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CAUSE NO. PR-11-3238-3

IN RE: The Estate of () IN THE PROBATE COURT
MAX D. HOPPER () FILED IN
DECEASED, () 5th COURT OF APPEALS
NUMBER THREE OF DALLAS, TEXAS
DALLAS COUNTY, TEXAS
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LISA MATZ
Clerk

FILED IN
COURT OF APPEALS
November 7, 2012
DENISE PACHECO
CLERK 8TH DISTRICT

REPORTERS RECO
VOLUME 2 OF 3

Be it remembered that on the 13th day of April, 2012,
A.D. the above entitled cause came on to be heard before
The HONORABLE JUDGE, MICHAEL E. MILLER, Judge Presiding,
And the following proceedings
WERE DOWN TAKEN BY MACHINE SHORTHAND:

1 APPEARANCES:

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: This is Cause Number 11-3238-3,
3 regarding Max D. Hopper and Jo N. Hopper versus JPMorgan Chase
4 Bank, et cetera.

5 Who wants to begin?

6 MR. ENOCH: I do, Your Honor. We were first to
7 file. We filed a motion for reconsideration, a new trial and
8 for clarification, and so we believe we should go first. I'm
9 representing -- Mark Enoch, representing the children, Stephen
10 Hopper and Laura Wassmer.

11 MR. JENNINGS: I think we're first on the
12 docket, Your Honor.

13 MR. GRAHAM: I think we're first on the docket,
14 Judge.

15 MR. JENNINGS: If the Court looks at its docket
16 sheet I think what they'll --

17 THE COURT: We had the same argument by the same
18 people last time.

19 MR. GRAHAM: The last time, they got to go
20 first.

21 MR. EICHMAN: Judge, we're merely a Respondent
22 here, but we're happy to go last.

23 THE COURT: Let's let you go first. We'll let
24 you go first, then.

25 MR. EICHMAN: Judge, we're here to tell the

1 Court that the Court has ruled wisely, so -- and then, we'll
2 sit down.

3 MR. JENNINGS: I think we are first on the
4 docket, Your Honor.

5 THE COURT: Well, you can thank the dart board
6 for that.

7 MR. ENOCH: Judge, with all due respect to
8 Mr. Jennings, we filed first. And I don't want to --

9 THE COURT: Okay. Why don't you go ahead.

10 MR. ENOCH: Thank you very much, Your Honor, I
11 appreciate it.

12 We are here, Your Honor, on a motion to
13 reconsider, to clarify, and new trial, and in the alternative,
14 motion for severance. And I would imagine, if I were sitting
15 in your shoes, Judge, I would say, "Mr. Enoch, what is it about
16 your argument or the case law that you don't think I was aware
17 of" or "what" -- "Is there a new fact," "Is there a new case,"
18 "Why should I reconsider what I've already thoroughly gone
19 through?"

20 And my answer to you is very simple, Your Honor,
21 in spite of what the bank responded two days ago. If you'll
22 recall the proceedings, there was an easement over here
23 (indicating), and Mr. Jennings began the arguments, and I
24 responded, we went through the constitutional issues relating
25 to whether a homestead can be part of a partition or not. I

1 spent very little time on the issue of undue influence because
2 I was going to respond then to the bank --

3 MR. JOHANSON: Undivided.

4 MR. ENOCH: The undivided interest.

5 Thank you.

6 When I sat down, Mr. Jennings and Mr. Eichman,
7 understandably, had their chance to argue. At one point, I
8 stood up and said, "Judge, Mr. Jennings has been going for a
9 while, may I respond."

10 And your response was, as I recall it, that you
11 had plenty of time that afternoon and everybody is going to get
12 a chance to say what they needed to say. I relaxed at that
13 point, until about 4:57 or 4:55 when you started putting your
14 books and records together to leave.

15 And I said, "Judge, may I respond," and you said
16 you had a 5 o'clock appointment to leave to. And, literally,
17 my response to the undivided interest was, "Judge, please pay
18 attention to two cases, I've given you copies, Clark versus
19 Posey and the Spendor case."

20 So my recollection, Judge, is -- and I'm not
21 saying it's your recollection, of course. My recollection is
22 that we were not given an opportunity to fully address the
23 issue of undivided interests. That's why I filed what I filed.
24 And, obviously, we have that opportunity now.

25 There are some procedural issues relating to the

1 order of whether or not the bank had requested affirmative
2 relief, whether the order needs to be clarified, but the first
3 order of business is the substantive ruling that Your Honor
4 made that allows the bank to choose whether or not to issue
5 undivided interests. And to respond to that, I'll provide --
6 I'll offer Stanley Johanson who will address those issues to
7 the Court. Thank you.

8 MR. JOHANSON: Thank you.

9 THE COURT: Hello.

10 MR. JOHANSON: Yeah, the central issue, it
11 appears to us, Your Honor, that the February order in which you
12 stated "the Independent Administrator may make distributions of
13 undivided interests." That's the authority that -- and the
14 order says they have that power or authority to make
15 distributions of undivided interest.

16 This entire argument comes from Section 150 of
17 the Texas Probate Code which starts -- which says that "the
18 Independent Administrator may petition the Court to" -- let's
19 see -- maybe, I should have it in front of me, that will be a
20 help -- "If the will does not distribute the entire estate, the
21 independent executor may file his final petition in the county
22 court..." and so on and so on, and --

23 MR. JENNINGS: Your Honor, may I interrupt just
24 a moment? There is nothing before you today to reargue the
25 original motion for summary judgment. Whatever -- whatever

1 Mr. Enoch thinks did or did not happen at the hearing -- and I
2 do recall it differently than he does -- to have Professor
3 Johanson come in here today and reargue the entire motion for
4 summary judgment, or any significant part of it based on the
5 argument that, quote, "wasn't made at the last hearing," we're
6 not on notice that that was going to happen.

7 We're here, and they're here only today -- I
8 mean, he said, "Well, we filed first." Well, we filed first,
9 if you're going to go back to the MSJ; there's no question
10 about that. So if we're going to reargue the MSJ in its
11 entirety, which is what this argument really leads to, then let
12 us reargue it, too, and we go first because we did file first
13 by about 45 days.

14 So I don't agree that this is an appropriate
15 argument for the Court to hear at this time. If they want to
16 bring up this point as part of their presentation on their --
17 their, essentially, motion to reconsider, motion to amend and
18 modify the Court's order to vacate the new trial, that makes
19 perfect sense. They can bring up anything they want within
20 that grouping.

21 But to start off and say, well, first, we want
22 to reargue the motion for summary judgment in this kind of
23 context, I don't think is procedurally appropriate, so, now,
24 that said, Mr. Graham's going make our main argument and then
25 I'm going to say something again. But I thought since I'm the

1 one who was making the main argument on the MSJ, that I should
2 be one to stand up and object. Thank you, Your Honor.

3 MR. ENOCH: Just very quickly, Your Honor. This
4 is ripe for your consideration; it's part of our motion.

5 THE COURT: I'm going to let Professor Johanson
6 argue whatever he wants to argue.

7 MR. JOHANSON: Thank you.

8 THE COURT: I do have to be somewhere at
9 4 o'clock, though.

10 MR. JOHANSON: So the basic point here,
11 Section 150, the word "may" file its final account with the
12 county court and so on and so on, and then it proceeds to talk
13 about whether assets are subject to partition and division, or
14 whether they're incapable of partition for -- and division.

15 And so, the essence of it is that the argument
16 that has been made by the independent administrator in this
17 case, this "may" means "discretionary." "May" means that the
18 independent administrator has a choice whether to follow the
19 Section 150 procedures or not follow the Section 150
20 procedures.

21 We then come to the therefore. "Therefore, if
22 in its exercise of its discretion it chooses not to follow the
23 Section 150 procedures" -- which gets us back into the
24 partition and division rules, Section 373 and so on,
25 "therefore, he has the power to make distributions of undivided

1 interests."

2 With respect, Your Honor, there's several
3 problems with this. First and fundamentally, this would mean
4 that there would be substantive differences in the rights
5 depending on whether we have a dependent administration, court
6 supervised, or whether, instead, we have an independent
7 administration. Because when it comes to a dependent
8 administration, Section 373 is the controlling provision in a
9 case like this, dealing with application for partition and
10 distribution.

11 And there's no question but that under Section
12 373 in a dependent administration, at any time after the
13 expiration of 12 months, anyone -- heir, personal
14 representative, beneficiary, legatee -- may by written
15 application seek a partition and distribution of the estate.

16 I would like to think that everyone in this
17 courtroom would agree that when we have a dependent court
18 supervised administration, then Section 373 and the
19 distribution and partition procedures in every case can be
20 triggered, by someone saying, "Your Honor, we want a partition
21 and distribution under Section 380 or 381 of the Texas Probate
22 Code." That's a dependent administration.

23 Is it appropriate to even suggest that the rule
24 is different when we have an independent administration, that
25 this is optional? Especially -- and another number to throw

1 out here is Section 149B, which applies to independent
2 administration after a period of two years, "an heir or
3 beneficiary can petition for a partition and distribution."

4 That, Your Honor, is about two months from now.
5 And the idea that for up to two years, because we have an
6 independent administration, the executor has -- the independent
7 administrator has the power to make a distribution of undivided
8 interests, but that can be stopped if he doesn't go real fast?

9 One year under the dependent, two years under
10 the independent administration, and especially in this case,
11 Stephen and Laura, the late Mr. Hopper's children, agree to an
12 independent administration on the theory that this would change
13 the procedure and simplify the procedure for handling the late
14 Mr. Hopper's estate.

15 The idea that the consequence of their decision,
16 they thought was simply to make this easier, to wind up the
17 affairs, would remove their substantive right under
18 Section 373, to ask for a partition and division under the
19 statutory procedure -- we all have our different views as to
20 the Texas legislature and what they'd come with in their
21 statute, but even the Texas legislature, one would like to
22 think, would not have that kind of a consequence of someone
23 opting for an independent administration, and in the process
24 lose substantive rights.

25 Now, it is true that -- Mr. Eichman, I should

1 say, the independent administrator, said, "Where's your
2 authority for saying that the independent administrator does
3 not have the power to make distributions of undivided
4 interests?" There's a problem with that question. It calls
5 for proving a negative: Show me that you're not a criminal.

6 No. The question here is, for 160 years this
7 state has been producing cases. There's not a single case in
8 which there's been an approval of a distribution of undivided
9 interests when anybody in the family objects to it; not a
10 single case.

11 Instead, what we have is Professors Woodward and
12 Smith in the most distinguished booklet on -- in the Texas
13 Practice series, dealing with this area, probate and decedent's
14 estate. Quote, "There is no authority for the distribution of
15 undivided interests; however, if the distributees are
16 agreeable, property is often divided without a partition."

17 So the basic point is: There is no authority.
18 They didn't find any authority when they printed this about 20
19 years ago. I haven't found a single authority that authorizes
20 a distribution of an undivided interests. And consider what
21 that would mean.

22 Now, as Mr. Woodward and Mr. Smith point out, in
23 the vast majority of Texas estates, we have a will. We have a
24 will that names an independent executor, and we have a will
25 that gives the independent executor a power to make

1 distribution in kind, partly in kind, undivided interests or
2 not. So that is one of the reasons that we don't see a whole
3 lot of cases, perhaps, as to -- on this particular issue.

4 But the idea that the -- Stephen and Laura, the
5 heirs of his one-half community interest, have to find
6 authority, with deference, we think, that the authority -- the
7 burden of persuasion ought to be with them.

8 Now, let's go back to Section 150 where it says,
9 "The independent administrator may do something." The question
10 is: How do we construe "may"? It has been suggested by the
11 bank and its attorneys that "may" means you've got a choice,
12 it's discretionary. But it seems to me, Your Honor, the way to
13 avoid making the alleged Texas legislature, avoid them looking
14 like fools, that you pay a price if you go from dependent to
15 independent administration.

16 Yes, there's another and a far more appropriate
17 way of construing "may." We give you the authority. We give
18 you the authority to take this action. You are authorized to
19 act on behalf of this statute, triggering the Section 150
20 procedure, and, therefore, Section 373 has said -- because
21 remember, as you well know, Your Honor, that's why you rarely
22 see independent executors in the courtroom. They don't need
23 your authority or permission or proof to do anything.

24 In point of fact, I won't give you the cite but
25 I'll give you the page number, my annotated probate code, we

1 had a rather interesting case not long ago. Let's see, where
2 is that? Section 145. Yes. This is Marshall v. Hobert
3 Estate. I'll give you the cite: 315 S.W.2d 604, Eastland.

