REPORTER'S RECORD
VOLUME 1 OF 3 VOLUMES
CV-05-01247
COURT CAUSE NO. PR-11-3238-3

IN RE: ESTATE OF	)IN THE DISTRICT COURT
	)
	)
	)
OF MAX D. HOPPER	)DALLAS, TEXAS
DECEASED	)
-- -- -- -- -- -- -- -- -- -- -- -- -	
JO N. HOPPER,	)
Plaintiff	)
	)
V.	)PROBATI

JP MORGAN CHASE BANK, N.A.,

STEPHEN B. HOPPER and LAURA S. WASSME

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REPORTER'S RECORD

MOTION FOR PARTIAL SUMMARY JUDGMENT ARGUMENT

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On the 31st day of January, 2012 the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable MICHAEL MILLER, JUDGE presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by Machine Shorthand.

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PROCEEDINGS

THE COURT: Whose motion for Summary Judgment is it?

MR. JENNINGS: Your Honor, we have a Motion for Summary Judgment that's properly set and was properly served for the hearing on this date. We also have two preliminary matters, housekeeping matters, that need to be attended to. One is a motion that essentially says that their Motion for Summary Judgment was late filed, should not be considered today, and the other is a series of objections as to the affidavits that they filed and also filed late, which were attached to the second Motions for Summary Judgment.

THE COURT: Okay. I'll hear everything and decide what I'm going to do about it.

MR. JENNINGS: In that case, Your Honor, I think I should start with our motion, which is before the Court this morning to continue the hearing on their Motion for Summary Judgment. It was filed on January 20th, Your Honor, and it's in the book that's before you.

You have a big black book. So, you can follow along easily, Your Honor, it's under tab number seven and it's essentially, Your Honor, our position

is that you're required to give under Rule 166-A, and particularly sub-section-C thereof, 21 days service of the Motion for Summary Judgment.

If you chose to serve it for your own reason by facsimile or mail, count three days extra. We have two supreme court cases, Your Honor, on point which we site. So I'll hand the Court a copy of and each one. One is the Lewis versus Blake case, Your Honor, and the other is the Stevens versus Turtle Creek case, Your Honor. The second one is not a supreme court case, but Lewis versus Blake is a leading case in the area. They both make clear that these are non -- these are serious objections and I'll opposing counsel a copy in one moment, Your Honor, but these are serious objections founded on due process principals and can't be just lightly disregarded.

THE COURT: So, you're objecting on their late filing.

MR. JENNINGS: I think that the fact that they filed late is actually uncontested, Your Honor. They just don't think it should matter. They think that I call the horse shoes and hand grenades approach, the Texas Rules of Civil Procedure that is a close enough, Who cares? We're all here, why not hear it". That's essentially what they're saying.

Now, just to give you a little bit of historical reference, we had a Motion for Summary Judgment, same ones you're going to be hearing today Your Honor, on file, November 30th. They were served by hand delivery with our affidavits properly attached and that was set for December 20th. You'll recall that they moved for a continuance on ours because they waited until just before the hearing on our Summary Judgment, saying we want to file our own and they should all be heard today.

So, we were supposed to have a hearing on that on December 23rd and we didn't know we had a hearing and the court simply on its own decided to reset everything until a later date, January 31st. Today. Fine as far as it goes, that was the one that they filed.

Then they waited until January 9th and they decided to file an Amended Motion for Summary Judgment that had a lot of new argument, they said it didn't, but we did had a lot of the argument.

THE COURT: Whose motion for Summary Judgment is it, yours?

MR. JENNINGS: We have one and they have one.

THE COURT: Oh, both parties do.

MR. EICHMAN: And just so there's no

misunderstanding, Judge, Mrs. Hopper and the children have a Motion for Summary Judgment. Independent administrator has responded to both of those motions.

THE COURT: Okay, I understand.

MR. JENNINGS: So, there are competing Summary Judgments before the court. We believe one should be heard today and one at a later time, which is theirs. So, what happened essentially, Your Honor, is they filed first on January 9th.

Well, that would have be fine and timely if they had bothered to go ahead and serve it on us by hand delivery, but they did not do so. The Lewis V Blake, says that you use the Rule Four County Procedure, so, 24 day's notice. They didn't do that. So, then not content to file on January 9th, then they filed again January 10th, this time attaching affidavits for the first time.

So, what's really curious about those affidavits, Your Honor, if I may approach the bench one more time, this time I'm not going to copy everybody because they appear to have copies of these. These affidavits, which I marked Exhibit A and D these are to their motion Your Honor. Their two clients Laura Wassmer and Steven Hopper, those are what we call the step-children and I represent

Mrs. Hopper and she's sitting in the courtroom in the black shirt.

So, the step-children have their affidavits. The affidavits are prepared on December 22nd. So, this entire time, this entire time when they could have filed their proof, if they had good proof, timely they laid behind the law and they didn't do that and they had to.

THE COURT: It may be morally reprehensible. Let's stick to the law.

MR. JENNINGS: They chose, for whatever reason, not to file them. So, they filed them late on January 10 and they didn't serve them timely under Lewis or the other case I gave you, Your Honor, which is Steven versus Turtle Creek.

So, from our perspective based on our motion which is under tab 7, they should not be allowed to go forward with their Motion for Summary Judgment hearing today, under the clear State of Texas law.

Additionally, Your Honor, we take a position and I'll get to it in a moment, we have it in our original motion, we take the position that the motion that they did file, the date is ineffective because the affidavits are late and they are no good and that's the second motion we will address here in a

moment, and in the meantime, they filed, what's called a motion to allow which is really just a reply, a response to our motion. Essentially, Your Honor, I would just say in general terms that under rule 166 A (c,) they had to have leave of Court at the time they filed not as to leave of Court 30 days later which is essentially what happened.

So, I would stop on the first motion Your Honor, and let them proceed with their position and I'd like to address the objections to the affidavits.

MR. ENOCH: May it please the Court, Your Honor, I'm Mark Enoch and together with Stan Johanson and Jerry Stolbach we represent Steven B. Hopper and Laura S. Wassmer.

You might recall that we had a hearing down here two days before Christmas because Mr. Jennings wanted the hearings on both Summary Judgments to be on different dates. I don't think this is any different now than wanting them heard on different dates.

My response to that was for judicial economy since we both say that -- let's hear them at the same time.

I filed my original motion on December 20th. We decided to rewrite one section of the brief with no substantive new arguments. It's still the same

section, the same number of the brief that was delivered to them on January 9th by certified mail, by email and I think, by facimilie also on the 9th.

The Lewis versus Blake case, we contend doesn't apply, very simply because in that case there's no mention of whether the hearing was, they talk about the fact that there was only 21 days notice of the hearing and you need 24th.

Remember, this hearing was set on December 23rd on the motion. So, the question isn't whether I can file a Motion for Summary Judgment within 24 days, it's whether I can amend or supplement a previously filed motion. Lewis doesn't apply to that at all, but just to make it easy for the Court, Judge, rather than to have you make a tough decision on whether it's fair or not, I understand we're here on the same issue. They have filed a response and objections to the affidavits that I filed 21 days before the hearing.

The notice has been known for 40 days. So, I file a motion for leave to file within 24 days, which is also set for your consideration today and then, I'm going to make three closing arguments.

First is, there's no substantive change. The difference between the first and the original was that one section, three pages, that was rewritten, the same

section, the same item. The difference and the reason I amended the next day, rather than file the affidavits as part of the response to those affidavits in any event, properly before you, because they were filed more than 7 days before the hearing in our response.

I wanted them as part of the original motion. That's why I did the second amended. So the only difference between the first amendment and, the second amendment was the addition of those affidavits, which you can hear about anyway because they're already part of the response.

We think, Judge, you can grant leave under 166 A. for Summary Judgment, for the leave to file within 24 days, if you will, under the Lewis case. I don't think you need to because I think all we did was amend or supplement a previously filed one and they've had more than 40 days notice.

THE COURT: Do you think if I allowed you to go forward and do, that I would be reversed?

MR. ENOCH: I do not.

MR. JENNINGS: Your Honor, with all the due respect, you would be reversed. He doesn't have any case significantly linked with the Supreme Court precedent and the Steven versus Turtle Creek case says

and it's been highlighted for your review.

The reason for the 21 day notice provision is to give the party opposing the Summary Judgment the full opportunity to respond on the merits, and it also says because Summary Judgment is such a harsh remedy the notice provisions of 166 (a) (c) must be strictly construed, citing Williams 724 Southwest 2nd 417. The reality, Your Honor, they're a day late, well actually, three days late and a dollar short and they were well aware of the time frame.

They could have filed whatever they wanted to file early or they could have simply served it properly, but they chose to do whatever they chose to instead of simply having a setting sometime in the future on a motion that was no longer a live pleading was sufficient. There was no notice of hearing given with their two amended MSJs that the court knows is fundamental law, that if you amend a pleading, that could be, an original pleading is no longer alive. When they got rid of their Motion for Summary Judgment by another Summary Judgment Motion, they effectively crossed out the hearing on their Summary Judgment.

THE COURT: Is their motion on the same subject as your motion?

MR. JENNINGS: It is on the same subject in

generalized terms, that's right.

THE COURT: Let's go forward with your motion.

MR. JENNINGS: That's fine. Now if I, may Your Honor, we are going to go on to another housekeeping matter and this addresses the affidavits which are before you. This is our objection to their affidavit offered in support of their second amended motion for partial Summary Judgment notice of what I just handed the court a moment ago.

Now, Your Honor, we made several objections, we don't think that the affidavits in addition to being untimely from the standpoint our objections in that regard, please review both affidavits side by side because they're absolutely identical.

Paragraph one is slightly different in each of them, but paragraph two is identical. It starts with, we understand the term, "we" is solely defined and cannot be part of the proper affidavit. Each applicant cannot swear to anything for more than itself, by definition the selected, "we", is used in the affidavits constitutes from the -- we hear today as well. This makes each affidavit firmly defective.

Additionally each affidavit makes assertions as to the substance of Plaintiff and/or the bank,

which is also the independent administrator, Becky Norton Chase alleged contentions and then he goes on to state the contentions involved or whether they had or whether the Affiant had effectively consented.

Well, they can deny consent, but they can't swear to the contentions of other and they can't swear to a legal concept which is a concept of the effective consent which is what both affidavits in paragraph (b) state.

So, that too is an improper legal conclusion that can't be considered competent Summary Judgment level evidence and the affidavits are defective and useless for the purposes of the Defendant's MSJ, even if things were timely filed and they weren't. They also go on to swear at some length as to additional legal conclusions including the following, this is in both of them, that the distribution and the word that should have be in here, but it wasn't, that the distributions were being made are unlawful or could later purchase Robledo and others estate asset would be partitioned and distributed.

This is not a factual statement in the affidavits. It's a legal conclusion that's the series of them to which we again object.

Additionally, both the Affiants respectfully

swear that they'll be unfairly treated if the plaintiff and "we", they use the word, "we", again. Are -- is which is undefined and independently objectionable were to receive interest in the Robledo property.

The concept of unfair treatment was inherently subjective, allegedly, in their opinion masquerading the fact. Plaintiffs objects again. In short, Your Honor, the affidavits that they chose to late file are wholly defective. They cannot be used to support the Summary Judgment motion.

Additionally, I would point out and we would talk about this further in response, but there are over 36 statements that we highlighted that were also made as quote "factual assertions" in their affidavits, in their motions, which are also unsupported by even their defective affidavit. That's another whole other set of problems. On top of that, Your Honor, in addition to those problems, they also have the fact that we have a controverting affidavit by Mrs. Hopper, and Mrs. Hopper is the only party that's filed a controverting affidavit and because she's filed a controverting affidavit, on its face, the defendant's motion for Summary Judgment can't be granted. So, I think their Summary Judgment is late.

It's fatally defective as to it's affidavit.

The affidavits are no good. They're independently late and on top, of that their, MSJ is controverted and you can't win a controverted motion for summary, the last I knew and that's another reason why the Court should not consider that matter today. I think they should refile, do whatever they need to do and clean up their work to the extent that they're capable of it and it should be heard on another day.

THE COURT: I'll take your objections under advisement. Please present your motion.

MR. JENNINGS: All right. Thank you. Your Honor, if I may, please the court, I'm going to be using three boards today and all three, the substance of each one of them, are also in the black binder that you have before you and the boards are marked by your reporter as Plaintiff's Exhibits A, B and C., and I'll be referencing those boards today. Counsel already has a copy and we gave him one, and we also gave the Court yesterday a white binder, which is a second one and on that I will just hand the court, it was one case on the last three pages, which are not relevant, for some reason was not taken in by the Xerox machine and I'll give you that and that goes at the back of the Stewart case.

