



Garden, and now asks this Court to dismiss it from the JAMS arbitration.

*Proceeding 3:* After Fee Smith filed this lawsuit, the clients filed a demand for AAA arbitration against Fee Smith and Block & Garden under their engagement letter with Fee Smith.<sup>2</sup>

Rather than having these disputes resolved by piecemeal litigation, it appears that all disputes among the parties can be adjudicated through the AAA arbitration proceeding. The clients have demanded arbitration against both law firms. The Fee Smith engagement letter subjects that firm to the AAA arbitration, and Block & Garden consents to participating in the AAA arbitration. As a result, this Court should abate this lawsuit in favor of the AAA proceeding.

### **Relief Requested**

Defendants seek an order abating this case—including any ruling on plaintiffs’ request for a stay of the JAMS arbitration—in favor of the AAA arbitration proceeding. Alternatively, Block & Garden seeks an order abating this case until completion of the JAMS arbitration and denying plaintiffs’ motion to stay or be dismissed from that arbitration.

### **Procedural Background Facts**

The fee dispute began after a verdict was rendered in favor of the clients with respect to claims against JP Morgan Chase in April 2018. The clients reached a

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<sup>2</sup> *Laura Wassmer and Dr. Stephen Hopper v. Fee, Smith, Sharp & Vitullo, LLP, Anthony L. Vitullo, John Malesovas, and Block, Garden & McNeill, LLP f/k/a Block & Garden, LLP.*

confidential settlement with JP Morgan. Fee Smith and Vitullo were terminated by the clients who then filed an action in probate court in Dallas County against the clients seeking to recover 45% of the amount of the settlement. The probate court compelled the fee claims of Fee Smith and Vitullo to binding arbitration.

Block & Garden filed a demand for JAMS arbitration against the clients and Fee Smith (Exhibit 1). In that arbitration proceeding, Block & Garden asserts a claim for declaratory judgment that it has a valid contingent-fee agreement with the clients and is entitled to its full contingent fee under that agreement.

After Block & Garden filed its arbitration demand seeking adjudication of its right to the contingent fee, Fee Smith filed this lawsuit in which it seeks (among other things) a declaratory judgment that Block & Garden's contingent-fee agreement with the clients is void, and that Block & Garden has no right to a contingent fee or any settlement proceeds in the underlying lawsuit (Exhibit 2).

Finally, the clients have filed a demand for AAA arbitration against both law firms (Exhibit 3). In the AAA arbitration proceeding, the clients seek a declaratory judgment that their contingent-fee agreement with Block & Garden is void. They also assert a claim for breach of fiduciary duty against Fee Smith and seek forfeiture of any contingent fee otherwise due to that firm.

In other words, all three proceedings explicitly seek relief concerning the validity and effect of the contingent-fee agreement between Block & Garden and the

clients, and whether the clients owe any contingent fee to either firm.

### **Argument**

The Texas Supreme Court has instructed lower courts that where pending litigation could affect issues to be resolved in arbitration, that litigation must be abated in favor of the arbitration proceeding. *In re Merrill Lynch & Co., Inc.*, 315 S.W.3d 888, 889 (Tex. 2010) (orig. proceeding).

#### **1. This case should be abated in favor of the AAA arbitration.**

It appears that all claims between all parties can be resolved in the AAA arbitration rather than by piecemeal litigation. The clients have demanded arbitration against both firms. Fee Smith cannot object to the AAA arbitration because it is required by the firm's engagement letter, and it has been ordered to arbitrate. Block & Garden consents to participating in the arbitration. And Fee Smith lacks standing to contest Block & Garden's presence in the arbitration at the behest of the clients.

"[W]hen an issue is pending in both arbitration and litigation . . . arbitration should be given priority to the extent it is likely to resolve issues material to [the] lawsuit." *In re Merrill Lynch & Co.*, 315 S.W.3d at 891 (citation and internal quotation marks omitted). Litigation must be abated where necessary "to ensure that an issue two parties have agreed to arbitrate is not instead decided in collateral litigation." *Id.* at 889 (citation omitted). Under these entrenched principles, this lawsuit must be abated in favor of the AAA proceeding.



**2. Even if this Court does not abate in favor of AAA arbitration, the lawsuit must be abated in favor of the JAMS arbitration.**

Block & Garden demanded JAMS arbitration against both the clients and Fee Smith. In its motion to stay, Fee Smith seeks abatement of the JAMS arbitration. But that is improper; all Fee Smith is entitled to request is to be dismissed from the JAMS arbitration as a non-signatory to the Block & Garden arbitration agreement contained in its engagement letter. And even if Fee Smith succeeds in obtaining that dismissal, this lawsuit still must be abated until resolution of the JAMS arbitration between Block & Garden and the clients.

Before citing the law compelling this result, an explanation. As previously noted, Block & Garden's goal is to have all claims resolved in the AAA arbitration. But given Fee Smith's history and conduct thus far, Block & Garden anticipates that Fee Smith may attempt to seek dismissal of Block & Garden from the AAA arbitration (though that would be legally insupportable). Thus, Block & Garden intends to wait a bit—either for written confirmation from Fee Smith disavowing any such intent, or for the AAA “dust to settle”—before deciding whether or not to dismiss the JAMS proceeding. Now, the law.

As previously noted, the Texas Supreme Court has repeatedly required that litigation be abated where it could moot the potential arbitration of related claims. *In re Merrill Lynch & Co.*, 315 S.W.3d at 891; *In re Merrill Lynch Trust Co.*, 235 S.W.3d 185, 196 (Tex. 2007) (orig. proceeding). This rule applies even where the

claims in litigation are brought by a non-signatory to the arbitration agreement.

That was precisely the situation in *Merrill Lynch Trust*, and the Court “concluded that the non-signatories’ litigation should be stayed” pending completion of arbitration. *In re Merrill Lynch & Co.*, 315 S.W.3d at 891 (citing *In Re Merrill Lynch Trust*, 235 S.W.3d at 191-96). The Court held “that the litigation involving the non-signatories to the arbitration agreement should be stayed lest it undermine issues to be resolved in the arbitration between the signatories.” *In re Merrill Lynch & Co.*, 315 S.W.3d at 891 (citing *In Re Merrill Lynch Trust*, 235 S.W.3d at 196).

That is precisely the situation in this case. Fee Smith’s claims concerning the validity of Block & Garden’s fee agreement and its entitlement to a contingent fee are the very same issues being contested in the JAMS arbitration between the clients and Block & Garden. As a result, this litigation must be abated in favor of that arbitration proceeding.

### **3. Fee Smith is subject to the JAMS arbitration proceeding.**

This Court decides whether Fee Smith is subject to arbitration as a non-signatory. *Jody James Farms, JV v. The Altman Group, Inc.*, No. 17-0062, 2018 Tex. App. LEXIS 405, at \*6 (Tex. May 11, 2018). As the Texas Supreme Court recently reaffirmed, there are a number of theories under which a non-signatory can be compelled to arbitrate—including third-party beneficiary status. *See id.* at \*10.

Under this theory, a non-signatory may be bound by an arbitration agreement

if that party is a third-party beneficiary to a contract containing an arbitration clause. *See Zinante v. Drive Elec., LLC*, 582 Fed. App'x 368, 371 (5th Cir. 2014). Here, Block & Garden's engagement letter with the clients explicitly refers to Vitullo's work on the case and affords him compensation for that work. Block & Garden and the clients intended Fee Smith to benefit from the engagement letter, and they clearly and fully spelled out Fee Smith's benefit as a third-party beneficiary. *See id.* As a result, Fee Smith can be compelled to arbitrate as a third-party beneficiary.

### **Conclusion**

Due to the pendency of both the AAA and JAMS arbitrations, this proceeding should be abated. With regard to the JAMS mediation, Fee Smith's motion to stay or be dismissed should be denied.

**Respectfully submitted,  
Johnston Tobey Baruch, P.C.**

By: /s/ Robert L. Tobey

Robert L. Tobey

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3308 Oak Grove Ave

Dallas, Texas 75204

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*Attorneys for Defendants*

### **Certificate of Service**

I hereby certify that on July 11, 2018, a true and correct copy of the foregoing document has been served electronically through the Court's electronic filing service provider upon all parties and counsel of record.

/s/Robert L. Tobey

**Block, Garden & McNeill, LLP**  
f/k/a Block & Garden, LLP

**VS.**

### Respondents.

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**ARBITRATION NO.** \_\_\_\_\_

Claimant, Block, Garden & McNeill, LLP f/k/a Block & Garden, LLP (“B&G”), files its Demand for Arbitration complaining of Respondents, Laura Wassmer; Dr. Stephen Hopper; Fee, Smith, Sharp & Vitullo, LLP (“Fee Smith”) and Anthony L. Vitullo and would show as follows:

1. This is a fee dispute between Claimant, its clients, Laura Wassmer and Dr. Stephen Hopper, and another law firm, Fee Smith, and one of its partners, Vitullo, who entered into a second contingent fee agreement with B&G's clients. Claimant has not been paid the money it is owed by its clients under its contingent fee agreement.

2. Claimant is Block, Garden & McNeill, LLP, f/k/a Block & Garden LLP, a Texas limited liability partnership with its principal place of business in Dallas, Texas.

3. Respondent, Laura Wassmer, is an individual who resides in Johnson County, Kansas, and may be served through her counsel, James E. Pennington, Law Offices of James E. Pennington, P.C., at 900 Jackson Street, Suite 440, Dallas, Texas 75202-4473.
4. Respondent, Dr. Stephen Hopper, is an individual who resides in Oklahoma City, Oklahoma, and may be served through his counsel, James E. Pennington, Law Offices of James E. Pennington, P.C., at 900 Jackson Street, Suite 440, Dallas, Texas 75202-4473.
5. Respondent Fee Smith is a Texas limited liability partnership and may be served at its principal place of business, 13155 Noel Road, Suite 1000, Three Galleria Tower, Dallas, Texas 75240.
6. Respondent Vitullo is a partner in Fee Smith and may be served at 13155 Noel Road, Suite 1000, Three Galleria Tower, Dallas, Texas 75240.

### **III. Jurisdiction and Venue**

7. Jurisdiction is proper with JAMS because the Agreement between B&G and Wassmer and Hopper states as follows:

#### **Arbitration**

In the event you believe that any statement for our services is erroneous for any reason, please notify us of the same within 10 days after receipt of such statement stating the basis for such belief. If agreement cannot be reached with respect to the amount owed, you agree to pay promptly the undisputed portion of our statement. Any dispute over fees and/or costs (a Dispute) will be submitted to and settled exclusively by binding arbitration, in accordance with the provisions of this Legal Services Agreement, subject only to any applicable requirement of state law that the parties engage in a preliminary non-binding mediation or arbitration regarding fee disputes. A party to the Dispute may commence arbitration by sending written notice to the other party demanding resolution of the Dispute through arbitration and setting forth the nature of the controversy, the dollar amount involved, if any, and the remedies sought (an "Arbitration Notice").

Binding arbitration shall be conducted in accordance with the Judicial Arbitration and Mediation Service/Endispute Rules and Procedures for commercial disputes (the "JAMS Rules"). Arbitration shall be held in Dallas County, Texas before an arbitrator

selected pursuant to the JAMS Rules who will have no personal or pecuniary interest, either directly or indirectly, from any business or family relationship with either of the parties, and who the parties agree will be the same person for any and all Disputes which are arbitrated pursuant to the terms of this Legal Services Agreement. As soon as reasonably practicable, a hearing with respect to the Dispute will be conducted by the arbitrator. As soon as reasonably practicable thereafter, the arbitrator will arrive at a final decision, which will be reduced to writing, signed by the arbitrator and mailed to each of the parties and their legal counsel. No discovery will be permitted.

The substantive laws of the State of Texas will be applied by the arbitrator, without regard to the choice of law provisions thereof. The rules of evidence applicable to judicial proceedings will not apply at the arbitration proceedings; evidence submitted by the parties may be admitted or excluded in accordance with the JAMS Rules applicable to the proceeding.

All decisions of the arbitrator will be final, binding and conclusive on the parties and will constitute the only method of resolving Disputes subject to arbitration pursuant to this Legal Services Agreement. The arbitrator or a court of competent jurisdiction may issue a writ of execution to enforce the arbitrator's award. Judgment may be entered upon such an award in accordance with applicable law in any court having jurisdiction thereover.

The parties will equally share the costs of the arbitrator and the arbitration fee (if any). Each party will bear that party's own attorneys' fees and costs, and the prevailing party will not be entitled to reimbursement by the other party of any of its fees or costs incurred in connection with the arbitration hereunder, regardless of any rule to the contrary in the applicable arbitration rules.

Either party may seek confirmation of the arbitration award in the courts situated in Dallas County, Texas, and each party hereby consents to the exclusive jurisdiction and venue of the courts situated in Dallas County, Texas in any claim or action arising hereunder.

**By entering into this Legal Services Agreement, you hereby agree to waive any and all rights to a jury trial regarding any Dispute.**

8. The Dallas office of JAMS is the appropriate venue for B&G's arbitration claims against Respondents since all of the events giving rise to the claims in this case occurred in Dallas, Texas, B&G's engagement agreement was performed in Dallas, Texas, and the arbitration clause in the engagement agreement specifies that any arbitration between B&G and its clients will be conducted in Dallas County, Texas.

#### **IV. Factual Background**

9. On October 8, 2012, Dr. Hopper and Ms. Wassmer, pursuant to Vitullo's introduction and recommendation, retained B&G to pursue claims against JP Morgan Chase Bank, N.A. for breach of fiduciary duty and mismanagement in the administration of the Estate of Max D. Hopper and to handle the probate matters associated with the Estate pending resolution of an appeal arising out of the probate court's rulings on the partition of the homestead (the "Claims"). A copy of the engagement agreement is attached as Exhibit 1. B&G was to be compensated by a fixed fee in the amount of \$100,000 for "Pre-Trial Services" described in the engagement agreement. Although B&G performed the Pre-Trial Services contemplated by the engagement agreement, only \$51,900 in fees were paid to B&G.
10. In addition, Dr. Hopper and Ms. Wassmer agreed to compensate B&G with a hybrid fee of one half of B&G's standard hourly rates for services performed at trial and a contingent fee of 20% of the gross recovery on the Claims.
11. The engagement agreement also authorized B&G to retain Vitullo and his firm, Fee Smith, to perform legal services on behalf of Dr. Hopper and Ms. Wassmer, which happened. Vitullo had reviewed the B&G engagement agreement and was aware of its terms. B&G and Vitullo agreed that if the case against JP Morgan went to trial, Vitullo would serve as the lead trial lawyer. As a result, the services of Fee Smith and Vitullo were covered by B&G's hybrid contingent fee agreement with Dr. Hopper and Ms. Wassmer, and B&G and Vitullo agreed to split the 20% contingent fee equally. Vitullo then brought in James Bell to assist in representing the clients in the defense of claims asserted by Jo Hopper, the clients' stepmother. B&G has never been terminated as counsel for Dr. Hopper and Ms. Wassmer, so its engagement agreement remains in full force and effect according to its



terms.

12. Subsequently without the knowledge or consent of B&G, Vitullo and Fee Smith entered into a separate contingent fee agreement with Dr. Hopper and Ms. Wassmer whereby the clients were obligated to pay Vitullo and Fee Smith 45% of any recovery. On information and belief, Vitullo and Fee Smith did not advise the clients that they might have to pay a contingent fee to both B&G and to Fee Smith.
13. The Claims were successfully tried to a verdict. Throughout the proceedings against JP Morgan and the trial, B&G was copied on Fee Smith's internal distribution service list and B&G remains as counsel of record for the clients to date.
14. After the verdict was rendered in favor of the clients with respect to the Claims in April 2018, the clients reached a confidential settlement with JP Morgan. The terms of the settlement including the amount to be paid to the clients are unknown to B&G. As a result, B&G does not know the amount of the fee it is owed. Fee Smith and Vitullo have filed an action in probate court in Dallas County against the clients seeking to recover 45% of the amount of the settlement.