4 And what happened there, the independent
5 executor wants to give an oil and gas lease, and it goes to the
6 probate judge and says, "Your Honor, could you give me the
7 authorization to give this oil and gas lease on behalf of the
8 estate." And, in essence, very politely, he was asked to leave
9 the court because "I have no authority over you. You were
10 given this authority by reason of your appointment as an
11 independent executor. I have no jurisdiction or authority to
12 tell you or to sanction or sanctify what you've proposed to
13 do."

14 But now we come to Section 150. Section 150
15 says, "you may," under Section 150, "file your account with the
16 county court and then trigger the court system, we allow you to
17 come back into court for this purpose." Namely, under
18 Section 380 or Section 381, to have a partition and
19 distribution, depending on whether or not this is an asset that
20 is capable or is not capable of distribution.

21 The other thing and final thing I want to
22 mention is, why is there no cases in 160 years. Consider --
23 now, it's true, we're dealing with an asset, a distinctive
24 asset known as a homestead that is not subject to partition and
25 division during the period that the surviving spouse has

1 occupied -- but, considering every other asset in the estate,
2 perhaps it's a piece of vacation property in Odessa. Well,
3 let's make that Aransas Pass, or perhaps it's a set of golf
4 clubs? The idea that the independent executor/administrator
5 could make a distribution of an undivided one-half interest --
6 but, Your Honor, you know what that means?

7 We don't like each other. If you say that the
8 independent executor or administrator can make a distribution
9 of undivided -- all we're going to have to do is go across the
10 street and knock on the door of the district court and have a
11 very expensive and complicated and time-consuming judicial
12 partition action that nobody likes.

13 Why not instead leave this case in the probate
14 court where it belongs, where all of the rights of the parties
15 can be taken care of, not giving them undivided interests, but,
16 rather, triggering Section 380 and Section 381.

17 One last thing I want to point out,
18 Section 380(a) says, "...If the estate does not consist
19 entirely of money or debts...the court shall appoint...to make
20 a partition and distribution of the estate," unless the court
21 has already determined that the estate is incapable of
22 partition, And then it goes the other way.

23 So the central point here, Your Honor, is,
24 "may," under these circumstances in this context, really cannot
25 mean "you've got a choice, you can decide to do it or not."

1 What it really means is, "we authorize you." And why doesn't
2 this come up very frequently? Because as Professors Woodward
3 and Smith point out, in many cases the parties agree on a
4 proper distribution. We don't have to trigger it.

5 But if they don't, this gives the independent
6 administrator the authority to knock on the judge's door and
7 say, "Your Honor, let us now proceed pursuant to Section 373,
8 380, and 381 and have a partition and distribution authorized
9 by the probate court. I may be an independent administrator
10 that ordinarily does not need your approval, but today I do."
11 That's it.

12 MR. GRAHAM: Your Honor, I'd like to respond
13 directly to that, if I may? That is directly related, and if I
14 could respond to Professor Johanson now, I think it might be
15 for the benefit of the Court, rather than letting that get past
16 with no response.

17 MR. ENOCH: It's up to you, Your Honor, I would
18 take no longer than three minutes.

19 THE COURT: Let's let Mr. Enoch finish.

20 MR. ENOCH: Thank you, Your Honor.

21 That concludes the substantive arguments with
22 respect to the undivided interests. We also had a concern
23 about the order, that, I assume, that the bank will address.
24 And that is, you had competing motions for summary judgment
25 between Jo Hopper and between the children of Max Hopper.

1 There was no affirmative relief requested at the hearing by the
2 bank or the IA.

3 And the reason that's significant is because one
4 of the declarations that they sought in their cross and
5 counterclaim was that they had the right to distribute
6 undivided interests. You gave them that right in paragraph 5
7 or 6, I believe it's 6, of your order.

8 When I read that, I thought, I understand that
9 you might not want to have granted my number one request, which
10 was, we asked you to declare that they must not distribute
11 undivided interests and must go to the partition; I understand
12 that you chose not to grant that. Although, our number one is
13 mistakenly not included in your order, one way or another.

14 My argument is, simply, you granted them relief
15 that they specifically sought in their petition, and they
16 didn't have an action before you at the time that procedurally
17 would have allowed you to do that. So, I think procedurally,
18 Your Honor, at that point there was no request by the IA for a
19 finding that they may distribute undivided interests; and,
20 therefore, I believe that that portion of the order should be
21 changed.

22 The final thing I will say, Judge, is this, and
23 that is, because of subsequent litigation that all parties are
24 anticipating in this case and between these parties, between
25 the heirs and between the surviving spouse and the IA, the

1 issue of, is it proper or not to grant undivided interests by
2 an IA, that is critical to everybody in the case and will color
3 all future activity in this case?

4 So, to the extent that you disagree with me --
5 you're entitled to do that, you wear the robe and I don't -- we
6 ask that you sever that matter out because we think that is of
7 seminal importance in the case, and we would like to, with all
8 due respect, take it up to the court of appeals.

9 I thank you for your time, Judge. Thank you for
10 caring.

11 MR. GRAHAM: May I, Your Honor? Thank you.
12 Your Honor, for the record, I'm Michael Graham, and I represent
13 Plaintiff, Jo Hopper. I'm Co-counsel for Jo Hopper.

14 Your Honor, in my -- I'd like to first respond
15 to my friend, Professor Stanley Johanson, who I've served on
16 more legislative drafting groups. When Stanley says, "well,
17 you know, you can't tell what the legislature's going to do,"
18 you have to remember that Stanley's part of the group that
19 actually drafts that, as am I, for the legislature. Some of
20 it's pretty well drafted, some of it's not.

21 But one thing is, you sort of listen as Stanley
22 went through all of that. One of the things that I think that
23 this case has lacked is a perspective of putting these issues
24 in a canvas of the way they fit into the probate practice.
25 I've spent the -- I'm not a trial lawyer, but I've spent the

1 last four years doing exactly what you do, and as Stanley goes
2 through this, the proposition that an independent executor
3 cannot distribute property in undivided interests is just --
4 would be the most radical change in the practice of probate law
5 ever. That's simply not the law.

6 I mean, it's kind of like President Clinton,
7 when you say, "well, 'may' really means 'shall,'" that words
8 can mean whatever you want them to mean. 150 says "may" do a
9 partition, and even then it's only on the estate's assets.

10 But speaking directly to what Professor Johanson
11 was talking about when he says, "Oh, well, you just can't
12 distribute property in undivided interests," of course an
13 independent executor can distribute property in undivided
14 interests. It happens all the time.

15 THE COURT: He means when the parties object,
16 though.

17 MR. GRAHAM: Well, the composition that the
18 parties object is a proposition that you're giving people a
19 choice, you're requiring consent of people. We've been in
20 here -- and the Supreme Court case of Wright, which we
21 forwarded over but which is seminal in this, we had no idea
22 that we were going to be off on aggregate theory versus item
23 theory. This is the visceral guts of what we do in community
24 property in Texas. I mean, we are down to just the core of it.

25 But the issue that they want is almost to have

1 your cake and eat it too because they want to say, "Oh, well,
2 wait, we have the right to object, so you can't distribute in
3 undivided interests, but the widow doesn't have a right to --
4 doesn't have to consent to any distributions that you're going
5 to go, only we," and they take through the decedent, it's not
6 their own property -- "have the right to object."

7 In direct response to Professor Johanson, he
8 cited Woodward and Smith. Woodward and Smith, that section was
9 written before the case -- so Clark versus Posey. Now, I
10 didn't bring my cases with me 'cause I didn't know we were
11 going to be back till a month ago, but Clark versus Posey was a
12 case in which the Court initially decided, "of course, you can
13 distribute in undivided interests." If you'd like to hand me
14 copy, it would be even better.

15 Clark versus Posey was a case, the court
16 initially decided that, the appellate court. And then on
17 rehearing, one of the litigants pointed out, "But wait, this
18 will says you will distribute separate shares to each of the
19 people." And so, because of that provision in the will, the
20 Court said, "oh, wait, no, no, you have to -- you can't
21 distribute in undivided interests, you have to distribute --
22 you'd have to separate it out."

23 But the general rule in Texas is that of course
24 an independent executor can distribute in undivided interests;
25 it happens all the time. It is the rule, it is why 150 says

1 "may."

2 Now there's a second layer to this, and it's
3 gotten confused, I believe, through this whole case because
4 it's -- this is complicated. There's two different parts to
5 this. You have an issue of what 150 says with respect to the
6 estate of the decedent. And the Probate Code is explicitly
7 clear that the estate of a decedent is the decedent's property.
8 Their one-half. I know this goes against what you ruled in
9 your order, but that is explicit, that that is with respect to
10 the estate of the decedent, his property.

11 "You get into an entirely new realm," as Wright,
12 the Supreme Court case says, when you get into the community
13 property, and you're dealing not just with the decedent's
14 property and what goes down to the decedent's heirs, but
15 instead now you're dealing with the property that a third party
16 owns, that's only been pulled back for administration purposes
17 under 177, which, administration is to protect the assets, have
18 possession of them, pay the debts, and then you're done with
19 it.

20 177 doesn't pull that half of the community in
21 for these purposes of 150 without getting a consent, so it --
22 with respect to Professor Johanson, the citations that he makes
23 are -- don't reflect subsequent cases, in the heart of
24 subsequent cases, and he talks about, well, we can't have a
25 dependent administration that's different from an independent

1 administration, and completely ignores the issue that we're not
2 talking about, under 150, whether a person who wasn't married,
3 whether their executor has a choice about picking 150 or not to
4 distribute.

5 We're talking about expanding the scope of 150
6 beyond administration, over to whether it can scoop up the
7 widow's one-half of the property, which is her one-half from
8 death. So it's a different deal.

9 Also, I would note, that Professor Johanson
10 said, "Of course, the homestead is not subject to partition at
11 all during the wife's occupancies." And then he kind of reeled
12 it back in, "'cause the only thing that everybody is here for,"
13 we talk about theoretical things -- "but the only thing that
14 anyone is here for, is to try to force my client, the surviving
15 spouse, who owns one-half of the property" by virtue of her
16 share of the community, "to buy, to be forced to acquire the
17 other half of the property, and be forced to give up other
18 assets in exchange for that property." And that's -- that is a
19 partition, and that's a different kettle of fish.

20 With that response, I'll be pretty brief on the
21 rest of what I'd like to say, but I really wanted to present
22 this today because this is -- I mean, trial lawyers do a
23 wonderful job presenting things, but this is the viscera of
24 everything we do, the nuts and bolts of community property.

25 I have great respect for Professor Johanson, and

1 he has done a mighty job of arguing an almost impossible case.
2 But having said that, it's an impossible case as the Supreme
3 Court in Wright will say, and Wright will say -- here in just a
4 minute, if I may go on; but I want to stop there.

5 Question?

6 THE COURT: Well, tell me why Wright is even
7 applicable? There was a will in Wright?

8 MR. GRAHAM: That's right.

9 THE COURT: And the case had to do with how to
10 distribute the property under a will, right?

11 MR. GRAHAM: It's applicable because even though
12 there was a will, whether or not there's a will doesn't change
13 the rights to and the ownership of community property. In
14 other words, community property is the same whether someone
15 leaves a will or not. The attributes of the community
16 property, what happens in the division of that community
17 property at the instant of death, the way that -- and we've
18 made a great big deal in this, that Professor Johanson argued
19 last time, about, "Well, Texas is really an aggregate theory
20 state instead of an item theory state."

21 And I gotta tell you, before I got involved in
22 this, I remembered that a little bit from law school but not
23 much. But what I came to realize as I dug around -- and
24 Professor Johanson was very quiet after his own book was read
25 back to him as much -- but I like Stanley -- so when the book

1 was read back to him, saying, "actually, no state has adopted
2 the aggregate theory."

3 But the reason that makes a difference is that
4 under the item theory, each item of community property at the
5 instant of death is then owned one-half by the surviving spouse
6 as her share of the community. It doesn't pass to her from the
7 husband; it's hers.

8 And the other half of the property passes, in
9 this case, to the decedent's heirs, because he was intestate,
10 and there's never a gap in title. Those properties pass at the
11 instant of death. We know that from law school. Nothing about
12 all these lawyers has changed that.

13 And second of all, we know from law school the
14 base of that, the surviving spouse has a homestead interest in
15 both halves of the residence until she abandons it or dies, and
16 that it can't be partitioned. Now, the reason that everybody
17 has spent so much time on this "item versus aggregate" and all
18 of the different things, is that they're going around the key
19 element in Wright, which is that Texas is an item state.