If you want, I'll be glad to put it in the binder for you. I've given copies to the other counsel. All right. Now, we can proceed to MSJ. As we said a moment ago Mrs. Hopper is here in the courtroom. She is the surviving spouse of a gentleman named Ashley Hopper, and she and Mr. Hopper were able to collectively amass a considerable fortune in their 28-year marriage, which ended in his tragic and sudden death on January 25th, 2000 and now what we're here about today essentially, Your Honor, is a dispute over the constitutional homestead and certain constitutional homestead has a defined meaning.

It is not a term that can be redefined by whether it's counsel for the independent administrator or counsel for step-children. It has a constitutional meaning and here's what the constitution says about homestead. It's extremely important does the constitutional precept be kept in mind at all times because the only rights of homestead immanents from the Texas constitution.

It is not independently a creature of some later statute. This constitutional provision has been around in Texas for well over 100 years.

In fact, I think closer to 150, but I don't know the exact date. Here's, of course what it says.

On the death of the husband or wife or both, the homestead shall descend and vest that's critical language, in the manner like other -- as/or like, other real property to the deceased and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the life-time of the surviving husband or wife. And here we have the surviving wife.

Now, after reading this about 150 times, I won't read the rest of it for just a moment. It finally dawned on me this morning that there's actually two clauses to this constitution, Section 52, Article 16. This is the first clause.

The first clause is talking about the descent and vested in to the surviving spouse of a property interest that descends and vests right then, right now, at the moment of death, but it shall not be partitioned. That's clause one.

Then there's a second clause -- and oh, it has one more part to the first part. It's during the lifetime of that surviving wife or as long as the surviving may elect to use or occupy the same as a homestead. That's clause one, essentially.

There's the second clause, or so long as the guardian of the minor children of the deceased may be

permitted under the order of the proper court having jurisdiction to use and occupy the same.

So, I kept reading it over and over and over again and almost memorized it. The reality is there's really two different points, clause one affects the surviving spouse and clause two envisions a situation where there are minor children and the Court takes jurisdiction of the matter and has to do something.

So, it's a really two part constitutional provision. Now, that's really an important point because a lot of the cases that you will see today, that the other side mis-cites and I kept wondering, why do they cite these cases so incorrectly, and why do they not get it and this was what was going through my mind as I was reading citations and it didn't make any sense because so many of these other cases deal with situations where there are minor children and there's court supervision going on and this is not our case. This is a very unusual situation. You have a case that involves a very large community estate. That very large community estate is worth $25 million on the date of death.

Another misapprehension that informs the other parties. Is a misapprehension that community property during the life and then upon the moment of

death is some sort of aggregation, but that's not true as we are going to point out in a minute as Professor Johanson himself has written.

Each item of community property in the State of Texas is owned individually 50/50, item by item by item and that, too, informs the Plaintiff's position and it's why we're right and they're wrong, because they haven't grasped that these items are owned separately. Not in some collective whole that can be played around with. You don't own a claim to a half interest in the community. You own a half interest in the community item by item and at the moment of death, in the twinkling of an eye, that interest becomes transmuted into your own separate property. There is no community property after death.

Now, there are cases that have a lot of loose talk about community property, but the truth is, it's formerly community property that is now separate property.

Now, we go to board two. Now there's been a lot of talk in the briefing about the homestead and the independent administrator for reasons I'll get into in a minute has taken what I considered a very unusual, interesting view that the homestead is not really a homestead, but it's a homestead right, but

that is, it's a burden on property for exclusive use and possession of the living in this case.

Well, that's just not true because the Texas Constitution defines homestead in Article -- Section 51, Article 16. So, this is kind of a one, two punch, as it were, on the whole point of homestead.

What it says, it says what a homestead is. Remember here that Section 16, in article 16, Section 52, it says: It shall descent and vest. Well, in Copper Real right, such as use of possession doesn't descend in vain. The property is descend in vain.

The homestead shall consist of, and this is, of course, a rural homestead, together with any improvements on the land, it shall consist of a lot or contiguous right amounts to not more than 10, acres together with any improvements on the land. That's a homestead. The homestead is a physical thing. It's not a mere incorporeal right. It's a thing. The thing is the property. The raise, that's what a homestead is.

Now, one of the things that should inform the court's thinking when it's reading, not only our Summary Judgment, but more importantly, the responses that you're going to see that are filed against it, and as well as Summary Judgment motion, if the Court

considers it, filed by the defendant's step-children, is this whole problem of misunderstanding property rules because if you get off on the wrong foot and you think, first of all, that a homestead is just some kind of a right and not a property interest, you have it wrong there and you know it would be further wrong, you will go down the wrong path with both feet if you think that the community property interest that existed at the moment before death somehow just continues on as a community property interest after death. It doesn't.

At the moment of death, that property descends and vest and when it does, it vest as separate property and it vests as an undivided interest by the surviving partners, spouse, in this case, Mrs. Hopper.

In each and every item that has formerly been community and now in this case, I'm not going to talk about the little tiny bit of separate property that was involved in this case out of over $25 million as the Independent Administrator counts it, of community property existed at the moment of Mr. Hopper's death.

The children also agree because they cited two or three names in their various MSJs, that about 43,800 additional would have been separate property,

owned by Mr. Hopper before his marriage. That's it. So, it's inconsequential. Now because he died Intestate, that also has special ramifications because he died Intestate, we have a situation where my client Mrs. Hopper takes in testate and she took and invested in her instantly.

She is not with the exception of that 43,000, which really doesn't count for the purposes of this analysis. She is not an Heir. It didn't require a probate proceeding for her to be vested with a half interest of each and every asset. No probate was required. She could go right along without any ruling by any court because she owned half of everything, of every single thing. Texas is a state that filed what's called the item approach. In fact, we haven't found a case that follows in this so-called aggregate approach, which unfortunately the whole under pending of their aggregate theory. That's the bank's statement, not me.

No, let me read to you from Professor Johanson: Almost all community property estate of the husband and wife own equal shares in each item of community property at death. They do not own equal undivided shares in the aggregated community property.

Thus, if husband and wife are in blank acre

are worth 50,000, and Y acre 50,000, each owns a half, share, W's will, the wife's will, cannot devise Y acre to H, and Y acre to B for daughter by a previous marriage even though the husband would end up with CD value, property value, equals his community share.

Now, I'm going to explain in a minute why this mistaken precepts on their part, where they refuse to follow their own co-counsel's statements, has gotten them in terrible trouble in terms of the intellectual underpinnings of their 3,407.

This Stewart versus Hardy estate, upon that Mrs. Stewart's death, that the spouse died Intestate, the deceased spouse will have half interest of community probate assets passed to the Decedent's, Decedents.

The surviving spouse continues to own his or her one half interest of in the community probate assets. Right there. "Continues to own". Didn't require any distribution. Didn't require any partition. Doesn't require division. Now, how they sort it out later, is another matter. How you go from owning half of something to owning all it, if you want to, with your consent, that's a different matter, but this is a non-consensual partition that has been sought all along.

The affidavit of Joe Hopper, on file with a Summary Judgment motion that we filed states, she has not consented to partition in any way, shape, or form and I don't think anybody can stand up in the courtroom and say they were wrong and we certainly have it in a controverting affidavit.

Finally, Your Honor, on this same point, Texas Matrimonial law Professor McKnight, as we all know, of states in his footnote, one, the wife owns a one-half interest in each item of the community property with which she cannot be deprived of at death, meaning the decedent's death, but she's still alive.

Now, we wanted to bring these to the Court's attention because if the court starts off with the same understanding of the law, that the law itself states it will avoid the trap of getting caught up in cases that either don't understand the law, words are used loosely, all the problems that you face, particularly with ancient cases, that most of the Judges in the State of Texas haven't even been to law school. In some of the cases they cite, go well, back to over 100 years.

Now, what do the children want to do? What they have asked the Court to do and what the

administrator just doesn't know what to do about, throws its hands up in the air and this is really a jump ball, and it's not, is they want to partition the homestead, which is expressly forbidden by the constitution.

Now, my client owned an undivided one-half interest, just before Mr. Hopper died, in that property, as community. The moment he passed away she owned a half interest in fee in that house, undivided. She also then got the constitutional homestead right on top of that issue.

Now, she isn't planning on going anywhere. She's never left the house. The only thing that's required under Section 272 of the Probate code is for the property to be delivered to her. Even that little bit of administration wasn't required here because she never left. She never went anywhere. Nobody had to give her anything. She was there the whole time. She's still there. What do they want? They want the property to be partitioned, that is, they're really upset that their stuff, owning half of a house that they can't do anything with until Mrs. Hopper lives out her life, they're upset about it and they want the court --

THE COURT: Let's stick with the law.

MR. JENNINGS: Well, it is the law, Your Honor it's what --

THE COURT: They're being upset is not neither here nor there. Let's stick to the law.

MR. JENNINGS: I agree. It is neither here nor there, but they say themselves that they believe that the law can't put them in that position. They don't have to sit there and wait patiently to do something with their burden of one-half, pending her passing, but the fact is that under the constitution, they do.

That's our position. They have to just sit there and own the property, their half interest in the property and relax. If she ever abandons, it then the property could be partitioned with her consent. If she abandons it, but if she doesn't abandon it, and without her consent, it cannot be partitioned and that's the crux of the issues that are before you.

Now, the other issues all flow from that issue. Now, one other thing I would say, and I started with a moment ago and then, I got off the point. Now, in a case where you have competing Motions for Summary Judgment and then you have what appears to be neutral, the Court might be tempted to think well, all right, I'll listen to side A and side

B and see what they both think and then, I'll listen to the party that's neutral, an Independent Administrator and then I'll see what they say. They can provide some guidance.

The problem here is the neutral in this case is not a neutral. As we pointed out in both our MSJ, in responses that we filed, the Independent Administrator has a big ax to grind.

The problem that they have in this case is we sued them for millions and millions of dollars of wrong doing that they've done in this estate, generally, the problems in their mishandling of this partition is just one of the many problems in this --

MR. ENOCH: Judge, I hate to interrupt argument, this kind of runs outside the scope of Summary Judgment

MR. JENNINGS: I don't think it does. It's in our response.

THE COURT: I think it does just. Keep to your motion, please.

MR. JENNINGS: Okay. In any event, Your Honor, they're not mutual. That's our position and you should take what this says in your briefing with a grain of salt.

Now, the constitution, as I said grants the

homestead right. It can't be taken away by anybody else. In fact, there's a great case in the City of, I will find it for the Court, city of Forth Worth versus Howerton, which is under tab 19, Your Honor, in your book, that I'm going to point out to the Court and on the last page of that case, it says. It's the general policy of the law, where the rights have been fixed under a constitutional provision, that the legislature is without power to destroy or inherit such rights.

It's also a general rule that the legislature does not have the power to enact any law contrary to provisions of the constitution and if any law apart thereof undertakes to nullify that protection furnished by the constitution, such law or part thereof that conflicts with the constitution is void and that, too, should inform the Court's thinking on these issues.

Now, the bank caused us essentially to file our Motions for Summary Judgment.

MR. EICHMAN: Just a matter of housekeeping, Judge, I don't know how long you have. He has been speaking for almost 20 minutes. I just want to make sure all the parties have equal time. What's your pleasure?

THE COURT: As far as I'm concerned the

briefer the better, but I will give him as much time as he needs --

MR. EICHMAN: I didn't know if we were restrained by that.

THE COURT: I'll give ya'll as much time as you need 4:30 or 5:00.

MR. EICHMAN: Very well. Okay. All right. That's fine. Thank you, Judge.

MR. JENNINGS: Now, Judge, and I'll try to be as brief, as I can. One of the points that we try to make here and I know the Court's going to read all these motions. So, I'm not gonna try to read everything that's in our motion that would be a waste of the Court's time and you don't want to hear all that, but one of the points that we've tried to make here, Your Honor, is that this property, basic property law, a basis constitutional law that informs our position is all about her retaining the right to not having to pay for a right.

If you have a constitutional right, you do not have to pay for it. What they suggested is what we call the aggregational theory. The aggregation theory goes like this, if we talk about our information, their aggregation theory is this, Mrs. Hopper owns half interest in the home outright.

She also has her homestead rights.

Now, they had a different idea about what the homestead right, as they called it, than we have because we say she has the homestead, but they call it a homestead right. We say she has the homestead.

