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August 22, 2016

John C. Eichman  
Hunton & Williams LLP  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202-2700

Re: Cause No. PR10-1517-1; *Estate of Max D. Hopper, Deceased*, In Probate Court No. 1 of Dallas County, Texas (the “Estate Proceeding”)

Cause No. PR-11-3238-1; *Jo N. Hopper v. JPMorgan Chase, N.A., Stephen B. Hopper and Laura S. Wassmer*; In Probate Court No. 1, Dallas, Texas (the “Lawsuit”)

Dear Mr. Eichman:

This letter shall constitute my rebuttal report as an expert witness in the above-entitled and numbered cause. More specifically, this report is submitted in rebuttal to the expert report of Jerry Jones dated July 13, 2016 in the above-entitled and numbered cause and the expert report of Anthony L. Vitullo dated July 13, 2016 in the above-entitled and numbered cause. This rebuttal report does not amend or replace my original expert report dated July 13, 2016 (the “Original Report”). The Original Report is expressly incorporated herein by reference.

**I. SCOPE OF OPINIONS AND INFORMATION REVIEWED**

I have been retained to provide expert opinions and analysis regarding the reasonableness of the attorneys’ fees<sup>1</sup> incurred by Hunton & Williams LLP (“HW”) and charged to JPMorgan Chase Bank, N.A., in its capacity as Independent Administrator of the Estate of Max D. Hopper, Deceased (“JPM”) in connection with the administration of the Estate of Max D. Hopper, Deceased (the “Estate”) and the allocation of such fees as between the separate estate of Max D. Hopper (the “Decedent”), the Decedent’s share of the community property estate, and Jo

<sup>1</sup> For ease of reference, the term “attorneys’ fees” as used herein shall be inclusive of attorneys’ fees, paralegals’ fees, fees charged for staff time, and other costs and expenses charged by HW.

Hopper's share of the community property estate. This report only addresses the attorneys' fees and expenses incurred in connection with the Estate Proceeding and the independent administration of the Estate (collectively, the "Estate Administration"). It does not address the attorneys' fees and expenses associated with the Lawsuit, which I understand were billed separately from the Estate Administration.

My understanding of the facts in this case comes primarily from review to date of the items listed in section II of my Original Report, as well as the following materials:

- Defendants' Stephen B. Hopper and Laura S. Wassmer's Expert Designation dated July 13, 2016 in the Lawsuit, including the following attachments thereto:
  - Expert report of Jerry Jones dated July 13, 2016; and
  - Expert report of Anthony L. Vitullo dated July 13, 2016.
- *Report of Expert, Thomas Cantrill* dated July 13, 2016.
- The Dallas County Probate Courts' *Guidelines for Court Approval of Attorney Fee Petitions* as revised and modified on Monday, January 20, 2015.
- Part 1 of the Deposition of Stephen B. Hopper taken on April 8, 2016.
- Part 2 of the Deposition of Stephen B. Hopper taken on April 9, 2016.
- Part 1 of the Deposition of Laura S. Wassmer taken on April 11, 2016.
- Part 2 of the Deposition of Laura S. Wassmer taken on April 12, 2016.

The list of materials reviewed in the Original Report and the above list are not exhaustive, as there are other documents and materials being relied upon which are not specifically listed above. There may be additional documents or materials that I may review in connection with my testimony as an expert witness in this matter. In that case I reserve the right to modify the opinions expressed herein if necessary.

## **II. REBUTTAL TO EXPERT REPORT OF JERRY JONES**

### ***A. Mr. Jones's Failed to Analyze Attorneys' Fees under the Applicable Standard***

In his report, Mr. Jones did not analyze the reasonableness and necessity of HW's attorneys' fees under the applicable standards set forth in the *Arthur Andersen & Co. v. Perry Equipment Corp.* case and Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct. Mr. Jones also did not articulate or identify any applicable standards on which his opinions are based.

