amended petition
24 in intervention. And the Court will take proposed
25 orders from both sides.

1 MS. JOHNSON: Your Honor, may I just
2 respond, briefly?

3 THE COURT: Yes.

4 MS. JOHNSON: Thank you, Your Honor.

5 THE COURT: Okay. But I will take
6 proposed orders today.

7 MS. JOHNSON: Thank you, Your Honor.
8 Your Honor, Mr. Lauten's a very clever lawyer and he's
9 made some very clever arguments here but they drafted
10 this arbitration provision. This is the first time
11 we've heard by the way, that their pleadings are outside
12 the scope, but there is a whole bucket of law about how
13 artful pleadings do not get you out of an arbitration
14 clause. This arbitration clause does not say breach of
15 contract claims go to arbitration. It says any matter
16 that arises between the attorneys and the clients goes
17 to arbitration. Any matter, Your Honor.

18 It is one of the broadest most
19 unambiguous, unlimited arbitration clauses there can be.
20 And simply because they have plead this as a DEC action,
21 let's be very clear about the relief they are seeking.
22 They are seeking that this Court declare that they are
23 entitled to immediate disbursement of 45 percent of the
24 settlement proceeds. They can dress that up as a DEC
25 action, they can say oh, it's not breach of contract

1 it's not that. That is a matter that has arisen between
2 attorneys and clients. That is a fee dispute that is
3 specifically covered in this arbitration clause.

4 Your Honor, the Transamerica case they're
5 coming up with -- and again, Mr. Lauten's a very clever
6 lawyer but there is no non-signatory. Transamerica
7 would only apply to bring JPMorgan in if they'd said
8 we're not paying, no matter what, we're not paying.
9 Then they would need to be a party to the arbitration
10 but that is the opposite of what JPMorgan has said.
11 JPMorgan has said we have no dog in this fight. We will
12 hold on to the proceeds until this dispute gets
13 resolved, until this Court gives us an order that we can
14 release it and then we will pay.

15 Your Honor, there is no non-signatory
16 issue and if this Court stays the arbitration -- I'm
17 sorry.

18 THE COURT: Excuse me. The last time I
19 heard from Mr. Beckwith, he said that they were working
20 with a settlement sheet, that they did not have a signed
21 settlement agreement. And I guess the Court raised --
22 he represented that they would comply with the
23 settlement sheet, but he didn't say unequivocally, that
24 Chase might or could not possibly back out of the
25 settlement agreement and he didn't say that

1 unequivocally.

2 So, I guess one of the concerns that the
3 Court has, because I've seen it happen, is that
4 settlement agreements fall apart down here. And so, one
5 of the problems with what they were proposing to me, as
6 a resolution of the issue with the disputed funds, was
7 that there was some guarantee in place that, you know,
8 that Chase would not disburse the funds under certain
9 conditions. However, you know, Chase probably would
10 still retain an option to say that the conditions were
11 not satisfied or that they had changed their mind.

12 And so, as I said, I didn't hear from Mr.
13 Beckwith that Chase was unequivocally yoked to the
14 settlement agreement. In fact, he said that the
15 settlement agreement had not been signed or fleshed out.
16 He said that they were working with the settlement
17 terms.

18 MS. JOHNSON: Your Honor, I would like
19 Ms. Pulliam to respond to this but, I also refer the
20 Court to JPMorgan's filing on Friday. They filed --

21 THE COURT: I haven't seen it.

22 MS. PULLIAM: I have a copy for you, Your
23 Honor.

24 MS. JOHNSON: I understand but just to be
25 clear, JPMorgan makes very clear that they will abide by

1 existing court orders regarding payment and that they
2 holding -- they are waiting for this Court to make an
3 order.

4 THE COURT: I understand that but a
5 settlement agreement is not a settlement agreement until
6 it's signed and --

7 MS. JOHNSON: It is signed Your Honor.

8 MS. PULLIAM: Your Honor, I just want to
9 make clear because I was standing with Mr. Beckwith at
10 the last hearing and if we weren't clear, we certainly
11 intended to be clear that there was a signed settlement
12 agreement at that time.

13 THE COURT: All right, well what I heard
14 was that there were settlement terms that had been
15 signed off on. I didn't --

16 MS. JOHNSON: Definitely. Your Honor,
17 there was a Rule 11 Agreement that was filed with the
18 Court and then there were two notices that JPMorgan has
19 filed.

20 THE COURT: I have not seen them.

21 MS. JOHNSON: And if I may approach, I
22 can give you the one that we filed most recently on last
23 Friday, May 4th. So, in that notice, the excerpt
24 portions of the confidential signed settlement agreement
25 and those portions contained the conditions precedent to

1 settlement. I'll give you just a second to look at it,
2 Your Honor but I would direct to you the second page
3 that contains the excerpts to the settlement agreement.
4 So, Your Honor, this is a representation by JPMorgan
5 again, that there is a signed settlement agreement.

6 I believe Mr. Lauten was incorrect when
7 he said that the bank is not bound by anything. It is
8 certainly bound by this agreement. It's also made a
9 representation to the Court about the terms that are
10 contained in the settlement agreement. Those terms, as
11 outlined in our filing, contain conditions precedent
12 prior to any release of funds.

13 So, this idea that there are settlement
14 proceeds currently that anybody has a property interest
15 in, is incorrect. There are no settlement proceeds
16 currently that are owed to anyone under the settlement
17 agreement.

18 THE COURT: Well, I understand that but I
19 guess --

20 Go ahead.

21 MR. LAUTEN: If you were to read this
22 into the record right now it would be unbelievably
23 unclear procedurally, where we are. And this is a true
24 fact, that supplement is not in evidence. I haven't
25 seen it. You haven't seen it. You haven't seen it in

1 camera. We have a lawyer telling you what an agreement
2 says that nobody on this side of the table or the Court
3 has actually seen and the point that was made at the
4 prior hearing, which I think you're latching onto, is
5 simply this: They can get together and change their own
6 agreement at any time. We're not a party to that
7 agreement. I haven't even seen their agreement. That's
8 the point. They may file something today and say we'll
9 do this and then tomorrow, they turn around and say we
10 won't. That's the threat. And that was germane to the
11 injunction, which the Court granted.

12 MS. JOHNSON: Your Honor, I just want to
13 get us back to the issue. Is this is a dispute that
14 should be compelled to arbitration? Whether or not --
15 if this Court compels arbitration, this Court's
16 temporary injunction stays in place. And Your Honor, if
17 I may approach again, this is a really important point.
18 Mr. Lauten told you at temporary injunction hearing, the
19 reason this Court had the right to enter an injunction
20 -- it's really important that the Court understands
21 this -- is that under the Texas Arbitration Act, before
22 arbitration proceedings begin in support of arbitration,
23 this Court can enter injunctions if it thinks there's
24 going to be destruction of property.

25 This was the authority that was given to

1 this Court. If this Court orders arbitration that will
2 not affect the temporary injunction, those proceeds
3 aren't going anywhere until this arbitration is
4 concluded. Those proceeds aren't going anywhere.
5 JPMorgan has said that. They have told this Court they
6 are going to abide by the temporary injunction. We have
7 said that. This corpus stays because JPMorgan has no
8 obligation to pay these funds.

9 So, this court has entered a temporary
10 injunction in support of arbitration. That is the
11 authority that Mr. Lauten gave you and he's not
12 disputing that. So, those funds are going to stay put.
13 JPMorgan's going to hold on to those until this gets
14 resolved and this Court enters a different order. This
15 is a lot of noise trying to distract the Court from the
16 issue that is before the Court, which is: Is this a
17 dispute that needs to go to arbitration? It most
18 certainly is and to be clear what they are asking for,
19 they have filed a summary judgment motion and they're
20 asking this Court to order, give us 45 percent of
21 settlement proceeds right now. That is a fee dispute.
22 It is a matter between attorney and client and it must
23 be decided by an arbitrator.

24 MS. PULLIAM: Your Honor, again, we don't
25 take a position on the arbitration issue. If this Court

1 has any questions whatsoever after the representations
2 that Mr. Beckwith made at the last hearing about the
3 existence of a settlement agreement or the
4 representations that my firm and Mr. Beckwith made in
5 our May 4th hearing about the existence of a settlement
6 agreement, including representations that there were
7 excerpts from that settlement agreement included in our
8 filing, we are happy to address that with filing an in
9 camera redacted portion of it.

10 THE COURT: Well, the question was not
11 whether or not there was a settlement agreement. The
12 question in my mind was whether or not that settlement
13 agreement could be changed or altered or not honored. I
14 mean, I see people change their minds every day. And
15 so, the question in my mind was whether the
16 representation was that there was a settlement
17 agreement.

18 The question in my mind was well do I
19 hang my hat on something that could change. And so, I'm
20 not privy to the negotiations between the Intervenors
21 and Chase Bank and so I don't know that, I mean, without
22 having seen that, I don't know whether or not there's an
23 opt-out provision in the settlement agreement, whether
24 or not there's a -- you see what I'm saying?

25 MS. PULLIAM: Yeah.

1 THE COURT: I basically -- I made the
2 observation that -- you're asking me to make a decision
3 without much information. And so, you know, with those
4 questions hanging in the air nobody decided to give the
5 Court any more information so, I reached the conclusion
6 that I reached.

7 MS. PULLIAM: And to be clear there is a
8 signed settlement agreement by both parties that --

9 THE COURT: I'm clear on that, ma'am.

10 MS. PULLIAM: -- creates obligation and
11 what is clear is that that will not change. That there
12 is a settlement agreement that obligates my client that
13 is signed by my client and that fact will not change.
14 And again, we're happy to present in camera if the Court
15 is interested, a redacted version of the settlement
16 agreement, subject to discussion with counsel.

17 MS. JOHNSON: And Your Honor, let me just
18 speak, this is so important. This whole business about
19 whether the settlement agreement can change, the Court
20 has already protected against that, because you have
21 entered a temporary injunction. You have said JPMorgan,
22 nobody's getting these settlement funds.

23 THE COURT: Well, the settlement
24 agreement and the temporary injunction -- I mean the
25 injunction protects the funds. It doesn't protect the

1 agreement.

2 MS. JOHNSON: That's true, Your Honor but
3 isn't that what the issue is?

4 THE COURT: No. The issue and I'll say
5 it again, the issue is I am not sure about the
6 settlement agreement. I'm not sure whether or not the
7 settlement agreement can be changed or modified without
8 the Court being aware of it. I don't know.

9 MS. JOHNSON: Your Honor, we will
10 represent -- we will propose today that we will notify
11 the Court immediately if the party's change any part of
12 the settlement agreement. But the point is everybody
13 here is concerned about what happens to these funds.
14 Nothing is happening to these funds while there's an
15 arbitration. The Court has entered a temporary
16 injunction preventing that.

17 THE COURT: I understand.

18 MS. JOHNSON: Yeah.

19 MS. PULLIAM: So, really, --

20 THE COURT: That's why I entered the
21 temporary injunction.

22 MS. JOHNSON: That's right. And that
23 stays in place pending arbitration unless it's reversed
24 by the Court of Appeals or unless the Court reverses
25 itself. That temporary injunction maintains those

1 funds. JPMorgan -- nothing is happening to those funds.

2 THE COURT: It maintains the funds,
3 ma'am. It doesn't necessarily maintain the agreement.
4 You see what I'm saying?

5 MS. JOHNSON: I do understand, Your Honor
6 and I don't know what to say other than we will inform
7 the Court if something changes in the agreement, but and
8 none of this, and again, Your Honor, all of this goes
9 to, all of this goes to an argument that there is now a
10 non-signatory who cannot be compelled to arbitration.
11 Again, there is absolutely no argument that's been
12 articulated related to JPMorgan that should prevent this
13 court from compelling its dispute to arbitration.

14 THE COURT: All right.

15 Ma'am?

16 MS. PULLIAM: Your Honor, I just want to
17 offer again, that we have a copy of the redacted version
18 of the settlement agreement that I'm happy to offer in
19 camera if the Court chooses subject to --

20 MS. JOHNSON: We have no objection to
21 that, Your Honor.

22 THE COURT: What about you?

23 MS. PULLIAM: I don't think she's looking
24 at me, Brian.

25 MR. LAUTEN: I don't have a copy to offer

1 into evidence, Your Honor so, if she wants to offer the
2 agreement in camera, I don't have a problem with that.
3 I don't have a problem with seeing the agreement.

4 THE COURT: Well, they're not offering
5 the agreement. They're offering a redacted copy of the
6 agreement.

7 MR. LAUTEN: Well, I would need to know
8 what they're redacting. I mean, it's hard to object to
9 something you haven't seen, that's being shown to the
10 Court without me getting a copy.

11 MS. PULLIAM: Your Honor, I can represent
12 the only thing redacted in the settlement agreement is
13 the amount of the settlement proceeds.

14 MR. LAUTEN: I don't have a problem with
15 the Court seeing it in camera.

16 THE COURT: All right.

17 MS. PULLIAM: Your Honor, to assist the
18 Court, the portions of the settlement agreement that are
19 quoted in our May 4th filings are contained in section 2
20 on page 3.

21 THE COURT: Thank you.

22 MS. JOHNSON: Your Honor, we're just
23 asking, given the timing, that we have a ruling quickly.
24 I understand we put all that in our papers that we have
25 a summary judgment response due next week. In the event

1 the Court denies our Motion to Compel Arbitration we
2 would ask the Court for a stay of proceedings that we
3 can seek emergency relief in the Dallas Court of Appeals
4 and alternatively, we would ask the Court to continue
5 the summary judgment hearing, which is set for May 23rd.
6 That would give everybody more space to be able to
7 resolve this issue.

8 THE COURT: The Court doesn't -- I don't
9 have very many days left in this month that aren't
10 already committed to other matters. And if the Motion
11 for Summary Judgment is taken up on the 23rd, I'm
12 planning to be out the following week.

13 MS. JOHNSON: The problem Your Honor, is
14 that we would have to file a response on the summary
15 judgment motion May 16th. We can't be forced to proceed
16 to continue to litigate the case while there's a Motion
17 to Compel pending and we would say even if the Court
18 wants more time to rule that would give everybody more
19 space if the Motion for Summary Judgment was continued.

20 THE COURT: All right, is there an
21 objection?

22 MR. LAUTEN: If that pleases the Court,
23 that's fine with us, Your Honor.

24 THE COURT: All right.

25 MR. LAUTEN: It's totally up to you.

1 THE COURT: All right.

2 Sheriff?

3 THE BAILIFF: Yes.

4 THE COURT: Could you get Amanda, please?

5 I'm just running over with motions
6 for summary judgment down here. I thought I'd had
7 enough motions for summary judgment in Hopper but it
8 looks like I'm not done yet, I've done easily 20
9 something.

10 THE COURT: When is that set for?

11 MR. LAUTEN: I'm not sure, Your Honor,
12 off the top of my head. I thought it was 30 minutes but
13 I'm not 100 percent confident in telling you that's
14 accurate.