What that means is, she has exclusive use of possession until the day she dies or affirmatively abandons it. Nobody contests that she's not done either one of those things. She's alive and well. So, what do they want to do?

What they want to do is, they want to take other separate property, now owned with undivided shares by Mrs. Hopper, and they want to rearrange the property interest so that they get property that is hers under the laws, as we described the item by item approach. They want to take other property that's hers and pay themselves out of that property for their burden interest in the homestead that they're otherwise stuck with.

At one point, in one of their responses on page 27, they complain that they're going to have to let her stay there for the rest of her life, rent free and yet the Meyers case, which we don't think applies to most settings in this case which is under tab if I can find it, under object 35, Your Honor, states, we

don't agree with the Meyers case. It doesn't apply here. It has a great quote, at the bottom of page 956, on that lower right hand corner. The Meyers, it states, the surviving husband or wife is entitled to the use and occupancy of the homestead as long as it is used as such and is not chargeable with rent therefore. So, even the cases that they cite doesn't really work to their benefit. There is no rent to be paid. She's entitled to her enjoyment.

Now, let me explain to the Court kind of what happened here, because there was a lot of property involved and expense, the Independent Administrator started distributing property to the step-children.

Now, I won't use the word, distributing property, I won't use that phrase, distributing property, to Mrs. Hopper because they don't have any power to distribute property to her. It's already her property.

So, what they did is they took assets and they gave them to the step-children, not quite all of the assets that they were entitled to, but a good part of them several, million dollars each as is reflected in this property affidavit, went to step-children.

She retained her property. The bank wasn't necessary to administer the IA -- administer

anything. It's her property. She retained her property. Now, what they want to do and what the bank has asked for in declaration, is it literally wants to reach back and take property that belongs to Mrs. Hopper. That is hers outright, and say, we'll take some of that and we'll redistribute it and give it to the children, so they won't be upset by the fact that they have to wait for you to die and that their tied up from using the value of that property interest that is burden by the homestead.

Again, the whole property is the homestead. It's not a homestead right. It's a homestead. Now, that essentially is the position that they're taken in this case. The bank has asked for a series of declarations.

THE COURT: Why don't you let them argue their motion and you argue your motion.

MR. JENNINGS: Well, it's part of my motion.

THE COURT: You argue your motion.

MR. JENNINGS: Well, I am arguing my motion. The declarations that the IA. Sought which is how we got here, the IA filed an action for declaratory judgment and our Motion for Summary Judgment knocks those down, one after another. So, that's why I'm addressing them because that's my motion.

I'm not just trying to talk about what they say. This is my motion. Their first declaration, that they sought, was their right to distribute Robledo, an undivided interest, and in the existing mortgage indebtedness and we refute that position for the reasons I've just stated.

Now, Professor Featherston, who's one of our co-counsel states and it's in footnote 23 of our motion, the authority of the personal representative of a survivor is one half of the community property, what was the community property is limited to what is necessary to satisfy debts of the deceased spouse, properly payable out of such community assets. That's the other key point that that the Court is going to have to listen. This is not about the Independent Administrator needing money to pay bills.

The Independent Administrator will probably tell you that they have the right to take in all the property under the Probate Code and it's administered. They would if there were debts to pay. They don't have that situation here. Again, it's an unusual estate. These were very wealthy people. So, the administrator isn't administrating debt, and that's not the problem here. The administrator is trying to administer my client's interest in the

homestead, which they cannot do as a matter of law. They cannot partition our homestead. That's our point.

The second thing that they say is the administrator speaks of declaration of the right, again the partitioning of the entire Robledo property that's the address that the property is located at, subject to a Section 380 partition action as part of the settlement division of in the community estate and I'm not going to read you the whole point.

Now, there's only one party that can ask for a 385 partition under the -- reading this statute, Texas Probate Code Section 385, states application for partition, when a husband or wife shall die leaving any community property, the survivor may at any time after debtor's testamentary, or if administration had been granted and an inventory, appraisement list of the claimant's estate have been returned and then I'll cut out a few words just to make it shorter. Make application in writing to the Court for a partition.

Again, this Plaintiff has not asked for any partition. In fact adamantly opposed it. Now one other point in that regard. What does the term, "estate" mean? Estate has a special meaning. In the Probate Code under

Section 3L, the term "estate", is defined, it's not defined in the way it's used by these other parties in this case, 3L says. The state denotes the real and personal property of a decedent both as such property originally existed and it's from time to time, so forth and so forth.

The only estate that the Independent Administrator can administer is the estate of the decedent that estate does not include any of the community property which became separate property at the instant of his death that Mrs. Hopper possess. That property passed outside of the "estate" context. It is not subject to distribution and a number of cases that we cite for that effect, Your Honor. They can't -- they can administrate the property only under Section 177 regarding paying the bills, but in this case where they're really no debts to pay that she's owed money by the Independent Administrator not the other way around, in this case, the reality is that the estate that they can administer is only Mr. Hopper's one-half. That's the estate. They have no power or authority to administer Mrs. Hopper's separate property upon death, upon the death of in the decedent. That's another not critical point that we need to make and that's why their point number two is

wrong.

Now, in an interesting letter that we received is attached through copy which is attached by affidavit of Mr. Graham for Mr. Cantrill. Mr. Cantrill apparently agreed on a lot of these points. Let me just read you a few of these. This is on page 30 and 31 of our motion. We are almost done, Your Honor.

The right to administer the survivor's interest in the community is founded upon Section 177. That Section does not expand the definition of estate to include the community interest of the survivor that is being administered by the IA and then he also goes on to say Section 373 (a) does state that the person representative may seek partition of the estate and determine estate does not include the surviving spouse's community property and what he's calling community property, of course, is actually separate that's his memorandum is attached as well.

Mr. Cantrill went on to say the Probate Code does define the term, estate, in Section 3L and that definition does refer to the personal and real property of the decedent. He goes on further to say, if the definition of estate Section 3L, makes no mention of the community one-half of the surviving

spouse. He then goes on to admit Section 380 which addresses the partition of property that's capable of division again refers to the estate and he goes on and I won't read the entire quote. It's a lengthy quote, of course, note our position.

Then he finally he says the interest of the survivors is hers and the interest in that property does not vest in her as an Heir under Section 37 because it is her property both before and after Max Hopper died.

The next point that they make their declaration treatise that they sought was that in the event the administrator elected to pursue a petition action that awards all of this Robledo property to Mrs. Hopper and if there's insufficient property that remains subject to administration to equalize the value of in the decedent's interest in the Robledo property partitioned to Mrs. Hopper, the administrator seeks a different declaration and is likely to require return of the community property previously distributed. I won't read you all of this.

Again, this is a fallacious conflict. They don't have any right over her property. It's her separate property. They're not administering anything. They didn't have to administer a thing when

he died, as far as Mrs. Hopper was, she was not an Heir except for a tiny 1/3 interest and 43,000 worth of separate property. She hasn't been an Heir to anything. This was hers to start with and it's hers today and the Court or no one else can take that away from her and they certainly can't take it away.

They have no power to administer it unless they to do the sale for the purposes of debt, but you'll note that there's not Summary Judgment Affidavit attached to anybody's Summary Judgment because there's not any debt problem with this estate and to administer in that regard.

They have not power of sale and there's no need for sale. Their, fourth point was the real kicker, the Administrator took the declaration to sell the Robledo property subject to Mrs. Hopper's homestead right.

Now, I will tell you, sir, that on their amended counter-claim that they filed on January 24th, the bank has now withdrawn that, I won't read you the whole thing, but they finally realized that even they couldn't go so far as to selling the homestead right out from under her. So they withdrew that and we don't have time to be worried about that and so all those arguments go away.

Now, we believe that all of our declarations conversely should be granted. We've made a number of declarations. Now, the bank's upset about these declarations. The IA says well, some of them aren't really needed. They do really self-evident point and really under a Declaratory Judgment action you don't need a declaration on self-evident points. Well, we disagree and here's why we disagree.

Under Rule 166, of the Texas Rules of Civil Procedure 166 (a) (e,) and we quote this in our response and I'll just briefly mention it. It says, "if Summary Judgment is not rendered upon the whole case or for ultimately facts and a trial is necessary. The Judge may hear it, examine the evidence, and the Judge may make an order specifying the facts that are to be established as a matter of law that directed such court proceedings.

Now, while the bank as effectively IA, I call them the bank sometimes, the IA has effectively exceeded to a number of our points in our Motion for Summary Judgment, in essence, stipulated to them, oh, these really aren't contested, this is not contested, that's not contested. The reality is that the children, step-children have made similar statements. Our Summary Judgment is sought against both the IA and

the step-children because they have not come forward and stipulated to any of these forms and we ask that all of the points in sub-part (b) of our argument and the declaration sought are granted in our favor and what are they?

First, the residence was the community property of deceased surviving spouse prior to decedent's death and I think that has been testified by the children step-children haven't affirmatively said it was. So, that's point one.

Point two, that immediately upon Decedents death surviving spouse retained and was fully vested to one-half of the residence, the Decedents undivided one-half passed to the step-children. Now, they have, the step-children, have effectively contested that because they'd never admitted that the, item period, that we were talking about before is correct, even though that is clear Texas law.

You know, the bank says, oh, that's self-evidence, but the self-evidence is that the step-children haven't signed on for that.

Number three. That we seek declaration on is that since the residence was their community homestead, it says the surviving spouse is allegedly the gainer of this, surviving spouse has the exclusive

right use and possession thereof and the step-children's interest was subject to her exclusive right and use of possession.

I'll tell you the step-children sure don't agree with that. All you have to do read page 27 of their response to the MSJ. They go on and on about how unfair it is and how terrible, it is just it's just shocking in this.

The next thing that we see, that the homestead is not subject to administration. That no party may be granted the partition of the homestead against Plaintiff as long as she maintains it as her homestead. Well, again that's her constitutional right, but the children have fought that, the step-children have fought that at every step of the way because we asked for declaration about that as well. We have three more. That the bank shall not charge enough to surviving spouse's share of assets being administered. Of course, really they don't have anything to administer. Any value attributable to the surviving spouse's right or sole use of possession of the children's one-half of the residence and any tangible personal property in connection therewith as a matter of law is its homestead.

Again, the children have contested that at

every step of the way and under next the Plaintiff is entitled to full exclusive use of possession of the homestead and can maintain her homestead without interference from the step-children or the IA for the remainder of her natural life until she ceases to occupy the homestead is affirmatively and deliberately abandon the same.

It may seem to the Court what I'm saying and I'm just restating the same premise and in a way I am because it all wraps around that one simple premise of what was hers to start with, what was hers at the moment of death and what's hers under the constitution, but we're trying to nail it down six ways to Sunday because they've been trying to pry it up every chance they got.

Last two, Your Honor. That the surviving spouse has not requested of the Court a non-pro-rata partition of the community as set forth in Section 385 of the Probate Code. Now, that's pretty self-evident. She has not made such a petition. I don't think anyone has petitioned that and again the children haven't admitted it. So, we're asking for a declaration.

And finally, that neither the Independent Administrator nor the Court may partition for this

homestead between the Plaintiff and the Decedent they are essential. Under Section 385 of the Probate Code and again I'm shortening this to make it a little clearer.

So long as it's Plaintiff's constitutional homestead and until she either dies or voluntarily abandons the property.

Now, I will save the case law analysis for my rebuttal and we have something to say about every case they cite and I will spare the Court that at this time maybe they'll shorten their argument and we won't need to hear all that. Thank you, Your Honor.

THE COURT: Thank you.

MR. JENNINGS: We ask that our Summary Judgment be granted, Your Honor.

THE COURT: Thank you very much. Go right ahead gentlemen.

MR. ENOCH: May it please the Court. I am Mark Enoch and together with Stanley Johanson and Thomas H.. Cantrill, I have the pleasure of representing, Stephen B. Hopper and Laura Wassmer. We also have Melinda Sims and Yvonne Parks here who are also assisting in the case, Judge.

I'm trial lawyer. I'm not a Probate lawyer. So, what I'm looking at here in this law in these

facts is something I've never seen before. Most people die with a will who have money and the people who don't die with a will typically, not all the time, typically don't have enough money to even fight for it.

So, it's an oddity. A rare event, I am told by Probate lawyers much more experienced than I am, that a Court is never invited to look at the partition rules under 150 and 379, except for the Texas Probate Code, but with all of the confusion and I am confused after hearing some of the arguments of the Plaintiffs. I think it's a very simple case.

We have a man who died and left community property, all of that community property under 177 is under the administration of the IA, the Independent Administrator, and he's authorized to administer that property.