20 Long before this administration was taken out,
21 and it took almost six months to take it out, the widow already
22 owned her one-half of every single property, and the children
23 owned their one-half, and she had her homestead right; those
24 were vested rights.

25 And the key in the Wright case is it's a widow's

1 election will. That because the widow doesn't just own a claim
2 to half of the community, but owns an interest in each and
3 every single asset, that no matter how small it is, neither the
4 husband during life, nor the independent administrator after
5 death, nor this Court, can divest the widow of her one-half of
6 any single item of community property without giving her the
7 opportunity to consent or reject. The only exception to
8 that --

9 THE COURT: Doesn't that happen in divorce court
10 every day, though?

11 MR. GRAHAM: But divorce is a completely -- yes,
12 sir, it does, but divorce is a completely different rule. In
13 divorce court --

14 THE COURT: Tell me how.

15 MR. GRAHAM: In divorce court, the divorce judge
16 has the authority to partition and allocate community property
17 among the spouses as is equitable. It's been a while since
18 I've read the statute, but that's pretty darn close to it.

19 A decedent's estate is completely different from
20 a divorce court, that you're not given the power under the
21 Probate Code to rearrange the community property interests
22 between the two without giving the widow the chance to agree or
23 deny. That's the essence of all widow's elections cases, that
24 Texas is an item state, that the widow owns it.

25 It's brought in under 177 to be subject to

1 administration, not administration, partition, distribution and
2 all that; to administration.

3 And, Judge DeShazo, who we'll be seeing next
4 week, Judge DeShazo, in her excellent treatise -- well,
5 practice guide, with Professor Featherstone, talks about that
6 the purpose of the administration is to pay the debts. And, in
7 fact, the independent executor has, because her half of the
8 community is subject to administration, the independent
9 executor has the power to sell an asset -- if it's necessary,
10 both halves of it, if it's necessary, to pay debt, but it ends
11 there.

12 Otherwise, administration is to protect and
13 preserve the property. And once the debts are paid, all the
14 independent administrator has the power to do is return the
15 widow's one-half of each and every item that hasn't been used
16 to pay debts back to the widow. So that's why the Supreme
17 Court case before death -- and it applies after death. That's
18 why --

19 THE COURT: What about Mr. Enoch's argument that
20 these bottles of wine are half one party's and half the other
21 party's, and by definition, the Court must -- must in that case
22 give some of her wine to him and some of his wine to her?

23 MR. GRAHAM: And I knew that that was going to
24 come up, even though it wasn't -- it's not part of this motion,
25 the wine's not in it, that is the question. And we talked

1 about that last night.

2 And the tough rule -- I hate to say it, but the
3 tough rule is that the wine is no different than the Exxon or a
4 lake house or anything else; that 150 does not give this Court
5 the power to partition that wine, which leaves only the choice,
6 just as it would be in anything other than the homestead -- and
7 all we're really talking about here is the homestead.

8 Everything else is color of all issues to try to get you to
9 like their position better -- but not homestead.

10 THE COURT: But, I mean, why can't I do to the
11 homestead what I would do to the wine?

12 MR. GRAHAM: Well, in fact, the rule is the same
13 for both of them. And that is, that you do not have the power
14 because the surviving spouse has the ownership interest. And
15 when you read Wright and when you look at the item theory of
16 community property, the Court was very careful -- I mean, not
17 the Court -- the legislature was actually very articulate in
18 this.

19 They went over into the definition of estate,
20 that we've talked about here, and said, "the estate means the
21 decedent's property only, his one-half" -- "his separate and
22 his one-half of the community." Now at that moment, all you
23 have under administration is the decedent's property, and
24 you've got this problem, you can't do anything.

25 So they enacted 177, and said, "well, the

1 surviving spouse's property is subject to administration."
2 They didn't say, "the surviving spouse's property becomes part
3 of the estates and all of the rules that are in here." They
4 very carefully made it only part of the administration.

5 Your Honor, while I hate hypotheticals, I think
6 the clearest way to realize what's wrong with this is that it's
7 clear that I could not do an election will giving my wife a
8 hundred percent of our homestead and giving my wife's interest
9 in some other property to my children without her having the
10 right to either elect for or against it.

11 If what they're proposing is the law, you don't
12 have to worry about election wills anymore. All you have to do
13 is name your children as your independent executor, and they
14 can come into court and under their theory of 150, rearrange
15 all the property to where they get the interest in the other
16 property, and they give -- which is exactly what they're trying
17 to do -- they give to the surviving spouse what they don't
18 want, and give to her.

19 That's the reason there's a bright line here
20 that you've got -- they've got the power to administer it, the
21 purpose of administration is to pay debts; but otherwise, you'd
22 have to go back and -- you asked me, Your Honor, what to do
23 about the wine, what to do about those things. It is simply an
24 ordinary suit for partition that they would file to break up
25 the wine.

1 Now, the difference, the reason it's different
2 than the partition that they're trying to get here, is in an
3 ordinary suit just to break up the wine, uh -- in an ordinary
4 suit to just break up the wine, if you find it can't be
5 divided, then you have to sell the wine. But here, if they can
6 get you to do it as part of the estate, they can say, "oh,
7 well, we'll sell the wine but we'll sell it to the widow and
8 we'll get the cash, we won't really have to sell." And that's
9 the reason they don't want to go through this.

10 And anything other than this prospect of doing
11 the homestead partition as part of the administration is,
12 number one, if it gets out of the administration, then they
13 can't partition the homestead. The only way they can get where
14 they want is to try to get you to do something which you're not
15 authorized to do without the widow's consent. You're
16 authorized to do it, but she's got the right to either consent
17 or reject.

18 But to try to get you to do something so they
19 can, wink, wink, not really partition the homestead 'cause
20 we're partitioning it to the surviving spouse, and instead take
21 other cash that's the surviving spouse's cash that's only
22 subject to administration, not the partition --

23 THE COURT: But it is what divorce judges do
24 every day.

25 MR. GRAHAM: It is. Divorces -- and I'll be

1 glad to do a supplemental brief after this, if you would like.
2 I think this is so interesting an area, that if the Court would
3 like to withdraw its order and let us brief this specific point
4 to you -- but just withdraw it and let's get it right, because
5 it's almost clear that this is going to go up -- this is going
6 to live a long time.

7 And I want to make sure that what we're bringing
8 out of this court reflects -- whether it's for me or against
9 me, reflects the very best judgment that we can on our probate
10 court system as we go up through.

11 THE COURT: Well, and so do I.

12 Yes, sir?

13 MR. JOHANSON: May I respond very briefly?

14 MR. CANTRELL: Let me -- I promise, two minutes?

15 MR. EICHMAN: Well --

16 THE COURT: You-all have until 3:50, so.

17 MR. CANTRELL: On the Wright case, it was a
18 widow's election. There is no sentence in that case that talks
19 about what a Court can or cannot do. The Wright decision says,
20 "the party, the husband, could not force it on the wife."
21 We've got cases already on the books that say the same thing,
22 so nobody's arguing about whether Max Hopper could have forced
23 Jo Hopper to an election without her consent. But that case
24 has nothing to say about what this Court can do in a partition
25 proceeding on its own motion.

1 Second, partition itself, think about what
2 they're saying. Most Texas estates are community property
3 estates. We've got a whole system of partition statutes that
4 talk about the court through 150 and then on into the 380
5 provisions, "...can partition the property."

6 If the Court can't partition a property that's
7 not capable of partition -- partition or division, what are we
8 saying? We're going to have a partition proceeding for half of
9 the community? And then we're going to distribute it, and
10 we're going to have to go to another Court and deal with the
11 widow's part of it? Clearly, not. And Mr. Graham is correct,
12 the technical reading of the word "estate" does mean the
13 decedent's estate.

14 The Section 3 preamble says unless otherwise
15 required by the context. And when you go into the partition
16 statutes and you start thinking about, what are we really doing
17 here? If we're -- if we've got an asset like the wine, Max
18 Hopper isn't going to partition it, but this Court should be
19 able to take however many bottles of wine we have, if the
20 parties cannot agree to it, and divide them. That's what the
21 partition provisions are for, at least from the standpoint of
22 the independent administrator.

23 MR. JENNINGS: Can I just say something, Your
24 Honor, about a point that they've raised? I just want to -- I
25 have done divorce law, and there is no equivalent to, I think

1 it's 363 of the family code, that does allow for -- the words
2 are, "a just and equitable division."

3 The Court is allowed in divorce actions to do
4 that. There is no similar provision in the Texas Probate Code.
5 I just to wanted to clarify that. I can get you the citation.
6 I think it's 363 of the family code.

7 THE COURT: I think it is, too.

8 MR. JENNINGS: But there is no 363 equivalent in
9 the probate code anywhere that I know of that, and I can tell
10 the Court that, as far as I know the probate code.

11 But I have done many divorces over the years,
12 and years ago, I don't do so many now, but particularly early
13 in my practice, and the courts have all kinds of equitable
14 power because they also have the right to worry about the minor
15 children, and that's why they're allowed to rearrange the
16 community property in the divorce any way they want. That
17 isn't this case. And this court -- and the probate court
18 doesn't give you that.

19 MR. GRAHAM: Or the decedent's estate.

20 MR. JENNINGS: It's not a decedent's estate
21 where there aren't these other competing interests.

22 Go ahead.

23 THE COURT: Sir, what section is that --

24 MR. GRAHAM: Your Honor, distinctly -- please go
25 ahead first with him. Excuse me, I'm sorry.

1 THE COURT: I'm saying, what you're telling me
2 that I -- or that we're going to -- what we're looking at in
3 the future, is that we're going to bring, in effect, everything
4 into this courtroom, and I'm going to say, "two forks for you,
5 one fork for you, and one fork for you."

6 MR. JENNINGS: No, I'm saying -- we're saying
7 you can't say that.

8 THE COURT: "And two spoons for you and one
9 spoon for you and one spoon for you."

10 MR. JENNINGS: No, no, that's exactly what you
11 can't do, Your Honor. You don't ever have to get into the two
12 forks and two spoons game. And that's what Mr. Graham is
13 saying. Mr. Graham is saying, either the parties work it out
14 or you order a sale, but you don't have to go through and match
15 up forks and spoons and cups and saucers.

16 And what's really fascinating is that Johanson
17 said, which is exactly in the pleading we filed today,
18 "homestead," which is what we're all really down here about --

19 MR. GRAHAM: We're really talking about
20 homestead, not wine.

21 MR. JENNINGS: That's right. That just confuses
22 the issue, as Mr. Graham correctly pointed out, but what you're
23 really getting to here is on the homestead, is, he said, "it's
24 a special category of asset." It doesn't even fall under these
25 rules of 150. That's the whole re -- I'm going to turn it over

1 to Mr. Graham.

2 MR. GRAHAM: And, you know --

3 THE COURT: Let Mr. Graham finish.

4 MR. GRAHAM: -- I sat down to let Mr. Enoch
5 finish.

6 THE COURT: Go ahead. Finish.

7 MR. GRAHAM: And what I'd like to do, Your
8 Honor, now is to focus very quickly on the order itself.
9 Everyone at this table has filed with varying degrees of
10 diplomacy in their responses -- the order has issues that need
11 to be dealt with and that it needs to be worked on.

12 And the way I see that, I divide it into two
13 parts. The first are the fairly easy -- easy ones to go
14 through, and then the second is the conceptual. And it's
15 really the most important, but let me get the easy ones first.

16 First of all, with respect to Plaintiffs' issue
17 number 7, was that -- that the widow has never asked for a
18 partition, which I think is pretty obvious here. You granted
19 it in your sentence 1, and you denied number 7 in your sentence
20 2. You just granted and denied the same one.

21 THE COURT: Sure enough.

22 MR. GRAHAM: It just happens. It just happens.

23 THE COURT: Oops. That quotes our governor.

24 MR. GRAHAM: But the second thing relates to --
25 and it's -- and because of what we've just talked about, it's

1 important. It relates to the denial of Plaintiffs' issues 2
2 and 3. And those issues, very quickly, I know you have it
3 before you, but let me just quickly hit them here.

4 MR. EICHMAN: Judge, if I may interrupt? This
5 may be helpful to you, looking at this, we've got an annotated
6 version of your order that places the requests underneath each
7 of the --

8 MR. GRAHAM: Is that the one that says "we win,"
9 "they lose" beside each one? That's how they annotated it.

10 THE COURT: Go ahead, sir.

11 MR. GRAHAM: Okay, well --

12 MR. JENNINGS: I thought you'd seen that before.

13 MR. GRAHAM: Well -- no, I have not seen this
14 before. Let me just not work off their pieces of paper.

15 The number 2 that you denied, was that,
16 "immediately upon the decedent's death, the surviving spouse
17 retained and was fully vested in fee simple to her one-half of
18 the residence, and decedent's one-half passed to the
19 stepchildren."