15 MS. JOHNSON: It's set at 2 p.m. on May
16 23rd.

17 THE COURT: You have an hour. Okay, I
18 have any time Tuesday afternoon, on June 5th.

19 MS. JOHNSON: That's fine with me. Is
20 that okay with you, Jim?

21 MR. PENNINGTON: Your Honor, I've got a
22 trial starting on June the 4th. I'm told it's the number
23 one setting.

24 THE COURT: All right, what about 9
25 O'clock, June 6th. You think you'll be finished?

1 MR. PENNINGTON: No, unfortunately, it's
2 going to be about a week.

3 THE COURT: I'm sorry?

4 MR. PENNINGTON: It's going to be about
5 approximately one week, Your Honor.

6 MS. PULLIAM: Your Honor, I think that
7 JPMorgan is a party to that hearing. I think the
8 summary judgment is also directed to the bank. I have
9 my availability here but I don't have Mr. Beckwith's.

10 THE COURT: I can't hear you.

11 MS. PULLIAM: I have my availability on
12 my calendar here with me, but I don't have Mr.
13 Beckwith's. One thing we can do is confer and -- If I'm
14 wrong, I'm happy to be wrong about that.

15 THE COURT: Okay, I could give you June
16 11th from 9-10 or I could give you June 11th at 3.

17 MS. PULLIAM: The 9-10 would be
18 preferable on my end but again, I haven't been able to
19 confer with Mr. Beckwith.

20 MR. LAUTEN: We can make these times
21 work, Your Honor. You tell us when to be here and we'll
22 be here.

23 MS. JOHNSON: Those times are fine with
24 us too, Your Honor.

25 THE COURT: Okay, well I can, I mean, if

1 you aren't finish Monday morning, it'll run into my 10
2 O'clock docket but I can put you on say at 3 O'clock or
3 move a case up to 1 O'clock and be finished at 2:30. I
4 can put you on say 2:30-4 on Monday afternoon, worst
5 case 3-5, Monday afternoon. Do you want to do that?

6 MR. LAUTEN: Sure.

7 MS. PULLIAM: The morning spot would be
8 preferable for me. I think I have to get on a plane
9 later that afternoon, but --

10 THE COURT: Can you text him or email
11 him?

12 MS. PULLIAM: I just did. I just did.

13 THE COURT: All right. Okay. What we'll
14 do is I'll move the date and you'll have an extended
15 amount of time to respond.

16 MR. LAUTEN: Your Honor, can I approach
17 the bench and give you a proposed order? I think Ms.
18 Johnson may have already given you hers.

19 THE COURT: Yes.

20 MR. LAUTEN: Thank you.

21 MS. JOHNSON: So, Your Honor, that would
22 mean that our response would be June 4th and so we would
23 ask that the Court give us, that we have a ruling on
24 arbitration one way or the other a couple of weeks
25 before our response is due. Thank you.

1 THE COURT: Well, what I'll do is we'll
2 set it on June 11th. You'll either have the 9-10 slot or
3 you'll have the 2:30-3:30 or 4, depending on --

4 MS. PULLIAM: We'll get back to you
5 tomorrow morning.

6 THE COURT: Okay, is everybody okay with
7 that? Can you all work that out?

8 MR. LAUTEN: Sure, Your Honor.

9 THE COURT: All right, and then your
10 response date would be --

11 MS. JOHNSON: I believe June 4th, Your
12 Honor.

13 [Counsel confer about dates]

14 THE COURT: All right, so everybody's
15 clear, either 9-10 on June 11th or 2:30-3:30 on June 11th
16 or I can go a little bit later. Anything else? Just
17 notify the Court tomorrow.

18 MS. PULLIAM: Absolutely, Your Honor.

19 MR. LAUTEN: Your Honor, thank you.

20 MR. LAUTEN: Did you say 2:30 or 3:30 on
21 June 11th?

22 THE COURT: I'm going to start another --
23 I'll have a motion for summary judgment in front of
24 yours that's going to start at 1pm and so, I've given
25 them an hour-and-a-half. Let's start you at 3 O'clock

1 to make sure I've given them enough time.

2 MR. LAUTEN: Thanks, Judge.

3 MS. JOHNSON: Thank you, Your Honor.

4 THE COURT: Okay, thank you very much.

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6 [End of proceedings]
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STATE OF TEXAS X

COUNTY OF DALLAS X

I, Jackie Galindo, Deputy Official Court Reporter for the Probate Court Number One, Dallas County, Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this request in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

WITNESS MY OFFICIAL HAND, this the 1st day of June, 2018.

—
/S/: *Jackie Galindo*

Jackie Galindo, Texas CSR #7023

Expiration Date: 12/31/19

Official Court Reporter

The Probate Court,

Renaissance Tower, 2400-A

Dallas County, Texas

214-653-6066

REPORTER'S RECORD
VOLUME 5 OF 5
CAUSE NO. PR-11-3238-1
COURT OF APPEALS NO. 05-18-00558-CV

IN THE ESTATE OF
MAX D. HOPPER,
DECEASED

THE PROBATE COURT

JO N. HOPPER
Plaintiff,

v.

JPMORGAN CHASE BANK N.A.
STEPHEN B. HOPPER,
LAURA S. WASSMER
Defendants.

NUMBER ONE

JOHN L. MALESOVAS d/b/a
MALESOVAS LAW FIRM, and FEE
SMITH, SHARP & VITULLO, LLP
Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK N.A.,
Defendants.

DALLAS COUNTY, TEXAS

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HEARING EXHIBITS

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EXHIBITS VOL. 2

<u>INTERVENORS</u>	<u>Description</u>	<u>Offered</u>	<u>Admitted</u>	<u>Vol.</u>
No. 1	Contingency Fee Contract signed By Laura Wassmer	28	34	2
No. 2	Contingency Fee Contract signed By Stephen Hopper	28	34	2
No. 3	Letter dated 4/5/18 From Mr. Pennington To Mr. Lauten	28	37	2

DEFENDANTS

No. 1	Letter dated 4/6/18 From Mr. Pennington To Mr. Malesovas and Mr. Lauten	36	58	2
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EXHIBITS VOL. 3

<u>INTERVENORS</u>	<u>DESCRIPTION</u>	<u>Offered</u>	<u>Admitted</u>	<u>Vol.</u>
No. 1	Contingency Fee Contract signed by Laura Wassmer	24	25	3
No. 2	Contingency Fee Contract signed by Stephen Hopper	25	25	3
No. 3	Charge of the Court Filed Sept. 25, 2017	25	25	3
No. 6	Rule 11 Letter Filed April 4, 2018	28	31	3
No. 7	Letter to Mr. Lauten From Mr. Pennington Dated April 5, 2018	29	31	3
No. 8	Letter to Mr. Malesovas From Mr. Pennington Dated April 5, 2018	29	31	3

EXHIBITS, VOL 3 cont'd.

<u>INTERVENORS</u>	<u>DESCRIPTION</u>	<u>Offered</u>	<u>Admitted</u>	<u>Vol.</u>
No. 11	Letter to Mr. Eichman From Mr. Vitullo Dated October 8, 2015	29	31	3
No. 13	Email to Mr. Vitullo From Mr. Stephen Hopper Dated Jan. 25, 2016	30	31	3
No. 66	Order Granting Plaintiff's Motion for Legal Rulings Dated March 28, 2018	30	31	3
No. 70	Email to Mr. Vitullo From Mr. Levinger Dated April 3, 2018	31	31	3
No. 14	Email to Mr. Vitullo From Ms. Laura Wassmer Dated Jan. 25, 2016	34	33	3
<u>DEFENDANTS</u>	<u>DESCRIPTION</u>	<u>Offered</u>	<u>Admitted</u>	<u>Vol.</u>
No. 2	Letter from Mr. Pennington to Mr. Vitullo and Mr. Malesovas dated April 6, 2018	36	38	3

THE STATE OF TEXAS X

COUNTY OF DALLAS X

I, Jackie Galindo, Official Court Reporter for the Probate Court Number One, of Dallas County, Texas, do hereby certify that the foregoing exhibits constitute true and correct duplicates of the original exhibits , excluding physical evidence, admitted, tendered in the offer of proof or offered into evidence during the HOPPER ESTATE MATTER, in the above entitled and numbered cause as set out herein before the Honorable Brenda Hull Thompson, Judge of The Probate Court One of Dallas County, Texas.

I further certify that the total cost for the preparation of this Reporter's Record is \$ 1,534.00 and was paid by Ms. Anne Johnson of Haynes and Boone Law Firm, LLC.

WITNESS MY OFFICIAL HAND, on this, the 1st day of June, 2018.

/s/: Jackie Galindo
 Jackie Galindo, Texas CSR #7023
 Expiration Date: 12/31/19
 Official Court Reporter
 Probate Court, Dallas County, Texas
 Renaissance Tower, 2400-A
 Dallas Texas
 214-653-6066



CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned **Stephen Hopper, and Laura Wassmer** referred to as "Client" or "Clients" employ and retain Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm, (herein "Attorneys") to represent Client as set forth herein.

1. **SCOPE OF REPRESENTATION:** Attorneys agree to investigate and evaluate and litigate Client's possible claim or claims of negligence, fraud, breach of contract, and breach of fiduciary duty against JP MORGAN CHASE and persons and companies relating to JP MORGAN CHASE BANKs wrongful acts in acting as the independent administrator of the Estate of Max Hopper..

Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. ~~Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client.~~ Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties. *other than Chase. Lw*

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit, ~~or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.~~ *Lw*

Client understands and agrees that Attorneys will not file suit against entities that are in a foreign jurisdiction or are international companies whom in attorney's opinion cannot be sued in a United States court. Client understands and agrees that Attorneys are not obligated to pursue entities that are defunct and/or bankrupt.

Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.

2. **AUTHORITY OF ATTORNEYS:** Client empowers Attorneys to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's Claims, including hiring investigators, expert witnesses, and/or other attorneys and filing any legal action necessary. Client authorizes and empowers Attorneys to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claim, and Client further authorizes and empowers them to sign any and all pleadings and all releases, checks, drafts, authorizations and other papers necessary and proper in connection with the prosecution or enforcement of Client's Claims and collection or settlement of the damages awarded or to be paid therefore, and to receive such funds or other property in Client's name and for Client on account of any judgment recovered or any settlement agreed upon in connection with Client's Claim. Full power and authority is given by Client to Attorneys to adjust, settle or compromise Client's Claim, but no final settlement shall be made and consummated by Attorneys without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claim without the Attorneys' authority, agreement and consent. Should Client make a settlement in violation of this Agreement, Client agrees to pay Attorneys the full fee agreed upon under paragraph 3 "Attorneys' Fee", below.

3. **ATTORNEYS' FEE:** This Agreement is a contingency fee contract. Specifically, if Attorneys are successful in recovering money or anything of value for Client, by settlement prior to trial begins, Attorneys shall receive attorneys' fees in the amount of forty percent (40%) of the gross recovery. The attorney fee will be split amongst the attorneys as follows: FSSV 50% Malesovas Law Firm 50% If the matter is resolved after trial begins, Attorneys shall receive attorneys' fees in the amount of forty-five (45%) of the gross recovery. All attorneys' fees shall be a percentage of the gross recovery. Gross recovery means the gross amount of money or other value or property recovered for Client, before the deduction of expenses. Trial is considered to have commenced at 5:00 p.m. on the Friday closest to ten (10) days before jury selection begins or evidence is first presented to the trier of fact, whichever is the earlier of these two events. If Attorneys do not recover any money or other value or property for Client, Client will not owe any attorneys' fees. Client agrees that Attorneys may, in their discretion, employ associate counsel to assist in prosecuting Client's cause of action, and Client does not object to the participation of any lawyers Attorneys may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel is the responsibility of Attorneys. In the event that the case is settled by way of a structured settlement, Client approves and authorizes attorneys' fees to be based upon the present value benefit of the settlement and further authorizes Attorneys to take attorneys' fees either in cash or in structured payment, as Attorneys deem appropriate.

In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to avoid paying the Client's claim; a defendant may transfer assets out of the country thereby necessitating the retention of foreign counsel, or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees of such counsel will be deducted from Client's share of the recovery.

4. **COSTS AND OTHER EXPENSES:** Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred. Such costs include filing fees, expert witness fees, court reporter and video fees, copy charges, postage, mailing, travel, witness fees, electronic document conversion fees, delivery fees, internal operating costs and other related charges incurred or paid as an expense on behalf of Client and paid to third-party vendors or incurred internally by Attorneys and charged to Client in connection with Attorneys' representation of Client.

5. **DISBURSEMENT OF PROCEEDS TO CLIENT:** Client understands that Attorneys make no guarantee or assurance of any kind regarding the likelihood of success of Client's claims. Upon receipt by Attorneys of the proceeds of any settlement or judgment, Attorneys shall (1) retain either forty percent (40%) of the proceeds as their attorneys' fees if the matter is settled or resolved before trial begins or forty-five (45%) percent of the proceeds as their attorneys' fees if the matter is settled or resolved after trial begins, (2) deduct from Client's share of the proceeds any costs and expenses, including the fees of any special outside counsel that Attorneys may incur on Client's behalf, and (3) disburse the remainder of Client's share of the proceeds to Client. At the time of disbursement of any proceeds, Client will be provided with a disbursement sheet reflecting the attorneys' fees, the expenses deducted out of Client's share, and the remainder of Client's share.

Upon some circumstances, health insurers, workers compensation carriers, or others who have paid benefits or provided services on Client's behalf may claim a right to recover a portion of the proceeds of any action brought on behalf of the Client and may place Attorneys on notice of their claim. Except as may be required by law, Attorneys will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. **POWER OF ATTORNEY:** Client gives Attorneys a power of attorney to execute and negotiate all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, proofs of claim, ballots, verified statements including those pursuant to Bankruptcy Rule 2019, and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.

7. **COOPERATION; ADDRESS CHANGE; RETURN OF DOCUMENTS:** Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial. Client shall appear on reasonable notice at any and all depositions and Court appearances and shall comply with all reasonable requests of Attorneys in connection with preparation and presentation of Client's claims. The Client acknowledges and agrees that all communications with Attorneys are privileged. The Client acknowledges that Attorneys may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of Attorneys' clients. Therefore, Client agrees and understands that other individuals who are clients of Attorneys may also invoke the attorney client privilege as to Attorneys' communications with Client. The Client acknowledges and agrees not to provide attorney work product or attorney client communications to any other person.

Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

Client understands that applicable State law may impose sales, service or other tax on any amount that Client may recover or the fees due Attorneys hereunder. Client also understands that applicable Federal income tax law may require that Client pay income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

9. **DEATH OF CLIENT:** The provisions of this Agreement will not terminate upon the death of Client. In the event of the death of Client, any duly appointed Representative of Client's heirs and/or estate will be bound by this Agreement to the extent allowed by applicable law, including without limitation, the provisions of this Agreement relating to the recovery of attorneys' fees and costs and other expenses. Any such Representative shall, upon request by Attorneys, execute a new Agreement in the capacity as Representative for the heirs and/or estate of the Client.