Now, the only question comes in administration of that estate, do they have the right to partition the entire estate including the homestead. That's the question.

There's no law that was cited at all by the Plaintiff in that today. The last time -- the first time that I can find that, that was decided was by people who lived in the nation of Texas, 123 years ago

the Texas Supreme Court in Hudgins versus Sansom decided the issue, that has been cited no fewer than 14 times since then until District Courts and Probate Courts got the idea and no longer committed error by excluding the homestead from the petition process.

We're asking you for three things. We're asking that you order the IA to properly partition and distribute the assets in accordance with Texas law by filing a 150 application and going to 380 and 381, Your Honor, of the items to be partitioned and/or sold if incapable of partition.

We are asking the Court, now again, this is the first time I'm learning of it. You're probably much now versed in this. There's a decree of partition. There are commissioners that are appointed. This Court decides that the items to be partitioned, in other words, the community estate, if you will, in a separate property of the deceased and gives the commissioners the order to go out and partition that, effect the partition.

We're also asking you in that decree to direct the commissioners to include Robledo, the homestead, in the partition process and we have authority and we'll show that authority with you in a moment.

The third thing we're asking is, to the extent that there have been premature distributions that no longer allow the lawful and proper partition and distribution of the estate, that the IA be able to claw back such assets as to make it fair in the partition process.

That third point, Judge, along with some of what I'll call the more confusing issues, this aggregate theory, versus item theory, I'm going to leave to my co-counsel Stanley Johanson he is much more capable of answering those questions and addressing those issue than I am.

So, let's start with the ultimate question. Do you, the Probate Judge in this Court, have authority under the Texas Probate Code to cause the IA and control what the IA does with respect to the partition process? Yes, you do under the code. Then the question is, do you have authority, does he have authority to include the homestead in the partition? Yes.

If that's the case, if I persuade you that the case law allows you to do that, all the theoretical argument you just heard go out the way because people a lot older than we have thought of those things before they've been dead for 100 years.

The first case I'd like to bring to your attention Judge, is Hudgins versus Sansom. Let me if I can, going to get you a copy of that. I've highlighted and I'll give to co-counsel, a highlighted portion, Judge, it's in the book that you have.

THE COURT: Do you know under which tap

MR. JENNINGS: Yes, 30, Your Honor.

MR. ENOCH: Tab 30, Your Honor, and the reason I'm handing these to you, Your Honor, because I've highlighted the relevant potions and particularly the language in Hudgins will be repeated many, many, many times in Texas jurisprudence after that point.

Hudgins is a case, if Your Honor, had an opportunity, I'm sorry gentlemen, I'm sorry for standing in front you. I don't want to block anybody's view. If I may stand here, Judge, there will be others.

In the reply, the Plaintiff argues that we have a bunch of old cases, that's his first objection to our cases and that's an irony to me because he wraps himself in the constitution of 1879 and I wrap myself in the Supreme Court case dated 1888 interpreting his constitution. The age of the case is important for us because the age of the case deals explicitly with the issue of whether the constitution

prohibits the inclusion of the homestead within the partition process.

Hudgins says it is included. This was not, by the way, he tries to distinguish these cases by, well, they're voluntary some sort of a 385. I think their position is under 385 only the surviving spouse can cause the partition of both halves of the community property.

Hudgins was filed by children. Children can't file a 385 action. As a matter of fact, as you know, under 149 (b) any interested person change force the partition after two years after the appointment of the IA.

So what happened in Hudgins, the daughter and husband complained that 200 acres was set aside and not considered by the commissioners. The homestead was not considered by the commissioners in partitioning of the community estate. What did the Court say? The sole question in this case is whether the 200 acres comprising a homestead should have been placed in partition.

Isn't that the question we can have today. Should Robledo be placed in the partition. First time that was addressed that I could find, 1888.

The constitution provides -- it's not up

here, it shall not be partitioned among the Heirs of the deceased during the lifetime of the surviving husband. Quote the exact language this constitution cannot change and then describe the purpose of the constitutional provision was to secure the surviving wife or husband the right to use the homestead, so long as he or she might elect to do so and to protect minor children, the word, "partition", here is evidentially used in the constitution in the legal sense. That means, the act or procedure which two or more co-owners cause the thing to be partitioned and divided into as many shares as there are owners in which vests in each such person a specific part with the right to posse it.

So, what the constitution is saying according to our Supreme Court, is this prohibits you to dividing up the property itself and assigning an equal share to people who are free to posse and use it. That's the constitutional right. Its one of occupancy and use. Continuing on --

THE COURT: Could you repeat that last sentence please?

MR. ENOCH: Yes, sir. And the Court will explain it far better than I will. The constitution guarantees a right of occupancy and use it. All it

says is that you cannot cut, if you will partition. I can't divide the homestead and give someone with equal rights to use it with someone else.

If I had black acres and we came in with Tenants-in-common, I could seek in the District Court, as you know, a partition. Instead of being a Tenant-in-common, I would have sole and exclusive ownership of one-half and someone else would have sole and exclusive ownership in the other half. Can't do that with the homestead. That's what this is designed to protect.

So, that's why the Court says the word "petition" in the constitution is used in its legal sense which means you separate it with a specific part with the right to posses it free from a like right of the persons. That's what this prohibits.

More enlightening, however, is later discussion. In the partition of the homestead that is forbidden or it is the partition of the homestead that it's forbidden, but it does not follow from this, that in the partition of an estate, the homestead may not enter into the partition, if that may be made without defeating the right of the surviving wife, husband, or children to occupy the homestead. How could that be done? How could Robledo be put into a partition

process and Mrs. Hopper still has the right to use it.

Well, of course, Judge, as we see in later cases it's the entire fee simple is awarded to her as part as her distribution of the community property. She absolutely has the right to use and occupy, if it's hers in fee simple 100 percent.

So, if the Court can or the commissioners can divide the estate, partition the estate, in a fair and equitable way that doesn't infringe on her right to occupy and use, Robledo can be part of the partition.

We see no reason why the homestead may not enter into the partition of the estate and be disposed of in any manner which does not take away the right inferred upon the children to occupy it. This is -- the right or occupancy is the sole right which is the purpose to protect by the provision of the constitution quoted and the partition of an entire estate of which a homestead may be a part which does not take away this right neither contravenes the spirit nor the letter of the constitution.

The final paragraph is, the judgment of the Court is reversible with instructions to the Court to enter a decree directing that the partition of all real estate including the homestead subject to right of the guardian of the minors to occupy it with them

during their minority.

The question of whether Robledo can be properly included in the partition under 380, 381 process has been decided by our great, great, great grandfathers. There's a case that follows, the Gerald case. This is a case, Judge, we have a wife died Intestate. Husband sought a partition to the community property.

Now, remember one of their argument is you don't have any authority to deal with half of the community property in this because it's so, under their theory no case law. Under their theory it became instantly and instantaneously her separate property on the moment of death.

How did Hudgins get decided like that. How could Hudgins have said the entire community property includes the homestead in the community property estate of both husband and wife, if they're right.

Okay. Now, we take Gerald. Gerald the decree should have directed the commissioners to take the homestead into account following Hudgins v. Sansom, the Supreme Court we, the case was just cited. Not only do we know that Robledo can in fact be included in the partition. It was error and I would point to page 4 of the opinion, Your Honor.

Appellants further contend that the rural homestead claimed by the surviving husband should have been taken into account in the partition as the estate consisted of several tracts of land and the husband's share might be greater than the acreage and value of the homestead. The soundness of this contention is established by Hudgins V. Sansom, the case we just talking about, but more importantly, it is not contested by them, that Hudgins in this case that Hudgins applied.

The latter contender is no error in this respect in as much under the decree the commissioners might take the homestead into consider and if they should not do so and if the trial Court should sustain the report Appellant then could appeal from the Court's judgment.

The Court says no. We do not concur with this view. Nowhere in the decree is it declared that the homestead may take be taken into consideration of the partition, therefore, it's reversed.

In other words, not only is it proper for Robledo to be part of the community property that's partitioned under in the TPC, it would be error for you to not direct in the decree, the commissioners to take into consideration that homestead.

Next case, Your Honor. I'll cite is Higgins. Higgins is interesting because again it's not a voluntarily, not a voluntary partition.

In Higgins and remember one of the arguments you've heard Mr. Jennings say that these are distinguishable. They're old and they either protect, remember the second portion of the constitution, part about the minor children came in to it. What is interesting is that none of these cases talked about that as being anywhere relevant in the Court's decision, but it's also interesting that Higgins doesn't have anything to do with minor children. It's just grown children saying, we want a partition the community estate.

MR. JENNINGS: Your Honor, we must object. Higgins is all about a guardianship.

THE COURT: I'll read these cases.

MR. ENOCH: Judge, beginning at the opinion of Chief Justice O' Connor, he mentions the lawsuit was instituted by surviving children. Doesn't mention minors. Then says Appellant insists that the Court was in error in excluding from the partition, the homestead of the 200 acres of Mr. Huggins.

Again, the issue is should the homestead be included in the partition of the asset sought this

time not by the spouse, not by children -- not by minor children, but just by Heirs. On page 4, the homestead, and it quotes, verbatim Hudgins V. Sansom, has been construed to prevent the inclusion of the homestead in the petition of which the homestead is but a part of not to -- I'm sorry.

Has been so construed as not to prevent the inclusion of the homestead in the partition of an estate of which the homestead is but a part when it can be done without depriving the survivor of the right of occupancy under the constitution.

The test seems to be as I can see it, if all we had was an estate including the home, I wouldn't be here and you wouldn't grant my request, but as soon as you have an estate with more than the homestead in it, we can partition the estate without dividing the homestead.

The homestead can in fact be delivered in fee by the commissioners to the surviving spouse so her right and use of occupancy is never violated and compensating assets be paid to the non-surviving spouse, Heirs, to take care of it. That's what this case says.

The partition of an entire estate of which the homestead may be a part which does not take away

this right may include the homestead.

The third case we now have with respect to Hudgins, citing Hudgins and following Hudgins. The next case Meyers versus Riley. Judge, this again was brought by children and these are not minors. So again, I represent children. He keeps calling them step-children. I hope the Court will understand that we are children that we represent and so, we're doing the same thing the folks in Higgins did. The say thing folks in Hudgins did. The same things in Meyers did.

Meyers again talks about Hudgins being conclusive on the issue. The partition of an entire estate of which a homestead may be part which is not take away this right neither contravene the spirt not the letter of the constitution.

Again, all of this constitutional argument, argued, dead, and buried with our great, great, great grandfathers.

Judge, it -- also again, it repeats the portion of in the interpretation of what this means in the constitution, that is, this prohibits the division of the house. The division of the homestead in equal parts owned not jointly, but separately by other people.

That's not what we're trying to do. We're saying partition the entire estate and give her Robledo and give us compensating assets so her rights are never violated.

Judge, in total there are and I'll tell you one more case I want to strike with you. After Higgins there's Hailey versus Hale, Hailey versus Hale we haven't talked about, Russell v Russell. Jones versus Dewberry Shultz V. Shultz, Strickler V. Kasner, Probee First National Bank of Whitney although that's a creditors' case, still talks about Hudgins. Menchaca V. Martinez where the Supreme Court again looks at Sansom.

Although it's deciding at that point in a common, in District Court partition process, but it talks about the fact that this is not inconsistent with our previous holding in Sansom V. Sansom.

So, in 1941 which was 60 years after the Supreme Court first did it, they again looked at it and recognized it as the obligatory law and then Cruz V Reinhart which is a 1948 case out Beaumont.

At some point Judge, as I mentioned to you, I can't explain why I stopped finding cases, anymore than I can't explain why I stopped finding cases about liability at the Alamo. It's old law. People don't

contest it anymore, and even in a unique situation such as this, Judge, where you find a wealthy person dying Intestate where the Heirs don't agree, I think it's an extraordinary leap heap of faith for them to expect that you should ignore the provisions of the Texas -- the Probate Code.

The final one, Judge, if I may show you is the Strickler case. Now Professor Johanson will explain that in greater length, but I want to make a couple of points.

This is a case in which the trial Court had ordered all the property except the house, again all the property except the homestead to be partitioned.

The Court reversed the lower Court saying the partition, you can include gift, all of the homestead, I'll fashion it for this case to Mrs. Hopper and she -- it never violates her right.

