

No. 05-18-00558-CV

**COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS**

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
09/07/2018 3:21:27 PM

LISA MATZ
Clerk

STEPHEN B. HOPPER and LAURA S. WASSMER,

Appellants,

v.

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

Appellees.

*On Appeal from Dallas County Probate Court No. 1,
the Hon. Brenda Hull Thompson, Presiding*

**APPELLEES' MOTION FOR SECOND
EXTENSION OF TIME TO FILE APPELLEES' BRIEF**

TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:

Pursuant to Texas Rules of Appellate Procedure 10.5(b) and 38.6(d), Appellees **JOHN MALESOVAS D/B/A MALESOVAS LAW FIRM** and **FEE, SMITH, SHARP & VITULLO, LLC** respectfully move the Court for an extension of time to file their Appellees' Brief, and show as follows:

1. Appellees' Brief is due herein on September 14, 2018. Appellees request a brief extension of time to file their Appellees' Brief, until Monday,

October 15, 2018. No party will be prejudiced by the requested extension. This extension is not sought for purposes of delay.

2. This is Appellees' second request for an extension of time to file their Appellees' Brief. The reasons for the requested extension are as follows.

3. First, a substantial part of the testimony relied upon by Appellees at the temporary injunction hearing that is the subject of this appeal is not contained in the electronic reporter's record filed with the Court on June 6, 2018. Counsel for Appellees played extensive clips from the videotaped depositions of Appellants Stephen Hopper and Laura Wassmer for the Probate Court, but the reporter's record does not contain any of this testimony.

4. Appellees were informed that the reporter did not tape or transcribe the videotaped deposition testimony as played for the Probate Court. Counsel for Appellees have been diligently working with counsel for Appellants to resolve this issue. On August 30, 2018, Appellees filed a motion with the probate court to supplement the reporter's record with the missing testimony, *to which Appellants are unopposed*. See Exhibit A attached hereto. On September 6, 2018, the probate court informed counsel for Appellees that it will sign an order to supplement the reporter's record without the necessity of a hearing so long as counsel for both sides approve of the order. On September 7, 2018, counsel for Appellants

approved of the proposed order and such order was submitted to the probate court the same day. See Exhibit B attached hereto.

5. Appellees are unable to adequately complete Appellees' Brief without reference to testimony which will be contained in the supplemental reporter's record once it is completed and filed with this Court.

6. In addition to difficulties involved with completing and correcting the record on appeal, an issue not discovered by Appellees prior to their first request for extension, appellate counsel Katherine Elrich and her firm were retained by Appellee John Malesovas d/b/a Malesovas Law Firm to address this appeal. Ms. Elrich recently entered an appearance with this Court on August 15, 2018 but cannot give the Appellees' Brief the attention it requires without this requested extension of time. Along with other day-to-day matters, her conflicts include the following:

- *Target Strike, Inc. v. Strasburger & Price, LLP; Daniel Lanfear; Donato Ramos; Alfredo Ramos; and the Law Offices of Donato D. Ramos, PLLC*, No. 05-18-00434-CV in the Dallas Court of Appeals (preparing for and presenting oral argument on behalf of Appellees Donato Ramos, Alfredo Ramos and the Law Offices of Donato D. Ramos, PLLC on September 11, 2018);

- *Zena James v. Amy K. Witherite and Eberstein & Witherite, LLP*, No. 05-17-00799-CV in the Dallas Court of Appeals (preparing for and presenting oral argument on behalf of Appellees Amy K. Witherite and Eberstein & Witherite, LLP on September 25, 2018);

- *Cincinnati Casualty Co. v. Journeyman Construction, Inc., et al.*, Cause No. CC-17-05795-E in the County Court at Law No. 5 Dallas County, Texas (aided in preparation for hearing on special appearance scheduled for hearing on August 31, 2018);

- *North Texas Tollway Authority v. Zachry Construction Corp., n/k/a Zachry Industrial, Inc., et al.*, No. 429-01326-2017 in the 429th District Court Collin County, Texas (preparing proposed jury charge for October 15, 2018 trial setting).

Accordingly, Appellees **JOHN MALESOVAS D/B/A MALESOVAS LAW FIRM** and **FEE, SMITH, SHARP & VITULLO, LLC** respectfully request that the Court grant the requested extension of time to file their Appellees' Brief until Monday, October 15, 2018.

Respectfully submitted,

/s/ Katherine Elrich

Katherine K. Elrich
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*Attorney for Appellee Fee Smith
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CERTIFICATE OF CONFERENCE

This is to certify that, on September 5 and 6, 2018, I conferred with counsel for Appellants, Anne M. Johnson, and Appellants oppose the relief requested herein.

/s/ Katherine Elrich

KATHERINE ELRICH

RULE 9.4 CERTIFICATE OF COMPLIANCE

This document complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), if applicable, because it contains 658 words, excluding any parts exempted by TEX. R. APP. P. 9.4(i)(1).

/s/ Katherine Elrich

KATHERINE ELRICH

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been forwarded to all counsel of record via electronic filing in accordance with the Texas Rules of Appellate Procedure on this 7th day of September 2018, as follows:

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/s/ Katherine Elrich

KATHERINE ELRICH

CAUSE NUMBER PR-18-01390-1

**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 & VITULLA, LLP,**

Intervenors

v.

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

§ **IN THE PROBATE COURT**

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DALLAS COUNTY, TEXAS

**INTERVENORS' UNOPPOSED MOTION TO
SUPPLEMENT REPORTER'S RECORD**

Pursuant to Rule 34.6 of the Texas Rules of Appellate Procedure, Intervenors John Malesovas d/b/a Malesovas Law Firm and Fee, Smith, Sharp & Vitullo, LLC file this unopposed motion to supplement the reporter's record.

I.

Pending in the Dallas Court of Appeals is a consolidated interlocutory appeal and original proceeding arising from a temporary injunction issued by the Probate Court in favor of Intervenors. Although the reporter's record was filed in this appeal, and a mandamus record was filed in the original proceeding, the transcription of the Temporary Injunction Hearing on

Exhibit A

April 24, 2018 omitted the video deposition testimony played by Intervenor at that hearing because the court reporter did not contemporaneously transcribe the testimony. *See* Exhibit 1 (Affidavit of Kevin DeRita); *see also* Exhibit 2 (Affidavit of Brian Lauten).