10. **OFFER OF SETTLEMENT:** Client understands that applicable law may, under certain circumstances, allow a Defendant to make an offer of settlement to Client and if Client rejects or does not accept such an offer, such may result in any award, verdict or judgment in Client's favor being reduced as provided by such law. Client understands that Client has the final authority to accept or reject any offer of settlement. Client understands that if Client rejects or does not accept such an offer, and Client's recovery is subsequently reduced, the fees owed to Attorneys will be calculated on the amount of any award, verdict or judgment before reduction, and the reduction shall be out of Client's share of any recovery.

11. **SECURITY INTEREST:** Client hereby assigns, transfers and conveys over to Attorneys an amount equal to either forty percent (40%) of the proceeds if the matter is settled or resolved before trial begins or forty-five percent (45%) of the proceeds if the matter is resolved after trial begins, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the claims described in this contract. Client does hereby give and grant to Attorneys an express security interest, in addition to any statutory lien, upon Client's claims and any and all judgments recovered, and any and all funds or property realized or paid by compromise or settlement, as security for the compensation and costs and expenses advanced or due to be paid or reimbursed to Attorneys hereunder. This security interest is to continue in the event Attorneys are discharged without good cause. If the claims are not assignable at law, Client expressly assigns to Attorneys, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

12. **BINDING EFFECT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

13. **TERMINATION OF REPRESENTATION:** Client understands that Client can terminate Attorneys' representation of Client at any time by providing written notice to Attorneys. Should Client elect to terminate Attorneys' representation prior to the full conclusion of Attorneys' representation, Client understands and agrees that Attorneys have a claim for expenses of litigation and unpaid attorneys' fees which will become due upon receipt by Client or any successor attorney of Client or any proceeds for any remaining portion of Client's claim. Client understands that the obligation for unpaid attorneys' fees will be calculated based on the percentage of work completed on the case or claims at the time Client terminates Attorneys.

14. **NO GUARANTEE OF RECOVERY:** Client understands that no guarantee or assurances of any kind have been made regarding the likelihood of success of Client's claim, but that Attorneys will use their skill and diligence, as well as their experience, to diligently pursue Client's action.

15. **MISCELLANEOUS:** In case any one or more of the provisions contained in this agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

16. **STATUTE OF LIMITATIONS:** Client understands that an issue may exist as to whether the applicable statute of limitations has expired. This issue is raised in many lawsuits

even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

17. **REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL:** Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall consent in writing to the terms of the arrangement after being advised of (1) the identity of the lawyer or law firm involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

18. **NOTICE TO CLIENTS:** Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.

20. **ARBITRATION:** It is Attorney's goal to maintain at all times a constructive and positive relationship with Client on the matter described above and on future matters in which Attorney may perform services for Client. However, should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, if any controversy or claim arises out of or is related to this agreement, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (including malpractice claims and fee disputes), Attorneys and Client both waive any right to bring a court action or have a jury trial and agree that the dispute shall be submitted to binding arbitration to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas..

CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.


Laura Wassmer

Stephen Hopper

Date: _____

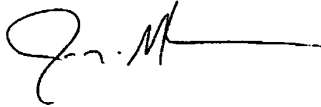
Address: _____

Telephone Numbers:

ATTORNEYS:



Fee, Smith, Sharp & Vitullo, LLP



Malesovas Law Firm



CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned **Stephen Hopper, and Laura Wassmer** referred to as "Client" or "Clients" employ and retain Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm, (herein "Attorneys") to represent Client as set forth herein.

1. SCOPE OF REPRESENTATION: Attorneys agree to investigate and evaluate and litigate Client's possible claim or claims of negligence, fraud, breach of contract, and breach of fiduciary duty against JP MORGAN CHASE and persons and companies relating to JP MORGAN CHASE BANKS wrongful acts in acting as the independent administrator of the Estate of Max Hopper..

Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client. Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties.

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.

Client understands and agrees that Attorneys will not file suit against entities that are in a foreign jurisdiction or are international companies whom in attorney's opinion cannot be sued in a United States court. Client understands and agrees that Attorneys are not obligated to pursue entities that are defunct and/or bankrupt.

Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.

2. AUTHORITY OF ATTORNEYS: Client empowers Attorneys to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's

Claims, including hiring investigators, expert witnesses, and/or other attorneys and filing any legal action necessary. Client authorizes and empowers Attorneys to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claim, and Client further authorizes and empowers them to sign any and all pleadings and all releases, checks, drafts, authorizations and other papers necessary and proper in connection with the prosecution or enforcement of Client's Claims and collection or settlement of the damages awarded or to be paid therefore, and to receive such funds or other property in Client's name and for Client on account of any judgment recovered or any settlement agreed upon in connection with Client's Claim. Full power and authority is given by Client to Attorneys to adjust, settle or compromise Client's Claim, but no final settlement shall be made and consummated by Attorneys without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claim without the Attorneys' authority, agreement and consent. Should Client make a settlement in violation of this Agreement, Client agrees to pay Attorneys the full fee agreed upon under paragraph 3 "Attorneys' Fee", below.

3. ATTORNEYS' FEE: This Agreement is a contingency fee contract. Specifically, if Attorneys are successful in recovering money or anything of value for Client, by settlement prior to trial begins, Attorneys shall receive attorneys' fees in the amount of forty percent (40%) of the gross recovery. The attorney fee will be split amongst the attorneys as follows: FSSV 50% Malesovas Law Firm 50% If the matter is resolved after trial begins, Attorneys shall receive attorneys' fees in the amount of forty-five (45%) of the gross recovery. All attorneys' fees shall be a percentage of the gross recovery. Gross recovery means the gross amount of money or other value or property recovered for Client, before the deduction of expenses. Trial is considered to have commenced at 5:00 p.m. on the Friday closest to ten (10) days before jury selection begins or evidence is first presented to the trier of fact, whichever is the earlier of these two events. If Attorneys do not recover any money or other value or property for Client, Client will not owe any attorneys' fees. Client agrees that Attorneys may, in their discretion, employ associate counsel to assist in prosecuting Client's cause of action, and Client does not object to the participation of any lawyers Attorneys may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel is the responsibility of Attorneys. In the event that the case is settled by way of a structured settlement, Client approves and authorizes attorneys' fees to be based upon the present value benefit of the settlement and further authorizes Attorneys to take attorneys' fees either in cash or in structured payment, as Attorneys deem appropriate.

In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to

avoid paying the Client's claim; a defendant may transfer assets out of the country thereby necessitating the retention of foreign counsel, or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees of such counsel will be deducted from Client's share of the recovery.

4. COSTS AND OTHER EXPENSES: Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred. Such costs include filing fees, expert witness fees, court reporter and video fees, copy charges, postage, mailing, travel, witness fees, electronic document conversion fees, delivery fees, internal operating costs and other related charges incurred or paid as an expense on behalf of Client and paid to third-party vendors or incurred internally by Attorneys and charged to Client in connection with Attorneys' representation of Client.

5. DISBURSEMENT OF PROCEEDS TO CLIENT: Client understands that Attorneys make no guarantee or assurance of any kind regarding the likelihood of success of Client's claims. Upon receipt by Attorneys of the proceeds of any settlement or judgment, Attorneys shall (1) retain either forty percent (40%) of the proceeds as their attorneys' fees if the matter is settled or resolved before trial begins or forty-five (45%) percent of the proceeds as their attorneys' fees if the matter is settled or resolved after trial begins, (2) deduct from Client's share of the proceeds any costs and expenses, including the fees of any special outside counsel that Attorneys may incur on Client's behalf, and (3) disburse the remainder of Client's share of the proceeds to Client. At the time of disbursement of any proceeds, Client will be provided with a disbursement sheet reflecting the attorneys' fees, the expenses deducted out of Client's share, and the remainder of Client's share.

Upon some circumstances, health insurers, workers compensation carriers, or others who have paid benefits or provided services on Client's behalf may claim a right to recover a portion of the proceeds of any action brought on behalf of the Client and may place Attorneys on notice of their claim. Except as may be required by law, Attorneys will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. POWER OF ATTORNEY: Client gives Attorneys a power of attorney to execute and negotiate all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, proofs of claim, ballots, verified statements including those pursuant to Bankruptcy Rule 2019,

and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.

7. **COOPERATION; ADDRESS CHANGE; RETURN OF DOCUMENTS:** Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial. Client shall appear on reasonable notice at any and all depositions and Court appearances and shall comply with all reasonable requests of Attorneys in connection with preparation and presentation of Client's claims. The Client acknowledges and agrees that all communications with Attorneys are privileged. The Client acknowledges that Attorneys may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of Attorneys' clients. Therefore, Client agrees and understands that other individuals who are clients of Attorneys may also invoke the attorney client privilege as to Attorneys' communications with Client. The Client acknowledges and agrees not to provide attorney work product or attorney client communications to any other person.

Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

Client understands that applicable State law may impose sales, service or other tax on any amount that Client may recover or the fees due Attorneys hereunder. Client also understands that applicable Federal income tax law may require that Client pay

income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

9. DEATH OF CLIENT: The provisions of this Agreement will not terminate upon the death of Client. In the event of the death of Client, any duly appointed Representative of Client's heirs and/or estate will be bound by this Agreement to the extent allowed by applicable law, including without limitation, the provisions of this Agreement relating to the recovery of attorneys' fees and costs and other expenses. Any such Representative shall, upon request by Attorneys, execute a new Agreement in the capacity as Representative for the heirs and/or estate of the Client.

10. OFFER OF SETTLEMENT: Client understands that applicable law may, under certain circumstances, allow a Defendant to make an offer of settlement to Client and if Client rejects or does not accept such an offer, such may result in any award, verdict or judgment in Client's favor being reduced as provided by such law. Client understands that Client has the final authority to accept or reject any offer of settlement. Client understands that if Client rejects or does not accept such an offer, and Client's recovery is subsequently reduced, the fees owed to Attorneys will be calculated on the amount of any award, verdict or judgment before reduction, and the reduction shall be out of Client's share of any recovery.

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Attorneys. Should Client elect to terminate Attorneys' representation prior to the full conclusion of Attorneys' representation, Client understands and agrees that Attorneys have a claim for expenses of litigation and unpaid attorneys' fees which will become due upon receipt by Client or any successor attorney of Client or any proceeds for any remaining portion of Client's claim. Client understands that the obligation for unpaid attorneys' fees will be calculated based on the percentage of work completed on the case or claims at the time Client terminates Attorneys.

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15. MISCELLANEOUS: In case any one or more of the provisions contained in this agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

16. STATUTE OF LIMITATIONS: Client understands that an issue may exist as to whether the applicable statute of limitations has expired. This issue is raised in many lawsuits even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

17. REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL: Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall consent in writing to the terms of the arrangement after being advised of (1) the identity of the lawyer or law firm involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be

made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

18. NOTICE TO CLIENTS: Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.

20. ARBITRATION: It is Attorney's goal to maintain at all times a constructive and positive relationship with Client on the matter described above and on future matters in which Attorney may perform services for Client. However, should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, if any controversy or claim arises out of or is related to this agreement, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (including malpractice claims and fee disputes), Attorneys and Client both waive any right to bring a court action or have a jury trial and agree that the dispute shall be submitted to binding arbitration to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas..

CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.

Laura Wassmer



Stephen Hopper

Date: 11/19/2015

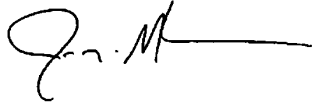
Address: 3625 N Classen Blvd Oklahoma City, OK 7318

Telephone Numbers: 405-639-9186

ATTORNEYS:



Fee. Smith. Sharn & Vitullo. LLP



Malesovas Law Firm

LAW OFFICES OF JAMES E. PENNINGTON

A PROFESSIONAL CORPORATION
900 JACKSON STREET, SUITE 440
DALLAS, TEXAS 75202-4473

JAMES E. PENNINGTON
LICENSED IN TEXAS AND COLORADO

PHONE (214) 741-3022
FAX (214) 741-3055
E-MAIL Jep@JepLawyer.com

April 5, 2018

VIA EMAIL: blauten@brianlauten.com

Brian P. Lauten
Brian Lauten, P.C.
3811 Turtle Creek Blvd.
Suite 1450
Dallas, Texas 75219

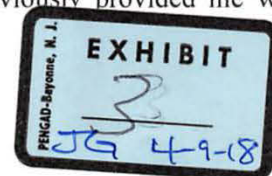
Re: Case No. PR-11-3238-1; In re: Estate of Max Hopper, Deceased, Jo N. Hopper v. JP Morgan Chase Bank, N.A., et al., in the Probate Court of Dallas County, Texas.

Brian:

Confidential

As you know, I represent Dr. Stephen Hopper and Laura Wassmer in connection with a dispute that has developed involving your clients, Anthony Vitullo and Fee, Smith, Sharp & Vitullo, LLP. Please be advised that my clients have decided to terminate their relationship with Mr. Vitullo, Fee, Smith, Sharp & Vitullo, LLP and John Malesovas. Their decision to terminate this relationship is based on a number of factors, which are too numerous to set forth herein. However, I provided you with a brief summary of those reasons yesterday during our call and suggested we meet in person to discuss this in more detail. Ultimately, as a result of several issues that were discovered by Jeff Levinger, the appellate lawyer retained to handle the appeal of the jury's verdict, my clients decided to settle the case with JP Morgan Chase. Most, if not all of these issues, were caused by your clients' omissions before and during trial, such as failing to present expert testimony and several jury charge issues which would have made an appeal very difficult for my clients. Additionally, I discovered a number of facts, some of which I outlined during our call, which indicate that the contingency fee agreement is probably not enforceable and which show that – even if it is enforceable – your clients breached the agreement. As a result, I am notifying you that my clients are – effective immediately -- terminating their relationship with Mr. Vitullo, Fee, Smith, Sharp & Vitullo, LLP and Mr. Malesovas and his firm. It is unclear to me whether you are representing Mr. Malesovas or his firm. Please advise, so that I can notify Mr. Malesovas if needed.

At this time, I am requesting your clients to provide me with their *entire* file regarding their representation of my clients. Although your clients have previously provided me with



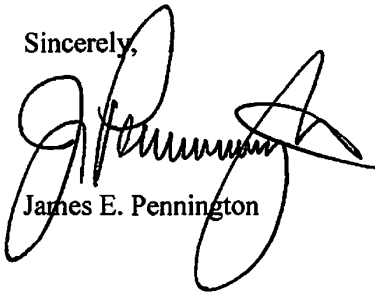
MR:587

Brian Lauten
April 5, 2018
Page 2

portions of the file, the files which were provided are not complete and were not provided in the manner in which they were originally maintained by the firm. I am not suggesting anything improper about the manner in which the files were previously produced. However, I am pointing this out to emphasize the importance of making sure that I receive the complete file in the same manner that it was maintained by your clients. You may provide the electronic files on a portable hard drive and have this device, along with the physical files, delivered to my office.