We have cases that say Robledo can be part of the partition process so long as there are other assets. We have cases that say your decree to the commissioners must direct that they take into consideration. We have cases that say in case where there are sufficient assets otherwise, it is proper to divide -- to give 100 percent of the fee to the homestead to the surviving spouse and we have cases

say it's err to not do that and yet on an aggregate, an item theory that professors like to teach students about and get them engaged in what the law ought to be, we have no case. Not one case cited by in the Plaintiff that says you should not take in to account Robledo in the petition in the entire estate.

Every case they cite that I can tell Judge and they gave me a bunch of new cases last night, but I've read most of them, had to do with the sale and partition, the sale of the homestead for a creditor not whether or not within the community estate it can be part of the partition process and one of the assets distributed.

Now, if the IA, if the bank, could under all these cases actually award 100 percent of the community property in Robledo to the surviving spouse, they must have control, they must have administered, they must have control over the other half of the community property.

Judge, if you'll look at, 177 where here he points -- there in my box. Here. I first want to deal with, if I may, Your Honor, Mr. Jennings' remarkable assertion that 3L doesn't mean what it says, 3L is a definition of the estate.

He hinges his argument on the fact that 3L

and you heard him argue it and I read the same thing and I don't think it says what he says.

He says, "estate denotes the real and personal property of a Decedent". Now, he reads that to be that the separate of Max and his half of the community property is all the estate means. That's what his reading of that.

It doesn't say that. It's doesn't say the real about and personal property separate property and one-half of his community property because it says, "as such property originally existed".

Now, how did that property community property originally exist. He didn't have 50 percent ownership and 100 percent of the community property. He had 50 percent in all of the community property. That's what his interest was. His estate was 100 percent of the community property, half of it going to her upon administration, half of it going to the Heirs upon administration, but beyond that take a look at 177, Judge, the issue really is --

MR. EICHMAN: Tab 46.

MR. ENOCH: -- tab 46, I'm sorry Your Honor. He's got his book right in his lap. We're just talking about Rule 177, Judge, and the bank and we are aligned on this, Your Honor. Mr. Jennings' client is

taking the position that even though he has the power to administer her half explicitly in 177 of the community estate, he can't do anything with it because after all it's just hers and the bank can't do or shouldn't do anything with it, but that's not what 177 says. 177 says, the IA is authorized to administer not only the separate property of the deceased spouse, but also the community property which was by law under the management of the deceased spouse during the continuance of the marriage and all of the community property that was by law under the joint control of the spouses during the continuation of the marriage.

Now, that's all and that's what has the right to administer then what Mr. Jennings said about that is oh, that's just for the sale for assets. Well, I don't see that because, for example, does Mrs -- let's take at, I'll go in order. Take a look at 149 (c), and Judge this is important because I think that Plaintiff wants her cake and eat too and this is what I mean.

They have filed an action. The reason we're here is they have filed the, Dec. Action, asking for the removal of this bank as IA. Who can do that? Only an interested person under 149 (c) and you're only interested if you have an interest in the estate

being administered by the bank.

So, at the same time she's asking you please, remove these people, I have standing to remove them because they're bad people, she's denying to you that they're administering her part of the estate.

The same question of 149 (b,) Your Honor. The way I understand the code and I might not understand it as well as other people here. There is a period of time after the bank is appointed and you should stay out of their hair and we should stay out of their hair and they should be about their business of collecting assets, paying debts, perhaps prosecuting a survival claim and then coming back and reporting the final affidavit these are what I collected, this is what I spent, these are the people I disturbed it to, but if they don't do that then there's a period of time after which the spouse under 385 can do the same thing.

If the spouse doesn't do it, two years, which is going to be in April of this year, we have the ability under 149 (b) to come forward and ask you to force them to partition under 380 and 381.

Now, if we, and remember these cases, one of his distinctions of the cases I discussed with you, oh, that's the voluntarily petition. That's where the

wife comes in and asks for both parts to be partitioned. No, no, no, I've showed you, the only case I've talked about were the ones where the wife didn't do it. Other people did it.

So, in 149 (b) we have the ability to seek the removal. We have the ability to seek an accountant. So does she and she could only get that if she has part of her estate, her assets being administered by the bank.

Under 250. Rule 250, the IA must appraise an inventory, all real and personal property of the, quote "estate", that has come into his possession and shall specify which is separate and community.

Now, is it really Mrs. Hopper's position that when the bank accounts for what they've done with the estate, they don't have to account with the part she claims is hers that they've been administering for the past two years? Of course not. She has every right as an interested person in knowing where every dollar has been spent.

Then TPC 385, Judge, the one that they've talked about a little bit which is the surviving spouses' option. The survivor may seek a partition, but they have to wait a little while, again, to let the IA do their work for a little while.

If as Plaintiff claims her half of the community property automatically became her separate property at the instant at Max's death, why does she need to apply to you to have the community property parted in to two pieces?

Under 385 (b) it says, the Court shall proceed to make a partition of said community property in to two equal moities. One to be delivered to the survivor and the other to the administrator for the children.

Now, if it had already been done, if it had already been turned in to two different motives and she now has separate property, why does in the code provide that she has the ability to come in and ask you to do the very thing she says, he doesn't have the right to do nor do you have the right to do.

And then finally, Judge, of the entire TPC, if administration rights do not include the right and power to divide and distribute other than undivided interest, why do we have the code at all. The bank is going to tell you and Professor Johanson will speak about this in greater length.

The bank is going to tell you I have choice, I can either do a 150 partition or I can put to people who don't want them you undivided interest in all this

property. I'll leave you with two thoughts.

As I understand it the purpose of an Independent Administration as opposed to a Dependant Administration, is that the parties don't spend as much money. They don't have to come to the Court to ask for authority to sell Blackacre or to pay a debt, the administrator can do that using his fiduciary powers.

And so the idea is to reduce the cost to participants in this estate assuming that there's going to be agreement among the parties on how to do things when there's not an argument, where do people look when there's not an argument. She wants it divided one way and we want it divided another. Where do we look? We look to the Probate Code and the Probate Code says when there's not an agreement we come to you and you establish the commissioners and you decided what is partitionable and you direct the partition.

If there's something incapable of sale, incapable of partition, you make that decision too and under 381 the commissioners then sell that object and you distribute the cash as the Court deems necessary, but if the idea is to reduce the cost and they are successful at simply persuading you that they have the

ability to distribute undivided interest which is really doing nothing, then aren't they just kicking the can down the road for someone to go over to the District Court and file under Rule 760, partition a Tenant-in-common on each and every asset to go ahead and partition that asset over there.

If they're right and they can issue an undivided interest in Blackacre in an attempt to make it easier, cheaper for people. How does it make it easier cheaper? If they have the right not to follow the code then what we have to do is on every asset that we can get a half interest on and, Judge, you're going to be amazed. They think we can take and undivided interest in a thousand bottles of wine bottle, every bottle of wine, half of it's ours.

Actually that's not right. Half of it is there's and a quarter of it, I guess that's a glass is Steven's and a glass is Laura's, but it doesn't stop there, Judge. You have 4300 putters. Mr. Hopper was an aficionado and --

MR. JENNINGS: Your Honor, we object. None of this was is in the Summary Motion before the Court. He's way outside the record at this point. There's no Summary Judgment Affidavit of proof of anything.

THE COURT: I will make my decision on the affidavit.

MR. ENOCH: And Judge, I'm wrapping up. This is where the bank and we disagree on whether they have the power to put undivided interest. It's not whether they can issue undivided issue, if the parties agree they can do anything to and you'll never hear about it.

It's when the parties disagree can they put to us something we don't want or do we have that right to come to Court and say they need to follow the law.

On the putter issue, Judge, there are 4300 putters, who's going to get the clubs and who's going get the shaft. Do you really want to be--

MR. JENNINGS: We object again. This is outside of the record.

THE COURT: Overruled.

MR. ENOCH: -- how do you own a half of a golf club. You can't. What you do is logically you look at the Code and the Code says, look someone's got to decide maybe the wine's worth x and in the putters are worth 2-x so, half of the putters go over here. There's a way to do that, but it's not putting undivided interest to people who don't want undivided interest.

The final thing I would mention, Judge, under 150 issue. You will hear a discussion about "may versus must", that the Independent Executor may file for 150. Initially it's permissive. We believe because the Heirs might agree. There is no reason to come to the Court and go through a partition process if the Heirs agree.

Once the Heirs do not agree you must follow the 379 through 387 code partition and I will cite to the Court the Clark versus Posey. In Clark versus Posey, we had an independent Executrix who on her on decides to partition to distribute non-pro-rata interest in the estate. The people who didn't like it, who didn't agree to it came and sought, objected to it.

Now remember the Executrix did not seek a 150 partition. She just came to the Probate Court and said, look, I want you to order the partition done as I think it ought to be done. There was an objection to it.

On the appeal the Court said look, ordinarily as the Probate Court -- that's a District Court case, we have no power to order the bank to invoke 150 and follow the code rules 380 and 381 in the partition sale of assets.

Ordinarily we can't tell them to do that, but once they begin the process and ignore the statute that rule doesn't apply. We are not going to let someone independently on their own discretion do something other than what the law applies.

So, we believe that when the bank prematurely already distributed millions in the estate or when they told us of their intention to distribute undivided interest of bottles of wine, we think they have already embarked on the partition process and therefore, you do have the authority to order that they file the 150.

Now, Judge, I appreciate your attention. I'm going to turn it over to my co-counsel Stan Johanson at this moment. Thank you.

MR. JOHANSON: May it please the Court. Yes some rather interesting arguments or comments that have been made here. I want to speak about this idea that the instance that one spouse dies what used to be community property, one-half of it, immediately becomes the surviving spouses property.

Yes, it is true Section 37 of the Probate Code that's the one that says, title vest immediately, but it also goes on to say subject to the personal representative right of possession for purpose of

estate administration.

Now, I can't tell you where it is in the materials, but we have a case involving a family allowance out of Fort Worth, the Wolf case, it's in there somewhere. I apologize, I don't know precisely where it was.

THE COURT: Is that from a year or two ago.

MR. JOHANSON: Exactly, exactly, you know about it. As you well know the surviving spouse is entitled to a family allowance for a period of one year, except any separate property she may have is taken into account as to the entitlement of a family allowance and what happened here, it turned out that Mrs. Wolf was well provided for.

There was a 200,000 community -- community bank, community life insurance policy paid into it by ownership. There was something like an $80,000 IRA community property it's hers and they went on to say, you know, after you die, she made an even $87,000. She doesn't need a family life. She has separate property. What the Court said is take -- the entire opinion is on the life insurance policy and everything else follows, and they said wait a minute, that's was community property. The moment she died, yes, oh the argument the Heirs made was that Section 37, the

instant she died it became her separate property and therefore, it should be taken into account and the essence of what the Court said no, when one spouse dies, the community property retains its community character for as long as is needed to wind down and administer the estate, making it paying off creditors claims, making the appropriate partition and distribution.

Now, it is true, you can say it from one respect that it is a spouses' separate property in the sense that thereafter, for example, once -- if you remarry that's her separate property, but that's taking to the future, that future doesn't start to roll until the community estate -- has been properly settled and finally administered. So, I think that takes care of that point.

The other point I have to say its rather novel. The suggestion that the Section 3L the definition's provisions that says, quote, "the estate of the Decedent they define the estate, meaning the estate of the Decedent, the suggestion that, that is the Decedent's separate property and only one-half of the community property". My first reaction when I saw that, was there goes the Probate Code.

What about Section 177, that is the one which

specifies who has the power and authority to administer the community estate and at the very end, as you well know, it goes on to say, the surviving spouse who has the right to sole possession of the community of which he has sole managing during lifetime, if she waives it then the personal representative shall have the right to administer, quote, "the entire community estate", end of quote. So, there's no question but the community estate is in administration as if in play.

Observation number three. I must say it's rather flattering to have your own wittings quoted before a Judge in the Probate Court, that's very nice, but let me tell what that sentence or phrase out of Dukemon and the other thing they did very nicely. It's actually Dukemon and Johanson. They gave credit to Johanson and Dukemon did, wills and trust and estate, but very basically what it means is when the husband or wife each don't own just one-half of the community asset, when they don't own, they each own one-half -- example, husband and wife own a lake house as community property. Husband dies devising my interest in the lake house to my daughter Dawn. No question, but he has an item theory as to that one.

He has the power to devise his one-half

community interest in the lake house to his daughter and on that the daughter and the surviving spouse would be Tenants-in-common each with an undivided one-half interest, but if his will does not make a specific request for devise of the lake house, it is part of in the prop, we call it the residuary state when there's a will that is subject to administration and subject to division are taken in distribution among the surviving party and in that situation if the parties agree, if the parties, if we have an independent -- the vast majority of cases Your Honor, that come before you, we have a will.