***B. JPM was not Required to Obtain Alternative Proposals from Counsel to Represent JPM in Connection with the Estate Administration***

I disagree with Mr. Jones's assertion that JPM had a duty to contact other qualified attorneys prior to engaging HW to represent JPM in connection with the Estate Administration. The personal representative of an estate is not required to engage the lowest bidder as counsel to represent it. It may engage counsel with the expertise and experience appropriate to the representation and recover the reasonable and necessary fees incurred. A professional fiduciary such as JPM would already be familiar with multiple lawyers who would be qualified for the engagement. It would be unnecessary for JPM to solicit bids on every single engagement. In my experience, professional fiduciaries do not typically engage in a competitive bidding process for engaging counsel in a particular probate estate.

Moreover, one of the factors concerning the reasonableness of attorneys' fees is the nature and length of the professional relationship between the client and attorney. Tex. Disciplinary R. Prof'l Conduct R. 1.04(b)(6); *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997). I understand that HW has represented JPM in a number of legal matters over the years. Given the existing relationship between JPM and HW and the efficiencies that such an existing relationship can bring to the representation in question, it was reasonable for JPM to engage HW to represent JPM in connection with the Estate.

***C. Block Billing was Appropriate***

Mr. Jones stated in his report, "Block billing is not appropriate and results in excessive fees." I disagree. Block billing is the practice of a lawyer describing in a single entry in his or her time records all of the tasks performed on a particular matter on that day and the amount of time spent performing those tasks. The alternative to block billing is itemized billing, which involves making a separate entry for each task performed. Block billing is not prohibited. It is, in fact, a common practice. Block billing also does not, as Mr. Jones asserts categorically, "result[] in excessive fees." If the time a lawyer has spent on each individual task performed in a day is reasonable, it does not become any less reasonable simply because it has been combined with the other tasks performed during the day in the lawyer's billing records. The relevant inquiry is not whether the fees are evidenced by block billing or itemized billing. It is whether the reasonableness of the fees can be determined from the time entries. Fee statements with block billed time are adequate for that purpose. *See McKool Smith, P.C. v. Curtis Int'l, Ltd.*, 15-11140, 2016 WL 2989241, at \*3 (5th Cir. May 23, 2016) ("We therefore cannot conclude that the arbitrator disregarded well defined Texas law by allowing McKool Smith to collect block billed attorney's fees."). HW's fee statements contain descriptions of the work performed, the date the work was performed, the person performing the work, and the total amount of time spent accomplishing the tasks. On numerous occasions, HW included parenthetical descriptions of the amount of time worked on discrete tasks within the daily entries. The information provided by HW is sufficient to determine the reasonableness and necessity of the attorneys' fees and expenses incurred in the Estate Administration. Thus, in my opinion, HW's use of block billing in connection with the Estate matter was appropriate and has not resulted in an excessive fee.

***D. HW has Properly Segregated its Fees in Connection with the Estate Administration***

Contrary to Mr. Jones's assertion in his report, the attorneys' fees and expenses for the Estate Administration have been segregated from the fees for the homestead litigation, removal, and damages claims. The Estate administration matter was assigned its own billing number, separate and apart from the litigation matters.

***E. HW's Attorneys' Fees and Expenses were Reasonable and Necessary***

1. Reasonableness of HW's Hourly Rates

I disagree with Mr. Jones's opinion that HW's hourly rates were "very high," for which he cites the "Dallas County Probate Courts' approved rate" as a reference point. I assume that Mr. Jones is referring to the Court's most current *Guidelines for Court Approval of Attorney Fee Petitions* (the "Guidelines"). The Guidelines are not applicable to the Estate Administration, which is an independent estate administration. The Guidelines apply to dependent administrations and guardianships, in which a fee application to the Court is required. The Guidelines are inapplicable in an independent administration such as the Estate, in which JPM and HW were not required to submit a fee application.

Even if the Guidelines did apply, the rates charged by HW in connection with the Estate Administration would be appropriate. In Section I.A of the Guidelines, the Court recognized that "a particularly difficult probate or guardianship matter may require special expertise that should be compensated at a rate higher than the attorney's standard rate under these guidelines." The size of the Estate and complexity of the assets, coupled with the contentiousness of the family relationships between Jo Hopper, Laura Wassmer, and Stephen Hopper (collectively, the "Beneficiaries") makes the Estate Administration a particularly difficult probate matter in which a higher rate is appropriate. As described in my Original Report, the Estate Administration involved unique and complex issues that required the attention of counsel experienced and knowledgeable in matters concerning estate administration and estate taxation. The nearly constant disputes between the Beneficiaries further added to the difficulty of the Estate Administration and the need for the involvement of counsel with sufficient experience and expertise to address the issues involved.