Finally, as I indicated during our call, my clients are willing to discuss a resolution of the attorney's fees related to your clients' representation, so give this some more thought and let me know if you have a proposal. In the meantime, I will instruct Mr. Levinger to retain a percentage of the settlement in his trust account until this matter is resolved. Thank you for your anticipated cooperation. If you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Pennington", with a large, stylized flourish extending from the end of the signature.

James E. Pennington

LAW OFFICES OF JAMES E. PENNINGTON

A PROFESSIONAL CORPORATION
900 JACKSON STREET, SUITE 440
DALLAS, TEXAS 75202-4473

JAMES E. PENNINGTON
LICENSED IN TEXAS AND COLORADO

PHONE (214) 741-3022
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E-MAIL Jep@Jeplawyer.com

April 6, 2018

*VIA EMAIL: john@malesovas.com
jmalesovas@gmail.com*

John Malesovas
1801 S. MoPac Expressway
Suite 320
Austin, Texas 78746

VIA EMAIL: blauten@brianlauten.com

Brian P. Lauten
Brian Lauten, P.C.
3811 Turtle Creek Blvd.
Suite 1450
Dallas, Texas 75219

Re: Case No. PR-11-3238-1; In re: Estate of Max Hopper, Deceased, Jo N. Hopper v. JP Morgan Chase Bank, N.A., et al., in the Probate Court of Dallas County, Texas.

Gentlemen:

This letter is in response to Mr. Lauten's email today regarding his notice of lien, and Mr. Malesovas' April 6, 2018 letter, and his Petition in intervention. I don't intend to respond to all of the various allegations and legal doctrines in your papers -- the only thing we all agree on at this point is that a dispute exists.

Rule 1.14 of the Texas Disciplinary Rules of Professional Conduct governs this dispute. Under that rule, the disputed portion of any funds is to remain in a lawyer's trust account or escrow account until the dispute is resolved. I have repeatedly assured Mr. Lauten that all settlement funds will be placed into Mr. Levinger's trust account and that the amount of disputed fees will not be disbursed until this dispute is resolved. My clients intend to fully comply with the requirements of Rule 1.14. The clients understand that you both claim a 45% interest in the settlement. Although we dispute this amount, Mr. Levinger is willing to retain 45% of the settlement in his trust account until this matter is resolved. Additionally, we will agree to retain a

Default
Ex. No 1
JG 4-9-18

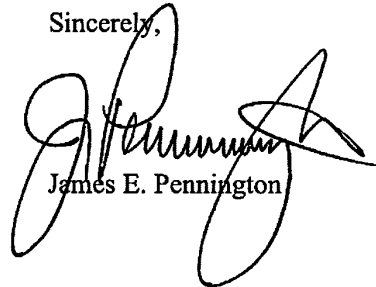
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John Malesovas/Brian Lauten
April 6, 2018
Page 2

sufficient amount to cover any expenses you have incurred in representing the clients. However, I need to know the amount of any such expenses, so please let me know this amount.

If you are unwilling to agree to the disputed portion being deposited into Mr. Levinger's trust account, then let me know if you are willing to agree to these funds being deposited into my trust account or with an independent escrow agent. Thank you for your anticipated cooperation. If you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Pennington", with a large, stylized flourish extending to the right.

James E. Pennington

CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned Stephen Hopper, and Laura Wassmer referred to as "Client" or "Clients" employ and retain Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm, (herein "Attorneys") to represent Client as set forth herein.

1. **SCOPE OF REPRESENTATION:** Attorneys agree to investigate and evaluate and litigate Client's possible claim or claims of negligence, fraud, breach of contract, and breach of fiduciary duty against JP MORGAN CHASE and persons and companies relating to JP MORGAN CHASE BANKS wrongful acts in acting as the independent administrator of the Estate of Max Hopper..

Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. ~~Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client.~~ Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties. *other than Chase, L*

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit, ~~or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.~~ *LW*

Client understands and agrees that Attorneys will not file suit against entities that are in a foreign jurisdiction or are international companies whom in attorney's opinion cannot be sued in a United States court. Client understands and agrees that Attorneys are not obligated to pursue entities that are defunct and/or bankrupt.

Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.



2. **AUTHORITY OF ATTORNEYS:** Client empowers Attorneys to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's Claims, including hiring investigators, expert witnesses, and/or other attorneys and filing any legal action necessary. Client authorizes and empowers Attorneys to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claim, and Client further authorizes and empowers them to sign any and all pleadings and all releases, checks, drafts, authorizations and other papers necessary and proper in connection with the prosecution or enforcement of Client's Claims and collection or settlement of the damages awarded or to be paid therefore, and to receive such funds or other property in Client's name and for Client on account of any judgment recovered or any settlement agreed upon in connection with Client's Claim. Full power and authority is given by Client to Attorneys to adjust, settle or compromise Client's Claim, but no final settlement shall be made and consummated by Attorneys without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claim without the Attorneys' authority, agreement and consent. ~~Should Client make a settlement in violation of this Agreement, Client agrees to pay Attorneys the full fee agreed upon under paragraph 3 "Attorneys' Fee", below.~~

3. **ATTORNEYS' FEE:** ~~This Agreement is a contingency fee contract. Specifically, if Attorneys are successful in recovering money or anything of value for Client, by settlement prior to trial begins, Attorneys shall receive attorneys' fees in the amount of forty percent (40%) of the gross recovery. The attorney fee will be split amongst the attorneys as follows: PSSV 50% Malesovas Law Firm 50%.~~ If the matter is resolved after trial begins, Attorneys shall receive attorneys' fees in the amount of forty-five (45%) of the gross recovery. All attorneys' fees shall be a percentage of the gross recovery. Gross recovery means the gross amount of money or other value or property recovered for Client, ~~before the deduction of expenses.~~ Trial is considered to have commenced at 5:00 p.m. on the Friday closest to ten (10) days before jury selection begins or evidence is first presented to the trier of fact, whichever is the earlier of these two events. If Attorneys do not recover any money or other value or property for Client, Client will not owe any attorneys' fees. Client agrees that Attorneys may, in their discretion, employ associate counsel to assist in prosecuting Client's cause of action, and Client does not object to the participation of any lawyers Attorneys may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel is the responsibility of Attorneys. In the event that the case is settled by way of a structured settlement, Client approves and authorizes attorneys' fees to be based upon the present value benefit of the settlement and further authorizes Attorneys to take attorneys' fees either in cash or in structured payment, as Attorneys deem appropriate.

In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to avoid paying the Client's claim; a defendant may transfer assets out of the country thereby necessitating the retention of foreign counsel, or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees of such counsel will be deducted from Client's share of the recovery.

4. **COSTS AND OTHER EXPENSES:** Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred. Such costs include filing fees, expert witness fees, court reporter and video fees, copy charges, postage, mailing, travel, witness fees, electronic document conversion fees, delivery fees, internal operating costs and other related charges incurred or paid as an expense on behalf of Client and paid to third-party vendors or incurred internally by Attorneys and charged to Client in connection with Attorneys' representation of Client.

5. **DISBURSEMENT OF PROCEEDS TO CLIENT:** Client understands that Attorneys make no guarantee or assurance of any kind regarding the likelihood of success of Client's claims. Upon receipt by Attorneys of the proceeds of any settlement or judgment, Attorneys shall (1) retain either forty percent (40%) of the proceeds as their attorneys' fees if the matter is settled or resolved before trial begins or forty-five (45%) percent of the proceeds as their attorneys' fees if the matter is settled or resolved after trial begins, (2) deduct from Client's share of the proceeds any costs and expenses, including the fees of any special outside counsel that Attorneys may incur on Client's behalf, and (3) disburse the remainder of Client's share of the proceeds to Client. At the time of disbursement of any proceeds, Client will be provided with a disbursement sheet reflecting the attorneys' fees, the expenses deducted out of Client's share, and the remainder of Client's share.

Upon some circumstances, health insurers, workers compensation carriers, or others who have paid benefits or provided services on Client's behalf may claim a right to recover a portion of the proceeds of any action brought on behalf of the Client and may place Attorneys on notice of their claim. Except as may be required by law, Attorneys will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. **POWER OF ATTORNEY:** Client gives Attorneys a power of attorney to execute and negotiate all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, proofs of claim, ballots, verified statements including those pursuant to Bankruptcy Rule 2019, and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.

7. **COOPERATION; ADDRESS CHANGE; RETURN OF DOCUMENTS:** Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial. Client shall appear on reasonable notice at any and all depositions and Court appearances and shall comply with all reasonable requests of Attorneys in connection with preparation and presentation of Client's claims. The Client acknowledges and agrees that all communications with Attorneys are privileged. The Client acknowledges that Attorneys may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of Attorneys' clients. Therefore, Client agrees and understands that other individuals who are clients of Attorneys may also invoke the attorney client privilege as to Attorneys' communications with Client. The Client acknowledges and agrees not to provide attorney work product or attorney client communications to any other person.

Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

Client understands that applicable State law may impose sales, service or other tax on any amount that Client may recover or the fees due Attorneys hereunder. Client also understands that applicable Federal income tax law may require that Client pay income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

9. **DEATH OF CLIENT:** The provisions of this Agreement will not terminate upon the death of Client. In the event of the death of Client, any duly appointed Representative of Client's heirs and/or estate will be bound by this Agreement to the extent allowed by applicable law, including without limitation, the provisions of this Agreement relating to the recovery of attorneys' fees and costs and other expenses. Any such Representative shall, upon request by Attorneys, execute a new Agreement in the capacity as Representative for the heirs and/or estate of the Client.

10. **OFFER OF SETTLEMENT:** Client understands that applicable law may, under certain circumstances, allow a Defendant to make an offer of settlement to Client and if Client rejects or does not accept such an offer, such may result in any award, verdict or judgment in Client's favor being reduced as provided by such law. Client understands that Client has the final authority to accept or reject any offer of settlement. Client understands that if Client rejects or does not accept such an offer, and Client's recovery is subsequently reduced, the fees owed to Attorneys will be calculated on the amount of any award, verdict or judgment before reduction, and the reduction shall be out of Client's share of any recovery.

11. **SECURITY INTEREST:** Client hereby assigns, transfers and conveys over to Attorneys an amount equal to either forty percent (40%) of the proceeds if the matter is settled or resolved before trial begins or forty-five percent (45%) of the proceeds if the matter is resolved after trial begins, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the claims described in this contract. Client does hereby give and grant to Attorneys an express security interest, in addition to any statutory lien, upon Client's claims and any and all judgments recovered, and any and all funds or property realized or paid by compromise or settlement, as security for the compensation and costs and expenses advanced or due to be paid or reimbursed to Attorneys hereunder. This security interest is to continue in the event Attorneys are discharged without good cause. If the claims are not assignable at law, Client expressly assigns to Attorneys, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

12. **BINDING EFFECT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

13. **TERMINATION OF REPRESENTATION:** Client understands that Client can terminate Attorneys' representation of Client at any time by providing written notice to Attorneys. Should Client elect to terminate Attorneys' representation prior to the full conclusion of Attorneys' representation, Client understands and agrees that Attorneys have a claim for expenses of litigation and unpaid attorneys' fees which will become due upon receipt by Client or any successor attorney of Client or any proceeds for any remaining portion of Client's claim. Client understands that the obligation for unpaid attorneys' fees will be calculated based on the percentage of work completed on the case or claims at the time Client terminates Attorneys.

14. **NO GUARANTEE OF RECOVERY:** Client understands that no guarantee or assurances of any kind have been made regarding the likelihood of success of Client's claim, but that Attorneys will use their skill and diligence, as well as their experience, to diligently pursue Client's action.

15. **MISCELLANEOUS:** In case any one or more of the provisions contained in this agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

16. **STATUTE OF LIMITATIONS:** Client understands that an issue may exist as to whether the applicable statute of limitations has expired. This issue is raised in many lawsuits

even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

17. **REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL:** Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall consent in writing to the terms of the arrangement after being advised of (1) the identity of the lawyer or law firm involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

18. **NOTICE TO CLIENTS:** Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.

20. **ARBITRATION:** It is Attorney's goal to maintain at all times a constructive and positive relationship with Client on the matter described above and on future matters in which Attorney may perform services for Client. However, should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, if any controversy or claim arises out of or is related to this agreement, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (including malpractice claims and fee disputes), Attorneys and Client both waive any right to bring a court action or have a jury trial and agree that the dispute shall be submitted to binding arbitration to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas..

CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.


Laura Wassmer

Stephen Hopper

Date: _____

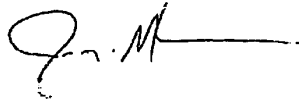
Address: _____

Telephone Numbers:

ATTORNEYS:



Fee, Smith, Sharp & Vitullo, LLP



Malesovas Law Firm

Page 1

CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned **Stephen Hopper, and Laura Wassmer** referred to as "Client" or "Clients" employ and retain Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm, (herein "Attorneys") to represent Client as set forth herein.

1. **SCOPE OF REPRESENTATION:** Attorneys agree to investigate and evaluate and litigate Client's possible claim or claims of negligence, fraud, breach of contract, and breach of fiduciary duty against JP MORGAN CHASE and persons and companies relating to JP MORGAN CHASE BANKs wrongful acts in acting as the independent administrator of the Estate of Max Hopper..

Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client. Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties.

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.

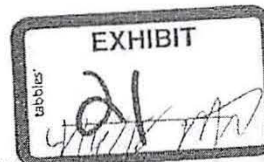
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Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.

2. **AUTHORITY OF ATTORNEYS:** Client empowers Attorneys to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's

Page 1

ATTORNEYS' EXHIBIT NO. 2
PAGE 1 of 8



MR:598

Claims, including hiring investigators, expert witnesses, and/or other attorneys and filing any legal action necessary. Client authorizes and empowers Attorneys to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claim, and Client further authorizes and empowers them to sign any and all pleadings and all releases, checks, drafts, authorizations and other papers necessary and proper in connection with the prosecution or enforcement of Client's Claims and collection or settlement of the damages awarded or to be paid therefore, and to receive such funds or other property in Client's name and for Client on account of any judgment recovered or any settlement agreed upon in connection with Client's Claim. Full power and authority is given by Client to Attorneys to adjust, settle or compromise Client's Claim, but no final settlement shall be made and consummated by Attorneys without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claim without the Attorneys' authority, agreement and consent. Should Client make a settlement in violation of this Agreement, Client agrees to pay Attorneys the full fee agreed upon under paragraph 3 "Attorneys' Fee", below.

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Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

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income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

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10. **OFFER OF SETTLEMENT:** Client understands that applicable law may, under certain circumstances, allow a Defendant to make an offer of settlement to Client and if Client rejects or does not accept such an offer, such may result in any award, verdict or judgment in Client's favor being reduced as provided by such law. Client understands that Client has the final authority to accept or reject any offer of settlement. Client understands that if Client rejects or does not accept such an offer, and Client's recovery is subsequently reduced, the fees owed to Attorneys will be calculated on the amount of any award, verdict or judgment before reduction, and the reduction shall be out of Client's share of any recovery.

