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 John Warren  
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 Dallas County *EW*

NO. PR-11-3238-3

IN RE: ESTATE OF	§	IN THE PROBATE COURT
MAX D. HOPPER,	§	
DECEASED	§	
_____	§	
JO N. HOPPER,	§	NO. 3
Plaintiff,	§	
v.	§	
JP MORGAN CHASE, N.A., STEPHEN	§	
B. HOPPER and LAURA S. WASSMER,	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**DEFENDANT JPMORGAN CHASE BANK, N.A.'S ORIGINAL ANSWER,  
SPECIAL EXCEPTIONS, COUNTERCLAIM AND CROSS-CLAIM**

JPMorgan Chase Bank, N.A. ("JPMorgan"), in it capacity as the Independent Administrator (the "Administrator") of the Estate of Max D. Hopper (the "Estate") and JPMorgan Chase Bank, N.A., in its corporate capacity (the "Bank"), file in the capacities stated below the following Original Answer, Special Exceptions, Counterclaim and Cross-Claim in response to Jo N. Hopper's ("Mrs. Hopper") "Original Petition For: Declaratory Judgment, Breach of Contract, Breach of Fiduciary Duty, Fraud, et al, For Removal of Independent Administrator, and, Jury Demand" (the "Petition") as follows:

**General Denial**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, the Administrator and the Bank generally deny each and every allegation in the Petition, and demand strict proof of all such allegations by a preponderance of the evidence or other applicable burden of proof.

### Affirmative Defenses

By way of affirmative defense, the Administrator alleges the following:

1. Several of the matters that are the subject of the Petition involve the propriety of the Inventory, Appraisal and List of Claims (the "Inventory") filed by the Administrator on June 24, 2011. The propriety of the Inventory is the subject of the "Original Complaint for Correction of Inventory, Appraisal and List of Claims by Jo N. Hopper" filed on June 30, 2011. That complaint is set for hearing on January 27, 2012. The Court must address the matters raised in that other proceeding before this action should go forward.

2. Mrs. Hopper's demand for a family allowance fails because, among other reasons, she received as her separate property in the year following the Decedent's death in excess of \$1.1 million in proceeds from insurance policies on the Decedent's life.

3. The Administrator is acting in good faith in defending Mrs. Hopper's removal action. The Administrator is entitled under Texas Probate Code section 149C(c) to receive out of the Estate its necessary expenses and disbursements including reasonable attorney's fees in this removal action.

### Special Exceptions

The Administrator and the Bank (where stated) specially except to Mrs. Hopper's Petition, as follows:

1. The Administrator and the Bank specially except to the Petition because she purports to make all allegations against the Administrator and the Bank simultaneously by defining their capacities interchangeably:

The following entity acting in the following capacity is a party Defendant to this lawsuit: JPMorgan Chase Bank, N.A., (the "Bank" or "Defendant Bank" or "Independent Administrator" or "IA", interchangeably) acting in its capacity as

Independent Administrator of the Estate of Max D. Hopper, Deceased and individually.

By doing so, Mrs. Hopper fails to give the Administrator and the Bank fair notice of the claims against each of them, in their respective capacities. The Administrator and Bank request that the Court grant this special exception, that the Court order Mrs. Hopper to replead within 15 days of the date of the Court's order to cure this defect and strike the allegations against the Bank if she fails to replead in that manner.

2. The Administrator specially excepts to the allegations in paragraph II.C.C. of the Petition in which Mrs. Hopper alleges that the Administrator has "wholly failed to fix and pay the family allowance for support of the Surviving Spouse for the year following the Decedent's death" and that "[t]his is an intentional breach of TPC § 286(a)." The Administrator further excepts to the allegations in paragraph III.C.9. of the Petition in which Mrs. Hopper seeks a declaratory judgment that the Administrator should fix and pay to her a family allowance for the surviving spouse. Mrs. Hopper fails to plead facts sufficient to show that she is entitled to a family allowance pursuant to Texas Probate Code section 286, which provides that a family allowance is not to be fixed until after the inventory has been approved, unless the surviving spouse earlier requests, and submits proof of her need for, a family allowance. Mrs. Hopper has failed to allege that any such events have occurred. The Administrator requests that the Court grant this special exception, direct Mrs. Hopper to replead within 15 days of the Court's order to cure this defect, and strike these allegations if she fails to replead in that manner.