20 Your Honor, this goes back to -- there was a lot
21 of confusion at the last hearing about whether Texas is an
22 aggregate state, where you just kind of have a claim to
23 anything, or whether it's an item state in which community
24 property descends immediately upon death, and this -- denying
25 this is an adoption, denying this and then the next one, that

1 since the residence was community homestead, and since the
2 surviving spouse elected to maintain the residence, surviving
3 spouse has exclusive use and possession that -- right -- the
4 surviving spouse has exclusive use and possession and defendant
5 stepchildren, therein, interests is subject to her exclusive
6 use there.

7 You granted number 6, which the only difference
8 between number 6 and number 3 was the reference to the
9 interests of the decedent's stepchildren. And through denying
10 those two, intentionally or not, you wound up adopting the
11 aggregate theory of community property, which as Professor
12 Johanson, I believe has written, "is not accepted in any
13 state," but with any event, the Supreme Court case of Wright
14 makes it clear that we're an item state.

15 And the first thing that the bank did in its
16 filing was to say, "Oh, yes, we are an item state." As a
17 matter of fact, the bank then goes on to say -- to dismiss that
18 the Court has adopted the aggregate theory, and said that you
19 didn't really mean it, that you were confused by the
20 capitalization, is what the bank sort of said.

21 MR. EICHMAN: Mr. Graham, with all due respect,
22 we did not suggest that the Court was confused by the
23 capitalization.

24 THE COURT: Let him finish.

25 MR. GRAHAM: And that you really meant that 150

1 applied here. Well, be that as it may -- and this is going to
2 go up. I mean, it's important. Those two have to be --

3 THE COURT: Where in this book are the specific
4 issues that I can make reference for?

5 MR. GRAHAM: Okay. Let me -- let me -- I have
6 it.

7 MR. JENNINGS: Tab 1, Your Honor, is the actual
8 order.

9 THE COURT: Tab what?

10 MR. JENNINGS: Tab 1 is the actual order you
11 signed.

12 THE COURT: That's the order I signed, but it
13 said Issue 1, so --

14 MR. GRAHAM: Your Honor, and I don't have these
15 for everybody --

16 THE COURT: Where is Issue 1?

17 MR. GRAHAM: -- but I just wrote the --

18 MR. ENOCH: Judge --

19 MR. GRAHAM: If you'll look --

20 MR. ENOCH: -- may I speak?

21 I can give you a direct document for it. Our
22 motion, Exhibit A is your order; Exhibit B is only that portion
23 of our motion that references the five things that you
24 referenced in your order; Exhibit C is their motion and the
25 eight things that you referenced in theirs.

1 So if you could find my motion for
2 reconsideration, those attachments will walk you through it,
3 because it only has the portions of the motions that have the
4 relief that you granted or denied.

5 THE COURT: Okay. I see it now.

6 MR. GRAHAM: This is the same thing if it's any
7 more convenient.

8 THE COURT: I see it.

9 MR. JENNINGS: But we also have our summary
10 judgment, Your Honor, with each one of the declarations we
11 sought, listed from here down in order, if you'd like to have
12 that.

13 THE COURT: That'd be great.

14 MR. GRAHAM: I think if --

15 MR. JENNINGS: They just start on that page and
16 then they work their way down.

17 MR. GRAHAM: This, with this many people, is
18 probably how they got denied to begin with, but it's -- these
19 two -- these two, in order for this Court to correctly reflect
20 that Texas is an item state, the Court has to find -- that's
21 too bold, I don't mean it that way -- but that the correct
22 finding would be that, of course, property passed on death to
23 the surviving spouse and the children, and, of course, the
24 children had an interest which was subject to the homestead.

25 THE COURT: May I ask a procedural question?

1 MR. GRAHAM: Certainly.

2 THE COURT: What is the last day I have?

3 MR. JENNINGS: I think it's the 29th of April,
4 Your Honor.

5 THE COURT: The 29th of April?

6 MR. JENNINGS: I believe so. I don't have my
7 calendar with me, but you have 75 days from the date of
8 February 4th to -- February has 29 days in it this year.

9 THE COURT: So that would be --

10 MR. JENNINGS: So it's roughly the 29th, but to
11 be safe, you ought to have an order by the 26th of April.

12 THE COURT: So I've got two weeks from today,
13 then?

14 MR. JENNINGS: Basically, you have till
15 April 26th, just to be safe.

16 MR. GRAHAM: To withdraw -- I mean, let me ask,
17 if I may, ask them a question, too?

18 Is it that the new order has to be issued or can
19 it be --

20 MR. JENNINGS: Well, let me speak to what you've
21 really asked. If this were a final order, you would definitely
22 only have until, I think it's April 29th, or to be safe,
23 April 26th. If it's not a final order, it's interlocutory.
24 These time limits don't matter at all; that's the reality.

25 THE COURT: Okay.

1 MR. JENNINGS: Now, every single person in this
2 room has filed a motion with the Court either saying severance
3 is appropriate or not appropriate. Not one of the three sides
4 has suggested that what you signed was a final order.

5 The truth is probably, assuming that it is not a
6 final order in some respect, the truth is, that if it's not a
7 final order none of these time limits apply, because anyone who
8 wants to appeal it is going to have to get a severance from you
9 anyway. I think that's the actual law. And I'm not saying
10 that to advocate anybody's side, but I don't believe that you
11 have issued a final order.

12 Of course, you could say right now on the record
13 that you didn't issue a final order, and it gets rid of the
14 whole 75-day problem.

15 MR. ENOCH: I would disagree with that to this
16 extent, Judge, and that is, if the bank issues undivided
17 interests tomorrow, it was a final order.

18 MR. JENNINGS: Well, that's --

19 MR. ENOCH: You have authorized them to do that
20 under the order, and if that's done, it doesn't matter if you
21 intend it to be a final order or not, and it appears that they
22 have the right to do that. What I would like to do if I can,
23 Judge, is -- this "aggregate," I'm getting a headache listening
24 to aggregate and item. The issue is whether the homestead
25 could be part of the overall partition. And you'll recall that

1 long line of cases, starting in 1888, where our Texas Supreme
2 Court said, "Absolutely it can be." That's not in dispute now.

3 What we brought up is simply, how can, under an
4 independent administration, the substantive rights of the
5 parties be materially different than under a dependent
6 administration? And if my clients agreed to an independent
7 administration, did they know or was it disclosed by the
8 fiduciary in this case, that if they did so, they would give up
9 substantive rights to partition and might be forced to take an
10 undivided interests in a homestead?

11 That's the issue. That's the seminal issue on
12 which you are ruling, and that is, whether or not an
13 independent executor or an independent -- an executor without
14 powers or an independent administrator, intestate estate, has
15 the right to issue undivided interests in lieu of following the
16 statute.

17 THE COURT: Let me ask you-all: What is your
18 position on his request to sever? Yes or no?

19 MR. JENNINGS: On the request to sever, I don't
20 think anybody's request to sever is ripe, including ours, until
21 you issue a true ruling after you've -- at a minimum, you have
22 to clean up the mistakes that are in the order. I mean, that's
23 just the honest truth.

24 THE COURT: Okay.

25 MR. JENNINGS: So you'd have to do that, and

1 only then should you hear either their or our motion for
2 severance. That's -- we just went ahead and filed it to get
3 you on notice of what we wanted to do, but the reality -- now,
4 I think that Mark is right, that, if they were to take action,
5 then that could create some finality, but they haven't done
6 anything. So, as long as they're sitting on their hands, this
7 is just an interlocutory order.

8 THE COURT: What is the bank's position on the
9 motion to sever, so we can heal this issue up?

10 MR. EICHMAN: Certainly, Judge. First off, as I
11 stated at the beginning, Judge, the bank believes that the
12 Court's ruling, as it was made, is the correct ruling. The
13 issue with respect to number 7, we think that the Court can
14 address that and make a clarification with respect to that.
15 But, otherwise, we really aren't here -- we're the ones who are
16 not here arguing that the Court got it wrong.

17 THE COURT: But what's your position as to --

18 MR. EICHMAN: With respect to -- with respect
19 to -- I'm sorry, Judge. With respect to the severance, here's
20 where we anticipate things going. We do not believe that
21 anything should be severed at this point in time. Neither of
22 these parties has clearly articulated to the Court in their
23 motions what it is that exactly ought to be severed.

24 You sever claims. They have not clearly
25 identified what claims it is that should be severed; moreover,

1 with respect to the point that Mr. Enoch has just raised and
2 Mr. Jennings raised, as well, about whether the bank is about
3 to take action on, for instance, distributing Robledo in
4 undivided interests, the action that the independent
5 administrator is about to take is to file further pleadings
6 with this Court in the estate proceeding, asking the Court,
7 under the declaratory judgment statute, to give the
8 administrator specific instruction.

9 At this point, I think the Court's ruling is
10 that the administrator has the authority to distribute
11 undivided interests or has the authority to pursue a partition
12 action. That's the way that we read the Court's -- the Court's
13 rulings.

14 THE COURT: It sounds to me like the bank
15 doesn't really want to be independent administrator, I mean,
16 independent executor.

17 MR. EICHMAN: Well, Judge --

18 THE COURT: You want to be the dependent
19 administrator, right?

20 MR. EICHMAN: Well, not quite, Your Honor, but
21 in the circumstances of this case, with these parties, and the
22 charges that they have either formally or informally made,
23 we're going to -- here's what we're going to be doing. We are
24 going to be filing a pleading in the next few days, asking the
25 Court to give us the instruction to distribute the Robledo

1 property in undivided interests. And in the alternative, if
2 the Court doesn't think that's the way we should go, to pursue
3 the partition action.

4 THE COURT: Well, I'm speaking off the cuff, but
5 I think we ought to appeal it, to let the higher authority tell
6 us what to do.

7 MR. EICHMAN: And, Judge -- and, Judge, if the
8 Court thinks that there ought to be a severance take place, I
9 think that the Court ought to make a ruling on that -- on this
10 last step that we intend to take before there's any kind of
11 severance with respect to the Robledo issue.

12 I think at that point in time, where the
13 administrator comes in and says, "Judge, this is the step we
14 intend to take, instruct us," which we're entitled to do under
15 the DJ statute, where there's a fiduciary decision, the
16 Court -- we can ask the Court to give us the instruction with
17 respect to that, with respect to that decision, so we're going
18 to ask the Court to do so.

19 And at that point in time, if they clearly
20 articulate what they think ought to be severed, perhaps there
21 can be a severance. But if there is a severance, Judge, this
22 administration is going to be going on for years.

23 MR. ENOCH: Judge, I disagree with Mr. Eichman
24 on the procedure going forward. And the reason I do so, sir,
25 as I understand -- as I understand, he's going to come forward

1 to you and ask you for permission to distribute a particular
2 asset of the estate in a particular way.

3 THE COURT: Right.

4 MR. ENOCH: I don't think you have the authority
5 to do that. What the statute says is, he can come before you
6 and ask for 150, and 150 requires the entire estate to go
7 through the partition process. He cannot come through and
8 ask -- but after distributing 80 percent of the estate, say,
9 "I've got a part of the estate I want you to order. How do we
10 distribute that."

11 THE COURT: We'll get to that when he files his
12 request.

13 MR. ENOCH: With respect to the specific issues,
14 Judge, we have identified the issue. And that is, whether or
15 not the independent administrator, absent agreement of parties,
16 may issue undivided interests; that is the seminal issue that
17 drives everything going forward in this case. We think it's
18 ripe for severance, we'd like to do so. And we'd like to
19 appeal.

20 THE COURT: And without having made up my mind,
21 finally, I agree with that.

22 MR. JENNINGS: Your Honor, may I say a couple of
23 brief things, and then I want Mr. Graham to finish his
24 presentation?

25 MR. GRAHAM: It's my moment.

1 MR. JENNINGS: I'm not trying to steal the
2 limelight. Your Honor, we're going to hand the Court an order
3 that we think the Court ought to enter, and it is to vacate its
4 current order and just grant the Plaintiffs' Motion for Summary
5 Judgment.

6 We think if you read through -- and this is what
7 Mr. Graham is about to tell you why -- but we think if you've
8 heard everything that you've heard even so far -- what -- Mr.
9 Eichman's talking out of both sides of this mouth. He tells
10 you your order's just wonderful, there's no problem with it,
11 except, of course, you do have to fix part of it. Well, if
12 you've got to fix part of it, you've got to fix the whole
13 thing.