Thus, pursuant to Texas Rule 34.6 of Appellate Procedure, Intervenor submit the deposition testimony attached hereto as Exhibit 1.A (Laura Wassmer) and Exhibit 1.B (Dr. Stephen Hopper) which is missing from the reporter's record and should be included in the reporter's record on appeal of this cause and in the mandamus record for the original proceeding. Defendants do not oppose this relief.

II.

For these reasons, Intervenor respectfully request that the reporter's record be supplemented to include the deposition testimony of Laura Wassmer attached as Exhibit 1.A and the deposition testimony of Dr. Stephen Hopper attached as Exhibit 1.B, and such supplemental record be filed with the Dallas Court of Appeals.

Respectfully submitted,

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—and—

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**COUNSEL FOR INTERVENOR/APPELLEE
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MALESOVAS LAW FIRM**

CERTIFICATE OF CONFERENCE

This is to certify that, on August 30, 2018, I conferred with counsel for Defendants, Anne M. Johnson, and Defendants do not oppose the relief requested herein.

/s/ Katherine Elrich

Katherine Elrich

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been forwarded to all counsel of record via electronic filing in accordance with the Texas Rules of Civil Procedure on this 30th day of August, 2018, as follows:

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/s/ Brian P. Lauten

Brian P. Lauten

AFFIDAVIT OF KEVIN DERITA

THE STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

BEFORE ME, the undersigned Notary Public, on this day personally appeared **Kevin DeRita**, known to me to be the person whose name is subscribed hereto, and being by me first duly sworn, upon his oath deposed and stated:

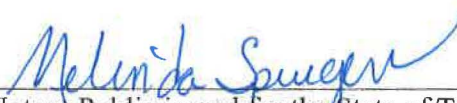
- I. My name is Kevin DeRita. I am over the age of 21 years, have never been convicted of a felony and am otherwise legally competent to testify to the facts contained in this Affidavit. I have personal knowledge of all facts recited herein which I hereby swear are all true and correct. Any records or documents attached hereto are the original or exact duplicates of the original.
- II. I was present during the Temporary Injunction hearing held in this case on April 24, 2018 ("TI Hearing"). I was requested by counsel for Intervenor John L. Malesovas, d/b/a Malesovas Law Firm and Fee, Smith, Sharp & Vitullo, LLP to play video deposition clips of the testimony of Laura Wassmer and Dr. Stephen Hopper during the TI Hearing.
- III. Attached as Exhibit A is a true and correct copy of the transcribed video deposition testimony of Laura Wassmer that was played to the Court, in open Court, before all parties present in Court at the TI Hearing. Attached as Exhibit B is a true and correct copy of the transcribed video deposition testimony of Dr. Stephen Hopper that was played to the Court, in open Court, before all parties present in Court at the TI Hearing.
- IV. The testimony reflected in Exhibits A and B attached hereto was introduced into evidence and accepted by the Court as evidence, without objection from any party, at the TI Hearing.

Further, affiant sayeth not.


Kevin DeRita

SWORN TO AND SUBSCRIBED BEFORE ME by the said Kevin DeRita, to
certify which witness my hand and seal this 10 day of August, 2018.




Notary Public in and for the State of Texas
My commission expires: 9-19-2019

Hopper vs JPMC

 Wassmer, Laura (Vol. 01) - 04/16/2018

1 CLIP (RUNNING 00:10:38.540)

 BY MR. LAUTEN: ...

LW 25 SEGMENTS (RUNNING 00:10:38.540)



1. PAGE 8:20 TO 8:21 (RUNNING 00:00:02.372)

20 Q. Can you please state your name for the record.
21 A. Yes, Laura Wassmer.

2. PAGE 9:17 TO 10:08 (RUNNING 00:00:41.208)

17 Q. Okay. I want to talk first about the lawyers
18 that have represented you in the lawsuit. Your first
19 lawyer was John Round [phonetic]; is that correct?
20 A. That was Steve's lawyer, yes.
21 Q. Okay. Was John Round fired?
22 A. Yes.
23 Q. And is there an unpaid balance with John Round?
24 A. I -- I don't know. That was Steve's attorney,
25 so I'm not sure.
00010:01 Q. Okay. Do you know if Mr. Round has taken the
02 position that there are unpaid fees owed to him?
03 A. I don't know.
04 Q. All right. Lyle Pishny [phonetic], was that a
05 lawyer that represented you?
06 A. Yes.
07 Q. Did you fire that lawyer?
08 A. Yes.

3. PAGE 10:12 TO 10:17 (RUNNING 00:00:17.280)

12 Q. All right. Do you know if Mr. Pishny is of the
13 opinion that there are moneys owed to him that were not
14 paid?
15 A. I am aware that he believes I owe him money for
16 documents he was asked to produce because he was
17 subpoenaed by Jo Hopper and her attorney.

4. PAGE 11:18 TO 11:25 (RUNNING 00:00:13.727)

18 Q. (BY MR. LAUTEN) All right. The next set of
19 lawyers you hired were Mark Enoch and Gary Stolbach
20 [phonetic] with the law firm of Glast, Phillip & Murray,
21 correct?
22 A. Correct.
23 Q. And you fired that set of lawyers, too,
24 correct?
25 A. Yes. And Lenny sued them.