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Attorneys. Should Client elect to terminate Attorneys' representation prior to the full conclusion of Attorneys' representation, Client understands and agrees that Attorneys have a claim for expenses of litigation and unpaid attorneys' fees which will become due upon receipt by Client or any successor attorney of Client or any proceeds for any remaining portion of Client's claim. Client understands that the obligation for unpaid attorneys' fees will be calculated based on the percentage of work completed on the case or claims at the time Client terminates Attorneys.

14. NO GUARANTEE OF RECOVERY: Client understands that no guarantee or assurances of any kind have been made regarding the likelihood of success of Client's claim, but that Attorneys will use their skill and diligence, as well as their experience, to diligently pursue Client's action.

15. MISCELLANEOUS: In case any one or more of the provisions contained in this agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

16. STATUTE OF LIMITATIONS: Client understands that an issue may exist as to whether the applicable statute of limitations has expired. This issue is raised in many lawsuits even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

17. REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL: Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall consent in writing to the terms of the arrangement after being advised of (1) the identity of the lawyer or law firm involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be

made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

18. **NOTICE TO CLIENTS:** Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.

20. **ARBITRATION:** It is Attorney's goal to maintain at all times a constructive and positive relationship with Client on the matter described above and on future matters in which Attorney may perform services for Client. However, should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, if any controversy or claim arises out of or is related to this agreement, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (including malpractice claims and fee disputes), Attorneys and Client both waive any right to bring a court action or have a jury trial and agree that the dispute shall be submitted to binding arbitration to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas..

CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.

Laura Wassmer



Stephen Hopper

Date: 11/19/2015

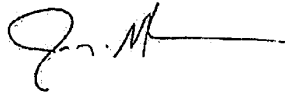
Address: 3625 N Classen Blvd Oklahoma City, OK 7318

Telephone Numbers: 405-639-9186

ATTORNEYS:



Fee. Smith, Sharn & Vitullo, LLP



Malesovas Law Firm

CAUSE NO. PR-11-3238-1

FILED

17 SEP 25 PM 4:26

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED

IN THE PROBATE COURT

JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY

JO N. HOPPER
Plaintiff,

NO. 1

v.

JPMORGAN CHASE BANK, N.A.
STEPHEN B. HOPPER, LAURA S.
WASSMER,
Defendants.

DALLAS COUNTY, TEXAS

CHARGE OF THE COURT

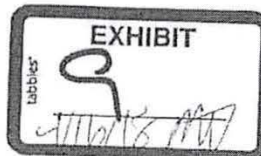
MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.



ORIGINAL

ATTORNEYS' EXHIBIT NO. 3
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Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from the other facts proved.

7. A party's conduct includes the conduct of another who acts with the party's authority or apparent authority. Authority for another to act for a party must arise from the party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized. Apparent authority exists if a party (1) knowingly permits

another to hold himself out as having authority or, (2) through lack of ordinary care, bestows on another such indications of authority that lead a reasonably prudent person to rely on the apparent existence of authority to his detriment. Only the acts of the party sought to be charged with responsibility for the conduct of another may be considered in determining whether apparent authority exists.

8. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

9. Do not answer questions by drawing straws or by any method of chance.

10. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

11. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

12. Unless otherwise instructed, the answers to the questions must be based on the decision of at least five of the six jurors. The same five jurors must agree on every answer. Do not agree to be bound by a vote of anything less than five jurors, even if it would be a majority.

13. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what a party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of the judgment. Do not add any amount for interest on damages, if any.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS

"JPMorgan" means JPMorgan Chase Bank, N.A.

"Fee Agreement" means Plaintiff's Exhibit 7.

"The Estate" means the Estate of Max D. Hopper.

Question No. 1

After JPMorgan was appointed Independent Administrator on June 30, 2010, did JPMorgan fail to comply with one or more of the following fiduciary duties:

- a. JPMorgan's duty to act toward Jo Hopper in the utmost good faith and exercise the most scrupulous honesty;

Answer "Yes" or "No": yes

- b. JPMorgan's duty to place the interests of Jo Hopper above its own and to not use the advantage of its position to gain any benefit for itself at the expense of Jo Hopper;

Answer "Yes" or "No": yes

- c. JPMorgan's duty to fully and fairly disclose to Jo Hopper all material facts known to JPMorgan that might affect her rights.

Answer "Yes" or "No": yes

If you answered "Yes" to any subpart of Question No. 1, then answer the following question. Otherwise, do not answer the following question.

Question No. 2

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Jo Hopper for her damages, if any, that were proximately caused by such conduct?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him or her would have foreseen that the event, or some similar event might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following element of damages, if any, and none other.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents, if any.

a. Jo Hopper's mental anguish sustained in the past.

"Mental anguish" means a relatively high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger.

Answer: \$ 500,000.00

b. Attorneys' fees paid by Jo Hopper before this lawsuit to address JPMorgan's breaches of its fiduciary duties.

Answer: \$ 222,780.95

Answer the following question only if you unanimously answered "yes" to Question No. 1 and with an amount greater than \$0 to any part of Question No. 2. Otherwise, do not answer the following question.

To answer "yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of five or more jurors. Otherwise, you must not answer the following question.

Question No. 3

Do you find by clear and convincing evidence that the harm to Jo Hopper from JPMorgan's breach of fiduciary duty resulted from malice?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegation sought to be established.

"Malice" means a specific intent by JPMorgan to cause substantial injury or harm to Jo Hopper.

Answer "Yes" or "No": YES

Answer the following question only if you unanimously answered "Yes" to Question No. 3. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

Question No. 4

What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to Jo Hopper as exemplary damages, if any, for the conduct found in response to Question No. 3?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong;
2. The character of the conduct involved;
3. The degree of culpability of JPMorgan;
4. The situation and sensibilities of the parties concerned;
5. The extent to which such conduct offends a public sense of justice and propriety; and
6. The net worth of JPMorgan.

Answer in dollars and cents, if any.

Answer: \$ 2,000,000.00

If you answered with an amount greater than \$0 to any subpart of Question 2, then answer the following question. Otherwise do not answer the following question.

Question No. 5

Did the negligence, if any, or knowing participation in JPMorgan's breach of fiduciary duty, if any, of those named below proximately cause Jo Hopper's damages?

"Negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him or her would have foreseen that the event, or some similar event might reasonably result therefrom. There may be more than one proximate cause of an event.

"Knowing participation in JPMorgan's breach of fiduciary duty" requires that (1) the person or entity knowingly participated in JPMorgan's breach of fiduciary duty, and (2) that person or entity knew of the fiduciary relationship and was aware of his participation in JPMorgan's breach of its duty.

- a. Answer "Yes" or "No" with regard to the negligence, if any, of the following:

Jo Hopper

NO

- b. Answer "Yes" or "No" with regard to knowing participation in JPMorgan's breach of fiduciary duty, if any, of each of the following:

Stephen Hopper

Laura Wassmer

Gary Stolbach and Glast, Phillips & Murray

NO

NO

NO

If you answered "Yes" to Question 5 for more than one of those named below, then answer the following question. Otherwise do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury you found in question 2. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Question No. 6

For each person or entity you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each for the conduct you have found:

JPMorgan	_____
Jo Hopper	_____
Stephen Hopper	_____
Laura Wassmer	_____
Gary Stolbach and Glast, Phillips & Murray	_____
Total	<u>100%</u>

Question No. 7

Did JPMorgan fail to comply with the Fee Agreement with regard to Jo Hopper?

Answer "Yes" or "No": YES

If you answered "Yes" to Question No. 7, then answer the following question. Otherwise, do not answer the following question.

Question No. 8

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Jo Hopper for her damages, if any, that resulted from such failure to comply?

Consider the following elements of damages, if any, and none other.

Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any, with respect to each of the following:

- a. Attorney's fees paid by Jo Hopper before this lawsuit to address JPMorgan's failure to perform its responsibilities under the Fee Agreement.

Answer: \$ 222,780.95

- b. Money owed to Jo Hopper for reimbursement of expenses.

Answer: \$ 58,051.47

If you answered "Yes" to Question No. 7, then answer the following question. Otherwise do not answer the following question.

Question No. 9

What is a reasonable fee for the necessary services of Jo Hopper's attorneys regarding her claim for breach of contract, stated in dollars and cents?

Factors to consider in determining a reasonable fee include:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for each of the following:

1. For representation through this trial.

Answer: \$ 4,061,518.00

2. For representation through appeal to the court of appeals.

Answer: \$ 200,000.00

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$ 50,000.00

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ 75,000.00

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$ 50,000.00

Question No. 10

Does JPMorgan as Independent Administrator hold money that in equity and good conscience belongs to Jo Hopper?

Answer "Yes" or "No": yes

If you answered "Yes" to Question No. 10, then answer the following question. Otherwise, do not answer the following question.

Question No. 11

What is the amount of money held by JPMorgan as Independent Administrator that in equity and good conscience belongs to Jo Hopper?

Answer: \$ 58,682.00

Question No. 12

What is a reasonable fee for the necessary services of Jo Hopper's attorneys regarding the Robledo claims, stated in dollars and cents?

"Robledo claims" mean all the declaratory judgment claims that regarding the house and lot located at 9 Robledo Drive, Dallas, Texas and other issues addressed in the court of appeals opinion issued in December 2014.

Factors to consider in determining a reasonable fee include:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for each of the following:

1. For representation through this trial.

Answer: \$ 4,052,035.00

2. For representation in a future appeal through appeal to the court of appeals.

Answer: \$ 200,000.00

3. For representation in a future appeal at the petition for review stage in the Supreme Court of Texas.

Answer: \$ 50,000.00

4. For representation in a future appeal at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ 75,000.00

5. For representation in a future appeal through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$ 50,000.00

Question No. 13

What is a reasonable fee for the necessary services of Jo Hopper's attorneys in obtaining a ruling that Jo Hopper does not owe the Estate any money for attorneys' fees, stated in dollars and cents?

Factors to consider in determining a reasonable fee include:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for each of the following:

1. For representation through this trial.

Answer: \$ 1469,828.00

2. For representation through appeal to the court of appeals.

Answer: \$ 200,000.00

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$ 30,000.00

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ 75,000.00

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$ 50,000.00

Question No. 14

Did JPMorgan fail to comply with the Fee Agreement with respect to Stephen Hopper and/or Laura Wassmer?

Answer "Yes" or "No" for each of the following:

Stephen B. Hopper: yes

Laura S. Wassmer: yes

If you answered Question Number 14 "Yes," Answer this Question. Otherwise do not answer the following question.

Question No. 15

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Stephen B. Hopper and/or Laura S. Wassmer for their damages, if any, that resulted from JPMorgan's failure to comply with the Fee Agreement?

Consider the following elements of damages, if any, and none other.

1. The amount of legal fees Stephen Hopper paid to his attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's failure to comply with the Fee Agreement.

Answer in dollars and cents, if any, for the following:

Stephen B. Hopper: \$ 84,300.00

2. The amount of legal fees Laura Wassmer paid her attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's failure to comply with the Fee Agreement.

Answer in dollars and cents, if any, for the following:

Laura S. Wassmer: \$ 78,000.00

3. The loss of potential inheritance to Stephen B. Hopper that was a natural, probable and foreseeable consequence of JP Morgan's failure to comply with the Fee Agreement.

Answer in dollars and cents, if any, for the following:

Stephen B. Hopper: \$ 1,847,300.00

4. The loss of potential inheritance to Laura S. Wassmer that was a natural, probable and foreseeable consequence of JP Morgan's failure to comply with the Fee Agreement.

Answer in dollars and cents, if any, for the following:

Laura S. Wassmer: \$ 1,847,500.00

There is no Question No. 16

There is no Question No. 17

There is no Question No. 18

There is no Question No. 19

Question No. 20

After JPMorgan was appointed Independent Administrator on June 30, 2010, did JPMorgan fail to comply with one or more of the following fiduciary duties, which it owed Stephen B. Hopper and Laura S. Wassmer as beneficiaries of the Estate?

- a. JPMorgan's duty to act toward Stephen Hopper and Laura Wassmer in the utmost good faith and exercise the most scrupulous honesty;

Answer "Yes" or "No": YES

- b. JPMorgan's duty to place the interests of Stephen Hopper and Laura Wassmer above its own and to not use the advantage of its position to gain any benefit for itself at the expense of Stephen Hopper and Laura Wassmer;

Answer "Yes" or "No": YES

- c. JPMorgan's duty to fully and fairly disclose to Stephen Hopper and Laura Wassmer all material facts known to JPMorgan that might affect their rights.

Answer "Yes" or "No": YES

If you answered "Yes" to Question 20, then answer the following question. Otherwise, do not answer the following question.

Question No. 21

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Estate for damages, if any, resulting from the conduct complained about in Question 20?

Consider the following elements of damages, if any, and none other.

Any reduction in the value of the Estate.

Do not add any amount for interest on damages, if any.
Answer in dollars and cents for damages, if any.

Answer: \$ 3,695,000.00

If you answered "Yes" to any subpart of Question 20, then answer the following question. Otherwise, do not answer the following question.

Question No. 22

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Stephen Hopper and Laura Wassmer for damages, if any, that were proximately caused by the conduct inquired about in Question 20?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have fore- seen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other.

Any reduction in the value of the Estate.

Consider each element separately. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

For Stephen Hopper, in dollars and cents:

Answer: \$ 1,847,500.00

For Laura Wassmer, in dollars and cents:

Answer: \$ 1,847,500.00

If you answered with an amount greater than \$0 to any subpart of Question 21 or 22, then answer the following question. Otherwise do not answer the following question.

Question No. 23

Did the negligence, if any, or knowing participation in JPMorgan's breach of fiduciary duty, if any, of those named below proximately cause Stephen Hopper's, Laura Wassmer's, or the Estate's damages?

"Negligence" when used with respect to Jo Hopper, Stephen Hopper, and Laura Wassmer means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Negligence" when used with respect to the conduct of Gary Stolbach and Glast, Phillips & Murray, means failure to use ordinary care, that is, failing to do that which an attorney would have done under the same or similar circumstances or doing that which an attorney would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him or her would have foreseen that the event, or some similar event might reasonably result therefrom. There may be more than one proximate cause of an event.

"Knowing participation in JPMorgan's breach of fiduciary duty" requires that (1) the person or entity knowingly participated in JPMorgan's breach of fiduciary duty, and (2) that person or entity knew of the fiduciary relationship and was aware of his participation in JPMorgan's breach of its duty.

