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IN THE COURT OF APPEALS  
FOR THE EIGHTH DISTRICT OF TEXAS

DENISE PACHECO, CLERK  
EIGHTH COURT OF APPEALS

**LAURA S. WASSMER AND STEPHEN B. HOPPER,**  
*Appellants,*

v.

**JO N. HOPPER,**  
*Appellee/Cross-Appellant,*

v.

**JPMORGAN CHASE BANK, N.A.,**  
*Appellee.*

FILED IN  
COURT OF APPEALS

NOV 30 2012

DENISE PACHECO  
CLERK 8th DISTRICT

On Appeal from Cause No. PR-11-3238-3  
In the Probate Court No. 3, Dallas County, Texas  
Honorable Michael E. Miller, Presiding Judge

**APPELLEE/CROSS-APPELLANT JO N. HOPPER'S  
UNOPPOSED (IN PART) FIRST MOTION FOR EXTENSION  
OF TIME TO FILE BRIEF**

**TO THE HONORABLE EL PASO COURT OF APPEALS:**

Appellee/Cross-Appellant Jo N. Hopper ("Appellee/Cross-Appellant" or "Mrs. Hopper"), files this Unopposed (in Part) First Motion for Extension of Time to File Brief and would respectfully show:

1. This Motion seeks an extension of time for Appellee/Cross-Appellant Mrs. Hopper to file her Brief.

2. Based on the Court's electronic docket sheet, the current deadline to file Appellee/Cross-Appellant's Brief is December 21, 2012.

3. Appellee/Cross-Appellant seeks a 46-day extension of time to file her Brief. *See* Tex. Rs. App. P. 38.6(d); 10.5 (b). Consequently, Appellee/Cross-Appellant seeks an extended deadline to February 5, 2013.

4. This is Appellee/Cross-Appellant's first request for an extension of time to file her Brief, sought in accordance with the actual deadline to file her Brief.<sup>1</sup>

5. Appellate counsel for Appellee/Cross-Appellant Mrs. Hopper, Michael A. Yanof, was hired by Mrs. Hopper specifically to serve as appellate counsel. He was hired to provide his appellate expertise in the appeal to the 5<sup>th</sup> Court of Appeals, which is now the appeal before this Court.

6. The extension of time sought by Appellee/Cross-Appellant is necessary due to the schedule of Appellee/Cross-Appellant's appellate counsel, Mr. Yanof. Specifically, his schedule prevents him from preparing the Brief by the current deadline, and will prevent him from preparing the Brief earlier than 46 days after the current deadline. This schedule includes (at least) the following:

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<sup>1</sup> Appellee/Cross-Appellant previously filed a Motion to Adopt Briefing Schedule of 5<sup>th</sup> Court of Appeals Local Rule 10. In conjunction with this Motion, Appellee/Cross-Appellant alternatively sought a motion for extension of time in the event the Court was not inclined to adopt 5<sup>th</sup> Court of Appeals Local Rule 10. This alternative Motion was sought simply to ensure that Appellee/Cross-Appellant's initial deadline to file her Brief was the same as her initial deadline to file her Brief when the appeal was in the 5<sup>th</sup> Court of Appeals. When this Court adopted 5<sup>th</sup> Court of Appeals Local Rule 10, it rendered Appellee/Cross-Appellant's Motion for Extension of Time as moot.

- a.) Travel to Beaumont on November 26, 2012 (the same day Appellants' Brief was actually received due to the Thanksgiving holiday)<sup>2</sup> for a hearing as lead appellate counsel for the defendants, on post-verdict motions to be heard on November 27, 2012 at 8:45 a.m. (hence the need to travel the day before), in *Escuadra v. GeoVera Specialty Insurance Company*, No. E185-065, 172<sup>nd</sup> Judicial District Court, Jefferson County, Texas;
- b.) Filing a Motion for New Trial, as lead appellate counsel for the defendant, by the deadline of November 30, 2012, in *Rio Bravo Cattlefeeders, L.L.C. v. Westway Feed Products, L.L.C.*, No. DCV-11-06822, 100<sup>th</sup> Judicial District Court, Donley County, Texas;
- c.) Preparing for oral argument in the 5<sup>th</sup> Circuit Court of Appeals in New Orleans, Louisiana on December 5, 2012, as lead appellate counsel for the appellees, in *Nadheer v. The Insurance Company of the State of Pennsylvania*, No. 12-50164;

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<sup>2</sup> Actually, Mr. Yanof is the only attorney representing Mrs. Hopper who was served with this Brief, despite other counsel also representing her. This failure to serve the other counsel also representing Mrs. Hopper further delayed analysis of the Brief by Mrs. Hopper's attorneys, as Mr. Yanof was traveling when the Brief was actually received in his office on November 26, and the other attorneys for Mrs. Hopper were not served with the Brief.

- d.) Preparing for and arguing a Motion for New Trial on December 11, 2012, as lead appellate counsel for the defendant, in *Ploetz v. Big Rock Partners GP, L.P.*, No. 2012-005214-3, County Court at Law No. 3, Tarrant County, Texas;
- e.) Preparing for and arguing oral argument on December 18, 2012, in the 5<sup>th</sup> Court of Appeals in Dallas, Texas, as lead appellate counsel for an appellee, in *Smith v. Sumeer Homes*, No. 05-11-01632-CV;
- f.) Preparing for and arguing oral argument on January 8, 2013 in the Texas Supreme Court, as lead appellate counsel for the petitioners, in *Zanchi v. Lane*, No. 11-0826; and
- g.) Preparing for and arguing oral argument on January 10, 2013 in the 9<sup>th</sup> Court of Appeals in Beaumont, Texas (although oral argument will take place in Conroe, Texas), as lead appellate counsel for the appellants, in *Packard Engineering Associates v. The Sally Group, L.L.C.*, No. 09-12-00325-CV.