## **V. Claims**

15. B&G incorporates the factual allegations contained in paragraphs 1-14 into all of its claims.

### **1. Declaratory Judgment**

16. B&G requests that the arbitrator declare the rights of the parties as follows:
  - a. That B&G has a valid and existing contingent fee agreement with its clients, Dr. Hopper and Ms. Wassmer, that has never been terminated and B&G is

entitled to receive 20% of any recovery made by clients on the Claims.

- b. That B&G has a valid and subsisting attorneys' fees lien on the proceeds of the settlement with JP Morgan.

## **2. Breach of Contract**

- 17. The engagement agreement between B&G and its clients, Dr. Hopper and Ms. Wassmer, is valid and existing and has never been terminated. Despite these facts, the clients have failed to pay B&G \$48,100, which is the balance of the \$100,000 flat fee that is owed to B&G, and have indicated they will not pay any of the 20% contingent fee owed from the recovery made by the clients on the Claims.

## **VI. Damages**

- 18. B&G is entitled to receive \$48,100, which is the balance of the \$100,000 flat fee that is owed to B&G, and 20% of the recovery made by the clients on the Claims. Since the amount of the settlement to be paid to the clients has not been disclosed to B&G, it is unable to quantify this element of damages at the time of filing this Demand for Arbitration.

## **VII. Attorneys' Fees**

- 19. Pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code and Chapter 38 of the Texas Civil Practice and Remedies Code, B&G is entitled to recover an award of reasonable attorneys' fees from Respondents. B&G will disclose the amount of attorneys' fees sought at a reasonable time prior to the

final hearing in this case.

### **VIII. Right to Amend**

20. B&G reserves the right to amend this Demand For Arbitration as additional facts are learned in discovery in this matter.

### **IX. Prayer**

Wherefore, Claimant, Block, Garden & McNeill, LLP, prays:

1. That Respondents be served and be required to appear and answer this Demand for Arbitration;
2. That B&G have the declaratory relief requested above from all of the Respondents;
3. For recovery of its actual damages from Dr. Stephen Hopper and Laura Wassmer of \$48,100 and 20% of any recovery made by the clients on the Claims;
4. For an award of reasonable attorneys' fees for the filing, preparation and hearing of this arbitration;
5. For pre- and post-award interest at the highest rates allowed by law;
6. For costs of this proceeding; and
7. For such other and further relief at law or in equity to which B&G may show itself to be justly entitled.

Respectfully submitted,

**Johnston Tobey Baruch, PC**

By: /s/ Robert L. Tobey

Robert L. Tobey

Texas Bar No. 20082975

rltobey@jtlaw.com

Randy Johnston

Texas Bar No. 10834400

randy@jtlaw.com

Attorneys for Claimant Block, Garden &  
McNeill, LLP

**Certificate of Service**

On May 8, 2018, a copy of this pleading was served on all parties, via email and via facsimile.

/s/ Robert L. Tobey

# BLOCK & GARDEN, LLP

Sterling Plaza  
5949 Sherry Lane, Suite 900  
Dallas, Texas 75225

October 8, 2012

Telephone  
214 866-0990

Dr. Stephen Hopper  
Mrs. Laura Wassmer  
3625 N. Classen Blvd.  
Oklahoma City, OK 73118

Facsimile  
214 866-0991

Web Site  
www.bgvllp.com

Re: Engagement to Perform Legal Services

Dear Dr. Hopper and Mrs. Wassmer:

This letter sets forth the basic terms upon which you (hereinafter referred to as "you" or "Client")) have engaged Block & Garden, LLP (hereinafter referred to as "we" or the "Firm") to represent you in connection with the Scope of Engagement set forth in paragraph 1 below.

1. Scope of Engagement. In general, you have requested that we assist you with the prosecution of your claims, pending in Cause No. PR-11-3238-3 before Probate Court No. 3 of Dallas County, Texas, against JP Morgan Chase Bank, N.A. for breach of fiduciary duty and mismanagement in the administration of the estate of Max D. Hopper (the "Claims"). In connection with all such matters, we will provide services of a strictly legal nature. The precise time frame in which these services will be performed cannot presently be determined. We will keep you apprised of developments as necessary to perform our services and will consult with you as necessary to ensure the timely, effective and efficient completion of our work.

In representing you with regard to these matters, we will need to review information, whether written or oral, provided by you and be able to rely that such information is accurate and truthful. We will be relying on your representations herein that all the information presented by you to us, regardless of the media, is truthful and accurate, and you acknowledge that we may rely on such information.

2. Billing Policies and Procedures. We enclose a copy of the Firm's Legal Services Agreement (so called herein), which sets forth various terms regarding our representation of you. The terms of the Legal Services Agreement are specifically incorporated herein, therefore, please review the Legal Services Agreement in its entirety and call me with any questions.

Notwithstanding the foregoing, we have mutually agreed to a fixed fee arrangement for the prosecution of the Claims through the earlier to occur of the full settlement of the Claims or the day immediately preceding the commencement of trial (as such commencement is defined in Exhibit A attached hereto) of the Claims (the "Pre-Trial Services"). The Firm will provide the Pre-Trial Services for a fixed fee of \$100,000. Payment of 50% of such fixed fee (\$50,000) shall be due upon execution by your of this letter and prior to commencement of such services. Payment of the remaining 50% of such fixed fee (\$50,000) shall be due upon request when, based on the Firm's opinion, at least 50% of the Pre-Trial Services have been completed. If the Claims are fully settled prior to the commencement of trial (as such commencement is defined in Exhibit A attached hereto), the Firm will reimburse to you, to the extent already paid, or credit

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Mrs. Laura Wassmer  
October 8, 2012  
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towards the \$100,000 fixed fee, the percentage of the Pre-Trial Services not rendered based on the Firm's opinion. You hereby authorize the Firm to retain the services of Mr. Anthony "Lenny" Vitullo of Fee, Smith, Sharp & Vitullo, LLP, Dallas, Texas to perform legal services on your behalf. Any Pre-Trial Services performed by Mr. Vitullo will be included within the fixed fee set forth in this paragraph. The provisions of the Hybrid Contingent Fee Arrangement set forth on Exhibit A attached hereto are incorporated herein. In the event that trial commences on the Claims, the payment provision set forth in Exhibit A will control with respect to such trial services commencing as of the commencement of the trial (as such commencement is defined in Exhibit A attached hereto). It is currently anticipated that the Pre-Trial Services will include:

- Reviewing Glast Phillips & Murray, P.C.'s case file for purposes of developing the Claims;
- Consulting with Ms. Denise Sullivan regarding any errors or improprieties regarding JP Morgan Chase Bank, N.A.'s calculation and reporting of federal income taxes with respect to the estate of Max D. Hopper. You, and not the Firm, will be directly responsible for Ms. Sullivan's fees;
- Conducting discovery pursuant to the Texas Rules of Civil Procedure regarding if Max D. Hopper had additional assets that should have been included within his estate;
- Reviewing the fees charged by JP Morgan Chase Bank, N.A. to such estate;
- Defending two depositions and taking four depositions to develop the Claims; and
- Developing a damage model with respect to the Claims.

Subject, of course, to our ethical and professional obligations, you agree that the Firm may terminate its legal services and withdraw from this engagement in the event our fee statements are not paid in a timely manner, which we consider to be within thirty (30) days of receipt. In the event the Firm elects not to terminate, you further agree that in the event a fee statement is not paid within thirty (30) days of issue, the Firm, in its discretion, may apply any retainer to any outstanding balance. You would then be required to deposit replacement funds into your trust account to bring its balance back up to the agreed upon retainer level.

3. Termination. You may terminate your engagement of the Firm at any time, and you hereby agree that the Firm may withdraw its representation of you, regardless of the status of any transaction or matter, in the event that (i) we do not receive payment of any statement within 30 days after receipt thereof by you; (ii) we have an irreconcilable difference of opinion with you about policy decisions in handling our representation of you; (iii) we discover any misrepresentation of information provided to us by you in connection with our representation of you; (iv) you engage in any conduct or activities contrary to our advice that in our opinion could

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Mrs. Laura Wassmer  
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constitute a violation of applicable laws; or (v) we are permitted or required to withdraw under any provision of the Code of Professional Responsibility, as amended, in the State of Texas, or applicable law. In addition, you understand that we reserve the right to withdraw our representation in the event that we determine that a conflict of interest exists with respect to another client of the Firm.

In the event of dismissal, withdrawal, or termination of the engagement of the Firm, it is agreed and understood that (i) the terms of this letter agreement and the Legal Services Agreement pertaining to fees, costs, and/or expenses for services rendered up to and including such date of dismissal, termination, or withdrawal of employment, shall remain in full force and effect; (ii) the terms of indemnification herein shall remain in full force and in effect; (iii) in the event the Firm is compelled to intervene in a pending lawsuit or initiate any subsequent proceeding in order to recover the fees, costs, and/or expenses due the Firm, the Firm shall be entitled to receive any and all attorney's fees, costs, and/or other expenses accruing in favor of the attorney or attorneys employed by the Firm to recover the fees, costs, and/or expenses due the Firm; and (iv) you agree, jointly and severally, to pay any and all court costs and expenses connected with such pending lawsuit as hereinabove described.

**THE STATE BAR OF TEXAS INVESTIGATES AND PROSECUTES MISCONDUCT COMMITTED BY TEXAS ATTORNEYS. ALTHOUGH NOT EVERY COMPLAINT AGAINST OR DISPUTE WITH A LAWYER INVOLVES PROFESSIONAL MISCONDUCT, THE STATE BAR OFFICE OF GENERAL COUNSEL WILL PROVIDE YOU WITH INFORMATION ABOUT HOW TO FILE A COMPLAINT. FOR MORE INFORMATION, YOU MAY CALL, TOLL-FREE, 1-800-932-1900.**

4. Miscellaneous. You agree that the Firm may identify you as a client in any of our advertising or other promotional materials or activities. We agree that you may disclose that the Firm has agreed to provide legal services (but not the economic terms of such provision) and the nature of such services to you.

We are, of course, delighted to be asked to provide legal services to you, and we are looking forward to working with you on this engagement. Should you ever wish to discuss any matter relating to our legal representation, please do not hesitate to call me directly, or to speak to one of our other attorneys who is familiar with the engagement.

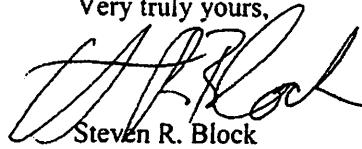
BLOCK & GARDEN, LLP

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Mrs. Laura Wassmer  
October 8, 2012  
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We look forward to serving you.

Best regards.

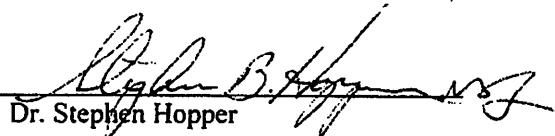
Very truly yours,



Steven R. Block

Enclosures: 1. Legal Services Agreement  
2. Exhibit A—Hybrid Contingent Fee Arrangement

ACCEPTED AND AGREED TO THIS  
19 DAY OF OCTOBER 2012:

By:   
Dr. Stephen Hopper

By: \_\_\_\_\_  
Laura Wassmer



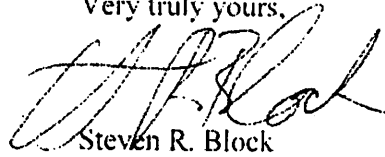
BLOCK & GARDEN, LLP

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Mrs. Laura Wassmer  
October 8, 2012  
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We look forward to serving you.

Best regards.

Very truly yours,



Steven R. Block

Enclosures: 1. Legal Services Agreement  
2. Exhibit A—Hybrid Contingent Fee Arrangement

ACCEPTED AND AGREED TO THIS  
22nd DAY OF OCTOBER 2012:

By: \_\_\_\_\_  
Dr. Stephen Hopper

By:   
Laura Wassmer

## **LEGAL SERVICES AGREEMENT**

This Legal Services Agreement (so called herein) sets forth various standard terms applicable to our rendering services as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this Legal Services Agreement carefully and contact us promptly if you have any questions.

### **How Fees Are Set**

The amount to be charged for the legal services we provide to you will ordinarily be calculated on an hourly basis at our standard hourly rates. These hourly rates presently vary from \$350 to \$550, depending on the attorney who is providing the services, and are adjusted periodically. In determining a reasonable fee for our services, we may consider other factors as set forth in Section 1.04(b) of the Texas Disciplinary Rules of Professional Conduct, which governs all Texas lawyers. A copy of Section 1.04(b) will be furnished upon request. We may adjust the charge downward or upward based on factors such as the novelty or complexity of the issues and the problems encountered, the extent of the responsibility involved, the results achieved, the efficiency of our work, the customary fees for similar legal services, and other factors that will enable us to arrive at a fair fee under the circumstances.

We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible we will furnish such an estimate based on our professional judgment, but always with a clear understanding that it is not a maximum or fixed fee quotation. The ultimate cost is frequently more or less than the amount estimated.

For certain well-defined services, for example, business incorporation, we will quote a fixed fee. It is our policy not to accept representation on a fixed-fee basis except in such defined-services areas or pursuant to a special arrangement tailored to the needs of a particular client. In all such situations, the fixed-fee arrangement may be set forth in an exhibit to the engagement letter agreement, setting forth the amount of the fee, when it is payable, and the scope of the services to be provided.

Any fees and costs we might have previously discussed are estimates only. You also understand that the payment of the Firm's fees and expenses is not contingent upon the outcome of any matter with respect to which the Firm represents you.

### **Expense Disbursements and Other Charges**

We typically incur and pay on behalf of our clients a variety of out-of-pocket costs arising in connection with legal services. Third-party charges incurred on your behalf in significant amounts will be sent to you for payment direct to the vendor. We will bill you monthly for our other expense disbursements incurred on your behalf (filing fees, travel expenses, delivery costs, expert witness fees, cost of preparation of exhibits, photographs, videos or publications, investigative fees and expenses, etc.), together with a charge in the amount of \$40 per month for copying, printing, long distance telephone, telecopy, and telex services. These will be billed to you on the same basis as charged to our other clients. A complete explanation of

the basis of such charges will be provided upon request. The Firm may also, in the exercise of my legal judgment, retain the services of various experts (including but not limited to other attorneys) to assist in our representation of you, which we agree to discuss with you in advance of their engagement, and you agree to be solely responsible for the payment of their fees.

### **Security Deposits**

Clients of the Firm are commonly asked to deposit a security deposit with the Firm to secure fees and expenses rendered and incurred by the Firm. We will not bill against the security deposit, but will return it to you at the conclusion of this engagement or, at your election, apply it against the final bill.

### **Billing Arrangements and Term of Payment**

We will bill you on a regular basis, normally each month, for fees, expenses, disbursements, and other charges. You agree to make payment within 30 days of the date we mail our invoice. All past due invoices will incur a rebilling charge of 1.5% per month. Notwithstanding the foregoing, in this matter you will only receive one bill for the Pre-Trial Services (excluding the initial \$50,000 payment due upon execution of this engagement letter agreement) for the remaining \$50,000 of the fixed fee for such Pre-Trial Services, which bill will be due and payable upon receipt.

### **Arbitration**

In the event you believe that any statement for our services is erroneous for any reason, please notify us of the same within 10 days after receipt of such statement stating the basis for such belief. If agreement cannot be reached with respect to the amount owed, you agree to pay promptly the undisputed portion of our statement. Any dispute over fees and/or costs (a "Dispute") will be submitted to and settled exclusively by binding arbitration, in accordance with the provisions of this Legal Services Agreement, subject only to any applicable requirement of state law that the parties engage in a preliminary non-binding mediation or arbitration regarding fee disputes. A party to the Dispute may commence arbitration by sending written notice to the other party demanding resolution of the Dispute through arbitration and setting forth the nature of the controversy, the dollar amount involved, if any, and the remedies sought (an "Arbitration Notice").