5. PAGE 13:18 TO 14:19 (RUNNING 00:01:02.643)

18 Q. (BY MR. LAUTEN) The answer to my question is,
19 Yes. You fired Gary Stolbach and Mark Enoch with Glast,
20 Phillips & Murray, correct?
21 A. Yes.
22 Q. And at the time that you fired them, they were
23 owed, according to them, approximately \$300,000 --
24 A. According --
25 Q. -- correct?
00014:01 A. -- to them, yes.
02 Q. And that money was never paid to them, correct?
03 A. It -- no. It was part of the settlement.
04 Q. Okay. And -- and when -- and in fact, you --

Hopper vs JPMC

05 you not only terminated Glast, Phillips & Murray, you
06 hired Mr. Vitullo to sue Glast, Phillips & Murray,
07 correct?
08 A. Correct.
09 Q. And in that legal malpractice case, it actually
10 settled for \$990,000, correct?
11 A. Yes.
12 Q. And you're -- you and Dr. Hopper got all of the
13 recovery on that, less the contingency that was paid to
14 Mr. Vitullo, correct?
15 A. And less taxes, yes.
16 Q. Okay. In addition to that, you didn't have to
17 pay the \$300,000 and change that Glast, Phillips &
18 Murray said they were owed, correct?
19 A. Yes.

6. PAGE 16:23 TO 17:22 (RUNNING 00:00:51.870)

23 Q. (BY MR. LAUTEN) Okay. And you also fired
24 James Bell [phonetic] in this lawsuit, correct?
25 A. Yes.
00017:01 Q. But with respect to Mr. Bell, he had already
02 been paid a \$200,000 up-front, flat fee, correct?
03 A. Yes.
04 Q. All right. So in this lawsuit, before we even
05 talk about Mr. Vitullo, six lawyers have been fired by
06 you or your brother, correct?
07 A. Correct.
08 Q. And five out of those six all claimed, at least
09 at one point in time, that they were not paid in whole
10 or in part, correct?
11 A. Correct.
12 Q. All right. And of those six, the only one that
13 claims -- or did not claim that he wasn't paid was
14 Mr. Bell, because that fee was paid in advance, correct?
15 A. Yes.
16 Q. All right. So Mr. Vitullo would be the seventh
17 lawyer that you fired in this case, correct?
18 A. Correct.
19 Q. And he would be the sixth of seven lawyers who
20 claims he's entitled to money that he was not paid,
21 correct?
22 A. Correct.

7. PAGE 18:07 TO 18:12 (RUNNING 00:00:26.076)

07 Q. (BY MR. LAUTEN) I'm going to show you what
08 I'll mark as Exhibit 2 for identification. Is Exhibit 2
09 a true and correct copy of the contingency fee contract
10 that you signed?
11 (Exhibit Number 2 marked.)
12 A. Yes.

8. PAGE 19:20 TO 20:10 (RUNNING 00:00:29.941)

20 Q. (BY MR. LAUTEN) All right. Did you read
21 Exhibit 2 before you signed it?
22 A. Exhibit 2 -- of the document?
23 Q. The contingency agreement.
24 A. Did I read it, yes.
25 Q. All right. Did you agree to be bound by it at
00020:01 the time you signed it?
02 A. Yes.
03 Q. All right. The interlineations on the first
04 page of paragraph -- under paragraph 1, are those
05 your -- are those your lines --
06 A. Yes.
07 Q. -- your edits?

Hopper vs JPMC

08 A. Yes.
09 Q. Are those your initials?
10 A. Yes.

9. PAGE 21:24 TO 22:03 (RUNNING 00:00:29.527)

24 Q. Okay. So you tell me exactly what your
25 intention was when you made that change to paragraph 1.
00022:01 A. Well, what I meant was when Chase was coming
02 back and suing us for their attorney fees, that Lenny
03 was going to represent us regarding that as well.

10. PAGE 22:12 TO 22:24 (RUNNING 00:00:30.205)

12 Q. Did you intend to compensate him for defending
13 claims when you signed this agreement?
14 A. Yes, I did.
15 Q. Okay. With what?
16 A. With the contingency fee.
17 Q. Okay. Well, did -- did -- was it your
18 intention that he would be compensated a percentage on
19 winning any lawsuit that was filed against you?
20 A. That was the intention, yes.
21 Q. Okay. So you intended to pay him 45 percent of
22 any claim he would successfully defend from Chase,
23 correct?
24 A. Yes. At the time we signed this, yes.

11. PAGE 43:18 TO 43:23 (RUNNING 00:00:10.846)

18 Q. (BY MR. LAUTEN) What is the amount of money
19 that you believe you owe to Mr. Vitullo and his firm
20 right now, if any?
21 A. I can't answer that question. I'm asking --
22 Q. Okay.
23 A. -- an arbitrator to help us figure that out.

12. PAGE 59:11 TO 59:14 (RUNNING 00:00:11.384)

11 Q. (BY MR. LAUTEN) Let -- let's -- let's just --
12 let's try it this way. It's a fact that you were sued
13 by JPMorgan Chase for in excess of \$3 million, correct?
14 A. That's not what I recall, no.

13. PAGE 60:01 TO 61:02 (RUNNING 00:00:56.814)

00060:01 Q. I -- I'm not talking about what they dropped it
02 to. At the time that this case went to trial, when
03 Mr. Vitullo walked into that courtroom, the amount you
04 were being sued for was in excess of \$3 million,
05 correct?
06 A. I'm not sure.
07 Q. And the contingency contract that you changed
08 made him responsible for defending those claims,
09 correct?
10 A. He was responsible for defending all claims,
11 yes.
12 Q. And the -- and after the trial, JPMorgan Chase
13 got a zero verdict on the counterclaim they were suing
14 you for, correct?
15 A. Well, they dropped the claim.
16 Q. They dropped the claim, correct?
17 A. Yes.
18 Q. And the person that was responsible for
19 defending those claims, under the agreement you signed,
20 was Mr. Vitullo, correct?
21 A. Yes. But I'm not sure I'm giving him total
22 credit for that.
23 Q. I get it. You're not giving credit to any of

Hopper vs JPMC

24 the lawyers. I -- I'll give you that credit.
25 But the fact of the matter is that was a
00061:01 valuable legal service that Mr. Vitullo provided,
02 correct?

14. PAGE 61:05 TO 61:11 (RUNNING 00:00:16.847)

05 Q. (BY MR. LAUTEN) Correct?
06 A. Can -- can you ask that again, please.
07 Q. Sure. You -- you -- if someone sued me for in
08 excess of \$3 million and the claim got dismissed, I'd be
09 pretty happy with my lawyer.
10 Are you happy with the fact that the
11 counterclaims got dismissed?