**Attorney's Fees**

Pursuant to Texas Civil Practice and Remedies Code section 37.009, the Administrator and the Bank request their reasonable and necessary attorney's fees and costs in defending Mrs. Hopper's claims for declaratory judgment.

**Counterclaim against Jo Hopper, and Cross-Claim against  
Laura Wassmer and Stephen Hopper, for Declaratory Judgment**

The Administrator files this Counterclaim against Jo N. Hopper, and Cross-Claim against Laura Wassmer and Stephen Hopper, for Declaratory Judgment under Texas Civil Practice and Remedies Code section 37.005 "to determine any questions arising in the administration of the . . . . estate," as follows:

**Parties, Jurisdiction, and Venue**

1. The Administrator brings this action.
2. Counterclaim Defendant Jo N. Hopper ("Mrs. Hopper") is Decedent's widow and an individual resident of Dallas County, Texas. Mrs. Hopper has entered an appearance through counsel in this probate proceeding. Because she has appeared in this action by filing her Petition, Mrs. Hopper will be served with process of the Administrator's Counterclaim against her through her counsel of record.
3. Cross-Claim Defendant Laura Wassmer ("Ms. Wassmer") is one of Decedent's children and an individual resident of Prairie Village, Kansas. Ms. Wassmer has entered an appearance through counsel in this probate proceeding. Pursuant to her "Notice of Appearance and Request for Service of Notices and Pleadings" filed July, 8, 2011 in ancillary case No. PR-10-1517-3, she may be served with process of the Administrator's Cross-Claim against her through her counsel of record.
4. Cross-Claim Defendant Stephen Hopper ("Dr. Hopper") is the Decedent's other child and an individual resident of Oklahoma City, Oklahoma. He has entered an appearance through counsel in this probate proceeding. Pursuant to his "Notice of Appearance and Request for Service of Notices and Pleadings" filed July, 8, 2011 in ancillary case No. PR-10-1517-3, he

will be served with process of the Administrator's Cross-Claim against him through his counsel of record.

5. This Court has jurisdiction over this controversy pursuant to Texas Probate Code section 5(h) (the "Code") and the Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code section 37.005.

6. Venue is proper in Dallas County, Texas under Texas Civil Practice & Remedies Code section 15.002 because Dallas County is the county in which the Estate is being administered.

#### Factual Background

7. The Decedent died intestate on January 25, 2010. He was survived by his wife, Mrs. Hopper, and by his two children from a prior marriage, Ms. Wassmer and Dr. Hopper. Mrs. Hopper, Ms. Wassmer and Dr. Hopper are at times referred to collectively as "Defendants."

8. On April 28, 2010, JPMorgan, joined by Mrs. Hopper, Ms. Wassmer and Dr. Hopper, filed an application for independent administration. This application sought JPMorgan's appointment as independent administrator of the Estate.

9. While that application was pending, it became necessary to seek the appointment of JPMorgan as temporary administrator of the Estate for limited purposes.

10. The Court appointed JPMorgan as temporary administrator of the Estate on June 14, 2010, and JPMorgan fulfilled the limited duties set forth in the order approving the temporary administration.

11. On June 30, 2010, the Court appointed JPMorgan, and JPMorgan qualified as Administrator, and is currently administering the Decedent's separate property and a portion of the community property estate of the Decedent and Mrs. Hopper pursuant to Code section 177.