Binding arbitration shall be conducted in accordance with the Judicial Arbitration and Mediation Service/Endispute Rules and Procedures for commercial disputes (the "JAMS Rules"). Arbitration shall be held in Dallas County, Texas before an arbitrator selected pursuant to the JAMS Rules who will have no personal or pecuniary interest, either directly or indirectly, from any business or family relationship with either of the parties, and who the parties agree will be the same person for any and all Disputes which are arbitrated pursuant to the terms of this Legal Services Agreement. As soon as reasonably practicable, a hearing with respect to the Dispute will be conducted by the arbitrator. As soon as reasonably practicable thereafter, the arbitrator will arrive at a final decision, which will be reduced to writing, signed by the arbitrator and mailed to each of the parties and their legal counsel. No discovery will be permitted.

The substantive laws of the State of Texas will be applied by the arbitrator, without regard to the choice of law provisions thereof. The rules of evidence applicable to judicial proceedings will not apply at the arbitration proceedings; evidence submitted by the parties may be admitted or excluded in accordance with the JAMS Rules applicable to the proceeding.

All decisions of the arbitrator will be final, binding and conclusive on the parties and will constitute the only method of resolving Disputes subject to arbitration pursuant to this Legal Services Agreement. The arbitrator or a court of competent jurisdiction may issue a writ of execution to enforce the arbitrator's award. Judgment may be entered upon such an award in accordance with applicable law in any court having jurisdiction thereover.

The parties will equally share the costs of the arbitrator and the arbitration fee (if any). Each party will bear that party's own attorneys' fees and costs, and the prevailing party will not be entitled to reimbursement by the other party of any of its fees or costs incurred in connection with the arbitration hereunder, regardless of any rule to the contrary in the applicable arbitration rules.

Either party may seek confirmation of the arbitration award in the courts situated in Dallas County, Texas, and each party hereby consents to the exclusive jurisdiction and venue of the courts situated in Dallas County, Texas in any claim or action arising hereunder.

By entering into this Legal Services Agreement, you hereby agree to waive any and all rights to a jury trial regarding any Dispute.

#### **Indemnification**

You agree to indemnify and hold harmless the Firm and all of its partners and employees (collectively, the "Indemnitees") against and from any and all losses, claims, damages, or liabilities, joint or several, that the Indemnitees, or any of them, shall incur or to which the Indemnitees, or any of them, may become subject, and to reimburse the Indemnitees, or any of them, for any legal or other expenses (including the cost of any investigation and preparation) as they are incurred by the Indemnitees, or any of them, arising out of or in connection with any inquiry, litigation, or other proceeding, whether or not resulting in any liability, insofar as such losses, claims, damages, liabilities, or expenses arise out of, or are based upon, the Indemnitees' services hereunder provided only that such Indemnitees were not grossly negligent or did not act with willful misconduct. You further agree that the Firm shall bill to you, at the billing rates in effect at the time, the amount of time spent by any partner or employee in connection with the preparation, response, or defense to any claim against any party or other matter giving rise to a claim for indemnification hereunder, and all expenses incurred in connection therewith. Such statements shall be paid by you within 10 days after receipt thereof.

#### **Attorney/Client Relationship**

This Legal Services Agreement creates an attorney/client relationship only between the Firm and you. Therefore, you agree that this engagement does not create an attorney/client relationship between the Firm and any of your family members and affiliated entities. You will not provide the Firm with any confidential information about any of your family members or

affiliated entities, unless the Firm enters into a separate engagement letter with such family members and/or affiliated entities. You agree that our representation of you will not create any conflicts of interest in the event that other clients of the Firm are adverse to your family members or affiliated entities (unless such family members or affiliated entities are also represented by this Firm).

### **Limitations of Liability**

Block & Garden, LLP is a limited liability partnership under the laws of the State of Texas. This means your right to recover damages in a legal malpractice action that may exceed our insurance and Firm assets is limited to the personal assets of the lawyers whose acts or omissions gave rise to your claim.

### **Disposition of Files and Records**

Following termination of your engagement, we will maintain the confidentiality of any of your confidential information provided us in accordance with applicable rules of professional conduct. Any documents owned or provided by you, or provided by a third party for your account, will be returned to you unless you authorize destruction of them.

We will retain our own files pertaining to our representation of you, including materials prepared by or for the internal use of our attorneys. These include the Firm's administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, internal attorneys' work product (such as drafts, notes, internal memoranda and legal and factual research), written and electronic communications, pleadings, and investigative reports. At the conclusion or settlement of a matter, we will either return your file to you or place your file in storage for 4 years. We may request you to pay a file maintenance fee of \$50.00 per year. At the end of 4 years, your entire file will automatically be destroyed. Therefore, we request that you check your preference below:

☐ Return my entire file to me at the conclusion and settlement of a matter; or

☐ Place my entire file in storage for a period of 4 years and destroy my file after 4 years.

If no box is checked, we will place your entire file in storage for a period of 4 years, and destroy your file after 4 years. Unless applicable rules of professional responsibility require an earlier return, we may retain such file material pending receipt of payment of any outstanding fees or costs.

### **Communication**

We often send to our clients information about the Firm or legal matters we think might be of interest to them. You agree that we may send you this material, either by electronic mail or other means. You also agree that we may communicate with you about our representation of you by electronic mail on an unencrypted basis.

Either at the beginning or during representation, we might express opinions or beliefs concerning the matters on which we represent you and the results that might be anticipated. Any such statements made by us are an expression of opinion only, and are not a promise or guarantee of results or outcomes.

## EXHIBIT A

### HYBRID CONTINGENT FEE ARRANGEMENT

1. **SCOPE OF REPRESENTATION:** 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 filing or pursuing an appeal from disposition in the trial court. Client hereby agrees and understands that the Firm retains 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 the Firm shall retain its interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.
2. **AUTHORITY OF THE FIRM:** Client empowers the Firm 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 the Firm to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claims, and Client further authorizes and empowers the Firm's personnel 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 of the damages awarded or to be paid therefor, 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 Claims. Full power and authority is given by Client to the Firm to adjust, settle or compromise Client's Claims, but no final settlement shall be made and consummated by the Firm without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claims without the Firm's authority, agreement and consent. Should Client make a settlement in violation of these terms, Client agrees to pay the Firm the full fee agreed upon under paragraph 3 "Attorneys' Fee" below.
3. **ATTORNEYS' FEE:** This Agreement is a hybrid contingency fee contract. In the event the Client's Claims go to trial, Client will pay for the Firm's services at 50% of its prevailing rates in accordance with the invoicing and payment terms of the engagement letter agreement to which this exhibit is attached and the Legal Services Agreement incorporated therein. We presently anticipate that the primary services will be performed by Steven R. Block whose current hourly rate is \$550 and Christopher M. McNeill whose current hourly rate is \$450; we will also retain on your behalf the services of Anthony L. Vitullo with Fee, Smith, Sharp & Vitullo, LLP whose current hourly rate is \$500. Additionally, if the Firm is successful in recovering money or any thing of value for Client after trial begins, the Firm shall receive attorneys' fees in the amount of twenty (20%) 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. Client agrees that the Firm may, in its discretion, employ associate counsel to assist in prosecuting Client's causes of action, and Client does not object to the participation of any lawyers the Firm may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel (including Fee, Smith, Sharp & Vitullo, LLP) is the responsibility of the Firm. 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 (using a discount rate of 3%), and further authorizes the Firm to take attorneys' fees either in cash or in structured payment, as the Firm deems appropriate.

Client agrees that the Firm may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's Claims. 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 except as set forth in the immediately following paragraph.

In some instances, it may be necessary for the Firm 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 Claims; 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 the Firm may retain such special outside counsel to represent Client when the Firm deems 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:** Client will 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, and other related charges incurred as an expense on behalf of Client and paid to third-party vendors or incurred internally by the Firm and charged to Client in connection with the Firm's representation of Client.

5. **DISBURSEMENT OF PROCEEDS TO CLIENT:** Client understands that the Firm makes no guarantee or assurance of any kind regarding the likelihood of success of Client's Claims. Upon receipt by the Firm of the proceeds of any settlement or judgment after the commencement of trial, the Firm shall (1) retain twenty percent (20%) of the proceeds as their attorneys' fees, (2) deduct from Client's share of the proceeds any unpaid costs and expenses, including the fees of any special outside counsel that the Firm 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 the Firm on notice of their claim. Except as may be required by law, the Firm will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. **POWER OF ATTORNEY:** Client gives the Firm's personnel a power of attorney to execute 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:** Client agrees to cooperate with the Firm to permit Client's Claims to be investigated and developed; to disclose to the Firm all facts relevant to the Claims; 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 the Firm in connection with preparation and presentation of Client's Claims. The Client acknowledges and agrees that all communications with the Firm are privileged. The Client acknowledges that the Firm may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of the Firm's clients. Therefore, Client agrees and understands that other individuals who are clients of the Firm may also invoke the attorney client privilege as to the Firm's 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 the Firm of any change of marital status or death of spouse. Client shall promptly notify the Firm of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify the Firm of any other legal proceedings to which Client or Client's spouse is a party.

8. **NO TAX ADVICE:** The Firm has advised Client that the pursuit of resolution of the Claims may have various tax consequences. Client understands that the Firm does not render tax advice and is not being retained to offer such advice to Client or to represent Client before the IRS. The Firm has recommended that Client may wish to seek independent tax advice from attorneys or accountants who are qualified in tax matters concerning the ramifications of Client's Claims and their disposition. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's Claims.

Client understands that applicable state law may impose sales, service or other tax on any amount that Client may recover or the fees due the Firm hereunder. Client also understands that applicable federal income tax law may require that Client pay income tax on the fees due the Firm hereunder, separate and apart from and in addition to any taxes owed by the Firm. Client

agrees that any such taxes (other than federal and/or state income taxes that the Firm may owe on monies actually received by it) shall be paid out of Client's 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 these terms 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 the Firm, execute a new engagement letter 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 the Firm 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 the Firm an amount equal to twenty percent (20%) of the proceeds if the matter is resolved after trial commences, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the Claims described in the engagement letter agreement to which this Exhibit A is attached. Client does hereby give and grant to the Firm 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 the Firm hereunder. This security interest is to continue in the event the Firm is discharged without good cause. If the Claims are not assignable at law, Client expressly assigns to the Firm, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

12. **BINDING EFFECT:** These terms 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 the Firm's representation of Client at any time by providing written notice to the Firm. Should Client elect to terminate the Firm's representation prior to the full conclusion of the Firm's representation, Client understands and agrees that the Firm has 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 Claims. 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 the Firm.

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 Claims.

15. **MISCELLANEOUS:** In case any one or more of the provisions contained in this Exhibit A 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.

Angie Avina

CAUSE NO. DC-18-06835

|                                    |   |                         |
|------------------------------------|---|-------------------------|
| FEE, SMITH, SHARP & VITULLO, LLP   | § |                         |
| AND ANTHONY VITULLO                | § | IN THE DISTRICT COURT   |
|                                    | § |                         |
| Plaintiffs,                        | § |                         |
|                                    | § |                         |
| v.                                 | § | OF DALLAS COUNTY, TEXAS |
|                                    | § |                         |
| BLOCK GARDEN & McNeill, LLP, f/k/a | § |                         |
| BLOCK & GARDEN, LLP                | § |                         |
| CHRISTOPHER McNEILL and            | § |                         |
| STEVEN BLOCK                       | § | _____ JUDICIAL DISTRICT |
|                                    | § |                         |
| Defendants.                        | § |                         |

**PLAINTIFFS' ORIGINAL PETITION AND  
APPLICATION FOR DECLARATORY RELIEF**

Plaintiffs Fee Smith Sharp & Vitullo LLP ("FSSV") and Anthony Vitullo ("Vitullo") (collectively, "Plaintiffs") file this Original Petition against Defendants Block, Garden & McNeill, LLP f/k/a Block & Garden, LLP, Christopher McNeill, and Steven Block and would show the Court as follows:

**I.  
INTRODUCTION**

Plaintiffs represented Stephen B. Hopper and Laura S. Wassmer ("Hopper and Wassmer") in a lawsuit, which resulted in a highly publicized jury verdict against JP Morgan Chase ("Chase") in October 2017, and an eventual settlement not long thereafter. In that litigation ("Chase Lawsuit"), Plaintiffs represented Hopper and Wassmer on a contingency basis pursuant to a contract between Plaintiffs on the one hand and Hopper and Wassmer on the other hand. Defendants claim to represent Hopper and Wassmer, but stopped working for Hopper and Wassmer on the Chase Lawsuit in November 2015. In fact, Defendants performed virtually no legal services in

representing Hopper and Wassmer throughout the duration of the Chase Lawsuit.

Defendants now seek to recover an equal portion of Plaintiffs' contingency fee, not based on any legal work that Defendants performed at the trial (that they never even attended), but instead based on a novel theory that Defendants hired Plaintiffs on a separate contingency fee agreement to perform legal services for Hopper and Wassmer. But Defendants' theory summarily fails because Plaintiffs and Defendants never agreed to a written and enforceable contingency fee contract to provide legal services for Hopper and Wassmer (nor did Hopper and Wassmer consent to such a fee sharing arrangement). In addition, Defendants' alleged contingency fee agreement with Hopper and Wassmer is void *ab initio* because it does not comply with the fee sharing rules (required under Rule 1.04(f) of the Texas Rules of Disciplinary Conduct) and, moreover, the agreement upon which Defendants rely was terminated "for cause" by Hopper and Wassmer in November 2015.

Plaintiffs did not agree to a joint venture contingency arrangement with Defendants in the Chase Lawsuit; and, furthermore, the lack of a signature of Plaintiffs to Defendants' agreement with Hopper and Wassmer is *ipso facto* dispositive of same. Indeed, Plaintiffs were never even approached by Defendants with such an offer. There is absolutely no contract between Defendants and Plaintiffs that could provide the basis for any percentage split fee for Defendants. To this end, Defendants purported attempt to bind Plaintiffs to a hybrid contingency fee contract that Defendants unilaterally created and that Plaintiffs neither signed nor even saw at the time of formation violates the Texas Government Code's requirement that an attorney sign a contingency fee contract in order for it to be enforceable—that is notwithstanding Rule 1.04(f)'s fee

division requirement applicable to contingency agreements when multiple law firms undertake one, consolidated representation. Defendants are fully aware that they have no contract with Plaintiffs, and no right to assert any right to a contingency fee from the settlement of a jury verdict from a trial that they did not attend—much less prosecute.

Defendants knew that Hopper and Wassmer had hired Plaintiffs on a contingency basis to represent them in the Chase Lawsuit. Defendants knew that they had been terminated “for cause” by Hopper and Wassmer in November 2015 in the Chase lawsuit; and, furthermore, documentary evidence establishes that Defendants knew their obligations to Hopper and Wassmer had not only been marginalized, but their role in multiple pieces of litigation had been re-assigned to a *separate* lawsuit altogether involving the partition of assets (“Partition Lawsuit”).

Distilled to its essence, in November 2015, Hopper and Wassmer terminated Block and Garden for cause in the Chase Lawsuit. At that time, Christopher McNeill, a Block & Garden partner, agreed that Defendants would only represent Hopper and Wassmer with respect to the partition of their father’s Estate. McNeil, on behalf of and in furtherance of Block & Garden, further agreed that Block and Garden would no longer represent Hopper and Wassmer in the Chase Lawsuit. McNeill also consented to Hopper and Wassmer’s retention of Plaintiffs in a separate contingency fee contract, regarding the prosecution of the Chase Lawsuit. The parties’ understanding was memorialized in a November 14, 2015, electronic communication.