14 Number 2, he said, well, it's really not even --
15 even though it's wonderful and it's perfect, it's really not
16 complete 'cause you don't really deal with the issue we care.
17 Even though he didn't file the summary judgment, as Mr. Enoch
18 has pointed out and as we've pointed out, too.

19 So the reality is, Your Honor, that the order
20 has flaws. And if you withdraw your order, just to think about
21 what to do, then none of these time periods that we're worried
22 about apply. That's the -- to be honest with you, that's the
23 safest and most conservative approach while you rethink, with
24 whatever you've determined in your --

25 THE COURT: That's a definite possibility here.

1 MR. JENNINGS: I think that's what you should
2 do, Your Honor.

3 THE COURT: Because the last time it took me, at
4 least a month to come up with --

5 MR. JENNINGS: And you were sick -- and you were
6 on your sick bed, Your Honor.

7 (INSTRUCTION BY THE COURT REPORTER)

8 MR. JENNINGS: And you were on your sick bed, as
9 you know, 'cause we've heard from the clerk. And the simplest
10 thing to do is to vacate the old order, reconsider it,
11 everybody's positions, whether you come down for us or against
12 us, I mean, that's the way it works out.

13 And then, however you come down, if then it
14 requires a severance and appeal, let the parties go forward.
15 But to go forward with this order, as many problems as it has,
16 truthfully, it's a mistake.

17 MR. ENOCH: Your Honor, just a question for the
18 Court? Mr. Graham, I know he's been interrupted, he still had
19 the floor. I still would like Mr. Johanson, Professor
20 Johanson, have an opportunity to respond and he's --

21 THE COURT: Can we take a 10-minute break?

22 MR. ENOCH: Yes, sure, of course, we can.

23 THE COURT: This mental illness stuff waits for
24 no one.

25 (SHORT BREAK IN PROCEEDINGS)

1 MR. JENNINGS: They told me you had already
2 signed the order granting our summary judgment, Your Honor, so,
3 I wanted to rush in and congratulate you.

4 THE COURT: Well, where were we? Go ahead.

5 MR. GRAHAM: Your Honor, I think where we were,
6 was that I was going to go ahead and finish my presentation.

7 THE COURT: Okay.

8 MR. GRAHAM: And then we can see where we go
9 from there. But let me just kind of go through. The parts
10 that we talked about, were that, number 7 is granted/denied, it
11 just needs to be granted, there's no question about it
12 whatsoever.

13 Number two and three, that it passed at death to
14 the surviving spouse and the children, and subject to the
15 administration -- subject to the homestead; those are just
16 basic Texas law and need to be granted.

17 THE COURT: Well, I don't know.

18 MR. GRAHAM: It's my view but -- and then the
19 last one on the issues, which really bounced out at me, is if
20 you'll take a look at Defendant's issue number 3, the
21 stepchildren's issue number 3 which is -- it sounds kind of
22 innocuous; you granted it. "The partition of the entire
23 community property subject to estate administration must
24 include Robledo, and that any party that does not receive
25 Robledo should receive assets equal in value to the full fair

1 market value of Robledo."

2 They wrote this. There's 1.2 million debt
3 against Robledo. This has to be denied 'cause their formula is
4 wrong. It's not anybody's fault, but otherwise --

5 THE COURT: Assuming it was paid for?

6 MR. GRAHAM: Right, but it's not, and therefore,
7 in our fact situation --

8 THE COURT: I understand. I agree with that.

9 MR. GRAHAM: -- that has to be denied.

10 THE COURT: I agree with that.

11 MR. GRAHAM: Then, really, just moving to the
12 Wright case, very quickly, and we've talked mostly about it,
13 but I'd like to focus on it because it's been the source of a
14 lot of controversy. And I think it will make really
15 interesting study, as you go on, 'cause this -- I truly believe
16 that this will shape all of our practices for years to come,
17 because it's the first time you get down in the earth with all
18 of these issues.

19 But Wright -- Wright's a Supreme Court case.
20 The bank dismisses Wright, and as you said to begin with, well,
21 it was under a will, and, well, it was the husband trying to
22 take away the surviving spouse's one-half that passed to her at
23 death, instead of someone else taking it away.

24 And Wright comes through -- Wright was a widow's
25 election. It's almost the identical situation to what's here.

1 The husband left the surviving spouse his half of the homestead
2 and left her half of some other properties to his
3 beneficiaries. They weren't his children, they were some aunts
4 and uncles. But the Supreme Court jumped in -- and the widow
5 was actually trying to say it wasn't an election, it's messed
6 up in that way.

7 But the Supreme Court came in, and a couple of
8 things are critical about it. And I'm sorry I didn't stand up
9 and talk about it last time, but I just didn't really believe
10 we were going to go off on item versus aggregate.

11 But in a just second I'll talk about why I think
12 we're -- but the Supreme Court came in and said that Wright's
13 very clear, that the surviving spouse receives her one-half of
14 each and every community asset at the instant of death. That
15 is hers. And no one can take it away from her. And that even
16 taking away -- this was not something in which he tried to take
17 away all of her community asset, it was just a little asset,
18 but even taking away the smallest piece of her share of the
19 community, even if he'd -- even if the husband had given her
20 vastly more, the Supreme Court is clear, "If it's a partition,
21 she's entitled to consent or not." Just absolute on it.

22 And I believe it's on page 675 of the case, and
23 the case is there. But the Supreme Court's language is clear
24 that -- page 675 -- if it's a partition, the doctrine, the
25 election applies. And so, you go through this and you say,

1 "Well, how is it applicable?"

2 Texas has so strong a rule about cutting up and
3 taking away the surviving spouse's share of community property,
4 that the husband can't do it, that no one can do it without her
5 consent. They talk about in here, "well, it doesn't do any
6 good to characterize it as a testamentary partition." It
7 doesn't make any difference. It's hers -- now in this context,
8 it was the husband that took it away.

9 But whether it's the husband saying, "Well, you
10 take this share" -- "you take the homestead, and I'm going to
11 give other people your interests in other assets." Or whether
12 it's the independent executor or this Court, this is not just
13 moving around assets that are the decedent's, which you have
14 the absolute right to do. This is now taking someone else's
15 assets, the widow's assets, that are only in here, and going
16 through it.

17 Now, let me see, in Wright, tying it back -- in
18 Wright, tying it back, and going back to the order, Wright
19 stands forward, that you just can't take her interest in a way,
20 in a way, in a way -- I may have, early on, mis-phrased
21 something, and when we say, "Well, you just can't do this," if
22 you give the widow the right to consent or elect against it,
23 you can.

24 It's just like in an election will, the decedent
25 can write a will that says, you know, "I give my share of this

1 to you, and I take your share..." and then the widow has the
2 right to elect it or not. Likewise, perhaps a better way to
3 phrase this, is that, yes, the Court, the independent
4 administrator can come up with all sorts of ways to reshuffle
5 the community property.

6 But the Supreme Court is clear. If it's a
7 partition like that, then the Doctrine of Election applies, and
8 it can only be that way if you give the widow the right to
9 elect or not elect, the right to accept or not. And in this
10 case, our client's been fighting this since the very first.

11 Two more things, and I'll finish up here. One,
12 this is making a person pay for a right that they already have.
13 She already has the right to -- I'm shifting over to the
14 constitutional issue now. This is taking her other money, her
15 community half of Exxon and AT&T and that sort of thing, and
16 taking those away from her without her consent, making her pay
17 for something that she's already got the right to live in for
18 the rest her life.

19 And the children said, "Oh, we're really doing
20 her a favor 'cause she can have the appreciation of this."
21 That's not up to someone else to decide for me or my client, or
22 for you, whether you're better off if you buy "X" or "Y."
23 That's your choice and your consent on that.

24 Second thing is that Mr. Enoch made a statement
25 a little while ago, "Oh, Your Honor, we've already talked about

1 this, there was a Supreme Court case in 1888 that said the
2 Court can move the partition around, that's Hudgons versus
3 Samson, we've beat it before and there's a number of cases.

4 In going back through -- first of all, we do not
5 agree that that's the law, but, second of all, you can
6 reconcile this. It came to me. If you read the widow's
7 elections cases, and you read those cases, the widow has the
8 right -- in the widow's elections cases -- to elect for or
9 against, but the -- one of the ways that she accepts and elects
10 for is course of conduct. She just never objects.

11 She takes, you know, what the husband has given
12 her and the administrator gives her her share in something, and
13 she never objects. And once she doesn't object, she has
14 consented. And likewise, first of all, Hudgons versus Samson,
15 which is the only Supreme Court case, and that was 1888, didn't
16 involve community property.

17 None of these issues were in there. They were
18 allocating property, pursuant to what eventually became 150,
19 among the decedent's beneficiaries and giving part of the
20 minors the homestead, and so it's taking place.

21 But it just, it doesn't involve this key issue
22 of community property. There's been a host of community
23 property cases since then, a few, I guess, is the right way to
24 put it, from the court of appeals that have considered this.
25 But in each one of them, either the surviving spouse actually

1 initiated the partition or the surviving spouse failed to
2 object, never raised it.

3 So, suddenly, you have a way to harmonize.
4 Well, yes, there are cases out there, this is just like widow's
5 election, there are cases out there where they did it, but none
6 of those had the widow's objection, and just like in the
7 widow's election cases, if the widow fails to object, that is
8 an acceptance. And here, we've done our darndest to object
9 every time anybody would listen to us: We're different.

10 And so I think Mr. Enoch, while he cites those
11 cases, is wrong in saying, Oh, that they override all of this.
12 Those are all cases in which the widow either -- to the extent
13 they're community property and not minors, they're cases in
14 which the widow either accepted it, was the one that initiated
15 it, or the widow never raised this issue. Had the widow raised
16 this issue, we'd have a case that talked about this, but she,
17 obviously, didn't raise it.

18 And, Your Honor, when you go through this
19 election concept that the widow's share is separate, it gets
20 brought in for administration purposes only, then that really
21 harmonizes all of these different things that people are
22 talking about.

23 And I think that leads you to the point of, in a
24 perfect world -- well, either way, I understand about
25 withdrawing so you can fix it. I think it leads to you

1 granting our motion and denying their motion, that these are
2 the key elements. And with that, Your Honor, I'd be glad to
3 rebut.

4 MR. JENNINGS: Let me just say one thing, Your
5 Honor. I agree with what he said, you should grant our motion,
6 but at a minimum today, from the bench, you should vacate the
7 present order. We're going to mediation next Tuesday, and no
8 order that puts everybody in a good position to argue their
9 position works better at mediation than an order that is
10 flawed.

11 THE COURT: I'm not going to do that.

12 MR. JENNINGS: Okay.

13 THE COURT: Go ahead, Mr. Graham.

14 MR. GRAHAM: Thank you, Your Honor.

15 MR. EICHMAN: Your Honor, at some point, can we
16 get a few minutes?

17 THE COURT: Sure.

18 MR. EICHMAN: Mr. Johanson, I think, wanted to
19 reserve two minutes for a rebut.

20 MR. JOHANSON: Yes.

21 MR. EICHMAN: We'll defer to the Professor for
22 two minutes, but then we'd like a little bit of time, Judge.

23 THE COURT: Sure.

24 MR. ENOCH: I don't -- excuse me, Professor. I
25 don't -- obviously, the bank will have their opportunity,

1 Judge, but the plan is for Professor Johanson to address a
2 couple of the issues and then Mr. Stolbach to address a couple
3 of issues?

4 MR. JOHANSON: I'll just take one minute. I'll
5 just take one minute.

6 Let me point out, Your Honor, as I think you
7 understand, the Estate of Wright, I haven't -- I said one thing
8 only, we have something called the widow's election will under
9 which one spouse, there the husband, can only dispose of his
10 one-half the community, and when he purports to dispose of the
11 fee simple title to community property, mistakenly thinking
12 that it was his, then we have the election doctrine.

13 The term "homestead," Mr. Graham, does not
14 appear in the estate of the Wright opinion. The term -- the
15 difference between aggregate and item theory does not appear in
16 that opinion. And the other thing is, yes, it is true,
17 Section 37 of the Texas Probate Code begins by saying, "Title
18 vests immediately with successors."

19 And then the next clause says, "...subject to
20 the personal representative's right of possession for purpose
21 of administration." And the idea that community property
22 disappears the instant of death of one of the spouses, simply,
23 with deference, just does not make sense; otherwise, we would
24 not need Section 177. So title vests immediately, that is
25 true. But it's subject to the executor's possession.