15. PAGE 61:14 TO 61:23 (RUNNING 00:00:18.579)

14 A. I was happy that they were dismissed, yes.
15 Q. (BY MR. LAUTEN) All right. You were also sued
16 by Ms. Hooper for her percentage of the dec action
17 claim, correct?
18 A. Yes.
19 Q. And that exposure was in excess of \$1 million,
20 correct?
21 A. Yes.
22 Q. And Mr. Vitullo is the only lawyer on your
23 pleadings that went to that hearing, correct?

16. PAGE 61:25 TO 62:04 (RUNNING 00:00:12.084)

25 A. I -- I'm not sure who went to that hearing.
00062:01 Q. (BY MR. LAUTEN) It's a fact that Mr. Vitullo
02 wasn't even hired to defend the attorney's fees claim
03 that Ms. Hopper was making against you, was he?
04 A. James --

17. PAGE 62:06 TO 62:10 (RUNNING 00:00:13.644)

06 A. James Bell was hired to do that.
07 Q. (BY MR. LAUTEN) And the answer to my question
08 is, No. Mr. Vitullo was not even hired to defend you on
09 the claim in excess of \$1 million that Ms. Hopper was
10 making for attorney's fees against you, correct?

18. PAGE 62:12 TO 62:16 (RUNNING 00:00:13.003)

12 A. Correct.
13 Q. (BY MR. LAUTEN) But yet Mr. Vitullo is the
14 lawyer that went to that hearing, and argued against the
15 over \$1 million attorney's fees claim that Ms. Hopper
16 was making against you, correct?

19. PAGE 62:18 TO 62:22 (RUNNING 00:00:09.729)

18 A. Yes. He and James were working together on
19 this.
20 Q. (BY MR. LAUTEN) And the Judge ordered that you
21 pay zero in attorney's fees to Ms. Hopper, correct?
22 A. Correct.

20. PAGE 63:14 TO 63:19 (RUNNING 00:00:14.390)

14 Q. (BY MR. LAUTEN) All right. That's fine. And
15 in addition to that, you got a \$990,000 settlement for
16 the third set of lawyers that you hired, that you sued
17 for malpractice, correct?
18 A. We didn't end up with that, but that was the
19 settlement, yes.

Hopper vs JPMC

21. PAGE 63:22 TO 64:09 (RUNNING 00:00:27.104)

22 Q. So let's just go through this. You have a
23 zero pretrial offer, correct?
24 A. Yes.
25 Q. You have over a million dollars that
00064:01 Mr. Vitullo successfully argued to prevent Ms. Hopper
02 from getting attorney's fees against you, correct?
03 A. Uh-huh, yes.
04 Q. In a matter that you had not even retained him
05 to represent you on, correct?
06 A. Correct.
07 Q. You go to trial and you get a 4 billion plus
08 verdict with punitive damages, correct?
09 A. Yes.

22. PAGE 86:02 TO 86:14 (RUNNING 00:00:31.067)

02 Q. Okay. Have you ever apologized to Lenny for
03 acting ungrateful for his hard work?
04 Have you ever done that?
05 A. I've not felt the need to apologize to Lenny.
06 Q. Have you ever apologized to Lenny for being
07 ungrateful for how you've treated him?
08 Have you ever done that?
09 A. I don't feel I owe Lenny an apologize -- an
10 explanation or an apology for being ungrateful.
11 Q. I'm talking about in the past. Have you ever
12 written to Lenny and apologized for being ungrateful?
13 Have you ever done that?
14 A. I don't consider myself ungrateful, no.

23. PAGE 87:15 TO 88:20 (RUNNING 00:00:59.779)

15 Q. All right. Now look at Exhibit 12. The same
16 day, right?
17 A. Yes.
18 Q. Later that night, correct?
19 A. Yes.
20 Q. [As read] "Lenny, thank you for taking the time
21 to call tonight."
22 A. Uh-huh.
23 Q. This is after hours, correct?
24 A. Uh-huh.
25 Q. 8:26.
00088:01 A. Uh-huh.
02 Q. [As read] "Our conversation was helpful.
03 Again, I apologize for coming across as ungrateful for
04 all you are doing, and for taking my frustration with
05 Joe out on you. I know that you, James, and the entire
06 team are working hard for us. I'm scared and just
07 needed some reassurance.
08 As Steve mentioned, I think getting some
09 additional response to our e-mails, to know if we are on
10 the right track or not, would be helpful. I don't know
11 if anything below would be helpful; just some notes I
12 jotted down as I read through the declaratory judgment
13 action. Please let me know if there's any additional
14 information I can provide.
15 "Thanks again, Laura."
16 Is this your e-mail, ma'am?
17 A. That is. Would you like the background on
18 that?
19 Q. Is this your e-mail, ma'am?
20 A. Yes. Would you like the background?

Hopper vs JPMC

24. PAGE 89:14 TO 89:19 (RUNNING 00:00:19.646)

14 Q. (BY MR. LAUTEN) All right. Did -- when you
15 told him you apologized for your ungrateful behavior,
16 did you -- was it sincere at the time?
17 A. You know, it wasn't that sincere. It was I
18 felt that if I did not suck up to Lenny at that moment,
19 he was going to walk out of our case.

25. PAGE 116:21 TO 117:03 (RUNNING 00:00:18.775)


21 Q. (BY MR. MALESOVAS) The only fee agreement you'
22 ever had with me with respect to JPMorgan is Exhibit
23 Number 2.
24 Is that true?
25 A. I can't remember if you were on the hourly
00117:01 agreement.
02 Q. I wasn't.
03 A. Okay. Then yes.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:10:38.540)

Hopper vs JPMC

 Hopper, Stephen (Vol. 01) - 04/16/2018

1 CLIP (RUNNING 00:17:25.199)

 Would you state your name, please, sir. ...