Despite the fact that Defendants have no right to a contingency fee on the Chase Lawsuit (either from Hopper and Wassmer or from Plaintiffs), Defendants have and continue to tortiously interfere with Plaintiffs’ contract with Hopper and Wassmer by

asserting their alleged right to a fee based upon an agreement, which is facially void and clearly in violation of Rule 1.04(f). Hopper and Wassmer have apparently received Defendants' demand for a fee; and, consequently, have refused to compensate Plaintiffs for their legal services. Thus, Defendants have not only illegally interfered with Plaintiffs' contract with Hopper and Wassmer, that interference has successfully prevented Plaintiffs from being duly compensated for their legal services, which have been and were fully performed in the Chase Lawsuit. Moreover, despite the fact that Defendants never retained Plaintiffs, nor did Defendants perform any legal services at trial, Defendants still maintain that they are entitled to a contingency fee, which has no basis in either fact or in law.

An actual and justiciable controversy exists between Plaintiffs and Defendants. Accordingly, Plaintiffs seek a declaration and findings that establish: (i) Defendants' purported contingency agreement is void *ab initio* because it fails Rule 1.04(f)'s fee division requirements; (ii) there is no contract between Plaintiffs on the one hand and Defendants on the other hand—and certainly no such enforceable contract, given the absence of any signature to same on behalf of any Plaintiff (TEX. GOV'T CODE ANN. § 82.065(a) (Vernon 2014)); (iii) and, finally, to risk stating the obvious, there is certainly no arbitration agreement whatsoever between Plaintiffs and Defendants.

## **II.**

### **PARTIES**

Plaintiffs FSSV and Vitullo are citizens of the state of Texas.

Defendant **Block, Garden & McNeill, LLP f/k/a Block & Garden, LLP** is a Texas limited liability partnership, with its principal place of business located at **5949 Sherry Lane, Suite 900, Dallas, TX 75225**. It can be served with process by serving

its named principal, Steven Block.

Defendant **Christopher McNeil** is a citizen of Texas who can be served with process by in hand service at his place of business located at **5949 Sherry Lane, Suite 900, Dallas, TX 75225**.

Defendant **Steven Block** is a citizen of Texas who can be served with process at his place of business located at **5949 Sherry Lane, Suite 900, Dallas, TX 75225**.

### **III.** **JURISDICTION AND VENUE**

Subject matter jurisdiction is properly vested in this Court. Jurisdiction is proper in this Court as the damages sought by Plaintiffs are within the jurisdictional limits of this Court.

Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs seek monetary relief in excess of \$1,000,000.00, which is within the jurisdictional limits of this Court.

This Court has personal jurisdiction over Defendants because they do business in the state of Texas.

Venue is proper in Dallas County under Texas Civil Practice and Remedies Code §15.002 as all or a substantial portion of the events giving rise to the claim(s) occurred in whole or in part in Dallas County. Venue is also proper in Dallas County, Texas, pursuant to § 15.002 because Dallas County is the county of residence for Defendant Block & Garden.

### **IV.** **FACTUAL BACKGROUND**

In 2012, Hopper and Wassmer approached Vitullo of FSSV to inquire about legal services related to the Estate of their deceased father, Max Hopper. Vitullo introduced



Hopper and Wassmer to Defendants. Thereafter, Defendants purportedly executed a fee agreement with Hopper and Wassmer, which provided that Defendants would represent Hopper and Wassmer with respect to Pre-Trial Issues only for a flat fee (“the Pre-Trial Issues Fee Agreement”).

Critically, neither FSSV nor Vitullo were parties to the Pre-Trial Issues Fee Agreement between Defendants and Hopper/Wassmer. However, Plaintiffs have subsequently been provided a copy of this Pre-Trial Issues Fee Agreement. This Pre-Trial Issues Fee Agreement stipulated that Defendants would receive a flat fee for their legal services in the amount of \$100,000. Thereafter, Defendants are believed to have received a legal fee for performing these purported services, and billed Hopper and Wassmer for their fee, per the express terms of the Pre-Trial Issues Fee Agreement.

The Pre-Trial Issues Fee Agreement included a provision that purported to convert the flat fee services agreement to a hybrid contingency fee agreement in the event that Hopper and Wassmer’s claims went to trial and there was a successful recovery in their favor. Critically, the terms of this hybrid contingency fee agreement were that Steven Block and Christopher McNeill would perform legal services at a rate of 50% of their normal rate (as opposed to the 100% charge for Pre-Trial Issues), but they would also receive 20% of the Client’s gross recovery “if [Block & Garden] is successful in recovering money or anything of value for the Client after trial begins....” This purported hybrid contingency fee agreement contemplated that Defendants would “retain on your behalf the services of Anthony L. Vitullo with Fee, Smith, Sharp & Vitullo, LLP who current hourly rate is \$500.” The purported hybrid contingency fee agreement

also stated that if Defendants did hire Mr. Vitullo, Defendants would be responsible for paying his legal fee.

**However, none of these events ever occurred. At no time did Defendants hire FSSV or Vitullo.** In fact, there was zero discussion of this alleged retention. Additionally, the purported contingency (that is, Block & Garden successfully recovering money or anything of value for Hopper and Wassmer) never happened, **because Block & Garden never appeared at trial nor did any work in the Chase Lawsuit after November 2015.** As such, Block & Garden did not “recover” anything. Moreover, at no time did Defendants compensate either FSSV or Vitullo any hourly rate (or 50% hourly rate) for the hours of work Vitullo and other attorneys employed with FSSV performed over the course of more than two years.

Defendants, despite their representations to Hopper and Wassmer, had no right to hire Vitullo or FSSV, no authority to hire Vitullo or FSSV, and never made an effort to hire Vitullo or FSSV. More importantly, Defendants never entered into any collateral agreement with either FSSV or Mr. Vitullo to represent Hopper and Wassmer under any fee agreement Defendants had or may have had with Hopper and Wassmer.

It is undisputed that these events never materialized. In November 2015, Defendants willingly agreed and represented to all parties that their engagement would be limited to Pre-Trial Issues, or, exactly what was set forth in Defendants’ Pre-Trial Issues Fee Agreement. Defendants, in fact, knew and freely consented to Hopper and Wassmer’s independent retention of Plaintiffs, including Anthony Vitullo of FSSV, specifically.

Defendants completed their legal services related to the Partition Lawsuit in the spring of 2016. To this end, Defendants' invoices (at least the ones that have been made available to Plaintiffs) reflect no additional legal services were provided to Hopper and Wassmer after spring 2016. Defendants' work was completed at that time; and no further legal work is believed to have been provided after this date. More than one year later, in the fall of 2017, Hopper and Wassmer's claims proceed to trial against Chase. Consistent with their November 2015 agreement, Defendants did not appear for trial or otherwise assist in the trial, which lasted more than one month. At no time during the trial did Defendants offer to compensate either Vitullo or FSSV any legal fee, whether reduced or otherwise, pursuant to any alleged contractual agreement to hire Plaintiffs. The only work performed by Defendants on the Chase Litigation before November 2015 was attending an isolated hearing, and a mediation.

In December 2017, Defendants demanded that Plaintiffs turn over legal fees allegedly owed to Defendants. The purported reason for this demand was a hybrid contingent fee agreement for "services performed at trial." Defendants claimed that they had hired Anthony Vitullo, though they declined to produce any details of this alleged retention. Defendants also omitted any reference to the November 2015 agreement that their services would be limited to the partition litigation. Defendants also failed to explain why they ceased performing the pre-trial services set forth in the Pre-Trial Issues Fee Agreement. Defendants also omitted the fact that they never showed up for trial.

Importantly, Section 82.065(a) of the Texas Government Code requires that any contingency fee agreement must be signed by both the attorney and the client. The

only contingency fee agreement signed by Plaintiffs is the contingency fee agreement between Plaintiffs and Hopper and Wassmer, not the Pre-Trial Issues Fee Agreement that Defendants claim entitles them to a hybrid contingency fee.

Rule 1.04(f) of the Texas Disciplinary Rules of Professional Conduct plainly states that a contingency fee contract that involves a fee sharing agreement or fee division agreement between multiple law firms must specify and explain the basis for this fee sharing arrangement—and the compensation must be commensurate with the services provided by each Firm—and there must be signatures of all parties and informed consent by the Client(s). The Pre-Trial Issues Fee Agreement that Defendants claim entitles them to a hybrid contingency fee provision fails to satisfy any of these requirements. In fact, the contingency upon which Defendants claim an interest is not even in the body of the contract; rather, its in an exhibit attached to that agreement separate from the signature page.

Germane to all of this is a temporary injunction that was recently granted in Plaintiffs' favor in the underlying case where the Chase Lawsuit was filed. See Exhibit "A." The probate court where the Chase Lawsuit was filed and ultimately tried has already found that Plaintiffs have shown a probability of success on the merits and that they have established that they are entitled to be paid for the full value of their contingency fee, especially given that the work has been completed.

## **V.**

### **CLAIMS FOR RELIEF**

#### **Count I—Application for Declaratory Relief (§ 37.001 TEX. CIV. PRAC. & REM. CODE et seq.)**

Plaintiffs 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 Plaintiffs and Defendants. Plaintiffs seek a declaratory judgment against Defendants pursuant to the UDJA declaring the rights, status, and other legal relations between and among these parties regarding the payment of legal fees, if any. As such, the Court should declare that: (1) Plaintiffs are not a party to any contingency fee contract with Defendants; (2) Defendants never retained Plaintiffs for services related to Hopper and Wassmer’s claims against Chase; (3) Defendants and Plaintiffs have no contractual agreement to perform legal services related to Hopper and Wassmer’s claims against Chase; (4) Defendants have no legal rights to the proceeds of any settlement obtained by Hopper and Wassmer via their post-trial settlement with Chase because Defendants failed to perform any legal services that are compensable on a contingency fee basis pursuant to any such contract; (5) Defendants have no legal rights to the proceeds of any settlement obtained by Hopper and Wassmer via their post-trial settlement with Chase because they waived and/or are estopped from claiming an interest; (6) Defendants have no legal rights to the proceeds of any settlement obtained by Hopper and Wassmer via their post-trial settlement with Chase because any purported contingency in the purported contract never occurred; and, most importantly, (7) the hybrid contingency provision in Defendants’ contract is void *ab initio* because it fails to comply with Rule 1.04(f) of the Texas Disciplinary Rules of Professional Conduct and Section 82.065(a) of the Texas Government Code.

## **Count II—Tortious Interference with Plaintiffs’ Contract and Business Relationship(s) with Hopper & Wassmer**

Plaintiffs have a valid and subsisting contract with Hopper and Wassmer. Defendants knew of this contract existed as early as November of 2015. Defendants, however, willfully and intentionally interfered with this contract by making a false claim to settlement proceeds based on an agreement that is facially void and by claiming that FSSV’s valid contingency agreement with Hopper and Wassmer was invalid because Defendant’s agreement took precedence over FSSV’s agreement. Defendants’ interference with Plaintiffs’ contract with Hopper and Wassmer proximately caused Plaintiffs’ injury, and Plaintiffs have incurred actual damages and/or losses including attorney’s fees far in excess of the minimum jurisdictional limits of this Court as a result of same for which they now sue.

## **Count III—Common Law Fraud (affirmatively and by omission) and Fraudulent Inducement**

Defendants made misrepresentations (both affirmatively and by omission) to Plaintiffs; Defendants knew that Plaintiffs would rely on those acts and/or omissions; Plaintiffs did in fact rely and reasonably rely on their mutual understanding of the parties’ agreements when Plaintiffs prosecuted the Chase Lawsuit to completion; and “but for” Defendants’ misrepresentations to Plaintiffs, the latter have been damaged.

In November 2015, Defendant Christopher McNeill, acting on behalf of and with the authority of Defendant Block & Garden, represented in a meeting with Vitullo, Stephen Hopper, and others that (1) he would represent Hopper and Wassmer solely on the partition lawsuit and not for a trial of Chase; and (2) he understood that FSSV would enter into a direct contingency contract with FSSV. However, Defendants’

McNeill and Block & Garden ostensibly had a plan to violate these representations. Defendants McNeill and Block & Garden failed to disclose that they would later falsely claim that (1) they represented Hopper and Wassmer during the trial of the Chase Lawsuit; (2) they would falsely claim they hired Vitullo for that trial; and (3) that they would deny ever knowing that FSSV had a direct contingency contract with FSSV. When Defendants' McNeill and Block & Garden made these representations and omissions, they knew that such representations and omissions were false and material and/or made such representations and omissions recklessly, as a positive assertion, without knowledge of their truth. Defendants made these representations with the intent that Plaintiffs rely on these representations. Plaintiffs relied on such representations and omissions in contracting directly with Hopper and Wassmer and by trying the Chase Lawsuit to verdict and through settlement. Such representations caused Plaintiffs' injury, for which they now sue.

**ATTORNEY'S FEES UNDER SECTION 37.009**

Pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code, Plaintiffs seek to recover their attorneys' fees upon which this Court may and should find to be "equitable" and "just."

**ACTUAL DAMAGES, SPECIAL DAMAGES, &  
CONSEQUENTIAL DAMAGES**

Plaintiffs seek actual damages, special damages, consequential damages, and attorney's fees. Plaintiffs are entitled to punitive damages in an amount to be determined by the trier of fact.

### **CONDITIONS PRECEDENT**

All conditions precedent to Plaintiffs' right of recovery have been performed, have occurred, or have been waived.

### **JURY DEMAND**

Plaintiffs hereby demand a jury trial on their tort claims. TEX. R. CIV. P. 216.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiffs respectfully request judgment in their favor against Defendants as follows:

- A. Defendants shall compensate Plaintiffs for their actual, special, and consequential damages;
- B. Plaintiffs shall be granted Declaratory Relief as set forth herein;
- C. Defendants shall compensate Plaintiffs for their attorney's fees;
- D. Defendants shall pay prejudgment and post-judgment interest at the maximum legal rate;
- E. Plaintiffs shall recover their costs in bringing this action; and
- F. Plaintiffs shall recover any and all such other relief whether in law or in equity upon which this Court may deem just and appropriate.

Dated this 24<sup>th</sup> day of May, 2018.



Respectfully Submitted,

**BRIAN LAUTEN, P.C.**

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

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**BRIAN P. LAUTEN**

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**ATTORNEYS FOR PLAINTIFFS  
FEE SMITH SHARP & VITULLO, LLP  
AND ANTHONY VITULLO**

CAUSE NO. PR-11-3238-1

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

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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

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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 24<sup>TH</sup> 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.) Intervenor's 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.) Intervenor's 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's, 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's.

The Court finds that Clients have admitted that some of the settlement funds belong to Intervenor's, but Clients refuse to identify the amount that belongs to Intervenor's and refuse to allow the undisputed amount that belongs to Intervenor's to be paid to Intervenor's. Based on this, as well as the Court's findings above, Intervenor's 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 Intervenor's' Application for a Temporary Restraining Order where Intervenor's 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 Intervenor's 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.

**IT IS FURTHER ORDERED** that trial in this matter is set for

*BT* 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 24<sup>th</sup> day of April 2018, at 2:05 o'clock p.m. *2018.*

  
**JUDGE PRESIDING**



the Clients signed another contingent fee agreement which more than doubled the fee and apparently cut out B&G.

## **II. Parties**

2. Respondent Fee, Smith, Sharp & Vitullo, LLP is a Texas limited liability partnership and may be served at its principal place of business, 13155 Noel Road, Suite 1000, Three Galleria Tower, Dallas, Texas 75240.

3. Respondent Anthony Vitullo is a licensed attorney and partner in Fee Smith and may be served at 13155 Noel Road, Suite 1000, Three Galleria Tower, Dallas, Texas 75240.

4. Respondent John Malesovas is a licensed attorney and may be served at the Malesovas Law Firm, 1801 South Mopac Expressway, Suite 320, Austin, Texas 78746.

5. Respondent Block, Garden & McNeill, LLP, f/k/a Block & Garden LLP, is a Texas limited liability partnership with its principal place of business in Dallas, Texas and may be served by and through its attorney, Robert Tobey, Johnston Tobey Baruch, P.C., 3308 Oak Grove Ave., Dallas, Texas 75204.