1 The interesting thing of all the discussions of
2 Mr. Jennings and Mr. Graham, I didn't hear them discuss the
3 applicability of Section 150 and how a "may" should be
4 construed.

5 MR. STOLBACH: Your Honor, I'm Gary Stolbach and
6 I am office lawyer, I'm not a trial lawyer, I'm just a trust
7 lawyer. So this is a rare opportunity for me to address the
8 Court, and I hope I don't breach protocols in doing that.

9 I wanted to talk about just one narrow but very
10 critical issue, and that is, whether the independent
11 administrator has a power to distribute undivided interests or
12 must go through the partition and distribution proceedings of
13 the probate code. And I only want to address myself to that.
14 There have been a lot of things said about this.

15 To my mind as a probate lawyer -- and by the
16 way, I agree with Mr. Graham that this speaks to some very
17 fundamental aspects of Texas probate law. This is nuts and
18 bolts, core law. I just have a different view of what that law
19 is.

20 I think there are only four or five points that
21 need to be made to clarify this issue, and I hope we do get
22 this clear, because from my client's perspective, it's
23 important to get the right ruling from this court and to
24 resolve this at the probate court level, if we can do it. My
25 clients have been through a lot already. But let me tell the

1 Court what I think the law in Texas is and why I think this is
2 not a complicated business.

3 Mr. Graham rose -- raised the issue of whether
4 the partition process applies to community property or just the
5 decedent's estate. We had a full hearing on that last time.
6 We and the bank agreed that it applies to the full community
7 estate. We've submitted to this court a spate of Texas Supreme
8 Court cases and other cases partitioning community property.

9 This cannot be an issue any longer under Texas
10 law. The law is absolutely clear that the partition and
11 distribution proceedings apply to the full community estate.

12 It's also clear that the homestead is part of
13 the partition process, "although, the surviving spouse may not
14 be deprived of occupancy," but that's a red herring. Nobody is
15 contemplating that or has ever contemplated that.

16 The next question we have to deal with is
17 whether undivided interests distribution is actually a lawful
18 alternative for an independent administrator in the state of
19 Texas. I think there are two absolutely compelling reasons to
20 show the Court why it can't be the law.

21 The first is that it's completely clear, and I
22 defy anybody to argue, that a dependent administrator that has
23 to follow the provisions of the probate code, has the power to
24 distribute undivided interests and ignore the partition
25 proceedings. It's impossible to consider that.

1 And yet we know from the bank and its pleadings
2 and from our pleadings, that the substantive rights of
3 beneficiaries are completely affected by whether undivided
4 interests are distributed or whether there's a partition and
5 distribution proceeding under the probate code. That is what
6 this --

7 THE COURT: So what do you mean by substantive
8 rights?

9 MR. STOLBACH: Well, I mean, let's suppose
10 Robledo is worth \$2,000,000, and we'll put the debt aside for a
11 second. Our client would like to receive \$2,000,000 of cash
12 and have Mrs. Hopper receive Robledo, if it's worth \$2,000,000;
13 we don't want to receive an undivided 50 percent interest in
14 Robledo subject to a life estate for Mrs. Hopper.

15 And there's no question that if the partition
16 process is the way that this estate is distributed, Robledo
17 will clearly be partitioned, undoubtedly, to Mrs. Hopper, as it
18 is in many cases, and other funds will go us and everybody will
19 be treated fairly.

20 But it's critical for the Court to understand
21 that the substantive rights of my client are completely
22 affected by whether they receive undivided interests or not.
23 And we value this, particularly, this one asset, and this
24 decision, at about \$750,000. And we can show the Court where
25 those figures come from, but it's about a

1 three-quarter-of-a-million-dollar difference to my client on
2 that issue.

3 So we know that in a dependent administration
4 that there will be partition of all the assets of the community
5 estate, including the homestead, and that my clients would
6 receive \$2,000,000 in cash, and through undivided interests, my
7 clients would be prejudiced to the effect of \$750,000.

8 And, in fact, the bank understands that my
9 client gets hurt by a distribution of undivided interests, and,
10 hence, he comes to the court and says, "We have a conundrum, we
11 don't know what to do, you need to tell us, Judge."

12 THE COURT: Can you back up for just a second?

13 MR. STOLBACH: You bet.

14 THE COURT: How was your client hurt again?

15 MR. STOLBACH: Sure. If my client were to
16 receive, rather than -- let's focus on \$1,000,000. The
17 alternative that we would propose is that we would receive
18 \$1,000,000 in cash. Instead of that, the undivided interests
19 alternative would be that we would receive a one-half interest
20 in Robledo, so that's one-half of a \$2,000,000 asset, but that
21 would be subject to Mrs. Hopper's life estate.

22 Well, I don't know what the Court would pay for
23 a one-half interest in Robledo subject to Mrs. Hopper's life
24 estate, but I'm valuing it roughly at, maybe, \$250,000 --

25 THE COURT: Yeah, but they're going to say,

1 "Look, your clients inherit what they inherit under the law,"
2 and that's --

3 MR. STOLBACH: And that's all we want. But what
4 does the law say? The -- Mrs. Hopper's lawyers find it handy
5 to ignore all of the statutory probate code provisions dealing
6 with partition and distribution. That is the law in Texas.
7 I'm not making that up. I'm not pretending it's there. It's
8 right here for us.

9 And what an independent executor can do is only
10 what a court could authorize a dependent executor to do. So,
11 an independent executor starts off charged to follow these
12 rules. That's the rules that the independent executor has to
13 follow, and that is the law in Texas.

14 The theory that undivided interests could be
15 distributed has no substantiation in Texas law. The only
16 authority that even speaks to it, because nobody argues this,
17 the only authority that even speaks to it is Woodward and
18 Smith, one of the most respected treatises on Texas Probate Law
19 that unequivocally declares that you cannot distribute
20 undivided interests.

21 Mr. Graham has said that Clark v. Posey
22 undermines that; that's completely wrong. Clark v. Posey
23 actually requires that, in that case, that undivided interests
24 not be distributed and that there be a partition of the estate.
25 The case stands for exactly the opposite proposition.

1 The bank agrees with us, and I hope the Court
2 will understand, that the difference in undivided interests
3 versus a full partition of the estate actually has a profound
4 economic effect on my client. The court -- I mean, the bank
5 agrees with that. It's in its pleadings. The bank has said
6 that they don't know how to resolve that. They feel it needs
7 attention.

8 So let's accept that if the court will indulge
9 me as -- I mean, the reason we're here is that we -- that's how
10 my clients view this, as a real economic problem.

11 If you start off with the proposition that
12 without question a dependent administrator must follow the
13 probate code provisions for partitioning the estate, then you
14 have to ask, "how could it be possible that the independent
15 administration, under the bank's theory, would allow for a
16 division of the estate in a way that a creates substantive harm
17 to the beneficiary?"

18 The substantive rights my client has in the
19 estate changed because when you don't have a dependent
20 administration, we have an independent administration, and the
21 independent administrator, they argue -- without any
22 authority -- has this power to distribute undivided interests.

23 This Court would be ruling for the first time in
24 160 years that the difference between an independent
25 administration and a dependent administration is not one of

1 procedure and efficiency, but actually has important effects on
2 the substantive economic rights of the beneficiaries.

3 We do not believe -- and I can't imagine anyone
4 outside of this courtroom could believe that that is the case
5 -- the law in Texas. And this -- if Mr. Graham suggests this
6 Court might be making bold departures from the probate law,
7 that ruling would be a remarkable bold departure from probate
8 law.

9 The second reason that it's unquestionable that
10 there is no right to divide -- to distribute undivided
11 interests, the first thing, this difference between dependent
12 administrators and independent executors, impossible to believe
13 Texas probate law provides that.

14 But think about this -- Professor Johanson
15 alluded to this earlier -- if that were the case, the bank's
16 conundrum, "What do I do?" "I can distribute undivided
17 interests, in which case, the Hopper children are hurt," or "I
18 can distribute through partition and distribution, like the
19 Probate Code clearly requires?" "I don't know what to do."

20 If that were the case, we would have hundreds of
21 situations throughout the history of Texas where exactly this
22 situation arose, and we'd have case after case after case of
23 adjudications instructing fiduciaries what to do in a situation
24 like this. There is no case law in the spec. And I think,
25 because no one has dared to argue, that there's a right to

1 distribute undivided interests.

2 It would be impossible to think that this would
3 not be adjudicated. And if you looked in treatises, secondary
4 sources, it would speak to this issue in the Texas probate law.
5 The same issue that's plaguing JPMorgan Chase in this
6 particular estate would have existed in hundreds of estates.

7 I have looked at every respected source on Texas
8 law, secondary source, and I find no discussion, except
9 Woodward and Smith that says, "this is not a possibility; you
10 cannot distribute undivided interests."

11 So I would suggest to the Court that it's
12 inconceivable the silence, the absence of this case law is
13 deafening in this situation. It cannot be that this, this
14 problem exists.

15 Mr. Cantrell in the administration of this
16 estate tumbled to this conundrum only months after litigation
17 was started or the controversy was started in this estate. I
18 don't know of anybody who advises executors -- including
19 JPMorgan -- who advises executors and beneficiaries that
20 there's a conundrum, that when you have an independent
21 administration, you have to decide, you have to huddle up with
22 all the beneficiaries and tell them, "we have two courses of
23 action."

24 In every independent administration, every
25 single one, "we can distribute undivided interests or we can

1 follow the probate code provisions on partition and
2 distribution; it has substantive differences on the
3 beneficiaries, we need to get this resolved."

4 This doesn't happen. I've been administering
5 estates for 35 years in Texas. It does not happen. Nobody is
6 giving this advice because this issue does not exist.

7 The bank has argued in support of the
8 proposition that there is a possibility of distributing
9 undivided interests -- there is right. They've argued two
10 things. The first thing they've argued is that Section 150 of
11 the probate code says, we "may" go to this Court and ask for
12 the partition and distribution proceedings to be implemented.

13 And since we have to distribute the estate and
14 we don't have to ask the Court to do this, well, what else do
15 we do with the property? We probably have to distribute
16 undivided interests. That is a false argument.

17 The statute has an obvious simple meaning, "If
18 the beneficiaries" -- and Woodward and Smith addresses this, so
19 Professor Johanson read that excerpt from Woodward and Smith --
20 "If the beneficiaries agree as to how the estate is to be
21 administered," of course the executor doesn't have to come and
22 waste the Court's time and hire appraisers and the like to have
23 a formal partition and distribution.

24 He's not violating the law if he distributes the
25 estate in full agreement of all of the beneficiaries. That is

1 what the word "may" means. That is all it means. There is no
2 requirement coming out of the word "may" that forces us to
3 believe that that statute for a second contemplates the
4 distribution of undivided interests to anybody. That is simply
5 sophist or it's illogical.

6 The bank has also provided the Court with three
7 or four cases that it says -- support the notion that undivided
8 interests can be distributed. These cases do not say that.
9 We've provided the Court with an interpretation of these three
10 cases, and I'd urge the Court to review those cases again.

11 The cases hold, if they hold anything, exactly
12 the opposite, that you may not distribute undivided interests
13 and that you must partition. There is, as I say to the Court,
14 not one case, not a single case in the history of Texas
15 Jurisprudence that holds that undivided interests may be
16 distributed by an executor as opposed to the, clearly, rules of
17 the Texas Probate Code.

18 Finally, the result of the partition and
19 distribution process is not inequitable; that's why it's the
20 law of Texas. People get treated fairly, it's a court
21 administered and supervised process. That's the law in Texas.
22 And we don't have to imagine it. We find it right here in the
23 probate code.

24 So the notion that this is somehow creating
25 disadvantages to people is beyond me. It would be more

1 efficient if people would agree and not have to go through this
2 court process, and in most situations, they do, but that's not
3 happening here.

4 Finally, I think it's really important that the
5 order coming out of the Court be correct. I think that the --
6 first of all, I think this issue should be resolved. I don't
7 believe there's any, any, lack of clarity in Texas law
8 whatsoever.

9 But if we're going to have an appeal coming out
10 of this court, I think it is really important the probate court
11 issue an order that is accurate, that reflects the law in
12 Texas, and that that's what the court of appeals is dealing
13 with. All right. I appreciate your time, Your Honor.