SH03

31 SEGMENTS (RUNNING 00:17:25.199)



1. PAGE 7:13 TO 7:14 (RUNNING 00:00:02.856)

13 Q. Would you state your name, please, sir.
14 A. Stephen Hopper.

2. PAGE 8:20 TO 9:06 (RUNNING 00:00:41.420)

20 Q. (BY MR. MALESOVAS) Shortly after trial, within
21 a week or two, you retained Mr. Pennington, true?
22 A. True.
23 Q. You retained Mr. Pennington, you said, because
24 you had questions, in part, about Mr. Vitullo's
25 performance at trial, true?
00009:01 A. True.
02 Q. Sometime in October 2017, you and your sister
03 wanted to terminate Mr. Vitullo, true?
04 A. Well, I think my sister was probably more
05 inclined to terminate Mr. Vitullo. I was more inclined
06 to hear what her new lawyers had to say.

3. PAGE 9:15 TO 10:01 (RUNNING 00:00:28.909)

15 Q. Okay. So sometime in October 2017, your sister
16 wanted to terminate Mr. Vitullo, true?
17 A. I believe so, yes.
18 Q. And sometime in October 2017, you had enough
19 questions about Mr. Vitullo's performance that you hired
20 another attorney to advise you about terminating or not
21 terminating --
22 A. That'd be correct.
23 Q. -- terminating him. Is that true?
24 A. That's true.
25 Q. And that other attorney was Mr. Pennington?
00010:01 A. Yes, that's true.

4. PAGE 10:10 TO 11:19 (RUNNING 00:01:58.891)

10 Q. So you hired Mr. Pennington in October 2017.
11 And within a couple of days, you then hired Mr. Levinger
12 in October of 2017?
13 A. I -- I may have the -- you know, I -- I can't
14 tell you how many days, but it was probably within the
15 same week, yes.
16 Q. Okay. I'm going to hand you some of the
17 documents you produced here today, Exhibit Number 17.
18 This is a letter dated October 11th, 2017, from
19 Mr. Levinger to you. And is this your -- sorry, I only
20 have one copy, because that's all you brought.
21 But is that your fee agreement with
22 Mr. Levinger?
23 (Exhibit Number 17 marked.)
24 A. Yes.
25 Q. And the date of that fee agreement is
00011:01 October 11th, 2017?
02 A. That's correct.
03 Q. So sometime prior to October 11th, 2017, either
04 a couple of days or a week, is when you had hired
05 Mr. Pennington, true?

Hopper vs JPMC

06 A. That's my best recollection, yes.
07 Q. You -- you didn't tell Mr. Vitullo you hired
08 Mr. Pennington until December 2017, correct?
09 A. That's correct.
10 Q. You told Mr. Levinger you had hired
11 Mr. Vitullo -- excuse me. Rephrase.
12 You told Mr. Levinger you had hired
13 Mr. Pennington at the time you hired Mr. Levinger, true?
14 A. Yes. I -- that's my best recollection, yes.
15 Q. You asked Mr. Levinger to communicate with
16 Mr. Pennington, true?
17 A. Well, that's a very broad statement. Yes. I
18 anticipated that they would be communicating, but I also
19 viewed their representation as separate.

5. PAGE 12:11 TO 13:10 (RUNNING 00:01:11.063)

11 These are coming out of Exhibit 8. Exhibit 18, sir, I
12 only have one copy, but I'll hand that to you.
13 This -- that's a bill you got from
14 Mr. Levinger, correct?
15 (Exhibit Number 18 marked.)
16 A. Yes, it is.
17 Q. Look in the entry, and tell me if it's not true
18 that Mr. Levinger's first task was to call
19 Mr. Pennington and talk to him, true?
20 A. That -- that's what this reflects, yes.
21 Q. All right. And you knew he was doing that,
22 right?
23 A. Yes.
24 Q. And you wanted him to do that, didn't you?
25 A. Well, I certainly wanted my attorneys to have
00013:01 communication with each other, yes.
02 Q. But you never told Lenny Vitullo or
03 John Malesovas that you had hired Mr. Pennington to look
04 into any conduct during that period of time, correct?
05 A. Correct.
06 Q. And you were recording your phone calls with
07 Mr. Vitullo during that period of time, correct?
08 A. I believe so.
09 Q. How many recordings do you have, sir?
10 A. I believe there are six recordings.

6. PAGE 37:01 TO 38:11 (RUNNING 00:01:30.224)

00037:01 Q. You started recording Taylor Horton before the
02 trial. When did you first record Lenny Vitullo?
03 A. Day after the trial.
04 Q. Where were you when you made that recording?
05 A. As I said, it -- I was in his office.
06 Q. So you were in his office and who else was
07 present?
08 A. My sister.
09 Q. You, Mr. Vitullo, and your sister present in
10 Mr. Vitullo's office the day after the jury verdict?
11 A. That's correct.
12 Q. And you were surreptitiously recording that
13 conversation?
14 A. That's correct.
15 Q. Did you record the whole thing?
16 A. Yes, I did.
17 Q. Did you ever tell Mr. Vitullo you were
18 recording him?
19 A. No, I did not.
20 Q. Why were you recording him the day after you
21 received what you've characterized as a very favorable
22 jury verdict?

Hopper vs JPMC

23 A. Because I knew that Mr. Vitullo would be
24 putting his interest over mine and pushing for a quick
25 settlement. And I knew that -- or I didn't feel that
00038:01 that would be in my best interest.
02 Q. So why were you recording him?
03 A. Again, because at that point, I did not trust
04 that Mr. Vitullo would be giving us proper legal advice
05 that was in my best interest, and I wanted to document
06 that fact.
07 Q. So your testimony you did -- is you didn't
08 trust your own lawyer, who had just secured a -- what
09 was it -- \$4 billion jury verdict for you?
10 A. I don't agree that it was Mr. Vitullo that
11 secured that jury verdict.