- a. Answer "Yes" or "No" with regard to the negligence, if any, of the following:

Jo Hopper	<u>NO</u>
Stephen Hopper	<u>NO</u>
Laura Wassmer	<u>NO</u>
Gary Stolbach and Glast, Phillips & Murray	<u>YES</u>

- b. Answer "Yes" or "No" with regard to knowing participation in JPMorgan's breach of fiduciary duty, if any, of each of the following:

Jo Hopper	<u>NO</u>
Gary Stolbach and Glast, Phillips & Murray	<u>NO</u>

If you answered "Yes" to Question 23 for more than one of those named below, then answer the following question. Otherwise do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury you found in question 21. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Question No. 24

For each person or entity you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each for the conduct you have found:

JPMorgan	90
Jo Hopper (negligence)	8
Jo Hopper (knowing participation)	8
Stephen Hopper	8
Laura Wassmer (negligence)	8
Gary Stolbach and Glast, Phillips & Murray (negligence)	18
Gary Stolbach and Glast, Phillips & Murray (knowing participation)	8
Total	100%

Answer the following question only if you unanimously answered "Yes" to any subpart of Question No. 20. Otherwise, do not answer the following question.

To answer "yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of five or more jurors. Otherwise, you must not answer the following question.

Question No. 25

Do you find by clear and convincing evidence that the harm to the Estate from JPMorgan's breach of fiduciary duty resulted from malice?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegation sought to be established.

"Malice" means a specific intent by JPMorgan to cause substantial injury or harm to the Estate.

Answer "Yes" or "No": YES

Answer the following question only if you unanimously answered "Yes" to Question Number 25. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

Question No. 26

What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to Estate as exemplary damages, if any, for the conduct found in response to Question No. 25?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong;
2. The character of the conduct involved;
3. The degree of culpability of JPMorgan;
4. The situation and sensibilities of the parties concerned;
5. The extent to which such conduct offends a public sense of justice and propriety; and
6. The net worth of JPMorgan.

Answer in dollars and cents, if any.

Answer: \$ 2,000,000.00

Question No. 27

Did JPMorgan commit fraud against Stephen B. Hopper and/or Laura S. Wassmer?

Fraud occurs when—

1. A party makes a material misrepresentation; and
2. The misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. The misrepresentation is made with the intention that it should be acted on by the other party, and
4. The other party relies on the misrepresentation and thereby suffers injury.

Fraud also occurs when—

1. A party fails to disclose a material fact within the knowledge of that party; and
2. The party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth; and
3. The party intends to induce the other party to take some action by failing to disclose the fact; and
4. The other party suffers injury as a result of acting without knowledge of the undisclosed fact.

"Misrepresentation" means—

1. A statement of opinion based on a false statement of fact; or
2. A statement of opinion that the maker knows to be false; or
3. An expression of opinion that is false, made by one who has, or purports to have, special knowledge of the subject matter of the opinion.

Answer "Yes" or "No" with for each of the following:

Stephen B. Hopper:

yes

Laura S. Wassmer:

yes

Answer the following question only if you answered "Yes" to Question Number 27. Otherwise, do not answer the following question.

Question No. 28

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Stephen Hopper and Laura Wassmer for their damages, if any, that were proximately caused by such fraud?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other.

1. The amount of legal fees Stephen Hopper paid to his attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's fraud.

Answer in dollars and cents, if any, for the following:

Stephen B. Hopper: \$ 84,500.00

2. The amount of legal fees Laura Wassmer paid her attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's fraud.

Answer in dollars and cents, if any, for the following:

Laura S. Wassmer: \$ 78,000.00

3. The loss of potential inheritance to Stephen B. Hopper that was a natural, probable and foreseeable consequence of JP Morgan's fraud.

Answer in dollars and cents, if any, for the following:

Stephen B. Hopper: \$ 1,847,500.00

4. The loss of potential inheritance to Laura S. Wassmer that was a natural, probable and foreseeable consequence of JP Morgan's fraud.

Answer in dollars and cents, if any, for the following:

Laura S. Wassmer: \$ 1,847,500.00

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If you answered "Yes" to Question 28, then answer the following question. Otherwise do not answer the following question.

Question No. 29

Did the negligence, if any, or knowing participation in JPMorgan's breach of fiduciary duty, if any, of those named below proximately cause Stephen Hopper's, Laura Wassmer's, or the Estate's damages?

"Negligence" when used with respect to Jo Hopper, Stephen Hopper, and Laura Wassmer means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Negligence" when used with respect to the conduct of Gary Stolbach and Glast, Phillips & Murray, means failure to use ordinary care, that is, failing to do that which an attorney would have done under the same or similar circumstances or doing that which an attorney would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him or her would have foreseen that the event, or some similar event might reasonably result therefrom. There may be more than one proximate cause of an event.

"Knowing participation in JPMorgan's breach of fiduciary duty" requires that (1) the person or entity knowingly participated in JPMorgan's breach of fiduciary duty, and (2) that person or entity knew of the fiduciary relationship and was aware of his participation in JPMorgan's breach of its duty.

- a. Answer "Yes" or "No" with regard to the negligence, if any, of the following:

Jo Hopper	<u>NO</u>
Stephen Hopper	<u>NO</u>
Laura Wassmer	<u>NO</u>
Gary Stolbach and Glast, Phillips & Murray	<u>YES</u>

- b. Answer "Yes" or "No" with regard to knowing participation in JPMorgan's breach of fiduciary duty, if any, of each of the following:

Jo Hopper	<u>NO</u>
Gary Stolbach and Glast, Phillips & Murray	<u>NO</u>

If you answered "Yes" to Question 29 for more than one of those named below, then answer the following question. Otherwise do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury you found in question 28. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Question No. 30

For each person or entity you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each for the conduct you have found:

JPMorgan	<u>90</u>
Jo Hopper (negligence)	<u>8</u>
Jo Hopper (knowing participation)	<u>0</u>
Stephen Hopper	<u>0</u>
Laura Wassmer (negligence)	<u>0</u>
Gary Stolbach and Glast, Phillips & Murray (negligence)	<u>10</u>
Gary Stolbach and Glast, Phillips & Murray (knowing participation)	<u>0</u>
Total	<u>100%</u>

Answer the following question only if you unanimously answered "Yes" to any part of Question No. 27. Otherwise, do not answer the following question.

To answer "yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of five or more jurors. Otherwise, you must not answer the following question.

Question No. 31

Do you find by clear and convincing evidence that the harm to Stephen B Hopper and/or Laura S. Wassmer resulted from fraud as found in Question 27?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

Fraud occurs when—

1. A party makes a material misrepresentation; and
2. The misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. The misrepresentation is made with the intention that it should be acted on by the other party, and
4. The other party relies on the misrepresentation and thereby suffers injury.

Fraud also occurs when—

1. A party fails to disclose a material fact within the knowledge of that party; and
2. The party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth; and
3. The party intends to induce the other party to take some action by failing to disclose the fact; and
4. The other party suffers injury as a result of acting without knowledge of the undisclosed fact.

"Misrepresentation" means—

1. A statement of opinion based on a false statement of fact; or

2. A statement of opinion that the maker knows to be false; or
3. An expression of opinion that is false, made by one who has, or purports to have, special knowledge of the subject matter of the opinion.

Answer "Yes" or "No" as to each of the following:

Laura S. Wassmer YES

Stephen B. Hopper YES

Answer the following question regarding JPMorgan only if you unanimously answered "Yes" to Question 31 regarding that defendant. Otherwise, do not answer the following question regarding that defendant

Question No. 32

What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to Stephen B. Hopper and Laura S. Wassmer as exemplary damages, if any, for the conduct found in response to Question 31.

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of JPMorgan
- d. The situation and sensibilities of the parties concerned
- e. The extent to which such conduct offends a public sense of justice and propriety
- f. The net worth of JPMorgan

Answer in dollars and cents, if any, as to each of the following:

Laura S. Wassmer \$ 1,000,000,000.00

Stephen B. Hopper \$ 1,000,000,000.00

Question No. 33

Did the negligence, if any, of JPMorgan proximately cause injury to Stephen B. Hopper and/or Laura S. Wassmer?

"Negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer "Yes" or "No" for each of the following:

Laura S. Wassmer

YES

Stephen B. Hopper

YES

Answer the following question only if you answered "Yes" to Question Number 33. Otherwise, do not answer the following question.

Question No. 34

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Stephen Hopper and Laura Wassmer for their damages, if any, that were proximately caused by negligence?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other. Answer in dollars and cents, if any, for the following:

1. The amount of legal fees Stephen Hopper paid to his attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's negligence.

Stephen B. Hopper: \$ 84,500.00

2. The amount of legal fees Laura Wassmer paid her attorneys prior to the inception of the litigation that were the natural, probable and foreseeable consequence of JPMorgan's negligence.

Laura S. Wassmer: \$ 78,000.00

3. The loss of potential inheritance to Stephen B. Hopper that was a natural, probable and foreseeable consequence of JP Morgan's negligence.

Stephen B. Hopper: \$ 1,847,500.00

4. The loss of potential inheritance to Laura S. Wassmer that was a natural, probable and foreseeable consequence of JP Morgan's negligence.

Laura S. Wassmer: \$ 1,847,500.00

If you answered "Yes" to Question 34, then answer the following question. Otherwise do not answer the following question.

Question No. 35

Did the negligence, if any, or knowing participation in JPMorgan's breach of fiduciary duty, if any, of those named below proximately cause Stephen Hopper's or Laura Wassmer's damages?

"Negligence" when used with respect to Jo Hopper, Stephen Hopper, and Laura Wassmer means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Negligence" when used with respect to the conduct of Gary Stolbach and Glast, Phillips & Murray, means failure to use ordinary care, that is, failing to do that which an attorney would have done under the same or similar circumstances or doing that which an attorney would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him or her would have foreseen that the event, or some similar event might reasonably result therefrom. There may be more than one proximate cause of an event.

"Knowing participation in JPMorgan's breach of fiduciary duty" requires that (1) the person or entity knowingly participated in JPMorgan's breach of fiduciary duty, and (2) that person or entity knew of the fiduciary relationship and was aware of his participation in JPMorgan's breach of its duty.

- a. Answer "Yes" or "No" with regard to the negligence, if any, of the following:

Jo Hopper	<u>NO</u>
Stephen Hopper	<u>NO</u>
Laura Wassmer	<u>NO</u>
Gary Stolbach and Glast, Phillips & Murray	<u>YES</u>

- b. Answer "Yes" or "No" with regard to knowing participation in JPMorgan's breach of fiduciary duty, if any, of each of the following:

Jo Hopper	<u>NO</u>
Gary Stolbach and Glast, Phillips & Murray	<u>NO</u>

If you answered "Yes" to Question 35 for more than one of those named below, then answer the following question. Otherwise do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury you found in question 34. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Question No. 36

For each person or entity you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each for the conduct you have found:

JPMorgan	90
Jo Hopper (negligence)	0
Jo Hopper (knowing participation)	0
Stephen Hopper	0
Laura Wassmer (negligence)	0
Gary Stolbach and Glast, Phillips & Murray (negligence)	10
Gary Stolbach and Glast, Phillips & Murray (knowing participation)	0
Total	100%

Answer the following question only if you unanimously answered "Yes" to Question 33. Otherwise, do not answer the following question.

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of 5 more jurors. Otherwise, you must not answer that part of the following question.

Question No. 37

Do you find by clear and convincing evidence that the harm to Stephen B. Hopper, Laura S. Wassmer, or the Estate resulted from gross negligence attributable to JPMorgan?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Gross negligence" means an act or omission by JPMorgan

1. which when viewed objectively from the standpoint JPMorgan at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. of which JPMorgan has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

You are further instructed that JPMorgan may be grossly negligent because of an act by Susan Novak if, but only if--

1. JPMorgan authorized the doing and the manner of the act, or
2. Susan Novak was unfit and JPMorgan was reckless in employing her, or
3. Susan Novak was employed in a managerial capacity and was acting in the scope of employment, or
4. JPMorgan or a manager of JPMorgan ratified or approved the act.

A person is a manager or is employed in a managerial capacity if--

1. that person has authority to employ, direct, and discharge an employee of JPMorgan; or

2. JPMorgan has confided to that person the management of the whole or a department or division of the business of JPMorgan

Answer "Yes" or "No" as to each of the following:

Laura S. Wassmer YES

Stephen B. Hopper YES

Answer the following question only if you unanimously answered "Yes" to Question 37. Otherwise, do not answer the following question.

Question No. 38

You must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to Stephen B. Hopper, Laura Wassmer or the Estate as exemplary damages, if any, for the conduct unanimously found in response to Question 37?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are--

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of JPMorgan.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of JPMorgan.

Answer in dollars and cents, if any, for each of the following:

Laura S. Wassmer \$1,000,000.00

Stephen B. Hopper \$1,000,000.00

Question No. 39

Did JPMorgan commit conversion against the Estate?

Conversion occurs when:

1. a party owned or had possession of the property or entitlement to possession, and
2. another party unlawfully and without authorization assumed and exercised control over the property to the exclusion or, or inconsistent with, the plaintiff's rights as an owner, and
3. the first party demanded return of the property, and
4. the other party refused to return the property.

Answer "Yes" or "No."

Answer: YES

If you answered "Yes" to Question 39, then answer the following question. Otherwise, do not answer the following question.

Question No. 40

What sum of money, if any, if paid now in cash, would fairly compensate the Estate for the value of the property JPMorgan converted, if any, valued at the time of such conversion?

Answer in dollars and cents for damages, if any:

Answer: \$ 3,695,000.00

Question No. 41

Does JPMorgan as Independent Administrator hold money that in equity and good conscience belongs to the Estate?

Answer "Yes" or "No": YES

If you answered "Yes" to Question No. 41, then answer the following question. Otherwise, do not answer the following question.

Question No. 42

What is the amount of money held by JPMorgan as Independent Administrator that in equity and good conscience belongs to the Estate?

Answer: \$3,695,000.00

Question No. 43

Did JPMorgan as Independent Administrator act in good faith, whether successful or not, in defending the action for its removal?

From September 21, 2011 through December 7, 2015, JPMorgan as Independent Administrator defended Jo Hopper's Removal Action.

"Removal Action" means Mrs. Hopper's claims for removal of JPMorgan as Independent Administrator.

"Good faith" means an action that is prompted by honesty of intention and a reasonable belief that the action was probably correct.

Answer "Yes" or "No."

Answer: NO

Question No. 44

What is a reasonable fee for the necessary services of the attorneys for JPMorgan as Independent Administrator in connection with its defense of the Removal Action, stated in dollars and cents?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Attorneys' Fees Incurred in Defense of the Removal Action:

\$1,185,775.00

Question No. 45

What is the amount of JPMorgan as Independent Administrator's reasonable attorneys' fees necessarily incurred in connection with the proceedings and management of the estate?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for representation after December 7, 2015:

1. For representation through trial and the completion of proceedings in the trial court.

Answer: \$ 685,632.00

2. For representation through appeal to the court of appeals.

Answer: \$ 100,000.00

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$ 75,000.00

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ 50,000.00

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$ 50,000.00

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

- a. have the complete charge read aloud if it will be helpful to your deliberations;
- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;
- e. get the signatures for the verdict certificate; and
- f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of five jurors. The same five jurors must agree on every answer in the charge. This means you may not have one group of five jurors agree on one answer and a different group of five jurors agree on another answer.