We have a will that names an Independent Executor and a will that gives that Independent Executor the power and authority to make non-pro-rata distribution. It's a very rare case as Mr. Enoch pointed out that we find ourselves in a large estate where we don't have that power, but the one thing is clear and I was very worried Mr. Enoch was gonna to take the thunder away from what I think is the best case of all as soon as I find it and that is the Spindor case, Strickler case. Yeah -- we. I'm looking at page two at the bottom of the second column if you find it there, Your Honor, half way down.

The trial Court ordered all of the property

except the house and lot occupied by Mrs. Kasner, that's the partition, but directed that said house and lot could not be partitioned so long as Mrs. Kasner lived and occupied the same. This was error.

It could be conceded that said property constituted Mrs. Kasner's homestead and that if -- it could be conceded that she had a right to continue to occupy, nevertheless, since said property constitutes a part of the community estate, it must be taken into consideration and partition in said estate. Such partition, here we come, need not disturb Mrs. Kasner's right of occupancy for such property may be set aside to her as part of the property allotted to her in fee as her portion of the community estate.

And then finally they end up, if the estate cannot be equitably partitioned without allotting said property to one of the children, it should be set aside to such, in other words, suppose we have the situation where the homestead is seven-eights of the estate and it's not equitable. We can't make that alone, but here's a road map, Your Honor, as to an appropriate and proper resolution or conclusion on this estate. Let's see I always wanted it it's very exciting to have this opportunity and I don't want to blow.

I will say there have been, let's call them novel arguments that are made throughout the Motion for Summary Judgment made on behalf of Mrs. Hopper is a notion that somehow she is being forced to quote "purchase", she's forced to purchase her homestead. She has to buy it. What the children want is for her to sell or to pay for her homestead. Nothing could be further than this.

When I say it's a novel argument, I think it's fair to say because we've got over a dozen cases where the Court ended up saying the homestead goes here to the spouse subject, of course, to her homestead right and other assets of comparable asset.

There's no purchase here. All we're doing is making a division with the community estate involving a partition. And the final thing I want to say or one initial thing I want to say is, one of the cases cited by Mr. Enoch was the Higgins V. Higgins case, that was, it did involve that was the one that I think did involve minor children --

REPORTER: Sir, speak up.

MR. JOHANSON: The essence of it what, let's see, what was the point I was going to make was that, oh, yeah. One of in the things that the spouse had done had made improvements on the homestead and one of

arguments that was sort of shunned aside because the resolution was that the homestead should have been included in the division, improvements had been and the question is should the children have to pay for the improvements and then parting back the first year of property, one-tenth of in possession cannot hoist improvements on it and get it out of possession and so on and so forth, but the basic point is the lesson. The basic point here is the lesson.

If the bottom line in this case is that the two children are Tenants-in-common and with Joe -- with the wife here. Thank you. What happens -- all these arguments are going to be made. What happens if a pipe bursts, what happens if we have the repair roof, what happens. The Tenancy-in-common is not a very desirable form of ownership unless the people can get along which tends to be the exception rather than the rule and so my whole point -- all that is, let them go their separate ways, Your Honor, and let Mrs. Hopper have her homestead right and the exclusive right of occupancy. Her constitutional right is not impaired and the children have assets of comparable value and I would like to think that everybody would be happy, they wouldn't have to see each or again and on that, Your Honor, I conclude.

MR. JENNINGS: Your Honor, may I just, I know the Independent Administrator goes next in this Round Robin, but if I could have about a minute and-a-half, to two minutes while these cases are fresh in the Court's mind.

THE COURT: All right.

MR. JENNINGS: Let me just take them one-by-one and knock them down Hudgins, Samson died Intestate his will gave all of his real estate to his daughter in this case a minor son, a minor son's estate remember clause two of the constitution. Crow that they cite or excuse me, Gerald Versus Crow that they cite. The Plaintiff's joined with him, as co-plaintiffs, the minors, Durdy, Hardy and Selma Crow. Again another case, both cases voluntary and the Court -- the constitution prohibits involuntary partitions not voluntary partitions. Everyone of these cases is distinguishable.

Let's go to the next one the Meyers that they're so proud of. The Court in it's partition suit by the children of deceased husband and the surviving wife must set aside the homestead to the use of the wife and her minor children. Let's try the great Strickler versus Kasner case, the professor's mentioned.

Opening line of the case, Gus Kasner died in 1960, 1916 -- leaving a wife and several minor children. Now, what else do we have. Let's see, here we've got the Higgins case. Now the Higgins miscites husband and tries to develop precedent based on that. Again a voluntary case.

Now finally, I just don't think that Mr. Johanson should be as modest as he is. I don't have a third copy, I want to give a copy to the Court. I don't think he should be as modest as he is, Your Honor, he says lots of things. We only quoted two pages in the handouts that was given to you, but I'll show you a couple of other things, he says, Your Honor, I've got to make sure as I'm reading these that mine is marked because I'm not sure that it is, I think it is. Just a minute.

Let's see what else Professor Johanson says when he's not involved in the representation of the client in this case.

Here's what he says in page 418 of his treatise. Each spouse is the owner of an undivided one-half interest in the community. Does death of one spouse dissolve the community? Dissolved it, there's no delayed primary action, a slow release pill that Professor Johanson mentions before you now. He seems

to forget this case in that regard. The deceased spouse owns and has customary power over only his or her one-half of community show that's Professor Johanson on the law when he's not an advocate.

Now, here's Professor Johanson again. Let's see page 422. The Decedent has no power to dispose of a homestead so his right of surviving spouse of statutory rights therein. The right to occupy the homestead given in addition to any other rights of surviving spouse has the Decedent's estate, that's at 422. Professor Johanson is too modest for not quoting himself.

Now, how about this one on 456 the problem of death of one spouse, the deceased spouse can dispose of his or her half of the community assets. Really? Now what was the time issue that Johanson gives us on that quote? Not any. His theory that under some case involving -- what was it, not partition, but excuse me, family allowance that there's always complications.

We don't have the complications in this case. Why don't we? There's no debt to worry about. We don't have those problems. What does he say, upon the death of one spouse the deceased spouse can dispose of his or her debt of the community assets.

The surviving spouse owns the other half. Where's the limited language of that? There's is none. Which is not, of course, subject to the testamentary disposition of the deceased spouse. While it's not subject to testamentary disposition so then why does the personal representative have any control over it. They do have control over for some purpose for administrating the estate for debts.

Now, he also brought up, Mr. Enoch brought up a real interesting point that I want to back down as well. He questions whether we're an interested person of the estate. Number one there's no pleadings to that effect by anybody, but also remember that $43,000 worth of separate property as to that, the bank can administer it all at once. She's an interested person based on that alone.

Now Johanson goes on to 456 and says one-half of community property belonging to the deceased spouse may be divided to whomever the Decedent deems, the same as separate property.

Well, then what is sauce for the goose is sauce for the gander. That means that instantly upon death and just as we said, just as all the cases say not withstanding Professor Johanson to distinguish between our board number 3 and realty gets here in

this case which is the law. It says that each of these assets is separately owned.

He also went on to say because community property belongs to both even when title appears on it's face of being the name of one spouse.

And lastly, the quote we gave you before, "almost all community property follows the theory that the husband and wife own equal shares of each item of community property at death. They do not own equal undivided shares of the aggregate of community property.

Now, I'm just going to point out one thing, Your Honor again, with all respect, counsel in this room. No one has defeated the concept that the second clause that relates to minors and so forth, when they are under court -- excuse me -- I'm going to go to 52, not 51, this separate clause or so long as the Guardian of minor children of deceased may be permitted under the order of a proper Court having jurisdiction.

All these cases that they have bring forth have two fundamental flaws. That's not the flaw that their old because old law can be great law. We now the truth to that.

MR. EICHMAN: Judge, with all due respect, I

think he's gone more than a minute and-a-half.

MR. JENNINGS: I'm not -- my apologies, you have my point, Your Honor, we think --

THE COURT: If you need to wrap it up.

MR. JENNINGS: Okay. Well, just that we're not saying that the law is bad because it's old. We're saying that there's two problems with all these cases.

One, they're all voluntary or two they missed the point they were voluntary partitions in earlier cases.

And number two, virtually all of these deal with minor children and even in the one case where they say they just described it as children, usually, if you're going to describe somebody as a child you'll either make clear whether that they're adult or not and if you just say they're children even on the one case to decide where there wasn't a minor child at all, it appeared to me they were minor children because of the textual wording of the case.

So, I mean, every case they cited to the Court is distinguishable. I think Professor Johanson is far too modest about his statements in the past when wasn't an advocate in this case.

MR. ENOCH: Just very briefly, Judge. It's a

remarkable position and I know you're going to have to read the cases Hudgins case, Higgins case. He wants you to believe that they decided the way they did because of Article 16 Section 52 or 51 with respect to minors.

I don't see it in the cases. There's not one mention of that portion. They quote, 16 and 51, so --

THE COURT: I will read the cases.

MR. ENOCH: -- it's not distinguishable and they're not voluntarily and everyone of them, the surviving spouse said you can't partition the homestead, the Court said you've got to partition the homestead.

THE COURT: Thank you. Go right ahead Mr. Eichman.

MR. EICHMAN: Thank you, Your Honor. John Eichman and Tom Cantrill --

THE COURT: I know the two gentlemen on your left.

MR. EICHMAN: John Eichman and Tom Cantrill for JP Morgan Chase Bank as Independent Administrator and also in its corporate capacity although in the later capacity I'm not sure we need to be here on the issues that are before the Court, but we're here anyway.

Judge, we don't have a law professor on our side in this matter. We don't have Professor Johanson or Professor Featherston. It's just Eichman and Cantrill and we'll try to do the best that we can, but what we're here for Judge is we are here seeking the Court's guidance as the Independent Administrator trying to do the proper thing with respect to trying to conclude this estate, we're hearing seeking the Court's guidance.

We have in our briefing, in response to the two motions laid out our announcements of the statutes, the constitution and the case law as best we can in an effort to illuminate the situation and obtain the Court's guidance. I think it's important though Judge because there's an awful lot of heated rhetoric in the papers filed by both of the sides of the family in this proceeding and there are some, frankly some complicated legal issues. I'd like to put this into sharp context if I could.

What I believe we're really here at this enormous burn rate as the Court can see in front of it with all the lawyers and law professors. What we're really arguing about and I've got a demonstrative that I'd like to share with the Court and I've entitled it some simple math because what's really being argued

about in these two motions is this -- the Robledo property and the related homestead right and I want to show the Court what it is we're really talking about here.

This is all based on the Summary Judgment record that we've introduced. The approximate value of this Robledo property is about $2 million, roughly. It's a little bit less than, but roughly $2 million. The approximate mortgage debt is roughly $1,200,000.

So, the equity value of this property based on the appraisal and the mortgage is $800,000. So, if you look at this from the perspective of Mrs. Hopper's community interest and the children's interest as Heirs of their father we're talking about $400,000 each and there is some prospect depending on how the Court determines the law is on this issue. There's some prospect that the children's share could have some value less than $400,000.

So, we're here in an estate where there has been noted between 20 and 25 millions dollars in assets. There's been distributions that the Independent Administrator has made at the insistence and in some cases the demand of Mrs. Hopper and these children and their lawyers to make these distributions

those have totaled about $20 million.

We're here today arguing, we believe, over some amount around $400,000 a side. It's obviously real money, but I wanted to put that into context of what's going on here, Judge, to an extent there's a bit of the tail wagging the dog, we think, and we think it's unfortunate that it's come to this, but to the legal issues that are before the Court.

Now, Mr. Enoch's clients have filed their Motion for Summary Judgment, Partial Summary Judgment. We like Mr. Jennings have filed some objections to some of the factual assertions that are unsupported in that motion and those are set now in our response.

We've also filed a Special Exception to a Request for Relief that's in their motion, but based on what I've heard Mr. Enoch say in his argument, it doesn't sound like they're pressing the particular matter that we specially accepted to which relates to a Request in their Summary Judgment Motion that they get a Declaratory Judgment that they're entitled to damages from the Independent Administrator.

We specially accepted to that I didn't hear him pressing that, but for purposes of preserving our record, we would ask that the Court rule on those

objections and rule on the Special Exceptions and I've got some proposed orders here. So, that when the Court gets a chance to take a look at that, you can have this, you can have this proposed order in front of you. Actually, there's one on the objections and one on the Special Exceptions.

MR. JENNINGS: We'd be glad to submit an order tomorrow and our objections too, Your Honor, if you would prefer that.