7. PAGE 21:09 TO 22:14 (RUNNING 00:01:24.085)

09 Q. You considered both the defense of the JPMorgan
10 claims and the assertion of affirmative -- affirmative
11 claims against JPMorgan to be one in the same, in
12 essence?
13 A. Again, I hadn't thought, at that time, of any
14 differentiation between the two.
15 Q. That's what I mean. You considered them to be
16 one and the same. Whether JPMorgan was suing you or you
17 were suing them, you considered that to be one claim
18 that Mr. Vitullo and Malesovas Law Firm were to handle
19 under the terms of your contract.
20 Is that true?
21 A. As best as I can recall.
22 Q. Your contract is identical to Exhibit Number 2,
23 except for the interlineations. Is that true?
24 A. That's true.
25 Q. And is it your position that you do not owe the
00022:01 fee that's called for in Exhibit Number 2?
02 A. It's my position that I owe a reasonable fee
03 for the work that was done on this case.
04 Q. That's not my question, though. My question
05 is: Is it your position you do not owe the fee that's
06 called for under the terms of the contract marked as
07 Exhibit 2?
08 A. I -- I cannot answer your question.
09 Q. You don't have a position on that?
10 A. I think that's a position that would be defined
11 by an arbitrator.
12 Q. You don't have a position on that. Is that
13 true?
14 A. Not at this moment, no.

8. PAGE 23:20 TO 23:25 (RUNNING 00:00:10.395)

20 Q. You, Dr. Hopper, have no position whether the
21 fee called for under Exhibit Number 2 is reasonable or
22 unreasonable --
23 A. At this --
24 Q. -- true?
25 A. True. I believe at this point, that is why we

9. PAGE 24:04 TO 24:13 (RUNNING 00:00:27.519)

04 Q. (BY MR. MALESOVAS) Why didn't you tell
05 Mr. Vitullo that you had hired somebody way back in
06 October of 2017?
07 A. Because I no longer trusted Mr. Vitullo.
08 Q. So beginning in October of 2017, you no longer
09 trusted Mr. Vitullo, correct?
10 A. That's correct.
11 Q. Were you happy with the jury verdict in your

Hopper vs JPMC

12 case against JPMorgan?
13 A. Yes. I was happy with the jury verdict.

10. PAGE 25:14 TO 25:20 (RUNNING 00:00:20.326)

14 Q. (BY MR. MALESOVAS) Were you happy with the
15 settlement your appellate attorney, Mr. Levinger,
16 negotiated with JPMorgan Chase?
17 A. I was happy given what we had to work with.
18 Q. You authorized Mr. Levinger to enter into that
19 settlement, didn't you?
20 A. Yes, I did.

11. PAGE 26:12 TO 26:18 (RUNNING 00:00:13.893)

12 Q. Do you agree there's a dispute as to how much
13 of the settlement money should be paid in attorney's
14 fees?
15 A. Yes.
16 Q. Can you tell us right now what the amount is
17 that's in dispute?
18 A. Of course not.

12. PAGE 30:11 TO 30:13 (RUNNING 00:00:06.166)

11 Q. (BY MR. MALESOVAS) Okay. Well, you agree
12 there's some amount of attorney's fees that aren't in
13 dispute, correct?

13. PAGE 30:15 TO 31:03 (RUNNING 00:00:27.244)

15 A. Some amount?
16 Q. (BY MR. MALESOVAS) Yes.
17 A. Yes, some amount.
18 Q. All right. What's that amount that you're
19 willing to let the court distribute to Mr. Vitullo and
20 me?
21 A. I think that's up to the Court or an
22 arbitrator.
23 Q. No. I'm asking you right now.
24 A. I don't know.
25 Q. So you would be happy with the full fee, if
00031:01 that's what the Court found appropriate, being
02 distributed right now to me and Mr. Vitullo, pending the
03 outcome of the arbitration --

14. PAGE 31:05 TO 31:06 (RUNNING 00:00:02.805)

05 Q. (BY MR. MALESOVAS) -- or trial, whatever the
06 Court may decide?

15. PAGE 31:08 TO 32:01 (RUNNING 00:00:54.355)

08 A. Absolutely not.
09 Q. (BY MR. MALESOVAS) Why not?
10 A. Well, because the full fee is not yours. I
11 mean, the full amount is not yours.
12 Q. How much is?
13 A. Well, according to the current contract that I
14 have with you, it would be 45 percent that would be, you
15 know, Mr. Vitullo's and yours. And the rest my sister
16 and I.
17 Q. 45 percent of what?
18 A. 45 percent of whatever we obtain in the
19 settlement with JPMorgan Chase.
20 Q. 45 percent of the cash that they're going to
21 pay you?
22 A. Well, yes, I'd assume so. I mean --
23 Q. What --

Hopper vs JPMC

24 A. -- there's also expenses. I understand that.
25 Q. What about --
00032:01 A. That are in dispute.

16. PAGE 43:21 TO 44:17 (RUNNING 00:00:44.345)

21 Q. (BY MR. MALESOVAS) Can you answer my question.
22 Do you have any complaint with something I did or didn't
23 do?
24 A. Not that I know of.
25 Q. Thank you, sir. The sole reason you're saying
00044:01 you don't want to pay me under the fee agreement is
02 because of your complaints that you've stated directed
03 towards Mr. Vitullo.
04 Is that fair?
05 A. Sir, it's not fair. I've never said I didn't
06 want to pay you.
07 Q. The whole reason you don't want to pay the full
08 fee due under the contract to me is because of what your
09 complaints are directed toward Mr. Vitullo.
10 Is that accurate or not?
11 A. No, that's not accurate.
12 Q. What's not accurate --
13 A. I --
14 Q. -- about it?
15 A. I'm willing to pay you a reasonable fee, and
16 I'm hoping that an arbitrator will help me know what
17 that is.

17. PAGE 55:03 TO 55:25 (RUNNING 00:00:48.116)

03 Q. All right. And at the time that you terminated
04 Mr. Vitullo, all of the work that needed to be done to
05 obtain a Rule 11 settlement agreement to fully resolve
06 all claims had been completed, correct?
07 A. Correct.
08 Q. You accepted all of the legal services that
09 Mr. Vitullo performed from the time he entered into an
10 appearance until April 5th, when you terminated,
11 correct?
12 A. That's correct.
13 Q. All right. And he provided you a valuable
14 legal service from the time he appeared in the case
15 until the time you terminated him on April 5th, correct?
16 A. He provided some valuable services, yes.
17 Q. All right. So the answer to my question is,
18 Yes. He provided valuable legal services, correct?
19 A. Provided some valuable legal services, yes.
20 Q. And you accepted the benefits of those
21 services, correct?
22 A. That's correct.
23 Q. And your sister accepted the benefits of those
24 services, correct?
25 A. That is correct.