2. If five jurors agree on every answer, those five jurors sign the verdict.

If all six of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all six of you agreeing on some answers, while only five of you agree on other answers. But when you sign the verdict, only those five who agree on every answer will sign the verdict.

4. There are some special instructions before Questions 3, 4, 25, 26, 31, 32, 37, and 38 explaining how to answer those questions. Please follow the instructions. If all six of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.


JUDGE PRESIDING

9/25/17

Verdict Certificate

Check one:

____ Our verdict is unanimous. All six of us have agreed to each and every answer. The presiding juror has signed the certificate for all six of us.

____ Signature of Presiding Juror

____ Printed Name of Presiding Juror

☒ Our verdict is not unanimous. Five of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

1. <u>Randy Gault</u>	<u>RANDY GAULT</u>
2. <u>Irelesie Alvarez</u>	<u>Irelesie Alvarez</u>
3. <u>Bobby Miller</u>	<u>Bobby Miller</u>
4. <u>Stacey Worack</u>	<u>Stacey Worack</u>
5. <u>Giovanna Rodriguez</u>	<u>Giovanna Rodriguez</u>

If you have answered Question No. 4, 26, 32, and 38, then you must sign this certificate also.

Additional Certificate

I certify that the jury was unanimous in answering the following questions. All six of us agreed to each of the answers. The presiding juror has signed the certificate for all six of us.

Questions 3, 25, 31, and 37 and 4, 26, 32, and 38.

Chaguila Sanders
Signature of Presiding Juror

Chaguila Sanders
Printed Name of Presiding Juror

Verdict Certificate

Check one:

☐ Our verdict is unanimous. All six of us have agreed to each and every answer. The presiding juror has signed the certificate for all six of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

☒ Our verdict is not unanimous. Five of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

1. <u>Randy Gault</u>	<u>Randy Gault</u>
2. <u>Irelesie Alvarez</u>	<u>Irelesie Alvarez</u>
3. <u>Bobby Miller</u>	<u>Bobby Miller</u>
4. <u>Stacey Worack</u>	<u>Stacey Worack</u>
5. <u>Giovanna Rodriguez</u>	<u>Giovanna Rodriguez</u>

If you have answered Question No. 4, 26, 32, and 38, then you must sign this certificate also.

Additional Certificate

I certify that the jury was unanimous in answering the following questions. All six of us agreed to each of the answers. The presiding juror has signed the certificate for all six of us.

Questions 3, 25, 31, and 37 and 4, 26, 32, and 38.

Signature of Presiding Juror

Printed Name of Presiding Juror

LEVINGER

April 4, 2018

JEFFREY S. LEVINGER
Board Certified Civil Appellate Law
Texas Board of Legal Specialization

By E-Mail

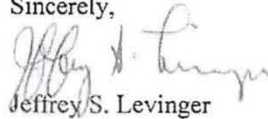
Van H. Beckwith
Baker Botts L.L.P.
2001 Ross Avenue, Suite 700
Dallas, TX 75201

Re: No. PR-11-3238-1; *In re Estate of Max D. Hopper; Jo N. Hopper v. JPMorgan Chase Bank, et al.*; in the Probate Court No. 1 of Dallas County, Texas

Dear Van:

This Rule 11 letter will confirm that Laura Wassmer, Stephen Hopper, the Estate of Max Hopper, and JPMorgan Chase Bank, N.A. have agreed to settle this case based on the confidential terms set forth in the email communication between Robert Sacks and me dated April 3 and 4, 2018. Laura Wassmer, Stephen Hopper, and the Estate agree to withdraw their Motion for Judgment and the hearing set on it for April 5-6, 2018, and the parties shall announce this settlement to the Court. I would appreciate it if you would sign this letter below to signify your acceptance of it.

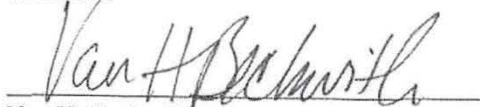
Sincerely,



Jeffrey S. Levinger
Counsel for Laura Wassmer,
Stephen Hopper, and the Estate
of Max Hopper

JL/rh
Enclosure

AGREED



Van H. Beckwith
Counsel for JPMorgan Chase Bank, N.A.



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FAX (214) 741-3055
E-MAIL jep@jeplawyer.com

April 5, 2018

VIA EMAIL: blauten@brianlauten.com

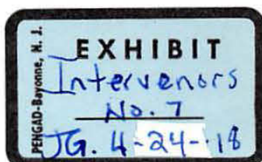
Brian P. Lauten
Brian Lauten, P.C.
3811 Turtle Creek Blvd.
Suite 1450
Dallas, Texas 75219

Re: Case No. PR-11-3238-1; In re: Estate of Max Hopper, Deceased, Jo N. Hopper v. JP Morgan Chase Bank, N.A., et al., in the Probate Court of Dallas County, Texas.

Brian:

As you know, I represent Dr. Stephen Hopper and Laura Wassmer in connection with a dispute that has developed involving your clients, Anthony Vitullo and Fee, Smith, Sharp & Vitullo, LLP. Please be advised that my clients have decided to terminate their relationship with Mr. Vitullo, Fee, Smith, Sharp & Vitullo, LLP and John Malesovas. Their decision to terminate this relationship is based on a number of factors, which are too numerous to set forth herein. However, I provided you with a brief summary of those reasons yesterday during our call and suggested we meet in person to discuss this in more detail. Ultimately, as a result of several issues that were discovered by Jeff Levinger, the appellate lawyer retained to handle the appeal of the jury's verdict, my clients decided to settle the case with JP Morgan Chase. Most, if not all of these issues, were caused by your clients' omissions before and during trial, such as failing to present expert testimony and several jury charge issues which would have made an appeal very difficult for my clients. Additionally, I discovered a number of facts, some of which I outlined during our call, which indicate that the contingency fee agreement is probably not enforceable and which show that – even if it is enforceable – your clients breached the agreement. As a result, I am notifying you that my clients are – effective immediately -- terminating their relationship with Mr. Vitullo, Fee, Smith, Sharp & Vitullo, LLP and Mr. Malesovas and his firm. It is unclear to me whether you are representing Mr. Malesovas or his firm. Please advise, so that I can notify Mr. Malesovas if needed.

At this time, I am requesting your clients to provide me with their *entire* file regarding their representation of my clients. Although your clients have previously provided me with



ATTORNEYS' EXHIBIT NO. 7
PAGE 1 of 2



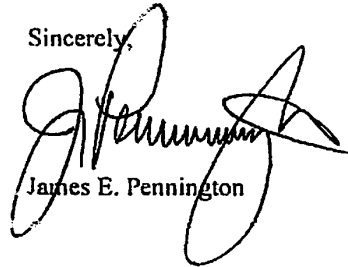
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Brian Lauten
April 5, 2018
Page 2

portions of the file, the files which were provided are not complete and were not provided in the manner in which they were originally maintained by the firm. I am not suggesting anything improper about the manner in which the files were previously produced. However, I am pointing this out to emphasize the importance of making sure that I receive the complete file in the same manner that it was maintained by your clients. You may provide the electronic files on a portable hard drive and have this device, along with the physical files, delivered to my office.

Finally, as I indicated during our call, my clients are willing to discuss a resolution of the attorney's fees related to your clients' representation, so give this some more thought and let me know if you have a proposal. In the meantime, I will instruct Mr. Levinger to retain a percentage of the settlement in his trust account until this matter is resolved. Thank you for your anticipated cooperation. If you have any questions, please feel free to give me a call.

Sincerely,



James E. Pennington

LAW OFFICES OF JAMES E. PENNINGTON

A PROFESSIONAL CORPORATION
900 JACKSON STREET, SUITE 440
DALLAS, TEXAS 75202-4473

JAMES E. PENNINGTON
LICENSED IN TEXAS AND COLORADO

PHONE (214) 741-3022
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E-MAIL jep@jeplawyer.com

April 5, 2018

VIA EMAIL: john@malesovas.com
jmalesovas@gmail.com

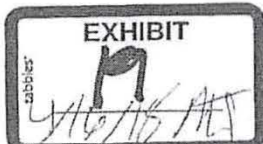
John Malesovas
1801 S. MoPac Expressway
Suite 320
Austin, Texas 78746

Re: Case No. PR-11-3238-1; In re: Estate of Max Hopper, Deceased, Jo N. Hopper v. JP Morgan Chase Bank, N.A., et al., in the Probate Court of Dallas County, Texas.

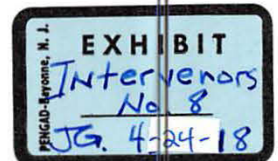
Mr. Malesovas:

In the event you have not previously been advised, I have been retained to represent Dr. Stephen Hopper and Laura Wassmer in connection with a dispute that has developed involving your representation in the above-referenced matter. Please be advised that my clients have decided to terminate their relationship with you and Mr. Vitullo, and your respective law firms. Mr. Vitullo was advised of this decision earlier today. The clients' decision to terminate this relationship is based on a number of factors, which are too numerous to set forth herein. Yesterday, I spoke with Mr. Vitullo's attorney, Brian Lauten, and provided him with a brief summary of those reasons and I offered to meet in person to discuss this in more detail. Ultimately, as a result of several issues that were discovered by Jeff Levinger, the appellate lawyer retained to handle the appeal of the jury's verdict, my clients decided to settle the case with JP Morgan Chase. Most, if not all of these issues, were caused by the attorneys' omissions before and during trial, such as failing to present expert testimony and several jury charge issues which would have made an appeal very difficult for my clients. Additionally, I discovered a number of facts, some of which I outlined during my call yesterday with Mr. Lauten, which indicate that the contingency fee agreement is probably not enforceable and which show that – even if it is enforceable – you and/or Mr. Vitullo breached the agreement. As a result, I am notifying you that my clients are – effective immediately -- terminating their relationship with you and your law firm.

At this time, I am requesting you to provide me with your *entire* file regarding your representation of my clients. Please make sure that I receive the complete file in the same



ATTORNEYS' EXHIBIT NO. 8
PAGE 1 of 2



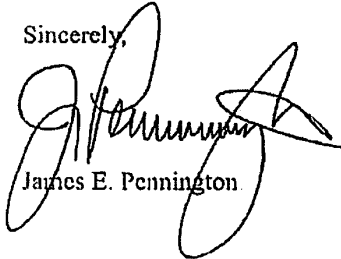
MR:664

John Malesovas
April 5, 2018
Page 2

manner that it was maintained by you and/or your law firm. You may provide the electronic files on a portable hard drive and have this device, along with the physical files, delivered to my office.

Finally, as I indicated to Mr. Lauten during our call, my clients are willing to discuss a resolution of the attorney's fees related to your representation, so please discuss this with Mr. Vitullo and let me know if you have a proposal. In the meantime, I will instruct Mr. Levinger to retain a percentage of the settlement in his trust account until this matter is resolved. Thank you for your anticipated cooperation. If you have any questions, please feel free to give me a call.

Sincerely,



James E. Pennington



Fee, Smith, Sharp & Vitullo LLP
Texas Trial Attorneys

Three Galleria Tower 13155 Noel Road Suite 1000 Dallas, Texas 75240
P 972-934-9100 F 972-934-9200

877-FEESMITH feesmith.com

1801 S MoPac Expressway Suite 320 Austin, Texas 78746
P 512-479-8400 F 512-479-8402

Anthony L. Vitullo
972-980-3234 Direct Dial

lvitullo@feesmith.com

October 8, 2015

BY E-MAIL

Mr. John Eichman
Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202



Re: Stephen Hopper and Laura Wassmer v. JP Morgan Chase

CONFIDENTIAL SETTLEMENT COMMUNICATION
PROTECTED BY TRE AND FRE 408

Dear John:

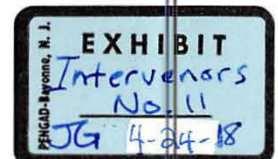
In anticipation of the global mediation to occur with respect to this matter on November 9, 2015, you requested information regarding the settlement expectations of Dr. Stephen Hopper and Mrs. Laura Wassmer (the "Children").

I begin by reference to the fee letter agreement (the "Fee Agreement") dated April 15, 2010 between the Children, Mrs. Jo Hopper and JPMorgan Chase Bank (the "IA"). On the Estate Settlement Services fee schedule (the "Fee Schedule") attached to the Fee Agreement, reference is made that additional fees are charged for litigation regarding according to an "Additional Services Fee Schedule." We have no evidence that such Additional Services Fee Schedule was ever provided to or agreed to by the Children. The Fee Schedule also references that attorney fees are an expense of the estate and are in addition to the estate settlement fees.

While the Children do not dispute that the IA is entitled to reimbursement of reasonable legal fees and expenses from the estate assets, the level of legal fees and expenses paid from the estate in this matter (in large part paid to Hunton & Williams) is anything but reasonable. Given that the Second Amended Inventory reflects total estate assets of approximately \$10 million, the in excess of \$2 million in legal fees and expenses paid from the estate assets represents more than 20% of the value of the estate. The IA has breached its fiduciary duties to safeguard estate assets and appears to have made no effort whatsoever to monitor or mitigate the fees and expenses generated by its legal counsel. Of the approximately \$2 million in legal fees and expenses incurred, roughly 50% of such fees and expenses were incurred with respect to general estate administration matters (a significant portion of which were incurred during periods of time

ATTORNEYS' EXHIBIT NO. 11

PAGE 1 of 3



MR:666

when there were no material litigation activities). The Children believe that the evidence will ultimately show that the IA delegated to its legal counsel many of the duties that it should have performed itself in consideration for its account administration fee.

It should be noted that over \$1million in legal fees were incurred by the IA to deal with the "Robledo Issue". The Children are seeking legal recourse against Gary Stolbach, Mark Enoch and Glast Phillips for the recovery of those legal fees and they are not seeking those legal fees from the IA in this matter.

The Children also have numerous complaints regarding the quality of services performed by the IA and/or its legal counsel and accountants. For example:

- The IA improperly calculated the cost basis for the estate assets which, if such matter had not been brought to the IA's attention by the Children's prior counsel, would have resulted in material adverse tax consequences to the Children.
- Similarly, numerous other tax filings with respect to the estate were filed incorrectly, late or not at all, resulting in additional material adverse tax consequences to the Children.
- The IA failed to timely and properly appraise the property of the Estate of Max Hopper.
- The IA failed to timely and properly secure the records of Sarah Williamson.
- The IA failed to disclose its prior special business arrangement with Jo Hopper that allowed Jo Hopper to be charged less than the Children for equivalent services. This constituted a conflict of interest.
- The IA allowed Hunton and Williams to perform services that the IA should have performed under the services agreement which increased the cost of the administration of the Estate of Max Hopper
- The IA did not properly account for distributions that were made to Jo Hopper related to the Gartner Inc. stock, Instantis stock, Insight Venture Partners, Innophos Holdings, and Bain Capital and other property
- The IA improper distribution and administration of the Pollack Property
- The IA improper retention of over \$800,000 in assets without distributing the same
- The IA improperly charged fees to the Children that should have also been charged to Jo Hopper

In light of the foregoing, the Children seek reimbursement of \$1.2 million of the legal fees and expenses deducted from the estate assets by the IA. The Children further seek and demand attorney fees in the amount of \$480,000.00 which represents 40% of the \$1.2 million in damages. Therefore the Children currently demand \$1,680,000 for full and final settlement against JP Morgan Chase.