## **III. Jurisdiction and Venue**

6. Jurisdiction is proper with AAA because the engagement agreement between Fee, Smith, Vitullo, Malesovas, and the Clients states as follows:

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.<sup>1</sup>

7. The Dallas office of AAA is the appropriate venue for the Clients' arbitration claims against Respondents since all of the events giving rise to the claims in this case occurred in Dallas, Texas, the engagement agreement was performed in Dallas, Texas, and the arbitration clause in the engagement agreement specifies that any arbitration will be conducted in Dallas, Texas.

8. As explained below, the Clients initially entered into an agreement with B&G which also contained an arbitration provision.<sup>2</sup> The B&G agreement specified that any claims would be filed with JAMS; however, B&G has agreed these claims may be filed with AAA, in order to avoid multiple proceedings with JAMS and AAA.

#### **IV. Factual Background**

##### **A. Retention of B&G, Vitullo and Fee Smith**

9. Following the death of their father, the Clients became embroiled in litigation involving the administration of their father's estate (the "Probate Lawsuit"). During the pendency of the Probate Lawsuit, the Clients became dissatisfied with their attorneys, Glast, Phillips & Murray, so they contacted Vitullo to take over their representation.

10. Vitullo agreed to represent the Clients, but he indicated that he wanted to bring in another firm, B&G (who he had worked with in the past) to assist on the case. Vitullo then arranged for a meeting between the Clients and B&G, which occurred on or about September 21, 2012.

11. Following the aforementioned meeting, B&G sent the Clients a fee agreement, which indicated that Vitullo, along with B&G, would be representing the Clients. The attorneys' fee for their legal services consisted of two components: (1) a fixed fee in the amount of \$100,000 for

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<sup>1</sup> See para. 20 -- Exhibits 4-5 attached hereto. Vitullo and Fee Smith were also named in the B&G agreement.

<sup>2</sup> See page 7 of Exhibit 1 attached hereto.

all pre-trial services; and – if the case went to trial – (2) a hybrid fee comprised of a 20% contingent fee, plus an hourly fee based on ½ the attorneys’ normal hourly rates (for time spent during trial). This particular fee structure was proposed by Vitullo.

12. After receiving the aforementioned fee agreement from B&G, the Clients discussed it with Vitullo. Subsequently, the Clients requested that the agreement be amended to include a list of specific items that would be included within the scope of legal services to be performed by the attorneys.

13. On October 8, 2012, B&G amended the agreement (to include certain matters within the scope of the pre-trial services) and sent the revised agreement to the Clients. The Clients executed the revised agreement (“B&G Contract”) and, thereafter, B&G, along with Vitullo, began representing the Clients.<sup>3</sup>

14. According to the B&G Contract, the representation involved the Clients’ claims against JP Morgan Chase Bank for breach of fiduciary duty and mismanagement in the administration of their father’s estate.

15. At all times, it was understood that both B&G and Vitullo would represent the Clients in the Probate Lawsuit. Notably, however, the B&G Contract did not contain any provision describing how the fees would be shared between B&G and Vitullo, as required by Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct.

16. At all relevant times mentioned herein, Vitullo was acting as an employee and/or agent of Fee Smith. Therefore, Fee Smith is liable for all of Vitullo’s wrongful actions and/or conduct pursuant to the doctrine of respondent superior.

## **B. The Glass, Phillips & Murray Contract**

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<sup>3</sup> A copy of the B&G agreement is attached as Exhibit 1.

17. Based on events that had previously occurred in the Probate Lawsuit, Vitullo advised the Clients that they should pursue a legal malpractice claim against Glass, Phillips & Murray (“GPM”). In connection with this matter, Vitullo offered to represent the Clients, along with another attorney, James Bell, who was going to work as associate counsel on the case.

18. On August 3, 2015, Vitullo sent the Clients a draft of a proposed contingent fee agreement, which included – not only the legal malpractice claim against GPM – but it also included the claims against Chase Bank, which were within the scope of the previously signed B&G contract. The new agreement provided for a 40% contingent fee prior to filing suit; 45% after a lawsuit was filed; and 50% if the case went to trial. It mentioned nothing about B&G.

19. After receiving this new agreement, the Clients informed Vitullo that they did not fully understand the new proposal, or how B&G and/or James Bell (the new lawyer) fit into the equation. Specifically, they wanted to understand how signing the new agreement would impact the pre-existing arrangement with B&G.

20. Vitullo never provided the Clients with an explanation regarding their questions; instead, he sent them a revised agreement, which limited the scope of claims covered under the new agreement to the legal malpractice claim against GPM.

21. The initial draft of this revised agreement indicated that the attorney being retained as associate counsel to work on the case, along with Vitullo, was an attorney named John Malesovas – not James Bell.<sup>4</sup> After sending this draft, Vitullo advised the Clients that it contained a typo, and he requested that they sign another draft which substituted James Bell as the associate attorney, in lieu of Malesovas.

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<sup>4</sup> At that time, the Clients didn’t know John Malesovas.

22. On or about August 12, 2015, the Clients signed the contingent fee agreement with Vitullo and Bell regarding the legal malpractice claims against GPM (“GPM Contract”).<sup>5</sup> Although the GPM Contract disclosed that the fees would be shared 50/50 between Vitullo and Bell, it did not disclose that the fees would be shared with Malesovas.

23. Ultimately, Malesovas worked on the GPM case and he received a portion of the contingent fees on that case.<sup>6</sup> However, none of the attorneys ever disclosed to the Clients the fee sharing arrangement with Malesovas and/or the amount of fees paid to Malesovas.

### **C. Vitullo Ignores the B&G Contract and Insists on a New Contract**

24. In September, 2015, Vitullo informed the Clients that, if he was going to represent them in the Probate Lawsuit, he would need a separate agreement from the existing B&G Contract. Vitullo failed to inform or disclose to the Clients that he was *obligated* to represent them based on the B&G Contract.

25. On September 14, 2015, Vitullo sent the Clients another contract for them to sign. This contract provided that Vitullo would be paid hourly and required the Clients to pay him an initial retainer of \$10,000. Notably, the services that Vitullo performed under this agreement were the same legal services that both he and B&G had agreed to perform under the B&G contract.

26. On September 15, 2015, the Clients executed the aforementioned hourly contract with Vitullo (“Hourly Contract”).<sup>7</sup> Subsequently, Vitullo billed the Clients approximately \$12,250 for his legal services between September, 2015 and November, 2015. The Clients paid these invoices as requested.

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<sup>5</sup> A copy of this agreement is attached as Exhibit 2.

<sup>6</sup> Upon information and belief, Malesovas received ½ of the contingent fees from the settlement with GPM.

<sup>7</sup> A copy of this contract is attached as Exhibit 3.

27. On November 9, 2015, the Clients and Vitullo attended mediation in the Probate Lawsuit. The mediation was unsuccessful. The next day, Vitullo emailed the Clients a status report and analysis of the claims in the Probate Lawsuit.

28. In his report, Vitullo *recommended* the Clients convert his Hourly Contract to a contingency fee agreement – giving Vitullo a 40% contingent fee (45% in the event of trial). Additionally, Vitullo recommended the Clients hire James Bell to defend certain claims in the Probate Lawsuit for a flat fee of \$200,000 (the Clients’ step-mother, Jo Hopper, was attempting to recover attorney’s fees from the Clients in connection with a declaratory judgment action in the Probate Lawsuit). Finally, Vitullo recommended the Clients continue to use B&G to resolve a portion of the Probate Lawsuit.

29. Nowhere in Vitullo’s report, however, did he explain to the Clients that the legal services (mentioned in his report) were *already included* within the scope of the B&G Contract and that Vitullo was *already obligated* to provide these same services to the Clients. In fact, there is no discussion or analysis of several material facts that should have been considered by the Clients in connection with Vitullo’s recommendations, including, but not limited to, the following:

- a. That the \$100,000 fixed fee under the B&G Contract covered the same legal services proposed in Vitullo’s email;
- b. That Vitullo was already obligated to perform the same legal services under the B&G contract;
- c. An explanation regarding why the Clients should pay Vitullo a 40% contingent fee for performing the same pre-trial services covered under the B&G Contract (which only required a fixed fee of \$100,000);

- d. An explanation regarding why the Clients should pay James Bell an *additional* flat fee of \$200,000 for performing a *portion* of the pre-trial services covered under the B&G Contract (which only required a fixed fee of \$100,000 for *all* pre-trial services);
  - e. An explanation regarding why the Clients should pay Vitullo a 45% contingent fee, if the case went to trial, when the B&G Contract only required a 20% contingent fee (plus a reduced hourly rate);
  - f. A full discussion of all the material benefits and disadvantages to the Clients under the new proposed deal;
  - g. Any recommendation or advice that the Clients consult with another lawyer regarding the new proposed deal;
30. A few days later, pursuant to the aforementioned recommendation, Vitullo sent the Clients a new contingent fee agreement. Under the new agreement, Vitullo and his firm (Fee, Smith), along with associate counsel, John Malesovas, would receive a contingent fee of 40% if the case settled before trial and a 45% fee if the case went to trial. The agreement also provided that the Clients would *not* be responsible for paying any expenses as they were incurred.
31. On or about November 19, 2015, the Clients signed the new agreement (the “Second Contingent Fee Contract”).<sup>8</sup> One of the Clients (Laura Wassmer) made some handwritten interlineations to the contract before signing it.

#### **D. Vitullo, Malesovas and Fee Smith Breach the Second Contingent Fee Contract**

32. Paragraph 4 of the Second Contingent Fee Contract states as follows: “Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred.”<sup>9</sup> Notwithstanding this clear

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<sup>8</sup> Copies of the executed Second Contingent Fee Contract, signed by each client are attached as Exhibits 4-5.

<sup>9</sup> Exhibits 4 and 5 at 3 (emphasis original).

language, Vitullo, Malesovas and Fee Smith required the Clients to pay in excess of \$100,000 in expenses during their representation in the Probate Lawsuit.

33. On or about August 3, 2016, Vitullo, Malesovas and Fee, Smith invoiced the Clients for over \$67,000 in expenses related to the Probate Lawsuit. All of those expenses were paid by the Clients.

34. In October, 2016, Vitullo, Malesovas and Fee, Smith required the Clients to pay another \$20,238.15 in expenses in connection with the Probate Lawsuit. At the time, however, the Clients were led to believe those expenses were incurred in connection with the settlement of the GPM legal malpractice claim. These expenses were deducted from the GPM settlement; however, they were actually expenses incurred in the Probate Lawsuit.

35. In August, 2017, prior to the trial of the Probate Lawsuit, the Clients were requested to pay (and did pay) additional expenses in excess of \$35,000.

#### **E. Trial of the Probate Lawsuit**

36. In September, 2017, the Probate Lawsuit went to trial. At the close of evidence, the jury returned a remarkable verdict: actual damages in excess of \$3 million and exemplary damages of \$4 billion. Unfortunately, this verdict was severely jeopardized by several problems created by the attorneys, including but not limited to their failure to plead an exception to the exemplary damage cap – which would have allowed the Clients to recover more than the statutory maximum.

37. The attorneys also failed to present any expert testimony supporting the Clients' claims, although the Clients paid in excess of \$60,000 in expert witness fees. The attorneys also failed to designate an expert witness regarding their own attorney's fees. There were also numerous

problems with the jury charge submitted by the attorneys.<sup>10</sup>

38. As a result of these and other problems with the verdict, the Clients determined it was in their best interest to settle their claims with JPMorgan Chase. On April 4, 2018, the Clients reached a confidential settlement with JPMorgan Chase.

#### **F. Termination of Vitullo, Malesovas and Fee Smith**

39. On April 5, 2018, the Clients terminated their attorneys, Vitullo, Fee Smith and Malesovas.<sup>11</sup> The termination was based on a number of factors, including, but not limited to, those facts previously set forth herein. The Clients had good cause to terminate their attorneys.

40. On the same date, Vitullo and Fee Smith were requested to provide the Clients with their entire file regarding their representation of the Clients.<sup>12</sup> The file was requested to be produced in the same manner that it was maintained by Vitullo and Fee Smith, including all electronic files and physical files.<sup>13</sup>

41. As of this date, Vitullo and Fee Smith have not complied with the Clients' request for their files. They have failed to provide *any* physical files. With respect to electronic files, they have failed to produce all emails and other electronic files in the same manner those files were maintained – making it very difficult for the Clients to review the files. Moreover, several emails appear to be missing from these files.

42. In the April 5, 2018 termination notice, the Clients agreed to instruct Jeff Levinger, the appellate lawyer who negotiated the settlement with JPMorgan Chase, to retain a percentage of the settlement in his trust account until the fee dispute was resolved.

43. Unsatisfied with the Clients' offer to retain the disputed fee amount in Mr. Levinger's

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<sup>10</sup> Many of these problems were disclosed to the Clients by another attorney, Jeff Levinger, who they retained to assist with the case following the jury verdict.

<sup>11</sup> A copy of the termination letter dated April 5, 2018 is attached hereto as Exhibit 6.

<sup>12</sup> Exhibit 6 at 1-2.

<sup>13</sup> Exhibit 6 at 2.



trust account, Malesovas immediately filed an intervention the Probate Lawsuit, seeking to enforce the Second Contingent Fee Contract.

44. On April 6, 2018, the Clients reiterated and clarified their agreement to place the settlement funds into Mr. Levinger's trust account and agreed the disputed fees would not be disbursed until the dispute was resolved.<sup>14</sup> The Clients stated they would fully comply with Rule 1.14 of the Texas Disciplinary Rules of Professional Conduct and that Mr. Levinger would retain 45% of the settlement (plus expenses) in his trust account until this matter was resolved.<sup>15</sup> Alternatively, the Clients agreed to deposit the disputed funds with an independent escrow agent.<sup>16</sup>

**G. Vitullo, Malesovas and Fee Smith Breach the Arbitration Agreement and Interfere with the Settlement**

45. Notwithstanding the Clients' agreement to leave the disputed funds in trust, Malesovas, Vitullo and Fee Smith decided to move forward with their intervention lawsuit in breach of the agreement to arbitrate all disputes – including fee disputes – with the Clients.<sup>17</sup>

46. Moreover, they requested the probate court to issue a temporary restraining order to protect their disputed fee, even though there was no basis for this request. Specifically, there was no imminent danger of any harm regarding their attorney's fee because the Clients agreed that the disputed funds would remain in Mr. Levinger's trust account (or the account of an independent escrow account) until the dispute was resolved.

47. Their actual plan – as it turned out – was to interfere with the Clients' right to obtain the *undisputed* portion of the settlement proceeds. In furtherance of this plan, they requested and

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<sup>14</sup> See April 6, 2018 letter attached as Exhibit 7.

<sup>15</sup> See Exhibit 7.

<sup>16</sup> See Exhibit 7 at 2.

<sup>17</sup> The fee agreements, drafted by the attorneys, require all disputes – including fee disputes – to be submitted to binding arbitration. See Exhibit 1 at 6; Exhibits 4 and 5 at 7.

obtained an injunction prohibiting the Clients from receiving *any portion* of the settlement funds, including the *undisputed* portion. They did this in violation of Rule 1.14, which mandates that the undisputed portion of any settlement “shall be distributed” to the client.<sup>18</sup>

48. After the attorneys prevented the Clients from receiving the undisputed portion of the settlement funds and – after they forced the Clients to incur substantial legal fees in the intervention lawsuit – the court finally compelled the attorneys to arbitrate their fee dispute.<sup>19</sup>

## **V. Claims against Respondents**

49. At all relevant times mentioned herein, Vitullo was acting as an employee and/or agent of Fee Smith. Therefore, Fee Smith is liable for all of Vitullo’s wrongful actions and/or conduct pursuant to the doctrine of respondent superior.

### **A. Claims against B&G, Vitullo and Fee Smith**

50. The Clients entered into an agreement with B&G, whereby B&G, Vitullo and Fee Smith agreed to represent the Clients in the Probate Lawsuit; however, the contingent fee portion of the B&G Contract is unenforceable because it fails to comply with Rule 1.04(f) of the Texas Disciplinary Rules of Professional Conduct.