12. The Administrator has distributed to Mrs. Hopper a substantial portion of Mrs. Hopper's share of the community estate that originally was under the control of the Administrator. The Administrator also has made cash distributions and some equity distributions to Ms. Wassmer and Dr. Hopper. All equity distributions of each equity position have been in proportion to the ownership interests of Mrs. Hopper, Ms. Wassmer, and Dr. Hopper in each equity asset that was distributed.

13. The Administrator filed the Inventory on June 24, 2011. The Defendants have filed objections to the Inventory, which have been set for hearing on January 27, 2012. The Court has not yet approved the Inventory.

14. Part of the community property subject to administration is the real property located at 9 Robledo Drive, Dallas, Texas 75230 (the "Robledo Property"), where Decedent resided with Mrs. Hopper at the time of his death. The Robledo Property constitutes part of the community property estate of the Decedent and Mrs. Hopper. Mrs. Hopper continues to live in the house at the Robledo Property, and possesses a homestead occupancy right to the entire property (the "Homestead Right") in addition to her one-half community interest in the Robledo Property. The Inventory valued the Robledo Property at \$1,935,000 as of the date of Decedent's death. The Robledo Property is subject to mortgage indebtedness.

15. Controversies have arisen between Mrs. Hopper, on the one hand, and Ms. Wassmer and Dr. Hopper, on the other hand, and in certain respects between the Defendants and the Administrator, regarding the Administrator's rights and responsibilities with respect to the distribution of undivided interests in community property, including the Robledo Property, and potentially separate property as well. The Administrator now seeks a declaration of its rights and

responsibilities in the form of a counterclaim for declaratory judgment against Mrs. Hopper and a cross-claim for declaratory judgment against Ms. Wassmer and Dr. Hopper.

Cause of Action: Declaratory Relief Regarding  
Distribution of Undivided Interests

16. The allegations in paragraphs 1-15 are incorporated in this paragraph by reference.

17. The purpose of independent administration under section 145 of the Code is to “free an estate of the often onerous and expensive judicial supervision [of the probate court], and in its place, to permit an executor, free of judicial supervision to effect the distribution of an estate with a minimum of cost and delay.” *Corpus Christi Bank & Trust v. Alice Nat'l Bank*, 444 S.W.2d 632, 634 (Tex. 1969). Thus, an independent administrator is given wide latitude by the Code in order to effect the distribution of an estate. This authority is carried out in a manner that is consistent with the independent administrator’s fiduciary duties to the beneficiaries of the estate, which include the interests of a survivor in community property while under the independent administrator’s control. *See generally Geeslin v. McElhenney*, 788 S.W. 2d 683, 684 (Tex. App.–Austin 1990, no writ).

18. Guided by these principles, the Administrator seeks a declaration of its right to distribute community property and separate property in undivided interests in accordance with intestate shares when it believes that such a distribution is consistent with its fiduciary duties to all Defendants, and that such a distribution can be effectuated without resorting to a court approved partition under sections 150 and 380, *et seq.*, of the Code.<sup>1</sup> Ms. Wassmer and Dr. Hopper contest the Administrator’s right to distribute undivided interests generally, and

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<sup>1</sup> The Administrator reserves the right, in light of the competing claims and assertions of the parties, to seek instruction from the Court on whether to proceed with such a distribution.

specifically with respect to the Robledo Property without seeking court approval for a partition under section 150.

19. Such a declaration of the Administrator's right to distribute community property in undivided interests (subject to the Homestead Right and the existing mortgage indebtedness to the extent the property is the Robledo Property), without first resorting to a partition proceeding raises five additional, specific questions.

20. First, the Administrator seeks a declaration of its right to distribute the Robledo Property in undivided interests, subject to the Homestead Right and the existing mortgage indebtedness, because such a distribution does not constitute a "partition" prohibited by section 284 of the Code.