6. This schedule alone, not including what may also present itself in the next few days, leaves inadequate time for Appellee/Cross-Appellant Mrs. Hopper's appellate counsel to analyze Appellants' Brief, and prepare her Brief, by the current deadline. And the scheduling conflicts above prevent appellant counsel for Mrs. Hopper from devoting significant time to the drafting of her Brief until at least January 11, 2013, the day after oral argument in *Packard*.

Appellee/Cross-Appellant seeks a 24-day extension from January 11, 2013, the day after oral argument in *Packard*. Hence, Appellee/Cross-Appellant seeks an overall 46-day extension of time to file her Brief.

7. There are two additional circumstances worth noting, as further “facts relied on to reasonably explain the need for an extension.” See Tex. R. App. P. 10.5(b)(1)(C). The first circumstance is that there are three holidays between now and February 4, 2013, the date to which Appellee/Cross-Appellant seeks an extension. Two of those holidays are multi-day holidays. Appellants’ certificate of service for their Brief notes service by certified mail on November 20, 2012. This was just before Thanksgiving. While Appellee/Cross-Appellant did not receive Appellants’ Brief until Monday, November 26, 2012, in any event November 22 through 25 was the Thanksgiving holiday. The same is true for December 24 through 26, which is the Christmas holiday. Finally, December 31, 2012 through January 2, 2013 is the New Years’ holiday. This is further complicated by each of these three holidays falling on a weekday, which creates practical and significant staffing issues.

8. The second circumstance is that Appellee/Cross-Appellant Mrs. Hopper’s Brief is not simply a responsive brief to Appellants. Rather, it is a combined brief from Mrs. Hopper’s counsel as Appellee and as Cross-Appellant. In accordance with 5<sup>th</sup> Court of Appeals Local Rule 10, which this Court has adopted for this appeal, the page limit to file this more expansive (two briefs in one) brief is 100 pages. To file such a Brief within 30 days of Appellants filing

their Brief would be a challenge under any circumstances. To do so given the schedule of Mrs. Hopper's appellate counsel is virtually (if not actually) impossible.

9. Appellee/Cross-Appellant Mrs. Hopper seeks a 46-day extension of time (from December 21, 2012) to file her Brief due to, as set forth more specifically above, the schedule of her appellate counsel between now and January 10, 2013, as well as the intervening holidays and two briefs in one that Mrs. Hopper's counsel must prepare. Accordingly, Appellee/Cross-Appellant Mrs. Hopper seeks an extension of time file her initial Brief to February 5, 2013. *See Tex. Rs. App. P. 38.6(d); 10.5 (b).*

10. Counsel for Appellee/Cross-Appellant has discussed this Motion with counsel for Appellants and Appellee, and counsel for Appellants and Appellee are not opposed to this Motion and the relief sought.

For these reasons, Appellee/Cross-Appellant Mrs. Hopper respectfully requests that the Court grant this Motion and extend the deadline to file Appellee/Cross-Appellant Mrs. Hopper's Brief until February 5, 2013, and grant any other relief to which she is justly entitled.

Respectfully submitted,

By: 


Michael A. Yanof  
State Bar No. 24003215  
Thompson, Coe, Cousins & Irons, L.L.P.  
700 North Pearl St., 25<sup>th</sup> Floor  
Dallas, Texas 75201  
(214) 871-8200 – Telephone  
(214) 871-8209 – Facsimile  
Email: [myanof@thompsoncoe.com](mailto:myanof@thompsoncoe.com)

James Albert Jennings  
State Bar No. 10632900  
Kenneth B. Tomlinson  
State Bar No. 20123100  
ERHARD & JENNINGS, P.C.  
1601 Elm Street  
Suite 4242  
Dallas, Texas 75201-3509  
(214) 720-4001 – Telephone  
(214) 871-1655 – Facsimile

ATTORNEYS FOR APPELLEE/  
CROSS-APPELLANT JO N. HOPPER

**CERTIFICATE OF CONFERENCE**

I certify that counsel for Appellee/Cross-Appellant Jo N. Hopper has had extensive discussions with counsel for Appellants Laura Wassmer and Stephen Hopper and Appellee JPMorgan Chase Bank, N.A. regarding this Motion and the relief sought. Counsel for Appellants Laura Wassmer and Stephen Hopper is not opposed to the Motion and the relief sought, specifically a 46-day extension of time for Appellee/Cross-Appellant Jo N. Hopper to file her Brief. Counsel for Appellee JPMorgan Chase Bank, N.A. is not opposed to the Motion and the relief sought up to a 30-day extension, but is opposed to a 46-day extension.

  
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Michael A. Yanof



**CERTIFICATE OF SERVICE**

I certify that I have transmitted a true and correct copy of the foregoing document to the counsel listed below this 29<sup>th</sup> day of November, 2012 as follows.

**Via Facsimile**

Thomas H. Cantrill  
John Eichman  
HUNTON & WILLIAMS  
1445 Ross Avenue  
Suite 3700  
Dallas, TX 75202  
*Counsel for Appellee JPMorgan Chase Bank, N.A.*

**Via Facsimile**

Lawrence Fishman  
Mark Enoch  
GLAST, PHILLIPS & MURRAY, P.C.  
14801 Quorum Drive, Suite 500  
Dallas, TX 75254  
*Counsel for Appellants Laura Wassmer and Stephen Hopper*

  
\_\_\_\_\_  
Michael A. Yanof