51. Rule 1.04(f) provides that if attorneys from more than one law firm join together to share a fee or to jointly represent a client, the attorneys *must* obtain from the client consent in *writing* to the terms of the arrangement *prior* to the time of the association, including:

- (i) the identity of all lawyers or law firms who will participate in the fee-sharing agreement, and

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<sup>18</sup> Vitullo, Malesovas and Fee Smith may claim that, technically, they haven’t violated Rule 1.14 because they’ve never had possession of these funds; however, this is a distinction without a difference because they *requested* that the court *prevent the Clients from receiving* the undisputed funds. Rule 1.14(c) requires any undisputed funds to be distributed to the Clients. Thus, it cannot be seriously disputed that they violated this Rule.

<sup>19</sup> A copy of the order compelling arbitration is attached as Exhibit 8. The Clients attempted to compel arbitration of this dispute immediately after the intervention was filed, but Vitullo and Fee Smith fought these attempts – insisting the court had jurisdiction and that the dispute shouldn’t be referred to arbitration.

- (ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and
- (iii) 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[.]

52. The B&G Contract fails to meet elements (ii) and (iii). Consequently, B&G may not enforce the contingent fee portion of the agreement. “No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that [does not comply with this Rule.]” *Rule 1.04(g), Texas Disciplinary Rules of Professional Conduct*. Instead, the attorneys are limited to recovering the reasonable value for their legal services based on quantum meruit. *Id.*

### **1. Declaratory Judgment**

53. The Clients request a declaration, pursuant to Section 37.002, et. seq. of the Tex. Civ. Prac. & Rem. Code (the Declaratory Judgments Act) regarding the parties’ rights pursuant to the B&G Contract. Specifically, the Clients seek a declaration that the contingent fee provision in the B&G Contract is unenforceable, void and/or illegal because it fails to comply with the mandatory fee sharing provisions contained in Rule 1.04(f) of the Texas Disciplinary Rules of Professional Conduct. As a result, B&G may not enforce this portion of the agreement and it is limited to recovering the reasonable value for its legal services based on quantum meruit.

54. Pursuant to Section 37.009 of the Tex. Civ. Prac. & Rem. Code, the Clients seek recovery of their costs and reasonable and necessary attorney’s fees.

### **2. Breach of Contract**

55. B&G and/or Vitullo and Fee Smith breached the B&G Contract by failing to perform the pre-trial services for the fixed fee, pursuant to the contract. The Clients seek to recover all damages caused by the breach of this contract. All conditions precedent to the Clients’ recovery for breach of contract have been performed or have occurred. Finally, the Clients seek recovery

of their reasonable and necessary attorneys' fees, costs and expenses through a final hearing, any enforcement proceedings and/or any appeals of this arbitration, pursuant to applicable Texas law, including, but not limited to, Section 38.001 of the Tex. Civ. Prac. & Rem. Code.

## **B. Claims against Vitullo, Malesovas and Fee Smith**

### **1. Breach of Fiduciary Duty**

56. Beginning on or about October 8, 2012, an attorney-client relationship existed between Vitullo, Fee Smith and the Clients. As a result of the attorney client relationship, Vitullo and Fee Smith owed a fiduciary duty to the Clients. Vitullo and Fee Smith breached their fiduciary duty to the Clients and such breach was a proximate cause of damages to the Clients.

57. Among other things, Vitullo and Fee Smith breached their fiduciary duty to the Clients by failing to fully and fairly disclose all important information to the Clients before the Clients executed the Hourly Contract and the Second Contingent Fee Contract. It was not in the Clients' best interest to enter into either one or both of these contracts; instead, it was in the best interests of Vitullo and Fee Smith to enter into these contracts. Vitullo and Fee Smith placed their own best interests ahead of the Clients' interest with respect to these contracts, and they used their position to gain a benefit for themselves at the expense of the Clients. The contracts were not fair and equitable to the Clients and Vitullo and Fee Smith did not act in the utmost good faith and exercise the most scrupulous honesty toward the Clients regarding the contracts.

58. Contracts between attorneys and their clients negotiated during the existence of the attorney-client relationship are closely scrutinized and – there is a presumption of unfairness or invalidity which attaches to such contracts. *Keck, Mahin & Cate v. Nat'l Union Fire Ins. Co.*, 20 S.W.3d 692, 699 (Tex. 2000). Attorneys are held to the highest standards of ethical conduct in their dealings with their clients, and this duty is the highest when an attorney contracts with his

client. *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557 (Tex. 2006). As a result, the attorney has the burden to show such any such contract is fair and reasonable. *Keck, Mahin & Cate*, 20 S.W.3d at 699.

59. Additionally, Vitullo and Fee Smith breached their fiduciary duty to the Clients in connection with the improper fee sharing arrangement with Malesovas. Vitullo and Fee Smith failed to disclose the terms of the fee sharing arrangement with Malesovas and they failed to obtain the Clients consent in writing as required by Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct.

60. As a result of Vitullo and Fee Smith's breach of fiduciary duty, the Clients have sustained damages and they seek recovery of all of their actual damages herein. Additionally, the Clients seek a fee forfeiture of any attorney's fees, which Vitullo and/or Fee Smith have received or may be entitled to receive, in connection with their representation of the Clients.

61. Finally, the Clients seek exemplary damages from Vitullo and Fee Smith based on their conduct set forth herein. Vitullo and Fee Smith are liable for exemplary damages because their conduct constitutes fraud, malice or gross negligence, as defined under Chapter 41 of the Texas Civil Practice and Remedies Code.

## **2. Breach of Contract – (in the alternative)**

62. In the alternative, and in the event that the Second Contingent Fee Contract is determined to be a valid and enforceable contract, Vitullo and Fee Smith breached the contract as a result of their actions set forth herein. Specifically, Vitullo and Fee Smith breached the contract by requiring the Clients to pay for expenses in the Probate Lawsuit, when the contract expressly stated the Clients would NOT be required to pay the expenses.

63. Moreover, this was a material breach of the contract which effectively discharged or excused the Clients from any future performance under the contract. *Bartush-Schnitzius Foods Co. v. Cimco Refrigeration, Inc.*, 518 S.W.3d 432 (Tex. 2017). As a result, the Clients are discharged from any obligation to pay the contingency fee, if any, under the contract and Vitullo and Fee Smith are limited to recovering their attorney's fees under quantum meruit.

64. Additionally, Vitullo and Fee Smith breached the contract by filing the intervention lawsuit, when the contract expressly required all disputes – including fee disputes – to be submitted to binding arbitration.

65. The Clients seek to recover all damages caused by Vitullo and/or Fee Smith's breach. All conditions precedent to the Clients' recovery for breach of contract have been performed or have occurred. Finally, the Clients seek recovery of their reasonable and necessary attorneys' fees, costs and expenses through a final hearing, any enforcement proceedings and/or any appeals of this arbitration, pursuant to applicable Texas law, including, but not limited to, Section 38.001 of the Tex. Civ. Prac. & Rem. Code.

### **3. Fraud**

66. Vitullo and Fee Smith had a duty to fully and fairly disclose all important information to the Clients regarding the Hourly Contract and the Second Contingent Fee Contract. However, they failed to fully and fairly disclose all important information to the Clients regarding the aforementioned contracts. As a result of their fraud, the Clients were damaged and they seek recovery of their actual damages herein.

67. Vitullo and Fee Smith also had a duty to fully and fairly disclose all important information to the Clients regarding the GPM Contract, including any fee sharing arrangements with Malesovas. However, they failed to fully and fairly disclose all important information to

the Clients regarding the GPM Contract. As a result of their fraud, the Clients were damaged and they seek recovery of their actual damages herein, including a forfeiture of all fees received or recovered in connection with the GPM settlement.

68. Additionally, the Clients seek exemplary damages from Vitullo and Fee Smith based on their conduct set forth herein. Vitullo and Fee Smith are liable for exemplary damages because their conduct constitutes fraud, malice or gross negligence, as defined under Chapter 41 of the Texas Civil Practice and Remedies Code.

#### **4. Conversion**

69. As a result of their conduct set forth herein, Vitullo, Malesovas and Fee Smith have converted property rightfully belonging to the Clients. The property converted includes the Clients' files and the undisputed portion of the settlement funds from the JPMorgan Chase settlement. This property rightfully belongs to the Clients; however, Vitullo, Malesovas and Fee Smith wrongfully exercised control over this property. They have refused to deliver all of the Clients' files and they have intentionally acted to deprive the Clients of the undisputed portion of the settlement funds. Accordingly, Vitullo, Malesovas and Fee Smith are liable for conversion and the Clients seek the immediate return of their property, or the equivalent value and other damages caused by the conversion of their property.

70. Additionally, the Clients seek exemplary damages from Vitullo, Malesovas and Fee Smith based on their conduct set forth herein. Vitullo, Malesovas and Fee Smith are liable for exemplary damages because their conduct constitutes fraud, malice or gross negligence, as defined under Chapter 41 of the Texas Civil Practice and Remedies Code.

#### **5. Negligence**

71. As a result of their conduct set forth herein, Vitullo, Malesovas and Fee Smith were

negligent and their negligence was the proximate cause of damages to the Clients. Specifically, Vitullo, Malesovas and Fee Smith were negligent in failing to plead an exception to the limitation on exemplary damages and failing to submit a jury question regarding this same matter. They also failed to present any expert testimony supporting the Clients' claims, which was negligent. They also failed to designate an expert witness regarding attorney's fees in connection with the Clients' breach of contract claim, which was negligent. Finally, they were negligent in failing to properly prepare and submit a correct jury charge in the Probate Lawsuit.

72. As a result of Vitullo, Malesovas and Fee Smith's negligence, the Clients determined it was in their best interest to settle their claims with JPMorgan Chase. The negligence of Vitullo, Malesovas and Fee Smith was a substantial factor in the Clients' decision to settle with JPMorgan Chase. Therefore, the Clients seek recovery of all of their actual damages proximately caused by their attorneys' negligence.

### **CONCLUSION**

Wherefore, Claimants, Laura S. Wassmer Dr. Stephen B. Hopper, request the following:

1. That Respondents be required to appear and answer this Demand for Arbitration;
2. That Claimants have the declaratory relief requested above from all of the Respondents;
3. That Claimants recover all of their actual damages from Respondents;
4. That Claimants recover exemplary damages from Respondents Vitullo, Malesovas and Fee Smith;
5. That Respondents forfeit their attorney's fees;
6. That Claimants recover their reasonable attorneys' fees for the filing, preparation and hearing of this arbitration or otherwise incurred with this matter;



7. For pre- and post-award interest at the highest rates allowed by law;
8. For costs and expenses of this proceeding; and
9. For such other and further relief at law or in equity to which Claimants may show themselves to be justly entitled.

Respectfully submitted,

s/ James E. Pennington

James E. Pennington  
State Bar No. 15758510  
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Dallas, Texas 75202-4473  
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[jep@jeplawyer.com](mailto:jep@jeplawyer.com)

**Attorneys for Claimants**  
**Stephen B. Hopper and Laura S. Wassmer**

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of June, 2018, the foregoing Demand for Arbitration was served on the following parties via email and/or certified mail:

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Johnston Tobey Baruch, P.C.  
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Attorneys for Block & Garden

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Attorneys for Anthony Vitullo and Fee Smith Sharp & Vitullo, LLP

s/ James E. Pennington  
James E. Pennington

# BLOCK & GARDEN, LLP

Sterling Plaza  
5949 Sherry Lane, Suite 900  
Dallas, Texas 75225

October 8, 2012

Telephone  
214 866-0990

Dr. Stephen Hopper  
Mrs. Laura Wassmer  
3625 N. Classen Blvd.  
Oklahoma City, OK 73118

Facsimile  
214 866-0991

Web Site  
[www.bgvllp.com](http://www.bgvllp.com)

Re: Engagement to Perform Legal Services

Dear Dr. Hopper and Mrs. Wassmer:

This letter sets forth the basic terms upon which you (hereinafter referred to as “you” or “Client”) have engaged Block & Garden, LLP (hereinafter referred to as “we” or the “Firm”) to represent you in connection with the Scope of Engagement set forth in paragraph 1 below.

1. Scope of Engagement. In general, you have requested that we assist you with the prosecution of your claims, pending in Cause No. PR-11-3238-3 before Probate Court No. 3 of Dallas County, Texas, against JP Morgan Chase Bank, N.A. for breach of fiduciary duty and mismanagement in the administration of the estate of Max D. Hopper (the “Claims”). In connection with all such matters, we will provide services of a strictly legal nature. The precise time frame in which these services will be performed cannot presently be determined. We will keep you apprised of developments as necessary to perform our services and will consult with you as necessary to ensure the timely, effective and efficient completion of our work.

In representing you with regard to these matters, we will need to review information, whether written or oral, provided by you and be able to rely that such information is accurate and truthful. We will be relying on your representations herein that all the information presented by you to us, regardless of the media, is truthful and accurate, and you acknowledge that we may rely on such information.

2. Billing Policies and Procedures. We enclose a copy of the Firm's Legal Services Agreement (so called herein), which sets forth various terms regarding our representation of you. The terms of the Legal Services Agreement are specifically incorporated herein, therefore, please review the Legal Services Agreement in its entirety and call me with any questions.

Notwithstanding the foregoing, we have mutually agreed to a fixed fee arrangement for the prosecution of the Claims through the earlier to occur of the full settlement of the Claims or the day immediately preceding the commencement of trial (as such commencement is defined in Exhibit A attached hereto) of the Claims (the “Pre-Trial Services”). The Firm will provide the Pre-Trial Services for a fixed fee of \$100,000. Payment of 50% of such fixed fee (\$50,000) shall be due upon execution by your of this letter and prior to commencement of such services. Payment of the remaining 50% of such fixed fee (\$50,000) shall be due upon request when, based on the Firm’s opinion, at least 50% of the Pre-Trial Services have been completed. If the Claims are fully settled prior to the commencement of trial (as such commencement is defined in Exhibit A attached hereto), the Firm will reimburse to you, to the extent already paid, or credit

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Mrs. Laura Wassmer  
October 8, 2012  
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towards the \$100,000 fixed fee, the percentage of the Pre-Trial Services not rendered based on the Firm's opinion. You hereby authorize the Firm to retain the services of Mr. Anthony "Lenny" Vitullo of Fee, Smith, Sharp & Vitullo, LLP, Dallas, Texas to perform legal services on your behalf. Any Pre-Trial Services performed by Mr. Vitullo will be included within the fixed fee set forth in this paragraph. The provisions of the Hybrid Contingent Fee Arrangement set forth on Exhibit A attached hereto are incorporated herein. In the event that trial commences on the Claims, the payment provision set forth in Exhibit A will control with respect to such trial services commencing as of the commencement of the trial (as such commencement is defined in Exhibit A attached hereto). It is currently anticipated that the Pre-Trial Services will include:

- Reviewing Glast Phillips & Murray, P.C.'s case file for purposes of developing the Claims;
- Consulting with Ms. Denise Sullivan regarding any errors or improprieties regarding JP Morgan Chase Bank, N.A.'s calculation and reporting of federal income taxes with respect to the estate of Max D. Hopper. You, and not the Firm, will be directly responsible for Ms. Sullivan's fees;
- Conducting discovery pursuant to the Texas Rules of Civil Procedure regarding if Max D. Hopper had additional assets that should have been included within his estate;
- Reviewing the fees charged by JP Morgan Chase Bank, N.A. to such estate;
- Defending two depositions and taking four depositions to develop the Claims; and
- Developing a damage model with respect to the Claims.

Subject, of course, to our ethical and professional obligations, you agree that the Firm may terminate its legal services and withdraw from this engagement in the event our fee statements are not paid in a timely manner, which we consider to be within thirty (30) days of receipt. In the event the Firm elects not to terminate, you further agree that in the event a fee statement is not paid within thirty (30) days of issue, the Firm, in its discretion, may apply any retainer to any outstanding balance. You would then be required to deposit replacement funds into your trust account to bring its balance back up to the agreed upon retainer level.