In my opinion, the hourly rates charged by HW in connection with the Estate Administration were reasonable for attorneys with the experience and expertise of those involved in the Estate Administration. Thomas Cantrill and Margaret S. Alford both have over thirty (30) years of experience in probate and estate administration matters and both are Board Certified in Estate and Probate Law by the Texas Board of Legal Specialization. John Eichman has over thirty (30) years of experience in commercial litigation, including fiduciary litigation. Grayson Linyard similarly focuses his practice on commercial and fiduciary litigation. Two experienced paralegals – Sally Lunday and Lori Wester – also worked on the Estate Administration matter.

2. Reasonableness and Necessity of the Total Fees for the Estate Administration

Mr. Jones further concludes without any explanation that “the total fees are not reasonable and some were unnecessary.” As previously described in my Original Report, my opinion is that the attorneys’ fees and expenses incurred by HW in connection with the Estate Administration were reasonable and necessary. The complexity and novelty of the issues involved required substantial attention of counsel in the Estate Administration. Additionally, the conduct of the Beneficiaries and their respective counsel made it necessary for HW to be involved significantly more than it might have otherwise been. The attorneys’ fees and expenses incurred by HW in connection with the Estate Administration were reasonable in light of the level of involvement necessitated by the complexity and the novelty of the issues involved and the conduct of the Beneficiaries and their respective counsel.

***F. JPM has Properly Allocated HW’s Attorneys’ Fees and Expenses in Connection with the Estate Administration***

I disagree with Mr. Jones’s opinion that the allocation of fees to the Decedent’s separate property and share of community property was “unreasonable in those instances in which the fees were generated by the actions of Ms. Hopper . . . in . . . the administration of the estate.” As described in detail in my Original Report, state law dictates the allocation of certain legal fees incurred in the Estate Administration to the decedent’s separate property and share of the community property. Where state law does not specifically require a certain allocation, the independent administrator may use its discretion to allocate the expenses considering the purpose of legal fee and the portion of the estate benefited by the legal services rendered.<sup>2</sup> Below is a non-exclusive list of instances in which JPM has proposed an allocation of legal fees related to the Estate Administration to Mrs. Hopper’s share of community property after consideration of such factors:

- Attorneys’ fees associated with securing the appointment of the temporary administrator and preparing and filing the temporary administrator’s final account and discharge were allocated in equal proportions to each of Mr. Hopper’s and Mrs. Hopper’s shares of community property because the entire community estate benefitted from the temporary administration.
- In certain instances, attorneys’ fees incurred during the preparation of the probate inventory and the IRS Form 8939 were allocated to Mr. Hopper’s share of community property and separate property or Mrs. Hopper share of community property because such fees were related to responses to specific inquiries from either Mrs. Hopper and/or the Laura Wassmer and Stephen Hopper (the “Children”) related to the probate inventory and the IRS Form 8939, the

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<sup>2</sup> The fee agreement between JPM and the Beneficiaries states, “Attorney fees, as well as charges by other outside professionals, are an expense of the estate and are in addition to our Estate Settlement fees.” I am not expressing herein any opinion concerning whether the fee agreement alters the general rules concerning the allocation of attorneys’ fees.

classification of assets as either community or separate property, and the appraisal of estate assets.

- Attorney's fees incurred in the transfer, management, and division of community property were allocated in equal proportions to each of Mr. Hopper's and Mrs. Hopper's shares of community property because such activities benefitted both Mr. Hopper's and Mrs. Hopper's shares of community property.

Based on my understanding of the circumstances of the Estate Administration and the purposes and benefits of the attorneys' services provided in connection with the Estate Administration, it is my opinion that JPM's proposed allocations of the attorneys' fees and expenses charged by HW in connection with the Estate Administration are reasonable.