You previously stated that the IA is due account administration fees in the aggregate amount of \$266,825. However, based on the second amended inventory, the value of the estate assets was only \$10 million. Accordingly, the IA's account administration fee is only \$220,000, and \$10,000 of the \$230,000 previously deducted from the estate should be refunded by the IA.

Mrs. Jo Hopper should reimburse the estate for her fair share of third party expenses incurred with respect to her community property. While we have not conducted a complete analysis of this item, based on your previous statements we believe that amount to be not less than \$80,000.

All cash and any other assets remaining in the estate must be distributed.

Any settlement is conditioned upon also obtaining a complete and final settlement between the Children and Mrs. Jo Hopper.

This settlement demand will expire at 5:30pm CST on November 10, 2015.

Please also find the enclosed deposition notice of a corporate representative of JP Morgan Chase. Obviously I am willing to work with you on the dates but I wanted to get this notice to you as soon as possible so that you can start working on identifying the appropriate witness. Please let me know if you have an alternative date for the deposition if this date does not work.

Should you have any question, comments or concerns, please do not hesitate to contact me regarding this matter.

Very truly yours,

FEE, SMITH, SHARP & VITULLO, L.L.P.



Anthony L. Vitullo

ALV/MS

-----Original Message-----

From: Stephen Hopper [mailto:dr.hopper@me.com]

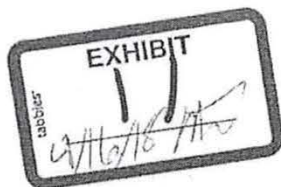
Sent: Monday, January 25, 2016 8:19 PM

To: Anthony "Lenny" Vitullo

Subject: Conference call

Lenny, I completely understand your reaction to Laura's email and can only conclude that her email was coming from, as she said her fear and anxiety. I do not question your commitment to our case and I'm well aware that you are the only person who has steered us through this "quagmire". I also know that there is no other attorney who would have touched this. Regardless of the outcome, I will always be grateful for the support you have given me over the past several years and I recognize that you have done this without charge. Please know you will always have my thanks. I am sorry that you had to question that today.

Stephen Hopper



ATTORNEYS' EXHIBIT NO. 13

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MR:669

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED

IN THE PROBATE COURT

JO N. HOPPER
Plaintiff,

NO. 1

v.

JPMORGAN CHASE BANK, N.A.
STEPHEN B. HOPPER, LAURA S.
WASSMER, AND QUAGMIRE, LLC,
Defendants.

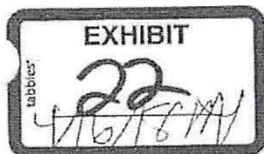
DALLAS COUNTY, TEXAS

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEGAL RULINGS REGARDING
ATTORNEYS' FEES FOR DECLARATORY JUDGMENT CLAIMS**

On January 4, 2018, came on to be considered *Plaintiff's Motion for Legal Rulings Regarding Attorneys' Fees for Declaratory Judgment Claims* ("Motion"), filed in the above-styled action. After duly considering the Motion, the pleadings on file, the authorities, the arguments of counsel, and the trial record in this case, including but not limited to the jury's answer to the jury charge, this Court hereby GRANTS this Motion and finds that:

(A) An award of attorneys' fees to Plaintiff Jo N. Hopper ("Plaintiff") against JPMorgan Chase Bank, N.A. (the "Bank") in the amount of \$4,052,035.00 incurred in connection with the Robledo claims (as that term is defined in Question 12 of the jury charge) is equitable and just;

(B) An award of attorneys' fees to Plaintiff in the amount of \$0 against Stephen B. Hopper and Laura S. Wassmer, individually, jointly and severally (collectively, the "Heirs") incurred in connection with the Robledo claims (as that term is defined in Question 12 of the jury charge) is equitable and just;



**PLAINTIFF'S MOTION FOR LEGAL RULINGS
ATTORNEYS' FEES FOR DECLARATORY JUDGMENT CLAIMS**

PAGE 1

ATTORNEYS' EXHIBIT NO. 66
PAGE 1 of 2



MR:670

(C) An award of attorneys' fees and expenses to Plaintiff in the amount of \$1,469,828.00 against the Bank incurred in connection with obtaining a ruling that Jo Hopper does not owe the State any money for attorneys' fees (as described in Question 13 of the jury charge) is equitable and just; and

(D) In the event the Bank files an appeal of the final judgment entered in this matter with respect to Plaintiff's declaratory judgment claims as described in Questions 12 and 13 of the jury charge, an award of the following attorneys' fees would be equitable and just: \$200,000 in the event of an appeal to the court of appeals, \$50,000 in the event of a petition for review filed with the Texas Supreme Court, \$75,000 in the event of briefing at the merits stage of a petition for review in the Texas Supreme Court, and \$50,000 for preparation and presentation of oral argument to the Texas Supreme Court and completion of appellate proceedings for appellate fees.

SO ORDERED on this 28th day of March, 2018.


Judge Presiding

From: Jeffrey S Levinger [mailto:jlevinger@levingerpc.com]
Sent: Tuesday, April 03, 2018 5:12 PM
To: Anthony "Lenny" Vitullo; John Malesovas - Malesovas
Subject: jury questions 43 and 44.

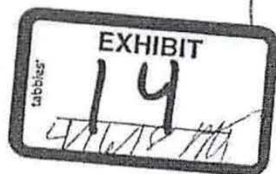
The bank's JNOV brief on liability makes a fairly big deal out of the jury's answers to Questions 43 and 44 relating to the reasonableness and necessity of its own fees and expenses relating to its defense of the removal action (about \$1.2 million) and its management of the estate after December 7, 2015 (about \$685,000). I previously had not focused much on those findings. What's our best argument about why those findings shouldn't matter?

JEFFREY S. LEVINGER



U.S. DISTRICT COURT
1445 ROSS AVENUE | SUITE 2500 | DALLAS, TEXAS 75202
P 214.855.6817 | F 214.855.6808 | E jlevinger@levingerpc.com | www.levingerpc.com

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ATTORNEYS' EXHIBIT NO. 70
PAGE 1 of 1



MR:672

From: Laura Wassmer [mailto:lhoppv@gmail.com]
Sent: Monday, January 25, 2016 8:26 PM
To: Anthony "Lenny" Vitullo; James Bell
Cc: Steve Hopper
Subject: Response to Declaratory Action

Lenny, thank you for taking the time to call tonight—our conversation was helpful. Again, I apologize for coming across as ungrateful for all you are doing and for taking my frustration with Jo out on you. I know that you, James and the entire team are working hard for us. I'm scared and just needed some added reassurance. As Steve mentioned, I think getting some additional response to our emails to know if we are on the right track or not would be helpful. I don't know if anything below would be helpful—just some notes I jotted down as I read through the declaratory action. Please let me know if there is any additional information I can provide. Thanks again! Laura

Response to Declaratory Action



MR:673

LAW OFFICES OF JAMES E. PENNINGTON

A PROFESSIONAL CORPORATION
900 JACKSON STREET, SUITE 440
DALLAS, TEXAS 75202-4473

JAMES E. PENNINGTON
LICENSED IN TEXAS AND COLORADO

PHONE (214) 741-3022
FAX (214) 741-3055
E-MAIL Jep@Jeplawyer.com

April 6, 2018

*VIA EMAIL: john@malesovas.com
jmalesovas@gmail.com*

John Malesovas
1801 S. MoPac Expressway
Suite 320
Austin, Texas 78746

VIA EMAIL: blauten@brianlauten.com

Brian P. Lauten
Brian Lauten, P.C.
3811 Turtle Creek Blvd.
Suite 1450
Dallas, Texas 75219

Re: Case No. PR-11-3238-1; In re: Estate of Max Hopper, Deceased, Jo N. Hopper v. JP Morgan Chase Bank, N.A., et al., in the Probate Court of Dallas County, Texas.

Gentlemen:

This letter is in response to Mr. Lauten's email today regarding his notice of lien, and Mr. Malesovas' April 6, 2018 letter, and his Petition in intervention. I don't intend to respond to all of the various allegations and legal doctrines in your papers -- the only thing we all agree on at this point is that a dispute exists.

Rule 1.14 of the Texas Disciplinary Rules of Professional Conduct governs this dispute. Under that rule, the disputed portion of any funds is to remain in a lawyer's trust account or escrow account until the dispute is resolved. I have repeatedly assured Mr. Lauten that all settlement funds will be placed into Mr. Levinger's trust account and that the amount of disputed fees will not be disbursed until this dispute is resolved. My clients intend to fully comply with the requirements of Rule 1.14. The clients understand that you both claim a 45% interest in the settlement. Although we dispute this amount, Mr. Levinger is willing to retain 45% of the settlement in his trust account until this matter is resolved. Additionally, we will agree to retain a



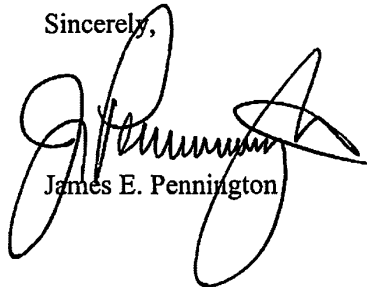
MR:674

John Malesovas/Brian Lauten
April 6, 2018
Page 2

sufficient amount to cover any expenses you have incurred in representing the clients. However, I need to know the amount of any such expenses, so please let me know this amount.

If you are unwilling to agree to the disputed portion being deposited into Mr. Levinger's trust account, then let me know if you are willing to agree to these funds being deposited into my trust account or with an independent escrow agent. Thank you for your anticipated cooperation. If you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Pennington", with a large, stylized flourish extending to the right.

James E. Pennington

CAUSE NO. PR-11-03238-1

IN RE: ESTATE OF MAX D. HOPPER,
DECEASED

IN THE PROBATE COURT

JO N. HOPPER

Plaintiff,

v.

JP MORGAN CHASE, N.A.,
STEPHEN B. HOPPER and LAURA S.
WASSMER

Defendants.

NO. 1

JOHN L. MALESOVAS, d/b/a
MALESOVAS LAW FIRM, and FEE,
SMITH, SHARP & VITULLO, LLP

Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK, N.A.,

Defendants.

DALLAS COUNTY, TEXAS

**ORDER GRANTING INTERVENTION DEFENDANTS' MOTION TO COMPEL
ARBITRATION**

ON THIS DAY, the Court considered the Motion to Compel Arbitration and the Supplement to the Motion to Compel Arbitration (collectively, the "Motion to Compel Arbitration") filed by Intervention Defendants Stephen B. Hopper and Laura S. Wassmer.

Having considered the Motion to Compel Arbitration, any responses and replies, and the arguments of counsel, the Court is of the opinion that the Motion to Compel Arbitration should be GRANTED.

PR-11-03238-1
CODR
ORDER
1838771



TRUE AND CORRECT
COPY OF ORIGINAL
FILED IN DALLAS
COUNTY CLERK'S OFFICE



MR:676

IT IS THEREFORE ORDERED that Intervention Defendants' Motion to Compel Arbitration is hereby GRANTED;

IT IS FURTHER ORDERED that the claims of Intervenors John Malesovas and Fee, Smith, Sharp & Vitullo, LLP in this matter are compelled to arbitration before the American Arbitration Association;

IT IS FURTHER ORDERED that the Intervenors' claims, and any proceedings related thereto, are stayed pending such arbitration.

SIGNED THIS 10th day of May, 2018.


HONORABLE BRENDA HULL THOMPSON



TRUE AND CORRECT
COPY OF ORIGINAL
FILED IN DALLAS
COUNTY CLERK'S OFFICE

PR 11-03238-1

MR:677



A true copy of original I certify this the
20th day of July, 2018
as witness my hand and seal of this office.
JOHN F. WARREN, COUNTY CLERK
County Court, Dallas County, Texas
By: John F. Warren, Deputy

MR:678

NO. _____

**IN THE COURT OF APPEALS FOR THE
FIFTH DISTRICT OF TEXAS AT DALLAS**

In re Stephen B. Hopper and Laura S. Wassmer,

Relators.

**AFFIDAVIT OF ANNE M. JOHNSON IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS**

**STATE OF TEXAS §
 §
COUNTY OF DALLAS §**

BEFORE ME, the undersigned Notary Public, on this day personally appeared Anne M. Johnson, known to me to be the person whose name is subscribed below, who, being by me duly sworn stated on her oath the following:

1. My name is Anne M. Johnson. I am a Partner with the law firm of Haynes and Boone, LLP, attorneys of record for Relators in this matter. In this capacity, I am authorized to make this affidavit. I am over twenty-one years of age, have never been convicted of a felony, and am not aware of any reason why I would be disqualified from making this affidavit. The facts stated herein are true and correct and based upon my personal knowledge or known to me through my duties and responsibilities as counsel for Relators.

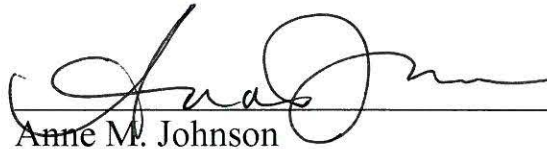
2. I have read Relators' Petition for Writ of Mandamus. All factual statements contained therein, not independently proved or otherwise verified through the Mandamus Record, are true and correct.

3. The documents included in Pages MR:001-393 of the Mandamus Record are true and correct copies of documents filed in the underlying matter, *In re Estate of Max D. Hopper*, Case No. PR-11-03238-1, in Probate Court No. 1, Dallas County, Texas, and documents compiled and certified as part of the Clerk's Record in a related interlocutory appeal in this Court, *Hopper v. Malesovas*, Case No. 05-18-00558-CV. For the sake of consistency, these documents have been included here in the same form as they appear in the related Clerk's Record.

4. The documents included in Pages MR:394-675 of the Mandamus Record are true and correct copies of hearing transcripts and exhibits from the underlying matter, which were also compiled and certified as part of the Reporter's Record in Case No. 05-18-00558-CV. Again for the sake of consistency, these documents have been included here in the same form as they appear in the related Reporter's Record.

5. The document included in Pages MR:676-678 of the Mandamus Record is a true and correct copy of an original document filed in the underlying matter.

FURTHER AFFIANT SAYETH NAUGHT.


Anne M. Johnson

SUBSCRIBED AND SWORN TO BEFORE ME this 26TH day of July,
2018, to certify which witness my hand and seal of office.


Notary Public