THE COURT: I would like all parties to submit their proposed orders tomorrow if possible. Go ahead, sir.

MR. EICHMAN: Thank you, Your Honor. Now, Judge I had submitted when I sent that notebook of materials over to the Court a little chart that tried to synthesize this morass of stuff.

THE COURT: In here?

MR. EICHMAN: No, Your Honor, it should be on the top of your on the top of your notebook there. It's underneath my letter outside.

THE COURT: Go ahead.

MR. EICHMAN: And Judge, what we tried to do here there are a lot of issues flying around in this. Mr. Jennings has eight declaratory requests.

The Independent Administrator has three

requests that are before the Court based on his motions and another one that's before the Court based on Mr. Enoch's motion and then Mr. Enoch's got five requests for declaratory relief.

So, there's a lot of stuff flying back and forth here and what we have attempted to do in this chart is basically synthesize all of it into six issues and I wanted to use that as kind of the center piece of what I'm going to talk about here as quickly as I can and without exhausting the rest of the Court's time or the Court on the points that we think are pertinent for your consideration.

Before I get to issue number one in that chart, let me real quickly address this point that Mr. Jennings talked about. He has three request for declaratory relief that we say aren't proper subjects.

A request for Declaratory Judgment because there's no justiciable controversy. He has to come into Court to get a Declaratory Judgment and show that there's actually justiciable controversy, there are matters and he referred to them and there are three of them that we say, we aren't contesting that we never have -- you don't have an actual controversy here and it's not a proper grounds for a Declaratory Judgment, so we would say as to those, you know, that Robledo,

Robledo is the homestead, so on all so forth.

As to those he's not entitled to Declaratory Judgment certainly not a Summary Judgment on a Request for Declaratory Judgment because there's no controversy as to it and we would ask the Court to so determine and deny his Motion for Summary Judgment with respect to those three requests for Declaratory Judgment and those are set out in some detail, Your Honor, in our response, Your Honor.

Then issue number one and Mr. Enoch really didn't address this until the very end and it is I think with Mr. Enoch's clients that there is a dispute concerning this issue, and this is kind of a launching pad for the rest and that is, that the Independent Administrator have a right to distribute property in undivided interest to the Heirs and Mrs. Hopper.

We say that we believe that we do, that Mrs. Hopper in her motion says, well, you really don't but then in a response that Mr. Jennings filed he seems to say, well, actually think that you do and the reason this is important is this goes to the whole issue of the Independent Administrator's role to the issue of whether the Independent Administrator can do things in a simple and straight forward manner or whether it is bound as effectively Mr. Enoch is

arguing to before it can distribute anything it must go to this Court and ask this Court for, a, basically permission to seek a partition of all the assets in the estate.

It's our position that an Independent Administrator has the ability to distribute assets in an undivided interest and that it can don't so with respect not only things like cash or equity, but it can do so with respect to a property such as Robledo.

Now, Mr. Enoch claims they don't want us to do that and we told them that it was our intention to do so. They objected. Mr. Enoch's partner Mr. Stolbach wrote a memorandum setting out their legal position. Cantrill set out his legal position and a decision was made by in the Independent Administrator. We're not going to go forward with distribution of Robledo in undivided interest instead, what we're going to is we're going to come before Judge Miller and ask for guidance from the Court to say Judge, can we do this, or do we need to go before the Court and seek a partition as they have argued.

So, our first point is. We do have a right, we believe to distribute an undivided interest the assets of the estate. Now, there's been some authority cited, secondary authority, cited in the

motion Woodward and Smith saying there is no right to distribute, you know, undivided interest or no authority to do so.

They cite no case law, we found no case law that says we cannot, and in fact, there is authority to the effect that we can and we cite it in our briefing to the Court. There's the estate of Spindor case which is a case where the District Court said that the trial Court said yes, there can be distribution and undivided interest. The Court of Appeals ended up saying well, in this instance, in this instance there should have been, but they did not determine that there could not be a distribution in undivided interest.

So, we have that, we have that authority. Plus, we cite several cases in our response whereby necessary implication there must be authority to distribute an undivided interest or otherwise nothing is going to happen and in this case -- well, we cited the Terrill case, the Clark versus Posey case that the Court has heard about and the case called Gonzales.

The other cases for our conclusion that the Independent Administrator does have this ability. Does have this authority to distribute an undivided interest is the fact that the partition statute which

is what Mr. Enoch's clients say we've got to use, we have got to use the partition statute such Section 150 it explicitly uses the term "may" it doesn't say "must." It says may very clearly stating that a partition is -- a request for a partition by a representative like the administrator here is discretionary with respect to the administrator and if the administrator may do it and it doesn't have to do it, then the other option that it has is distribution in undivided interest.

Now, additionally, the Clark versus Posey case that Mr. Enoch referred the Court to, we've got that in our materials and there's some language in there that, Judge, I think is really important and I'd ask the Court to take a look at it.

It's at tab 20 of the materials there. And the Court in Clark Versus Posey at page 519, where the Executrix had made of her own accord partitions. She had not made distributions. She made partitions or she made a partition of property. The Court said it is beyond the power of the Court of to compel the Independent Executor to take advantage of the statues providing for partition of the estate's administered independently under Wells.

So, the necessary implication of that is that

distribution in undivided interest is an appropriate procedure by a personal representative if the statute is permissive and this Court can't compel the administrator to take advantage of that statute the other option is distribution in an undivided interest.

Now, Mr. Enoch suggested that thus far the administrator has already engaged in a partition. There's no evidence that the administrator has engaged in a partition, what it has done is distributed an undivided interest of it's distributed cash and the like. The thing that they failed to point out is a key distinction. This is really fundamental to what we've got going on here. There's a key distinction between the concept of distribution and the concept of partition, and that's issue number two in my materials there. Now --

MR. JENNINGS: Pardon me. Do we have a copy of that? I'm sorry. We can't follow along. I can't follow along with you, I don't see it in my book.

MR. EICHMAN: It was attached to your book.

MR. JENNINGS: I'm sorry. I must have missed it. We don't have it, Judge, for whatever reason.

MR. EICHMAN: Judge, there's a key distinction between partition and a distribution of undivided interest and for that we would point to

there's the case called the Estate of Lewis and that also is the materials and the Court in the Estate of Lewis case, that's at tab 23, at page 931, Judge, said, the Court said, distribution is not the same as partition. In a distribution which is merely the delivery of interest devised by well to those entitled to them, free of control by the estate's representatives does not constitute an invasion of the corpus and that's an important point here.

What these folks have interests that they both pointed out under the statutory scheme and what has been done is there has simply been a delivery by the administrator of assets to them consistent with their statutory interest, for instance, cash or shares in equity shares in entities or funds and I would also point out to the Court that this was done at the great insistence of Mrs. Hopper, her lawyer Mr. Graham, and Mr. Enoch's client, the two children, their lawyer whose name is not here in the courtroom, but his name is Lyle Fishney and distributions were made to these children at the request of Mr. Stolbach.

At a point in time when Mr. Stolbach represented them, money was distributed out of the estate and we're not saying they weren't entitled to it they were, but it was done at their request and

when the Court has a moment there's a pretty interesting litany of email requests and demands that we list in our response where these people are really stomping up and down saying, give us our money, give us our money. You Independent Administrator don't need to hold on to our money. Give it to us to now. Is basically what was happening and the Independent Administrator did and thinks it was proper to do so.

That is not a partition. That was simply a distribution and there's an important distinction.

Now, Judge the third issues, that we've got in our chart there, does deal with the issue of partition. What we're are asking the Court for on this issue is we've asked the Court for some guidance for declaratory relief as to whether the administrator may proceed with a partition with respect to the Robledo property and whether that partition process should cover the entirety of or some portion of the community estate beyond Robledo. THE COURT: Would you please state that again?

MR. EICHMAN: Sure. Sure. In our request for -- let me, so, I don't misstate the request for relief. I've got it typed up here. Actually Judge, I can give this to the Court and so you'll have it right there.

This the, little guide to all the parties request for Declaratory Judgment. Our second request for Declaratory Judgment, administrator seeks a declaration of its right to seek a partition of the entire Robledo property which we're talking about there the real estate subject to the homestead right to Mrs. Hopper in a section 380 partition act, as part of the settlement division of in the community estate without violating our fiduciary obligations and then we ask for some guidance from the Court with respect to the valuation, a valuation issue that, that's something we think that the commissioners, if we do proceed down the partition path, for instance, if the Court says that we can do this. The administrator may determine that this is the path that it will proceed down.

We're asking for some guidance concerning evaluation issue with respect to whether the homestead right should be factored in to the valuation determination so that when the commissioners make their decision about who gets what and how much do they get with respect to Robledo.

So, that if for instance Robledo is partitioned entirely, the Robledo property, the fee is partition entirely to Mrs. Hopper, the children are

going to need to get some amount of assets and the question that we're asking the Court's guidance on is what's the, basically what's the methodology that's to be used in determining the amounts of those assets that they're to get and that's actually the next point that I am going to be talking about, but this whole issue about whether we can seek a partition, for the most part, we are aligned with Mr. Enoch's arguments with respect to this point.

He argues "must", we argue "may", but with respect to whether the entire community estate or whether community assets other than Robledo can be taken into consideration? We agree that our community assets can be taken into consideration and that Robledo, the fee interest, the fee interest in Robledo, not the homestead, right, but the fee interest can be included in the partition process and in fact must be included in the partition process and we think that Mr. Enoch has correctly stated what those cases say and we do not believe that the constitutional issues that Mr. Jennings is hanging his hat on are prohibitions or in any way preclude the Independent Administrator from seeking a partition that includes the Robledo property, the fee interest.

And he makes an argument that in his papers,

he didn't focus on it too much this afternoon, but in his papers he basically claims that we are hallucinating when we come up with this concept of a distinction between the fee interest and the homestead right. That there's no difference at all, that under the constitution it's one in the same, but the cases are real clear.

The Texas Supreme Court has on more than one occasion stated that indeed there's the homestead right which they have analogized they became attune to a life estate and then there is the underlying fee interest and there's a case named Laster out in the Texas Supreme Court that had language that we cite in our response that just, they can't deal with it. They directed in their reply brief in a footnote, but not only that, but the Laster case cites a US Supreme Court case, interpreting Texas Homestead law and that one as well, the US Supreme Court case knocked them out of the water as well.

So, on this issue except for the difference between "must and may," we're basically on, pretty close to the same page as Mr. Enoch's clients. Then Judge, there's an issue that has been raised and this is the fourth issue in my chart. And Judge if I may, let me really quickly address the point that

Mr. Jennings made at some length and Professor Johanson responded to this. Let me just add my two cents.

The issue of whether the administrator is able to administer Mrs. Hopper's share of the community estate, it is the administrators view that under Section 177, it unquestionably has the right to administer the Mrs. Hopper's share of community estate and that, that estate, that her share of the community is subject to being administered for purposes of, among other things, paying debts of Mr. Hoppers, but also paying expenses of administrator.

With respect to third parties expenses, there's not an issue with respect to whether the administrator is going to charge a fee to Mrs. Hopper's share, but there are other expenses of administration that are subject under the law to be charged to her share of the community. I just wanted to point to that out.

With respect to our fourth issue, Judge, this goes to the issue of valuing the homestead right in the partition proceeding and we do not really take an affirmative position here and this issue comes up as I mentioned, if there is a partition proceeding with respect to the Robledo property, there's going to be

an issue if you recall under that, under my -- some simple math chart thereof whether if Mrs. Hopper the commissioners determine that if she gets the entire fee interest in the Robledo property of whether the children get 50 percent of the equity interest in the form of other assets.

So, in other words if that get $400,000 in other assets or do they get some amount less than $400,000.

In other words, is her homestead right to be factored into the consideration of what they get in that partition process, the value of their fee interest, if it's something less than that $400,000. Is it, for instance, $400,000 less the exist account because the fact that Mrs. Hopper is going to be in that house if she keeps it, she's going to have a right to stay in it until she passes away.

We don't explicitly express a view on that. The children definitely take a position and say that homestead right should not be taken into consideration in coming up with that value. So, it's $400,000 then it should be $400,000. It shouldn't be $400,000 less the discount for the homestead right and we think though there are certainly case authority, there's the Reily case and the Russell versus Russell case that

are talked about in our materials that together pretty strongly suggest that you're not supposed to take in -- the commissioners are not supposed to take into consideration a discount for her homestead right burdening the fee interest. So, that's our fourth, that's our fourth requests.