21. Second, the Administrator seeks a declaration of its right to partition the entire Robledo Property (the real estate subject to the Homestead Right) to Mrs. Hopper in a section 380 partition action as part of the settlement and division of the community estate without violating fiduciary obligations owed to any of the Defendants.<sup>2</sup> Assuming that the Robledo Property can be partitioned entirely to Mrs. Hopper, the Administrator also seeks a declaration of what value must be partitioned to Ms. Wassmer and Dr. Hopper in order to equalize the community property distributed.<sup>3</sup>

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<sup>2</sup> Counsel for Ms. Wassmer and Dr. Hopper have contended that a distribution in undivided interests will impair the value of the portion of the Robledo Property partitioned to them because their undivided interest in the Robledo Property will remain subject to Mrs. Hopper's Homestead Right during her lifetime. Counsel for Mrs. Hopper contend that seeking a partition of this property to Mrs. Hopper may effectively destroy the value of her Homestead Right if equivalent value being partitioned to Ms. Wassmer and Dr. Hopper is determined without regard to impairment that would exist if the Robledo Property were to be distributed in undivided interests.

<sup>3</sup> The Administrator does not seek a specific valuation determination, but rather a determination that the value to be partitioned to Ms. Wassmer and Dr. Hopper will be equivalent in fair market value to the Estate's community interest in the Robledo Property partitioned to Mrs. Hopper, which will not require any consideration of the effect of the Homestead Right of Mrs. Hopper as an impairment to value.



22. Third, in the event the Administrator elects to pursue a partition action that awards all of the Robledo Property to Mrs. Hopper, and if there is insufficient property of Mrs. Hopper that remains subject to the administration of the Administrator to equalize the value of the Decedent's interest in the Robledo Property partitioned to Mrs. Hopper, the Administrator seeks a declaration of its right to require return of community property previously distributed to Mrs. Hopper in order to offset the value of the Robledo Property being partitioned to her.

23. Fourth, the Administrator seeks a declaration of its right to sell the Robledo Property subject to Mrs. Hopper's Homestead Right. In this event, the Administrator also seeks a declaration of its right to deliver full title to the purchaser, subject to the Homestead Right, without Mrs. Hopper's consent or signature on the deed of purchase, if refused.

24. Fifth, the Administrator seeks a declaration that its prior actions in distributing cash and distributing equity interests in individual assets, all in accordance with percentage ownership of Defendants in those assets, which resulted in complete ownership in each distributee of the asset distributed to that distributee<sup>4</sup>, were proper distributions, and not a partition requiring prior approval of this Court pursuant to sections 150 - 380, *et seq.* of the Code.

#### Attorney's Fees

Pursuant to the Texas Civil Practice and Remedies Code section 37.009, the Administrator requests its reasonable and necessary attorney's fees and costs incurred in prosecuting its counterclaim and cross-claim for declaratory judgment. The Administrator is

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<sup>4</sup> For example, if 100 shares of Corporation X was distributed, and if Corporation X was community property, Mrs. Hopper received 50 shares in her name, and each of Ms. Wassmer and Dr. Hopper received 25 shares in their respective names, as opposed to distributing one certificate of 100 shares to be owned 50% by Mrs. Hopper, and 25% by each of Ms Wassmer and Dr. Hopper.

also entitled to its attorney's fees under Texas Probate Code section 149C(c) for defending, in good faith, an action seeking to remove an independent administrator.

**Prayer**

WHEREFORE, the Administrator and the Bank respectfully request that the Court require Jo Hopper to cure the above defects in her pleading, deny all relief sought by Jo Hopper, grant the Administrator the relief requested in its counterclaim and cross-claim, award the Administrator and the Bank attorney's fees and costs, and grant the Administrator and the Bank all other relief to which they may be justly entitled.

Respectfully submitted,

**HUNTON & WILLIAMS LLP,**

By: 

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

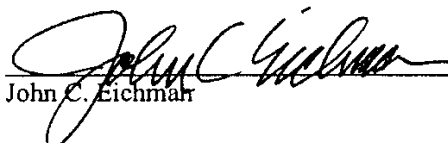
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served by electronic mail and facsimile on the following counsel of record after 5:00 p.m. on the 6th day of October, 2011:

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