14 THE COURT: Quickly.

15 MR. GRAHAM: Oh, it will be quick.

16 MR. EICHMAN: Judge, are we still going to get a
17 chance?

18 THE COURT: Yes.

19 MR. GRAHAM: Your Honor, first of all, my friend
20 Professor Johanson said that the Supreme Court case didn't
21 mention the item theory at all. I will give you this, and I'm
22 sorry, I haven't had a chance to make copies, but on this page
23 of it, "it need not, of course, dispose of the respondent's
24 interest in every item of the community property." The fact
25 that we construed dispositions of particular items of the

1 community property, to include the community half in the same
2 item of community property." Your Honor, the case talks
3 extensively about the item theory of community property.

4 Second of all, Mr. Stolbach -- and the Court
5 raised an absolutely interesting issue. One of my favorite
6 movies is "The Usual Suspects" and there's a line in there in
7 which the guy says, "The greatest trick the devil ever pulled
8 was convincing people that he didn't exist." And I feel like
9 that with respect to this thing about the way the children are
10 somehow injured.

11 At the instant of death, one-half of the
12 property passed to the children -- it didn't need an
13 administration for that -- and one-half passed to the wife, and
14 the homestead applied. That's how they owned it, the moment
15 after death; that's how they owned it for the six months up
16 until it started; and that's how they own it right now. That's
17 subject to administration now. But that's how it's owned.

18 So Mr. Stolbach comes in -- and his clients, and
19 say, well, now, wait a minute, we're injured, if you give us
20 exactly what we've owned since the moment after death. You
21 instead have to buy us out of this house, and give us a couple
22 of million dollars. And we don't like Texas homestead law, we
23 don't want to have to be remainder beneficiaries --

24 THE COURT: I understand.

25 MR. GRAHAM: And so, in fact, it's the widow.

1 And then, finally, I think Mr. Stolbach said, there's never
2 been a case in Texas that discussed the distribution in
3 undivided interests. The court already has a copy of In re
4 Spondor.

5 In re Spondor, the district court's order, well,
6 as it's accordingly determined that the independent
7 administrator does not have the power to make such partition,
8 but it must either distribute the estate in undivided shares or
9 request its partition and distribution provided by 150.

10 And then because on the rehearing, they talk
11 about "both wills direct the administrator to divide my
12 estate." Then they talk about, "surely, this court of appeals
13 is not going to un -- to ignore the unambiguous language of
14 this will to do so." And then they revise it to say, "well,
15 you cannot do -- distribute it in undivided interests because
16 of this will. You have to partition and distribute it."

17 So, it's one of those things where the Court can
18 read the Spondor opinion, but the suggestion once again, the
19 distribution of undivided interests, the bank and we are
20 absolutely in agreement with this.

21 It's, again, only important, because if you're
22 going to dress yourself as the injured party, that you're going
23 to be injured and you have this right to be taken and not have
24 to suffer the slings and arrows of having a remainder interest
25 in a homestead, you have to get yourself to the point that, oh,

1 well, you know, we're just, we're just not really -- we don't
2 own anything. You're making a choice now. This is nothing
3 more than continuing what they already own and asking for this
4 Court to change it.

5 The final thing. There's been a lot of emphasis
6 placed upon "Oh, independent administration, if you rule this
7 way, will be different than dependent administration," and "we
8 know that we can partition in dependent administration but
9 you're saying they won't have to partition in independent."

10 Your Honor, with respect to both, when you're
11 dealing with community property, the property which is already
12 vested in the wife, they have to get the independent
13 administrator -- whether it's a dependent administrator or an
14 independent administration, this rule of the item theory, this
15 rule of the Wright case, that if you're going to take any of
16 the wife's shares away, you have to get her consent.

17 That is just as applicable to dependent
18 administration as it is to independent. It's simply confusing
19 the issue. And with that, thank you very much, Your Honor.

20 THE COURT: Mr. Eichman.

21 MR. JENNINGS: Judge, I want you to know that In
22 re Sendor is number 24 --

23 THE COURT: Thank you.

24 MR. JENNINGS: -- in the materials that you --

25 THE COURT: Mr. Eichman.

1 MR. EICHMAN: Thank you, Your Honor. I'm not
2 going to take real long. I know the Court doesn't have much
3 time, and I am not going to take all its time.

4 THE COURT: I've gotten 40 minutes, so go ahead.

5 MR. EICHMAN: As I have stated before, Judge,
6 it's the independent administrator's position that the Court's
7 rulings on the fundamental issues presented by these two
8 motions for partial summary judgment was correct, that the
9 Court -- that the Court did not err, did not get it wrong, as
10 these parties have been arguing.

11 We would strongly urge the Court not to vacate
12 the order that the Court has entered and --

13 THE COURT: Why?

14 MR. EICHMAN: Pardon?

15 THE COURT: Why? Since I've made a clear error
16 as to number 7?

17 MR. EICHMAN: Judge, I think that, at most, the
18 Court would address that -- or could address that issue simply
19 by entering an amended order which addresses that number 7
20 issue. But with respect to the substantive rulings that the
21 Court has made, makes no other changes because I think that the
22 Court's gotten it -- gotten it dead on correct.

23 And I think that that would address the issue --
24 if the Court wants to address the issue that you suggested you
25 thought you might address, that Mr. Graham raised about the

1 value point in that one finding with respect to Robledo, which
2 I guess he's reading -- he's reading and could conceivably be
3 read to mean the full equity value -- or excuse me, the full
4 value and not take into consideration the mortgage. Everyone
5 knows there's a mortgage on that property.

6 But those two points go to the fundamental
7 rulings that the Court has made, and our position is that the
8 Court ought not change any of those fundamental rulings. And
9 we've set out in our response -- and I don't know if the
10 Court's gotten a chance to look at our response to these
11 motions -- what we see as the four fundamental rulings that the
12 Court has made.

13 But the first one, it deals with this issue of
14 the authority of the administrator to distribute in undivided
15 interests. We certainly take no issue with the Court's ruling
16 with respect to that point. This point was briefed at length.

17 I mean, the Court's got hundreds of pages of
18 summary judgment papers on this, the legal briefing on this
19 point was extensive, and I think that the Court has made a
20 considered ruling with respect to that issue.

21 Professor Johanson has made several arguments,
22 Mr. Stolbach has made several arguments here this afternoon;
23 they are precisely the same arguments. In fact, in parts, they
24 almost were quoting the arguments that they made in their
25 motion for summary judgment. And I think that the Court has

1 fully considered those.

2 We, in response to their arguments, have cited
3 the Court, as Mr. Graham mentioned, to the Spendor case, and
4 there are three other cases that we cited: The Clark versus
5 Posey case; there was a case called Gonzales.

6 And those were addressed at some length in the
7 papers that we filed, that we believe fully support what the
8 Court has determined with respect to the authority of the
9 independent administrator to distribute the Robledo property in
10 undivided interests. And we don't think that the Court needs
11 to change a thing with respect to that determination.

12 As I mentioned previously, though, Judge, we do
13 intend to ask the Court to give us one more ruling with respect
14 to that issue, and there will be a pleading filed shortly on
15 that point.

16 Then another fundamental point that the Court
17 has, we believe, gotten correct in its order is that the
18 independent administrator may seek a partition with respect to
19 the community estate including the Robledo property. And Mr.
20 Graham and Mr. Jennings have argued at great length the impact
21 of the Wright case. Mr. Cantrell addressed that in his brief
22 remarks.

23 We just don't think that the Wright case
24 controls. We don't think it's applicable, really, at all, in
25 this situation. As the court pointed out, in Wright you had a

1 will. This is an intestacy. Their -- that case, we think,
2 stands only for the proposition that a testator can't force his
3 spouse, in his will, to trade her one-half interest in an asset
4 for something else. But the Wright case doesn't speak at all
5 to the partition regime that is established under the probate
6 code, or to the Court's authority under that partition regime.

7 And so, we don't think it at all is applicable
8 to this situation, and certainly not determinative of this
9 issue of whether the independent administrator may go to court
10 and seek a partition of the community, including the Robledo
11 property.

12 So we don't think that there's anything in
13 Wright that says to this Court, that this Court's ruling with
14 respect to that fundamental issue was incorrect.

15 We also don't think that this Court's ruling in
16 any way tramples upon the item theory. We think that they're
17 going way too far with this argument, that somehow the Court in
18 making its rulings has in any way adopted the aggregate theory.
19 We don't think that's the case.

20 We don't -- you know, Cantrell and I have read
21 this Court's rulings and read the Wright case, and we just --
22 quite honestly, we don't -- we just -- we don't see where
23 they're going with that argument, and we don't think that this
24 Court is in any way inconsistent with Texas law with respect to
25 the item theory.

1 Mr. Graham mentioned one other point, I think,
2 with respect to the Court's denial of Mrs. Hopper's request
3 number 2 and 3. And he read, I think, her request number 2,
4 and I think that the Court indicated that you are not in
5 agreement with the point that he was making with respect to her
6 request number 2 and were in agreement with what I think the
7 Court was suggesting, and this was the one that -- I think the
8 Court has this red and black document in front of you, issue
9 number 2, it's at the top of page 2 of this, "that immediately
10 upon decedent's death, surviving spouse retained and was fully
11 vested in the fee simple title to her undivided one-half of
12 the" -- capital R -- "Residence, and decedent's undivided
13 one-half thereof passed to his stepchildren."

14 We -- and the Court denied that and we don't
15 think that the Court got it wrong by denying that, based on the
16 fact that the request suggests that that property is not
17 subject to administration.

18 And as Professor Johanson pointed out, we agree
19 with this, "clearly, it is subject to administration." And
20 also that request seems to suggest that Robledo is not subject
21 to partition, and we think that that's another reason that the
22 Court could properly deny that request.

23 Judge, and then, finally, there are -- there is
24 the issue of severance. And just so we're clear on our
25 position, we don't think that they've said clearly, exactly

1 what it is that -- of the Court's rulings, that with respect to
2 which claims ought to be severed.

3 And with respect -- they seemed to have focused
4 today on the Robledo issue, and if there's going to be any
5 severance with respect to the Robledo issue, we would strongly
6 urge the Court to hold off on doing anything with respect to
7 that until we put in front of the Court this one additional
8 pleading so that the Court can make a determination with
9 respect to our request for instruction on the distribution of
10 Robledo in undivided interests.

11 At this point in time, that is what the
12 administrator intends to do, to ask the Court to bless its
13 distribution of Robledo in undivided interests. And that
14 pleading will be on file shortly.

15 And Mr. Cantrell -- I don't know if he has
16 anything else that he wants to add.

17 MR. CANTRELL: I'll reserve, Judge, if other
18 people will talk, and I'll have another chance?

19 MR. ENOCH: Your Honor, I'd like to just wrap
20 up?

21 THE COURT: Go ahead, sir.

22 MR. ENOCH: And it will take two minutes.

23 THE COURT: Go ahead, sir.

24 MR. ENOCH: I've been listening to the arguments
25 and I understand the Court sees that the difficult legal issues

1 aside, and I understand from the Court's questions that the
2 Court may be inclined to lean towards severance. Of course, I
3 am not prescient. I don't know what the Court's going to do.
4 If the Court desires to do that, we can't just sever a lawsuit
5 or a claim. What we have to do is sever a judgment.

6 THE COURT: You need to be more specific and
7 show me what you want severed.

8 MR. ENOCH: In our motion, Judge, specifically,
9 we want to sever what we think could be your final judgment
10 that the independent administrator may distribute undivided
11 interests, that's -- clearly, that's the seminal issue, as I
12 mentioned in my opening remarks.

13 And so, that will require if your court
14 agrees -- if Your Honor agrees with us that that should be an
15 issue to be severed, the Court must make a ruling whether the
16 independent administrator can or cannot. Because either way,
17 it's going to be appealed.

18 The question I have is: Which side of that
19 issue does this Court want to be on? And I'm asking this from
20 a 30,000-foot level. If the Court comes down with the answer
21 that the court of appeals looks at and it says, "the
22 independent administrator may distribute undivided interests,"
23 what is the practical effect of that for Texas Jurisprudence?

24 In every case, from now on, where there is not a
25 will and an independent administrator, and there is not an

1 agreement of the parties, and there is a homestead and a
2 surviving spouse, there will be substantive differences -- and
3 I will explain more clearly what I mean on substantive
4 differences -- between undivided interests and following 150.

5 And, therefore, every independent administrator
6 before he even accepts the position, will have to advise his
7 clients, Look, if you appoint me, I have a right to do
8 undivided interests, and that may affect you differently. How
9 would it affect you differently?" Judge, how would you like to
10 have this question: You can have a million dollars cash today,
11 or you can have a half of a \$2 million asset, that we don't
12 know how long it's going to be before you can have your hands
13 on it.