Our fifth requests or excuse me, the fifth issue I should say. Mr. Enoch's motion says that -- argues that these distributions that the Independent Administrator has made over the course of the first year of the estate administration are unlawful.

He makes the argument, the children make the argument in their papers that the approximately $10 million that they have received that those have been unlawful distributions.

We say no, they're not unlawful. The administrator had the authority to distribute those assets and they are not for the reasons that I stated earlier that was not an extra statutory partition. That was merely a distribution and as I mentioned earlier, we've got ample Summary Judgment proof that they asked for them.

In fact, they insisted on them and they basically said you're breaching your duty, bank, if you don't give us that money.

And then lastly, Judge, is the issue of the administrator's ability to essentially claw back any distributions that might have been, that ultimately may be determined to have been premature. I mentioned that $400,000 figure, the equity value, with respect to Robledo. That would seem to be a potential target figure if the Court determines that in the valuation process that the commissioners shouldn't take into consideration a discount for the homestead right. It would seem that $400,000 is kind of a ballpark that we're talking about here.

So, if Mrs. Hopper gets all of the Robledo the entire fee interest then if you carry it out a couple of steps the children in theory would be entitled to get somewhere around $400,000 in other assets.

If there's not $400,000 in other assets and again, we're not committing to these figures, these are just kind of examples figures that I think are probably roughly ballpark, but if the children are entitled to get that amount, kind of basically distributed to them in exchange for they're no longer having that equity interest in Robledo.

The issue is going to be is there $400,000 in Mrs. Hopper's share of the community estate that is

still under administration by the bank and if in fact at that point in time there is not, then we have asked for declaration by the Court that we're entitled to get that money, that amount of money back from Mrs. Hopper because she had distributed to her about, under the Summary Judgment evidence, somewhere around probably $10 million in assets. And so, we're asking for a declaration that we would under those circumstances be entitled to get that amount of money roughly just again, for an example, $400,000 back from her in order to make this transfer or distribution to the children following the partition.

So, that last issue is we're asking the Court for a declaration on that. Mr. Jennings says without citing really any substantive authority, says we're not entitled to any such claw back. We disagree with that under, there's a Dallas Court of Appeals case specifically holding that an Executor was entitled where there was, there was too much distributed and there were some expenses that had to be paid that the Executor was effectively able to claw that back and there through an offset because we think that allot the corollary, that is, we'd be able to get it without having to file a lawsuit against Mrs. Hopper to get that money back, to get that money back into the

estate, so that this partition process, if it happens and if the money is needed can be completed.

THE COURT: Who makes the decision under your analysis? Who decides how much money showed be clawed back?

MR. EICHMAN: Well, I think that ultimately, I think that ultimately, the commissioners will make that determination, but I think that this Court based on the relief that we're requesting is going to kind of set the perimeters for the commissioners based on the whole issue of what's the methodology for determining the amounts, if any, that is to go to the children.

That whole issue of whether the, whether the $400,000 is reduced by virtue of the homestead right and the burden as a result of in the homestead right, once this Court makes that determination I think that the perimeters are going to be pretty well set and then the commissioners would follow those perimeters as set by this Court once it makes that declaratory determination.

THE COURT: Okay.

MR. EICHMAN: Those are the, those are our points Judge and we appreciate your time and you potential guidance on these issues.

MR. JENNINGS: May I speak fairly briefly, Your Honor?

THE COURT: One minute.

MR. JENNINGS: I may need a little more than that.

THE COURT: No. I've given you more time than everybody else combined. Just make your point.

MR. EICHMAN: Judge, Judge, I expect Mr. Cantrill to make a discussion. Can he have a minute or so?

THE COURT: Yes. Go ahead.

MR. JENNINGS: I apologize, just a minute, I promise.

THE COURT: Let this gentlemen, let Mr. Jennings make his one minute statement.

MR. JENNINGS: Before I make my statement, one question, Your Honor, would it be okay if we submit a proposed orders on Thursday and after you said that I didn't realize my schedule this morning. I can't do that tomorrow.

THE COURT: I'm going to ask everybody to submit their own his and her own proposed order that you want me to consider and if it's not tomorrow, I doubt it that I'll have a decision tomorrow.

MR. JENNINGS: Okay.

THE COURT: So, go ahead please.

MR. JENNINGS: Okay. I'll be very brief. Your Honor, this case Laster he said we were basing our case about, we're not at all Laster is a divorce case, Your Honor, and it's completely in opposite and in that case again, there was an agreement about partition. In the Whisler case Melissa and Richard agreed that was the couple with the trial court's approval particularly son partition of the homestead, until both children either obtained the age of 18 are no longer attended school.

It was an agreed partition, Your Honor.

Second, he keeps using the word distribution. Again, this is a fundamental misunderstanding from Professor Johanson's treatise that they are distributing to the widow. They are not.

It is in the widow's own property. They aren't distributing anything. They maybe administering, but they are not distributing to her, they are distributing to the children -- step-children. They are not distributing to the widow. It is simply her part -- property that they are delivering to her. That's the statute that's what the constitution says.

THE COURT: Okay. Thank you very much.

MR. JENNINGS: One last point. You've effectively heard and conceived on community property that it's only under administration arguably and under 177 and not because it is an estate property under 150.

With that I just ask that the Court look at particularly what at my illustrated example of the crazy effect that their proposal, both of their proposals, would have at pages 11,12 of our Motion for Summary Judgment. If you'll you read those we'd really appreciate it how bizarre this petition request.

Last thing, you've not heard one case cited, you asked a very perceptive question when you asked, well, how did you come up with these numbers? Who would make these choices? The reason you've never heard this before is because this never has happened before a reported case history, none of this has every happened before.

People have never made these crazy arguments before. There's never been a case where an involuntary petition -- partition was attempted to be shoved down the throat of a widow such as Mrs. Hopper and the reason she's battling when only $400,000 is

involved and she's basically -- is she wants to strike a blow for all the widows of Texas that never have to face this kind of game action by children, step-children and an Independent Administrator who's out of control. That's all. Thank you.

THE COURT: Mr. Cantrill.

MR. CANTRILL: Just a minute and a half, but I get to use Mr. Jennings concept of what he's admitting. Nobody yet has focused on the pre-emblem, Section 3 of the Probate Code when they talk about definition in 3L of what is an estate and I think you can read 3L to say that's the Decedent's separate property and one-half of the community just reading that, but the pre-emblem of section three says unless the context otherwise requires. That's part of the definition.

And when you go to the partition statutes, if estate means only the Decedent's one-half of the community and is separate, that means the Court can't even partition community property because the authority to partition is based on in the estate, and if you cannot partition community what's purpose of having the partition.

So, I think you have to read the partition statutes when you go there with that definition in 3L

and the pre-emblem to 3L in the mind that also ties in to the 177 concept of administering this.

Number two. Administration. Well, Mr. Jennings says pay debt and I think we've clarified that it can also be used to pay expenses and it can also be done to prevent waste. When you inherit an automobile it's an appreciating asset. You may need to sell it, 150 says "may" in terms of do I partition or do I distribute an undivided interest that suggests to me the Independent Administrator should exercise some judgment.

We had Mr. Enoch's example of the wine which is to be distributed a quarter of a bottle of wine to one kid a quarter to another. I submit to you, Your Honor, if we'd done that six months ago and stopped arguing about the wine, we could buy all of them the same wine. It would have stopped what I think is waste.

Again, it's judgment, but I think the authority is there to do that even though in most cases it wouldn't make a lot of sense to distribute an undivided interest.

Another instance where it could become important, let's say you got minor kids who can't consent because virtual representation doesn't apply

their interest are antagonist to the adults. Do we always have to go to court a get a partition or can the Independent Administrator exercise judgment and distribute undivided interest?

I think nobody's arguing we can partition without Court appointment, I don't think that's what we're arguing and finally is the timing thing. We have Retired Judge DeShazo set up for mediation middle of February. This group can't agree that the sun rises in the east and we need to have some guidance from the Court, if the Court can find the time do that before that mediation, so that we can at least know what the Court thinks the rules are whether we agree with them or not.

THE COURT: What's that date?

MR. ENOCH: February 13th, Judge.

MR. EICHMAN: So, if we go into that mediation as we're presently configured, I don't think I'm going to convince Mr. Jennings's he's wrong. I don't think Mr. Jennings's going to convince Mr. Stolbach he's wrong. We're the only correct party, of course, but we can settle this. So, we need your help.

THE COURT: Thank you very much. Do you want another minute?

MR. ENOCH: Yes, Your Honor, in my rebuttal and the reason I want to because I want to focus my comments directly to the undivided interest issue that was argued by Mr. Eichman. All I need to today is --

THE COURT: Can you make it real short? I'm supposed to be somewhere six minutes.

MR. EICHMAN: All right. I'll do that Judge. There are four cases, I'd like you to look at that stand for the propositions that there's no authority for them to distribute undivided interest.

They're cited. There's the Clark Versus Posey, there's the Spindor case. The Lewis case that he cites where distribution just because they distributed exactly what the Will said should be distributed and with respect -- there's another case called Cruz dealing with the valuation, homestead, that the value of the homestead is not to be included. That is Cruz V. Reinhart, 208 Southwest 2nd, it's a Beaumont case 1948, talking about the value should not be taken into account distributions.

Let me pause this question to you. If they can issue undivided interest, their position is that our clients are in a different position than if all of Robledo is partitioned as the Supreme Court says it ought to be remember. In other words there's a

substantively different answer for my clients and for Mrs. Hopper, if they issue undivided interest.

Can they do anything different than a dependent administrator can under the statutes? If a dependent administration was going on, there's nothing in the statutes that allows them to issue undivided interest and so this creates a conundrum they say, oh my gosh, what do we do. Why isn't there hundreds of cases dealing with the fact that if it's the issue of undivided interest you come to a substantively different answer than if you follow the procedures in the book. Is this something they've ever dealt with? Did they tell our client about that? Is there any authority out there whatsoever that an Independent Administrator that result, without the agreement of the parties can be substantively different than following the law.

That's why I'd like you to pay particular attention to Clark versus Posey. Clark versus Posey says that once they start distribution and partition and they do it outside of that statute, you are able then to force them to do it according to that statue and the statute is there when people don't agree.

Judge, there ought to be hundreds of cases on this issue there are none because no one's ever

submitted before. There's no secondary authority about what do you do when undivided interests are transferred, create substantively different answers than what the codes provide and why would in the Clark versus Posey say, you can't do it, but for what in the statue allows the Independent Executors to do. They don't have the discretion, absent the agreement of the parties to deviate from the law.

We appreciate your time, Judge, I would close was this final thought. A lot of tough decisions for you and I submit to you your decision can be a relatively simple one. And this is it.

You don't need to grant my Summary Judgment. You don't need to grant their Summary Judgment -- I think you do --

MR. JOHANSON: They don't have one. They don't have a Summary Judgment.

MR. ENOCH: I'm sorry, you don't need to grant the request. You do need in my judgment to refuse or deny a request that Robledo be carved out of the partition process.

All they are looking for is guidance. That's what John started with. I think you should guide them to follow the statute.

THE COURT: I have two weeks and these are

matters of first import over 150 years of jurisprudence.

MR. JENNINGS: Your Honor, you don't have to that's what I want to stand up and say. The Court should take the time and I urge the Court to take the time to read the five or six competing briefs that have been submitted. Particularly in our response on February the 24th -- on January 24th on the issue of what an estate is and what in the context is --

THE COURT: I do, I understand Mr. Jennings.

MR. JENNINGS: Look at 25 through 27. Last point Your Honor, you shouldn't feel rushed and you know the mediation will come and mediation will go, if it resolves it resolves and if it doesn't, it doesn't. The Court should take the time to get it right. Thank you.

MR. ENOCH: One final thing, Your Honor, to address the time of the mediation. You're gonna have a hearing, there's a hearing before you on Friday with respect that might affect the timing of the mediation and so I just wanted, I don't want you to be surprised when we come here on Friday, we talked about whether the mediation goes forward or not based on some other things we haven't talked about today.

THE COURT: Thank you-all very much, I will

decide which authority I'm going to rely on Johanson or Yours.

MR. ENOCH: Thank you, Your Honor.

MR. EICHMAN: Thank you.

MR. JENNINGS: Thank you.

END OF PROCEEDINGS

STATE OF TEXAS)

COUNTY OF DALLAS)

I, Micaela Ynostrosa, Freelance Court Reporter in and for the Probate Court No. 3 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 $561.75 and was paid/will be paid by Mr. Jennings attorney at Law. WITNESS MY OFFICIAL HAND this 16th day of April, 2012.

_____

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