3. Termination. You may terminate your engagement of the Firm at any time, and you hereby agree that the Firm may withdraw its representation of you, regardless of the status of any transaction or matter, in the event that (i) we do not receive payment of any statement within 30 days after receipt thereof by you; (ii) we have an irreconcilable difference of opinion with you about policy decisions in handling our representation of you; (iii) we discover any misrepresentation of information provided to us by you in connection with our representation of you; (iv) you engage in any conduct or activities contrary to our advice that in our opinion could

Dr. Stephen Hopper  
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constitute a violation of applicable laws; or (v) we are permitted or required to withdraw under any provision of the Code of Professional Responsibility, as amended, in the State of Texas, or applicable law. In addition, you understand that we reserve the right to withdraw our representation in the event that we determine that a conflict of interest exists with respect to another client of the Firm.

In the event of dismissal, withdrawal, or termination of the engagement of the Firm, it is agreed and understood that (i) the terms of this letter agreement and the Legal Services Agreement pertaining to fees, costs, and/or expenses for services rendered up to and including such date of dismissal, termination, or withdrawal of employment, shall remain in full force and effect; (ii) the terms of indemnification herein shall remain in full force and in effect; (iii) in the event the Firm is compelled to intervene in a pending lawsuit or initiate any subsequent proceeding in order to recover the fees, costs, and/or expenses due the Firm, the Firm shall be entitled to receive any and all attorney's fees, costs, and/or other expenses accruing in favor of the attorney or attorneys employed by the Firm to recover the fees, costs, and/or expenses due the Firm; and (iv) you agree, jointly and severally, to pay any and all court costs and expenses connected with such pending lawsuit as hereinabove described.

**THE STATE BAR OF TEXAS INVESTIGATES AND PROSECUTES MISCONDUCT COMMITTED BY TEXAS ATTORNEYS. ALTHOUGH NOT EVERY COMPLAINT AGAINST OR DISPUTE WITH A LAWYER INVOLVES PROFESSIONAL MISCONDUCT, THE STATE BAR OFFICE OF GENERAL COUNSEL WILL PROVIDE YOU WITH INFORMATION ABOUT HOW TO FILE A COMPLAINT. FOR MORE INFORMATION, YOU MAY CALL, TOLL-FREE, 1-800-932-1900.**

4. Miscellaneous. You agree that the Firm may identify you as a client in any of our advertising or other promotional materials or activities. We agree that you may disclose that the Firm has agreed to provide legal services (but not the economic terms of such provision) and the nature of such services to you.

We are, of course, delighted to be asked to provide legal services to you, and we are looking forward to working with you on this engagement. Should you ever wish to discuss any matter relating to our legal representation, please do not hesitate to call me directly, or to speak to one of our other attorneys who is familiar with the engagement.

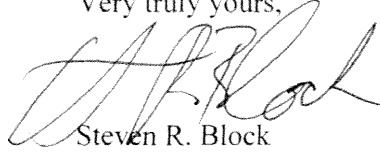
BLOCK & GARDEN, LLP

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We look forward to serving you.

Best regards.

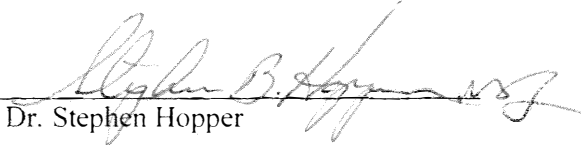
Very truly yours,



Steven R. Block

Enclosures: 1. Legal Services Agreement  
2. Exhibit A—Hybrid Contingent Fee Arrangement

**ACCEPTED AND AGREED TO THIS**  
19 **DAY OF OCTOBER 2012:**

By:   
Dr. Stephen Hopper

By: \_\_\_\_\_  
Laura Wassmer

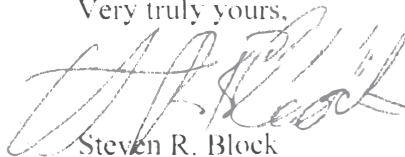
BLOCK & GARDEN, LLP

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Mrs. Laura Wassmer  
October 8, 2012  
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We look forward to serving you.

Best regards,

Very truly yours,




Steven R. Block

Enclosures: 1. Legal Services Agreement  
2. Exhibit A—Hybrid Contingent Fee Arrangement

**ACCEPTED AND AGREED TO THIS**  
**22nd DAY OF OCTOBER 2012:**

By: \_\_\_\_\_  
Dr. Stephen Hopper

By:  \_\_\_\_\_  
Laura Wassmer

## **LEGAL SERVICES AGREEMENT**

This Legal Services Agreement (so called herein) sets forth various standard terms applicable to our rendering services as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this Legal Services Agreement carefully and contact us promptly if you have any questions.

### **How Fees Are Set**

The amount to be charged for the legal services we provide to you will ordinarily be calculated on an hourly basis at our standard hourly rates. These hourly rates presently vary from \$350 to \$550, depending on the attorney who is providing the services, and are adjusted periodically. In determining a reasonable fee for our services, we may consider other factors as set forth in Section 1.04(b) of the Texas Disciplinary Rules of Professional Conduct, which governs all Texas lawyers. A copy of Section 1.04(b) will be furnished upon request. We may adjust the charge downward or upward based on factors such as the novelty or complexity of the issues and the problems encountered, the extent of the responsibility involved, the results achieved, the efficiency of our work, the customary fees for similar legal services, and other factors that will enable us to arrive at a fair fee under the circumstances.

We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible we will furnish such an estimate based on our professional judgment, but always with a clear understanding that it is not a maximum or fixed fee quotation. The ultimate cost is frequently more or less than the amount estimated.

For certain well-defined services, for example, business incorporation, we will quote a fixed fee. It is our policy not to accept representation on a fixed-fee basis except in such defined-services areas or pursuant to a special arrangement tailored to the needs of a particular client. In all such situations, the fixed-fee arrangement may be set forth in an exhibit to the engagement letter agreement, setting forth the amount of the fee, when it is payable, and the scope of the services to be provided.

Any fees and costs we might have previously discussed are estimates only. You also understand that the payment of the Firm's fees and expenses is not contingent upon the outcome of any matter with respect to which the Firm represents you.

### **Expense Disbursements and Other Charges**

We typically incur and pay on behalf of our clients a variety of out-of-pocket costs arising in connection with legal services. Third-party charges incurred on your behalf in significant amounts will be sent to you for payment direct to the vendor. We will bill you monthly for our other expense disbursements incurred on your behalf (filing fees, travel expenses, delivery costs, expert witness fees, cost of preparation of exhibits, photographs, videos or publications, investigative fees and expenses, etc.), together with a charge in the amount of \$40 per month for copying, printing, long distance telephone, telecopy, and telex services. These will be billed to you on the same basis as charged to our other clients. A complete explanation of



the basis of such charges will be provided upon request. The Firm may also, in the exercise of my legal judgment, retain the services of various experts (including but not limited to other attorneys) to assist in our representation of you, which we agree to discuss with you in advance of their engagement, and you agree to be solely responsible for the payment of their fees.

### **Security Deposits**

Clients of the Firm are commonly asked to deposit a security deposit with the Firm to secure fees and expenses rendered and incurred by the Firm. We will not bill against the security deposit, but will return it to you at the conclusion of this engagement or, at your election, apply it against the final bill.

### **Billing Arrangements and Term of Payment**

We will bill you on a regular basis, normally each month, for fees, expenses, disbursements, and other charges. You agree to make payment within 30 days of the date we mail our invoice. All past due invoices will incur a rebilling charge of 1.5% per month. Notwithstanding the foregoing, in this matter you will only receive one bill for the Pre-Trial Services (excluding the initial \$50,000 payment due upon execution of this engagement letter agreement) for the remaining \$50,000 of the fixed fee for such Pre-Trial Services, which bill will be due and payable upon receipt.

### **Arbitration**

In the event you believe that any statement for our services is erroneous for any reason, please notify us of the same within 10 days after receipt of such statement stating the basis for such belief. If agreement cannot be reached with respect to the amount owed, you agree to pay promptly the undisputed portion of our statement. Any dispute over fees and/or costs (a "Dispute") will be submitted to and settled exclusively by binding arbitration, in accordance with the provisions of this Legal Services Agreement, subject only to any applicable requirement of state law that the parties engage in a preliminary non-binding mediation or arbitration regarding fee disputes. A party to the Dispute may commence arbitration by sending written notice to the other party demanding resolution of the Dispute through arbitration and setting forth the nature of the controversy, the dollar amount involved, if any, and the remedies sought (an "Arbitration Notice").

Binding arbitration shall be conducted in accordance with the Judicial Arbitration and Mediation Service/Endispute Rules and Procedures for commercial disputes (the "JAMS Rules"). Arbitration shall be held in Dallas County, Texas before an arbitrator selected pursuant to the JAMS Rules who will have no personal or pecuniary interest, either directly or indirectly, from any business or family relationship with either of the parties, and who the parties agree will be the same person for any and all Disputes which are arbitrated pursuant to the terms of this Legal Services Agreement. As soon as reasonably practicable, a hearing with respect to the Dispute will be conducted by the arbitrator. As soon as reasonably practicable thereafter, the arbitrator will arrive at a final decision, which will be reduced to writing, signed by the arbitrator and mailed to each of the parties and their legal counsel. No discovery will be permitted.

The substantive laws of the State of Texas will be applied by the arbitrator, without regard to the choice of law provisions thereof. The rules of evidence applicable to judicial proceedings will not apply at the arbitration proceedings; evidence submitted by the parties may be admitted or excluded in accordance with the JAMS Rules applicable to the proceeding.

All decisions of the arbitrator will be final, binding and conclusive on the parties and will constitute the only method of resolving Disputes subject to arbitration pursuant to this Legal Services Agreement. The arbitrator or a court of competent jurisdiction may issue a writ of execution to enforce the arbitrator's award. Judgment may be entered upon such an award in accordance with applicable law in any court having jurisdiction thereover.

The parties will equally share the costs of the arbitrator and the arbitration fee (if any). Each party will bear that party's own attorneys' fees and costs, and the prevailing party will not be entitled to reimbursement by the other party of any of its fees or costs incurred in connection with the arbitration hereunder, regardless of any rule to the contrary in the applicable arbitration rules.

Either party may seek confirmation of the arbitration award in the courts situated in Dallas County, Texas, and each party hereby consents to the exclusive jurisdiction and venue of the courts situated in Dallas County, Texas in any claim or action arising hereunder.

By entering into this Legal Services Agreement, you hereby agree to waive any and all rights to a jury trial regarding any Dispute.

### **Indemnification**

You agree to indemnify and hold harmless the Firm and all of its partners and employees (collectively, the "Indemnitees") against and from any and all losses, claims, damages, or liabilities, joint or several, that the Indemnitees, or any of them, shall incur or to which the Indemnitees, or any of them, may become subject, and to reimburse the Indemnitees, or any of them, for any legal or other expenses (including the cost of any investigation and preparation) as they are incurred by the Indemnitees, or any of them, arising out of or in connection with any inquiry, litigation, or other proceeding, whether or not resulting in any liability, insofar as such losses, claims, damages, liabilities, or expenses arise out of, or are based upon, the Indemnitees' services hereunder provided only that such Indemnitees were not grossly negligent or did not act with willful misconduct. You further agree that the Firm shall bill to you, at the billing rates in effect at the time, the amount of time spent by any partner or employee in connection with the preparation, response, or defense to any claim against any party or other matter giving rise to a claim for indemnification hereunder, and all expenses incurred in connection therewith. Such statements shall be paid by you within 10 days after receipt thereof.

### **Attorney/Client Relationship**

This Legal Services Agreement creates an attorney/client relationship only between the Firm and you. Therefore, you agree that this engagement does not create an attorney/client relationship between the Firm and any of your family members and affiliated entities. You will not provide the Firm with any confidential information about any of your family members or

affiliated entities, unless the Firm enters into a separate engagement letter with such family members and/or affiliated entities. You agree that our representation of you will not create any conflicts of interest in the event that other clients of the Firm are adverse to your family members or affiliated entities (unless such family members or affiliated entities are also represented by this Firm).

### **Limitations of Liability**

Block & Garden, LLP is a limited liability partnership under the laws of the State of Texas. This means your right to recover damages in a legal malpractice action that may exceed our insurance and Firm assets is limited to the personal assets of the lawyers whose acts or omissions gave rise to your claim.

### **Disposition of Files and Records**

Following termination of your engagement, we will maintain the confidentiality of any of your confidential information provided us in accordance with applicable rules of professional conduct. Any documents owned or provided by you, or provided by a third party for your account, will be returned to you unless you authorize destruction of them.

We will retain our own files pertaining to our representation of you, including materials prepared by or for the internal use of our attorneys. These include the Firm's administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, internal attorneys' work product (such as drafts, notes, internal memoranda and legal and factual research), written and electronic communications, pleadings, and investigative reports. At the conclusion or settlement of a matter, we will either return your file to you or place your file in storage for 4 years. We may request you to pay a file maintenance fee of \$50.00 per year. At the end of 4 years, your entire file will automatically be destroyed. Therefore, we request that you check your preference below:

\_\_\_\_\_ Return my entire file to me at the conclusion and settlement of a matter; or

\_\_\_\_\_ Place my entire file in storage for a period of 4 years and destroy my file after 4 years.

If no box is checked, we will place your entire file in storage for a period of 4 years, and destroy your file after 4 years. Unless applicable rules of professional responsibility require an earlier return, we may retain such file material pending receipt of payment of any outstanding fees or costs.

### **Communication**

We often send to our clients information about the Firm or legal matters we think might be of interest to them. You agree that we may send you this material, either by electronic mail or other means. You also agree that we may communicate with you about our representation of you by electronic mail on an unencrypted basis.

Either at the beginning or during representation, we might express opinions or beliefs concerning the matters on which we represent you and the results that might be anticipated. Any such statements made by us are an expression of opinion only, and are not a promise or guarantee of results or outcomes.

## EXHIBIT A

### HYBRID CONTINGENT FEE ARRANGEMENT

- 1. SCOPE OF REPRESENTATION:** 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 filing or pursuing an appeal from disposition in the trial court. Client hereby agrees and understands that the Firm retains 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 the Firm shall retain its interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.
- 2. AUTHORITY OF THE FIRM:** Client empowers the Firm 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 the Firm to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claims, and Client further authorizes and empowers the Firm's personnel 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 of the damages awarded or to be paid therefor, 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 Claims. Full power and authority is given by Client to the Firm to adjust, settle or compromise Client's Claims, but no final settlement shall be made and consummated by the Firm without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claims without the Firm's authority, agreement and consent. Should Client make a settlement in violation of these terms, Client agrees to pay the Firm the full fee agreed upon under paragraph 3 "Attorneys' Fee" below.
- 3. ATTORNEYS' FEE:** This Agreement is a hybrid contingency fee contract. In the event the Client's Claims go to trial, Client will pay for the Firm's services at 50% of its prevailing rates in accordance with the invoicing and payment terms of the engagement letter agreement to which this exhibit is attached and the Legal Services Agreement incorporated therein. We presently anticipate that the primary services will be performed by Steven R. Block whose current hourly rate is \$550 and Christopher M. McNeill whose current hourly rate is \$450; we will also retain on your behalf the services of Anthony L. Vitullo with Fee, Smith, Sharp & Vitullo, LLP whose current hourly rate is \$500. Additionally, if the Firm is successful in recovering money or any thing of value for Client after trial begins, the Firm shall receive attorneys' fees in the amount of twenty (20%) 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. Client agrees that the Firm may, in its discretion, employ associate counsel to assist in prosecuting Client's causes of action, and Client does not object to the participation of any lawyers the Firm may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel (including Fee, Smith, Sharp & Vitullo, LLP) is the responsibility of the Firm. 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 (using a discount rate of 3%), and further authorizes the Firm to take attorneys' fees either in cash or in structured payment, as the Firm deems appropriate.

Client agrees that the Firm may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's Claims. 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 except as set forth in the immediately following paragraph.