14 Judge, that is time value of money. That's
15 where the three-quarter million dollars comes in.

16 THE COURT: But they're going to say, "That's
17 what your people inherited."

18 MR. ENOCH: Your Honor --

19 THE COURT: I mean, that's life, isn't it?

20 MR. ENOCH: Judge, that is not life because --

21 THE COURT: I think it's -- I think it's a good
22 argument that "that's life." But go ahead, I'm sorry.

23 MR. ENOCH: If that is the case, there is no
24 reason to have 150, 379, 383 partition. There's no reason for
25 this Court to have the ability to give to commissioners the

1 ability to partition that which can be partitioned and sell
2 that which cannot be partitioned; there is no reason for that.

3 There is absolutely no reason for the probate
4 code to exist if all the independent administrator has to do --
5 in fact, why does there exist an independent administrator? If
6 all of a sudden, at death, all of that vests, why do we have an
7 independent administrator to administer, other than to pay
8 debts? I would suggest to you, Judge, that just as we've
9 argued, and the IA and we agree, all of the community property
10 comes in.

11 The question is how it's distributed, and that
12 must be under 150. Because if it's not under 150 and it comes
13 under undivided interests, there are difference in value to all
14 the beneficiaries, that affects them equally with us. It
15 cannot be a substantive difference, Judge, where the only
16 difference is, you choose an IA to save money.

17 I would suggest to you, Judge, that's if that's
18 what you want to do, you want to kick this upstairs and let the
19 parties argue up there, I would suggest -- I would want you to
20 be on the side of: You cannot issue undivided interests.
21 Because otherwise in the future, there is a lot of confusion in
22 Texas Jurisprudence as to what the burdens of disclosure and
23 activities are on independent administrators, because in each
24 instance, he'll have to advise of the potential for differing
25 substantive rights and results. Thank you, Judge.

1 MR. JENNINGS: Your Honor, may I say one thing?

2 THE COURT: Go ahead.

3 MR. JENNINGS: I'll be very brief, as well.

4 I just to want address one conundrum that
5 Counsel Enoch is suggesting about this division, and then I
6 want to address the severance, which is really what I was
7 standing to say.

8 I think the Court will agree with me that for a
9 rule of law to be a rule of law, it has to apply equally in all
10 cases to all people. Imagine an estate -- if the rule were as
11 Mr. Enoch has enunciated, imagine an estate where there's only
12 one asset, the homestead.

13 Under Mr. Enoch's formulation, apparently, the
14 Court would have the power to make the widow, or the widower,
15 go out and borrow at least half of the value of the homestead
16 and give it to the heirs. Because the heirs, as the Court has
17 correctly pointed out, "get what they get."

18 Well, what do they get? They get one piece of
19 property -- there's not another dime in the estate. They get
20 one piece of property and when the widow or widower dies, they
21 get either a half or the whole, depending on whether the
22 widower or widow have a underlying half-interest in the
23 property, as we have here.

24 But even if the widow didn't have any interest
25 in the property, they'd have to wait till she died to get it.

1 They can't get their mitts on it early and they can't get a
2 court order from you or -- the Supreme Court of Texas isn't
3 going to give them a court order that said, the widow has to go
4 out and borrow \$250,000 so that these folks don't have to wait
5 a long time until they kick off. Now, that's just the law.

6 It's not as Mr. Enoch says; it's never been that
7 way, and it never will be that way in this state. That's point
8 1, Your Honor.

9 Point 2 is on the severance, and I'll just be
10 very brief. Everything has been in such a state that we just
11 asked the Court for a severance. We didn't try to be detailed
12 about what we wanted. What we propose to do is see what the
13 Court orders, or doesn't, in the next few days, or whatever
14 time the Court --

15 THE COURT: It won't happen in a few days.

16 MR. JENNINGS: Whatever time the Court may take
17 and we want -- because there is no time limit upon a motion for
18 severance, that we're aware of. We'll file a new motion for
19 severance detailing the issues that need to be severed.

20 I will say this, Mr. Enoch, when they filed
21 their motion to sever, they said, "oh, just sever our issues."
22 If there's a motion to sever, you need to sever all the issues
23 that relate to all these things because they are all
24 intertwined. There's not just the Robledo issue, every one of
25 these issues, both that they've raised and that we've raised,

1 all interrelate to the same points of law. So all those issues
2 and claims need to be severed collectively and brought up.
3 That's really how -- objectively speaking --

4 THE COURT: Well, that makes me --

5 MR. JENNINGS: But that's really what I think.

6 THE COURT: That makes me agree with Mr. Irwin
7 (sic), that we ought to not sever at all. The point of
8 severance is to --

9 MR. JENNINGS: Well, I'm here to be truthful
10 with you.

11 THE COURT: -- give the appellate court the core
12 issue so that they can enlighten us all.

13 MR. JENNINGS: Well, they are all part of the
14 core issue, and I'm here to try to tell the Court truth, not
15 just to say something that somebody might like to hear. But
16 the order does need to be vacated and reformed. We think --
17 just sign our order, solves the problem. Or -- or if you want
18 to vacate it -- vacate it or reform it in some other way, then
19 that's, of course, the Court's discretion.

20 But either way, whatever the issues are that are
21 left, after you reform the order -- 'cause some these issues
22 may go away after you reform them. Whatever issues are left,
23 those are the issues that need to be severed. Because really,
24 realistically, the correct issues have been joined by
25 everybody, and they need to be -- they need to be decided so

1 that there's not a waste of time and money going forward in
2 litigation where this would have to be resolved. Thank you.

3 MR. CANTRELL: Thank you, Your Honor. On this
4 partition issue, dependent, independent, if you're in a
5 dependent administration, you're going to have a partition
6 unless under 378 the estate consists primarily of cash and
7 debts.

8 In an independent administration, like this one,
9 we had approximately 80 percent of these assets in cash,
10 marketable securities, similar-type assets, where we could give
11 50 shares of 100 to Mrs. Hopper, 25 shares of 100 to each of
12 the children. At the substantial urging of the beneficiaries
13 of this estate, including Mrs. Hopper, we were asked to make
14 early distributions of cash and money, which we did, fungible
15 essentially.

16 If we buy Mr. Stolbach's theory that an
17 independent administrator can never act on the "may," he must
18 always come back and seek partition, then what we're saying is,
19 "the action of the independent administrator may have been
20 wrong in letting cash go earlier." The Court can allow an
21 early distribution of assets, not wait until the end of the
22 administration and partial distribution; why can't an
23 independent administrator?

24 To say that Texas law has been clear on this for
25 150 years, I might agree, as long as it's my view of what the

1 law is. I think that an independent administrator can make
2 periodic distributions as you go along, particularly if it's
3 cash or marketable securities, at a time when you didn't think
4 it would be prejudicial to the continuing administration of the
5 estate.

6 That's the whole philosophy of independent
7 administration, as we've heard today, "make it easier" "make it
8 cheaper, if possible," "you don't have to go to court all the
9 time to get these simple things done."

10 That's what JPMorgan has been doing as
11 independent administration with the substantial urging of the
12 parties. And for them to come in here today and say, Oh, we
13 were wrong, that just doesn't make any sense; it's not
14 consistent with what Texas law is. It's not consistent with
15 the way estates have been administered for years on these type
16 of distributions. And for the Court to say the independent
17 administration always has to go through a 150 proceeding, you
18 cannot distribute anything early without leave of the Court,
19 goes to the very foundation of what an independent
20 administration is. It doesn't make any sense.

21 MR. ENOCH: Judge, I'd just like to -- just very
22 quickly. I agree with Your Honor. We don't -- we're not
23 severing half of the case. We're not -- I mean, I think what
24 you need is guidance on a critical issue that governs
25 everything else, and the issue of undivided interests paints

1 everything in this case.

2 The clearer and the simpler the issue, the less
3 time we spend and the less money we spend at the court of
4 appeals. Unless you feel uncertain about specific issues, for
5 example, whether community estate can be partitioned, under the
6 code, which is clear from the code, I would rely on your own
7 decision there.

8 But with respect to this issue of undivided
9 interests where there doesn't seem to be a law that you think
10 necessarily guides you in that, I would suggest that that is
11 the issue. That goes up, it comes down very quickly, we get to
12 trial, and if it comes back that they can do what they've done,
13 then my case is a far different case going forward, just as
14 theirs is.

15 It affects how long this litigation will take,
16 how much the people spend on it, and whether or not it even
17 continues. That is the issue. Thank you.

18 THE COURT: Go ahead. The last word right here.

19 MR. GRAHAM: Oh, I don't want -- okay. Thank
20 you, Your Honor.

21 THE COURT: The last word.

22 MR. GRAHAM: Two things --

23 THE COURT: Unless Professor Johanson wants it?
24 Go ahead.

25 MR. GRAHAM: First of all, if it's so clear that

1 community property is subject to partition, why are we here and
2 has all this money been spent? I mean, look, we're not two
3 voices crying in the wilderness. Professor Featherstone agreed
4 -- I mean, to simply say, "well, their side is the only one
5 that needs to be addressed," there is at least as much, if not
6 more controversy in the issue of partition of community, as
7 there is in undivided interests.

8 And this is also a chance to sort these issues
9 out for the next widow that comes along, "What's the rule with
10 respect to all of this?" So to sever one part and not the
11 partition would simply be -- to play at a different field.

12 THE COURT: Well, you-all let me know what you
13 want partitioned and I will look at --

14 MR. GRAHAM: And then the second thing, is
15 that -- it occurs to me, there's a definitional thing that I'd
16 just like to leave in here and it permeates all of this, just
17 like there's an assumption, that, oh, estate must include
18 community property, even though it expressly doesn't because a
19 different part says, oh, look at the context.

20 The use of the word "distribution," while we're
21 all pretty cavalier about that word, is incorrect with respect
22 to the surviving spouse's one-half. It's really a return or a
23 release back to her of her share. Distribution is what you do
24 when you've got the right to partition and all that sort of
25 stuff.

1 They don't have full possession for all purposes
2 of the one-half of community, they only have it for
3 administration purposes. The proof is in the pudding on that,
4 that we know that you don't have to have an administration to
5 pass title in Texas. I would guess that the majority of the
6 estates that -- are intestate.

7 There's no administration taken out, and title
8 companies, either with a will that's filed as a muniment of
9 title, or with respect to an intestate administration -- an
10 estate share, title companies know that title passes at death,
11 it doesn't take this administration they talk about. So
12 distribution is not correct.

13 And so when we turn things like that around and
14 say, well, you have to have the distribution be from the
15 executor to distribute the undivided interests, the truth of
16 the matter is as long as there are no bills that need to be
17 paid, we all -- the widow already has, and the children already
18 have their one-half interest in the property.

19 If the independent executor never gave anybody a
20 deed, it wouldn't be a problem. The title company goes and
21 looks at the determination of heirship --

22 THE COURT: That's not what we have here.

23 MR. GRAHAM: Hum?

24 THE COURT: That's not what we have here.

25 MR. GRAHAM: We do have here the dependent --

1 independent administration with an heirship determination but
2 that's -- those two issues, that there is question about what
3 the estate is, and I think the last one might be, that, I
4 believe Mr. Eichman said, in these words, "well, that, you
5 know, if you do that, you can't partition the homestead" --
6 oh, no, Mr. Graham is saying in his point, so-and-so, you
7 shouldn't order that 'cause that implies that you can't
8 partition the homestead. And of course, I'd say to Mr.
9 Eichman, would you read the constitution one more time where it
10 says, "that's right, you can't partition the homestead."

11 Thank you, Your Honor.

12 THE COURT: Let me just tell those of you of the
13 Hopper family, you have brilliant lawyers, so make no mistake
14 about that. What I'm probably going to do is vacate the order
15 and do some more thinking about it. Because I'm going to a
16 seminar next week, I'll be gone for three-fifths of the week,
17 and that leaves me only a small window to address this issue.

18 So the odds are, I'm going to vacate the order.
19 I have myself a note here that if I don't do it -- if I haven't
20 made up my mind by the 25th, I will vacate the order. So, I
21 want to thank you all. It's a pleasure hearing all you
22 gentlemen argue, and I'll do the best I can.*****

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF DALLAS)

I, MONA L. RICHARD, Official Court Reporter in and for the Probate Court Number Three of Dallas County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is \$704 and was paid by Hunton & Williams.

WITNESS MY OFFICIAL HAND this the 5th day of October, 2012.

S/Mona L. Richard

Mona L. Richard, Texas CSR 2384
Expiration Date: December 2013
Official Court Reporter
Probate Court Number Three
Dallas County, Texas
Dallas, Texas