18. PAGE 58:19 TO 60:12 (RUNNING 00:01:28.309)

19 Q. All right. And JPMorgan Chase is the
20 independent administrator. One of the points of
21 leverage during the case the threat that they could try
22 and claw back these distributions that had been paid to
23 you previously, correct?
24 A. That's correct at some point.
25 Q. And you were telling Mr. Vitullo, Hey, look, we
00059:01 want to win this. But at the very least, don't let them
02 take away the money we've already gotten, right?
03 A. I believe that was communicated to Mr. Vitullo.
04 Q. Sure. And that was a big thing that you were

Hopper vs JPMC

05 telling Mr. Vitullo, was, Look, yeah. We want to win
06 this case. But by golly, don't let us -- don't let them
07 sue us for what we've already gotten.
08 You were telling him not to let them do
09 that, right?
10 A. Well, I -- I don't think we were telling him to
11 not let them sue us. But certainly, we were not wanting
12 that to happen --
13 Q. You --
14 A. -- yes.
15 Q. You didn't want to give the money back that you
16 had gotten from your dad's estate, true?
17 A. That's true.
18 Q. And JPMorgan Chase knew that they could try to
19 get that money back, correct?
20 A. Certainly they threatened that, yes.
21 Q. And one of the -- part of -- part of Lenny's
22 job, according to your own sister, was to make sure that
23 he protected the assets that you had already gotten,
24 correct?
25 A. Well, that's my understanding of what the
00060:01 contract entailed when we hired Mr. Vitullo, yes.
02 Q. So the answer to my question is, Yes. That was
03 part of his job, correct?
04 A. As I understood it, yes.
05 Q. And none of that money was taken back by
06 JPMorgan Chase, was it?
07 A. No, it wasn't.
08 Q. Okay. Did you say no?
09 A. No.
10 Q. Right. You got to keep that \$5 million between
11 you and your sister, correct?
12 A. That's correct.

19. PAGE 70:10 TO 70:25 (RUNNING 00:00:31.350)

10 Q. Let's -- let's talk about what you've got. You
11 got to keep the 5 million with your sister, right?
12 A. Yes, that's correct.
13 Q. You won on your counterclaim that
14 JPMorgan Chase was suing you for in excess of 3 million,
15 correct?
16 A. Well, it was dismissed. I mean, they dropped
17 it, yes.
18 Q. Well, if it's dismissed and you pay zero,
19 that's a pretty good result, right, when you're being
20 sued?
21 A. Yes.
22 Q. All right. You got a \$990,000 legal
23 malpractice settlement when you fired your third set of
24 lawyers that he got for you, correct?
25 A. That's correct.

20. PAGE 71:22 TO 71:25 (RUNNING 00:00:06.056)

22 Q. You had a zero offer before trial, correct?
23 A. From -- who are we talking about?
24 Q. JPMorgan Chase.
25 A. That's true.

21. PAGE 80:07 TO 80:16 (RUNNING 00:00:18.789)

07 Q. (BY MR. LAUTEN) Can you even sit here under
08 oath today and say how much JPMorgan Chase was suing you
09 for?
10 A. Well, that -- that number was changing.
11 Because it -- it wasn't even finalized while we were in
12 court.

Hopper vs JPMC

13 Q. Well, do you know how much you were being sued
14 for?
15 A. Again, that number kept changing.
16 Q. How much were you being sued for, Dr. Hopper?

22. PAGE 80:18 TO 80:22 (RUNNING 00:00:24.312)

18 Q. (BY MR. LAUTEN) What's the range from low to
19 high? What was your exposure, according to what was
20 pled in discovery from JPMorgan Chase?
21 A. It was probably between -- it's hard to
22 remember. 3.5 tops, to maybe 900 low.

23. PAGE 82:25 TO 83:03 (RUNNING 00:00:09.588)

25 Q. (BY MR. LAUTEN) You got -- do -- you can
00083:01 answer this, though, right?
02 You got a valuable legal service from
03 Mr. Vitullo, correct?

24. PAGE 83:05 TO 84:01 (RUNNING 00:00:45.250)

05 A. There were times when I got a valuable service
06 from Mr. Vitullo.
07 Q. (BY MR. LAUTEN) You accepted the benefits of
08 Mr. Vitullo's work, correct?
09 A. That's correct.
10 Q. And you waited until after you settled the case
11 to terminate him, correct?
12 A. No.
13 Q. Okay. Was the termination letter dated
14 April 5th?
15 A. Yes.
16 Q. And that was after a Rule 11 had been executed
17 to settle the case, correct?
18 A. Yes, that's correct.
19 Q. All right. So you terminated him after you
20 settled the case, right?
21 A. After we got the Rule 11 agreement, yes.
22 Q. All right. Just a coincidence, right? You
23 don't need him anymore.
24 A. Well, that's true. We didn't need him anymore.
25 We were afraid that he would harm us if we terminated
00084:01 earlier.

25. PAGE 95:13 TO 96:03 (RUNNING 00:00:43.148)

13 Q. Sir, you reached a settlement before you
14 terminated Mr. Vitullo, right?
15 A. Yes.
16 Q. There's nothing left to do except get the money
17 and sign the agreement, right?
18 A. Well, yes.
19 Q. And Mr. Vitullo isn't responsible for either of
20 those things, right?
21 A. Either of which things?
22 Q. Getting the settlement agreement signed or
23 getting you your money.
24 A. Well, he -- he certainly has an influence,
25 because JPMorgan put that as part of the settlement.
00096:01 Q. I'm talking about performed his obligations to
02 you, the client. At the time that he was terminated, he
03 had fully performed -- you already had a deal, right?