***G. JPM did not Need to Challenge or Object to HW's Fees***

Mr. Jones incorrectly assumes that JPM was required to challenge or object to the fees charged by HW. JPM had no reason to challenge or object to attorneys' fees and expenses incurred by HW in connection with the Estate Administration because they were reasonable and necessary under the circumstances. Consideration was given to the reasonableness and necessity of the fees before they were paid by JPM. HW reviewed the time spent in connection with the Estate Administration and exercised billing judgment, reducing the amount of time charged on a number of occasions. JPM also reviewed the charges on HW's invoices to make sure the attorneys' fees charged were reasonable and necessary.

***H. JPM's Delegation of Duties to HW was Proper***

Mr. Jones accuses JPM of using HW to discharge its duties as the independent administrator, citing "acrimony between the children [of Mr. Hopper], the widow, and [JPM]" as the reason for turning over such duties. Further, he wrongly states that the "actions by [HW] are outside of the fee schedule agreement which says '[t]he attorney represents the estate in court and oversees legal matters.'" This is a mischaracterization of the role played HW in the Estate Administration. Instead, because of the "acrimony" between the parties involved, attorneys representing Ms. Hopper and the children of Mr. Hopper inserted themselves into nearly every phase of the Estate Administration. The attorneys advocated opposing legal positions, threatening and, in some instances, initiating litigation, thus creating "legal matters" and necessitating the involvement HW in activities that may have otherwise been undertaken without HW's involvement. In these circumstances, it was reasonable for JPM to seek counsel from HW in order to fulfill its duty as Independent Administrator to properly administer the assets of the Estate.

***I. HW's Fees in the Estate Administration Related to the Homestead Issue were Reasonable and Necessary***

I disagree with Mr. Jones's opinion that JPM and HW "spent a great deal of unnecessary time and expenses on the homestead issues." The independent administrator must, as a practical

matter, take certain actions to report the property on which the homestead is impressed and to effectuate the passage of title to the homestead property. Mrs. Hopper and the Children, and their respective counsel, took diametrically opposed positions with respect to how the title was to pass to the Robledo Property. These entrenched positions by the Beneficiaries and their counsel caused the escalation in fees to address the homestead issue.

### **III. REBUTTAL TO EXPERT REPORT OF ANTHONY L. VITULLO**

Like Mr. Jones, Mr. Vitullo did not analyze the reasonableness and necessity of HW's attorneys' fees under the *Andersen* factors. He also did not identify or articulate a standard on which his opinions are based.

I disagree with Mr. Vitullo's opinion that the attorneys' fees and expenses incurred by HW in connection with the Estate Administration "are excessive, unnecessary, unreasonable and outside the scope of [JPM's] agreement to provide administrative services." As I have already explained in my Original Report, the attorneys' fees and expenses incurred by HW in connection with the Estate Administration were reasonable and necessary, which also means they were not excessive. Furthermore, the wording of JPM's agreement with the Beneficiaries – particularly the term "legal matters" – is broad enough to cover the services HW provided in connection with the Estate Administration.

For the same reasons described in section II.H of this report, I disagree with Mr. Vitullo's opinion that JPM "had its attorneys perform work that should have properly been performed by [JPM.]"

For the same reasons described in section II.E.1 of this report, I disagree with Mr. Vitullo's opinion that the rates charged by HW in connection with the Estate Administration are "extremely high."

I disagree with Mr. Vitullo's opinion that "multiple attorneys charged for the same type of work, resulting in unnecessary overbilling." While multiple attorneys were involved in and billed time in connection with the Estate Administration, the time charged does not appear to be duplicative or unreasonable. Furthermore, it appears on the face of the fee statements for the Estate Administration that HW exercised billing judgment and reduced fees for time that may have been duplicative.

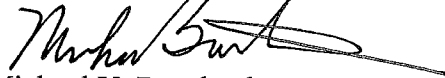
I disagree with Mr. Vitullo's assessment that "little to no consideration was given to the fact that [HW's] legal bills were depleting the inheritance of the [Children.]"

### **IV. CONCLUSION**

For the foregoing reasons, I respectfully disagree with the expert opinions expressed by Mr. Jones and Mr. Vitullo in their respective expert reports in this matter. I reserve the right to amend or supplement this report as additional information becomes available or is reviewed.

Sincerely,

BOURLAND, WALL & WENZEL, P.C.

A handwritten signature in black ink, appearing to read "Michael Bourland", with a long horizontal flourish extending to the right.

Michael V. Bourland