In some instances, it may be necessary for the Firm 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 Claims; 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 the Firm may retain such special outside counsel to represent Client when the Firm deems 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:** Client will 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, and other related charges incurred as an expense on behalf of Client and paid to third-party vendors or incurred internally by the Firm and charged to Client in connection with the Firm's representation of Client.

**5. DISBURSEMENT OF PROCEEDS TO CLIENT:** Client understands that the Firm makes no guarantee or assurance of any kind regarding the likelihood of success of Client's Claims. Upon receipt by the Firm of the proceeds of any settlement or judgment after the commencement of trial, the Firm shall (1) retain twenty percent (20%) of the proceeds as their attorneys' fees, (2) deduct from Client's share of the proceeds any unpaid costs and expenses, including the fees of any special outside counsel that the Firm 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 the Firm on notice of their claim. Except as may be required by law, the Firm will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

**6. POWER OF ATTORNEY:** Client gives the Firm's personnel a power of attorney to execute 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:** Client agrees to cooperate with the Firm to permit Client's Claims to be investigated and developed; to disclose to the Firm all facts relevant to the Claims; 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 the Firm in connection with preparation and presentation of Client's Claims. The Client acknowledges and agrees that all communications with the Firm are privileged. The Client acknowledges that the Firm may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of the Firm's clients. Therefore, Client agrees and understands that other individuals who are clients of the Firm may also invoke the attorney client privilege as to the Firm's 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 the Firm of any change of marital status or death of spouse. Client shall promptly notify the Firm of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify the Firm of any other legal proceedings to which Client or Client's spouse is a party.

**8. NO TAX ADVICE:** The Firm has advised Client that the pursuit of resolution of the Claims may have various tax consequences. Client understands that the Firm does not render tax advice and is not being retained to offer such advice to Client or to represent Client before the IRS. The Firm has recommended that Client may wish to seek independent tax advice from attorneys or accountants who are qualified in tax matters concerning the ramifications of Client's Claims and their disposition. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's Claims.

Client understands that applicable state law may impose sales, service or other tax on any amount that Client may recover or the fees due the Firm hereunder. Client also understands that applicable federal income tax law may require that Client pay income tax on the fees due the Firm hereunder, separate and apart from and in addition to any taxes owed by the Firm. Client

agrees that any such taxes (other than federal and/or state income taxes that the Firm may owe on monies actually received by it) shall be paid out of Client's 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 these terms 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 the Firm, execute a new engagement letter 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 the Firm 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 the Firm an amount equal to twenty percent (20%) of the proceeds if the matter is resolved after trial commences, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the Claims described in the engagement letter agreement to which this Exhibit A is attached. Client does hereby give and grant to the Firm 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 the Firm hereunder. This security interest is to continue in the event the Firm is discharged without good cause. If the Claims are not assignable at law, Client expressly assigns to the Firm, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

12. **BINDING EFFECT:** These terms 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 the Firm's representation of Client at any time by providing written notice to the Firm. Should Client elect to terminate the Firm's representation prior to the full conclusion of the Firm's representation, Client understands and agrees that the Firm has 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 Claims. 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 the Firm.



**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 Claims.

**15. MISCELLANEOUS:** In case any one or more of the provisions contained in this Exhibit A 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.

## **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 James S Bell P.C, (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 Glast Phillips and Murray PC, Mark Enoch, Gary Stolbach and persons and companies relating to Glast Phillips and Murray P.C.'s wrongful conduct as the law firm providing services to Client and Clients that involved wrongful conduct including representing Stephen Hopper and Laura Wassmer. ("Client's Claims").

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 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%, James S Bell P.C. 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 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.

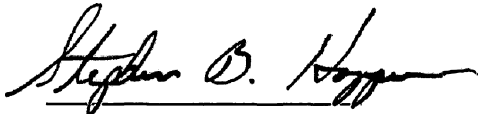
**17. REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL:** Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall 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: 08/12/2015

Address: 3625 N Classen Blvd. Oklahoma City, OK 73118



Telephone Numbers:

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ATTORNEYS:

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Fee, Smith, Sharp & Vitullo, LLP

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James S Bell P.C.

## **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 James S Bell P.C, (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 Glast Phillips and Murray PC, Mark Enoch, Gary Stolbach and persons and companies relating to Glast Phillips and Murray P.C.'s wrongful conduct as the law firm providing services to Client and Clients that involved wrongful conduct including representing Stephen Hopper and Laura Wassmer. (“Client’s Claims”).

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 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%, James S Bell P.C. 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 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

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**Stephen Hopper**

Date: 9/24/15

Address: 8005 Roe Avenue Prairie Village KS 66208

Telephone Numbers:

913-522-7063

ATTORNEYS:

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Fee, Smith, Sharp & Vitullo, LLP

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James S Bell P.C.



**THIS AGREEMENT IS SUBJECT TO ARBITRATION  
AND CONTAINS AN AGREEMENT TO SUBMIT ALL DISPUTES  
RELATING IN ANY WAY TO THE SUBJECT MATTER  
OF THIS AGREEMENT TO ARBITRATION FOR RESOLUTION**

In the event of any dispute regarding our representation of you, including any claim of negligence, malpractice, deceptive trade practices, breach of contract, or any other theory, for any form of actual, special, or exemplary damages, costs, interest, or attorney's fees, you agree to arbitrate such dispute in Texas in accordance with the terms of this Agreement.

**STANDARD TERMS OF ENGAGEMENT FOR LEGAL SERVICES**

This Agreement sets forth the standard terms of our engagement as an attorney by **STEVEN HOPPER, AND LAURA WASSMER** (herein referenced as "you"). Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this Agreement carefully and contact us promptly if you have any questions. We suggest that you retain this Agreement in your file.

**SCOPE OF SERVICES**

You should have a clear understanding of the legal services we will provide. In particular, we have only agreed to represent you in the matters described below. We often undertake representation on specific matters. You should not assume that we intend to act as general legal counsel on your behalf. Any questions that you have regarding the scope of our representation should be dealt with promptly.

We will represent you in the following matter:

Fee, Smith, Sharp & Vitullo will assist YOU with issues related to settling your claims against CHASE bank and its claims against YOU as it relates to the litigation filed in Probate Court for the Estate of your father. Fee, Smith, Sharp and Vitullo LLP will not be responsible for litigation of any claims on YOUR behalf against Chase bank or to defend you against any claims but will only be responsible for attempting to settle your claims against Chase bank in mediation, meetings, settlement conferences, or other communications with Chase bank.

*A contingency fee agreement is in place regarding claims against East Phillips.*  
We have not been retained to represent you in any other matter, nor have we been retained to pursue any claims on your behalf, or to advise you on any general business matters in which you may be engaged. We have only been retained to defend you in the above referenced case.  
*on an hourly agreement basis.*

**WHO WILL PROVIDE THE LEGAL SERVICES**

Customarily, you will be served by a principal attorney contact. Your principal attorney contact in this case will be Anthony L. Vitullo. Subject to appropriate supervision, your work, or parts of it, may be performed by legal assistants. Such delegation may be for the purpose of involving legal assistants for the purpose of providing services on the most efficient and timely bases.

### **HOW FEES WILL BE SET**

**In determining the amount to be charged for the legal services provided to you, the following will be considered:**

- **The time and effort required, the novelty and complexity of the issues presented, and the skill required to perform the legal services properly.**
- **The amount of money or value of property involved and the results obtained.**
- **The time constraints imposed by you as our client and other circumstances, such as an emergency, the need for injunctive relief from court, or substantial disruption of other office business.**
- **The experience, reputation, and expertise of the attorney or attorneys performing the services.**
- **The extent to which office procedures and systems have produced a high quality product efficiently.**
- **The likelihood that the acceptance of the particular employment will preclude other employment by the attorney.**

**We will keep records of time devoted to your work, including conferences (both in person and on the telephone), negotiations, factual and legal research and analysis, document preparation and revision, travel on your behalf, and other related matters.**

**The hourly rates of the attorneys and legal assistants assigned to your case have an important bearing on the fees charged. These rates are reviewed periodically to reflect current levels of legal experience, changes in overhead costs, and other factors and may be adjusted accordingly. The current hourly rates are as follows:**

|                |          |
|----------------|----------|
| Partner Rate   | \$500.00 |
| Associate Rate | \$350.00 |
| Paralegal      | \$75.00  |

These rates are subject to change based on the foregoing factors.

You have agreed to pay an initial retainer in the amount of \$10,000.00. Once the retainer is paid down to \$2,000.00 you have agreed to pay another \$5,000.00 retainer.

### **OUT-OF-POCKET EXPENSES**

We typically incur, and pay on behalf of our clients, a variety of out-of-pocket costs arising in connection with legal services. These include charges made by government agencies and service vendors, as well as clerical charges. Whenever such costs are incurred, we will carefully itemize and bill them.

Typical of such costs are long distance telephone charges; messenger, courier, express delivery charges and U.S. postage; facsimile charges; printing and reproduction costs; filing fees; deposition and transcript costs; witness fees; travel expenses; charges made by outside experts and consultants, including accountants, appraisers and other legal counsel (unless arrangements for direct billing have been made); computerized research charges; and charges for automated outside document production.

We incur outside costs as an agent for our client and incur internal expenses on behalf of our clients, who agree that these costs will always be paid on a regular basis.

### **BILLING ARRANGEMENTS AND TERMS OF PAYMENT**

**We will bill you on a regular basis, normally each month, for both fees and expenses. You agree to make payment upon receipt of our statement.**

**If the delinquency continues and you do not arrange satisfactory payment terms, we will withdraw from the representation.**

**If you disagree with the amount of our fee, contact us immediately. Typically, such disagreements are resolved to the satisfaction of both sides with little inconvenience or formality. If no contact is made within ten (10) days of your receipt of a statement, you thereby acknowledge the accuracy of the statement.**

## **REPRESENTATIONS**

**The undersigned attorneys cannot and do not warrant or guarantee the outcome of the case.**

**YOU ACKNOWLEDGE THAT THE UNDERSIGNED ATTORNEYS HAVE MADE NO GUARANTEE REGARDING THE SUCCESSFUL RESOLUTION OF YOUR CASE, AND EXPRESSIONS RELATIVE THERETO ARE MATTERS OF THE UNDERSIGNED ATTORNEYS' OPINION ONLY AND SHOULD NOT BE CONSIDERED AS EXPRESS OR IMPLIED WARRANTIES OF THE CASES' OUTCOME.**

## **TERMINATION OF REPRESENTATION**

**You may terminate our representation at any time, with or without cause, by notifying us in writing. If such termination occurs, your papers and property will be returned to you promptly. Our own files pertaining to the case will be retained. Your termination of our services will not affect your responsibility for payment of legal services rendered and out-of-pocket costs incurred before termination and in connection with an orderly transition of the matter, unless we state otherwise.**

**We are subject to the Texas Rules of Professional Conduct, which lists several types of conduct or circumstances that require or allow us to withdraw from representing a client, including nonpayment of fees or costs, conduct which renders it unreasonably difficult for us to carry out our engagement effectively, and conflict of interest with another client.**

**We try to identify in advance and discuss with our clients any situation that may lead to our withdrawal, and, if withdrawal ever becomes necessary, we immediately give the client written notice of our withdrawal. If applicable rules of court require or permit a different procedure, we will follow those procedures in addition to those outlined above.**

## **COOPERATION OF CLIENT**

**You agree to cooperate with us at all times, to comply with all reasonable requests of the undersigned attorneys, and to provide all information requested by us.**

## **TEXAS LAW TO APPLY**

**This agreement shall be construed under and according to the laws of the State of Texas, and your rights, duties and obligations and those of the undersigned attorneys regarding their representation of you and regarding anything covered by this agreement shall be governed by the laws of the State of Texas and shall be performable in Dallas County,**

## **ARBITRATION**

Any and all disputes, controversies, claims or demands arising out of or relating to this agreement or any provision hereof, the providing of services by Fee, Smith, Sharp & Vitullo, or any of its attorneys or legal assistants, to you, or in any way relating to the relationship between you and Anthony L. Vitullo, or any of its attorneys or legal assistants, whether in contract, tort or otherwise, at law or in equity, for damages or any other relief, shall be resolved by binding arbitration pursuant to the Federal Arbitration Act in accordance with the Commercial Arbitration Rules then in effect with the American Arbitration Association. Any such arbitration proceeding shall be conducted in Dallas, Texas. This arbitration provision shall be enforceable in either federal or state court in Dallas County, Texas, pursuant to the substantive federal laws established by the Federal Arbitration Act. Any party to any award rendered in such arbitration proceeding may seek a judgment upon the award and that judgment may be entered by any federal or state court in Dallas County, Texas, having jurisdiction.

## **NOTICE TO CLIENTS**

The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys.

Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office General Counsel will provide you with information about how to file a complaint.

For more information, please call 1-800-932-1900. This is a toll-free phone call.

## **CONCLUSION**

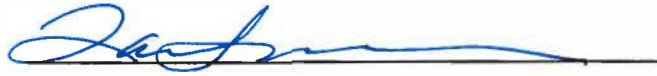
We appreciate the confidence and trust you have placed in our firm and look forward to serving you in the future. If you do not agree with and understand the foregoing, please contact us immediately. Unless we hear from you to the contrary, this will constitute our agreement relating to this engagement.

By:

---

CLIENT STEVEN HOPPER



CLIENT LAURA WASSMER

Date: 9/15, 2015

Address: 8005 Roe Avenue

Prairie Village KS 66208

Telephone Numbers:

Home: \_\_\_\_\_

Cell: 913-522-7063

Work: \_\_\_\_\_

Date: \_\_\_\_\_

ATTORNEYS

By: \_\_\_\_\_  
Fee, Smith, Sharp, and Vitullo LLP

Date: \_\_\_\_\_, 2015.

## **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

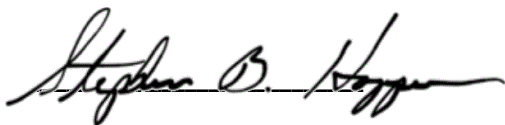
made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

**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

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ATTORNEYS:



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Fee. Smith. Sharn & Vitullo. LLP



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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.

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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.

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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.

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**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

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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](mailto:Jep@Jeplawyer.com)

April 5, 2018

**VIA EMAIL:** [blauten@brianlauten.com](mailto: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.

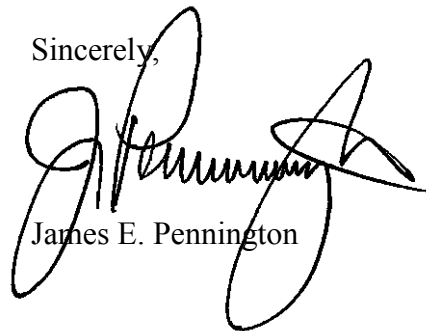
At this time, I am requesting your clients to provide me with their *entire* file regarding their representation of my clients. Although your clients have previously provided me with

Brian Lauten  
April 5, 2018  
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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 to the right.

James E. Pennington

# LAW OFFICES OF JAMES E. PENNINGTON

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April 6, 2018

**VIA EMAIL: [john@malesovas.com](mailto:john@malesovas.com)  
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**VIA EMAIL: [blauten@brianlauten.com](mailto:blauten@brianlauten.com)**

Brian P. Lauten  
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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

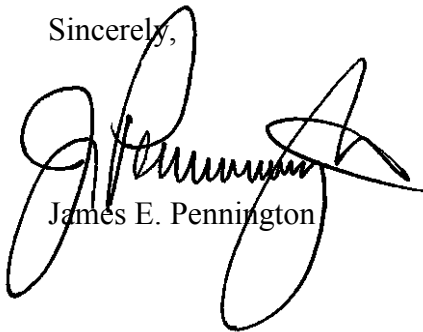


John Malesovas/Brian Lauten  
April 6, 2018  
Page 2

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 from the end of the signature.

James E. Pennington

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.

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 10<sup>th</sup> day of May, 2018.

  
HONORABLE BRENDA HULL THOMPSON