26. PAGE 96:05 TO 96:05 (RUNNING 00:00:00.377)

05 A. Yes.

Hopper vs JPMC

27. PAGE 97:04 TO 97:05 (RUNNING 00:00:05.370)

04 Q. Have you signed another agreement with
05 JPMorgan, other than the Rule 11 agreement?

28. PAGE 97:08 TO 97:08 (RUNNING 00:00:00.499)

08 A. Yes.

29. PAGE 98:06 TO 99:04 (RUNNING 00:00:45.930)

06 Q. (BY MR. MALESOVAS) And whatever settlement
07 agreement -- formal settlement agreement you executed
08 with JPMorgan, have they paid you the money?

09 A. No.

10 Q. Because the agreement you executed with
11 JPMorgan requires Mr. Vitullo and I to release our lien
12 before they will pay you.

13 Is that true?

14 A. That's true.

15 Q. And that's something Mr. Levinger negotiated
16 and put into the agreement on your behalf?

17 A. No.

18 Q. Something you negotiated and put into the
19 agreement?

20 A. No.

21 Q. Something you agreed to?

22 A. Yes.

23 Q. And Ms. Wassmer agreed to it?

24 A. Yes.

25 Q. And both of you signed the agreement?

00099:01 A. Yes.

02 Q. And JPMorgan signed the agreement?

03 A. Yes.

04 Q. When?

30. PAGE 99:06 TO 99:15 (RUNNING 00:00:19.180)

06 A. I'm -- I can't give you the exact date.
07 Sometime last week.

08 Q. (BY MR. MALESOVAS) After the temporary
09 restraining order was issued, right?

10 A. Yes.

11 Q. You were trying to get the money out before
12 then, weren't you?

13 A. No.

14 Q. When were you first presented with a written
15 agreement with JPMorgan to finalize the settlement?

31. PAGE 99:18 TO 99:24 (RUNNING 00:00:14.429)

18 Q. (BY MR. MALESOVAS) The written settlement
19 agreement that you just identified, when was one ever
20 first presented to you to sign?

21 A. Same day I signed it. So it would be last
22 week.

23 Q. After the temporary restraining order?

24 A. Yes.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:17:25.199)

CAUSE NUMBER PR-18-01390-1

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 & VITULLA, LLP,

Intervenors

v.

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

§ IN THE PROBATE COURT

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NUMBER 1

DALLAS COUNTY, TEXAS

AFFIDAVIT OF BRIAN P. LAUTEN

STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

BEFORE ME, the undersigned authority, on this day personally appeared Brian P. Lauten,
who after being sworn by me stated upon his oath:

1. My name is Brian P. Lauten and I am over the age of twenty one, of sound mind
and memory, and am otherwise fully competent to make this affidavit. The facts stated in this
affidavit are based upon my personal knowledge and they are true and correct.

2. I attended and was present during the Temporary Injunction hearing held in this case on April 24, 2018 ("TI Hearing"). I introduced into evidence without objection the video deposition clips of the testimony of Laura Wassmer and Dr. Stephens Hopper during the TI Hearing. Exhibit A attached to the affidavit of Kevin DeRita is a true and correct copy of the transcribed video deposition testimony of Laura Wassmer that was played to the Court, in open Court, before all parties present in Court at the TI Hearing. Exhibit B attached to the affidavit of Kevin DeRita is a true and correct copy of the transcribed video deposition testimony of Dr. Stephen Hopper that was played to the Court, in open Court, before all parties present in the Court at the TI Hearing.


3. The testimony reflected in Exhibits A and B attached to Kevin DeRita's Affidavit was introduced into evidence and accepted by the trial court as evidence, without objection from any party at the TI Hearing.

FURTHER AFFIANT SAYETH NOT.

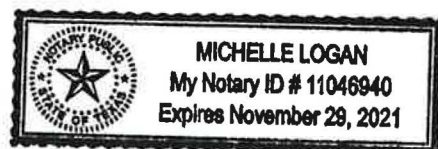
Signed this 30th day of August 2018.


BRIAN P. LAUTEN

SUBSCRIBED AND SWORN to before me on this 30th day of August 2018.


Notary Public in and for the State of Texas

My Commission Expires: 11-29-21



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

v.

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

v.

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

NUMBER 1

DALLAS COUNTY, TEXAS

IT IS THEREFORE ORDERED that the Court Reporter of Probate Court Number 1 of Dallas County, Texas is to prepare a supplemental reporter's record to include the testimony of Laura Wassmer attached as Exhibit 1.A to the unopposed motion to supplement reporter's

record and the testimony of Dr. Stephen Hopper attached as Exhibit 1.B to the unopposed motion to supplement reporter's record, and shall file such supplemental reporter's record with the Dallas Court of Appeals in *Stephen B. Hopper and Laura Wassmer v. John Malesovas d/b/a Malesovas Law Firm and Fee, Smith, Sharp & Vitullo, LLP*, Cause No. 05-18-00558-CV.

IT IS SO ORDERED ON THIS ____ day of _____, 2018.

JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:

/s/ Brian P. Lauten

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LAURA S. WASSMER**



Filing Submitted

Envelope Number: 27345118

Case Number: PR-11-03238-1

Case Style: IN THE MATTER OF MAX HOPPER,
DECEDENT

The filing below has been submitted to the clerk's office for review. Please allow 24 - 48 hours for clerk office processing.

Filing Details	
Court	Dallas County - County Clerk - Probate
Date/Time Submitted	9/7/2018 1:37 PM CST
Filing Type	Proposed Order
Filing Description	Agreed Order to Supplement the Reporter's Record
Type of Filing	EFileAndServe
Filed By	Michelle Logan
Filing Attorney	Brian Lauten

Fee Details	
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If the filing is canceled or rejected these funds will be released and will return to your account according to your financial institution's policies (typically 3-10 business days).	
This envelope is pending review and fees may change.	
Case Fee Information	\$0.00
Proposed Order	\$0.00
Total: \$0.00 (The envelope still has pending filings and the fees are subject to change)	

Document Details	
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