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July 13, 2016

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

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

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

Dear Mr. Eichman:

This letter shall constitute my initial report as an expert witness in the above-entitled and numbered cause.

**I. QUALIFICATIONS**

I am an attorney licensed to practice law in the State of Texas since 1969. I earned a Doctor of Jurisprudence degree from Baylor University School of Law and a Master of Laws in Taxation degree from the University of Miami, Florida. I am the founding shareholder of Bourland, Wall & Wenzel, P.C., a Fort Worth based law firm representing individuals, fiduciaries, closely held and family businesses, professional practices and charitable organizations since 1983. My professional practice focuses largely on business, tax, estate planning, trust, probate, charitable entity and charitable giving law, and I am board certified in estate planning and probate law by the Texas Board of Legal Specialization. In connection with my practice I am regularly involved in planning, drafting, and advising with regard to the above areas of the law. I have studied and published outline materials regarding the above areas of the law. I am a Fellow of the American College of Trust and Estate Counsel. As a testifying expert witness I charge my normal hourly rate of \$650.00 per hour. For further information regarding my qualifications and experience, please see my curriculum vitae, enclosed with this report.

## II. INFORMATION REVIEWED

I have been retained to provide expert opinions and analysis regarding the reasonableness of the attorneys' fees incurred by Hunton & Williams LLP and charged to JPMorgan Chase Bank, N.A., in its capacity as Independent Administrator of the Estate of Max D. Hopper, Deceased ("JPM") in connection with the administration of the Estate of Max D. Hopper, Deceased (the "Estate") and the allocation of such fees as between the separate estate of Max D. Hopper (the "Decedent"), the Decedent's share of the community property estate, and Jo Hopper's share of the community property estate. My understanding of the facts in this case comes primarily from review to date of the following materials:

- Court filings and discovery responses in the Lawsuit including the following:
  - Plaintiff's Second Amended Original Petition for: Declaratory Judgment, Breach of Contract, Breach of Fiduciary Duty, Fraud, et al, and, Jury Demand
  - Defendants Stephen B. Hopper and Laura S. Wassmer's Motion for Leave to File Amended Petition
  - Steven Hopper's and Laura Wassmer's Third Amended Cross Claim and Counterclaim
  - Defendant JPMorgan Chase Bank, N.A.'s First Amended Answer to Stephen Hopper's and Laura Wassmer's First Amended Cross Claim
  - Letter dated March 22, 2016 from John Eichman to the Honorable Brenda Hull Thompson
  - Jo N. Hopper's Supplemental Responses to JPMorgan Chase Bank N.A.'s Request for Disclosure
  - Jo N. Hopper's Supplemental Objections and Answers to JPMorgan Chase Bank N.A.'s First Set of Interrogatories
  - Defendant JPMorgan Chase Bank, N.A.'s Second Amended Answer, Special Exceptions, Counterclaim and Cross-Claim in Response to Jo N. Hopper's Second Amended Original Petition
  - Application for Distribution of Property and Motion for Protective Order
  - Defendant JPMorgan Chase Bank, N.A.'s Response to Defendants' Application for Distribution of Property and Motion for Protective Order

- First Amended Application for Distribution of Property and Motion for Protective Order
- Reply to Defendants' Response to First Amended Application for Distribution of Property and Motion for Protective Order
- Plaintiff's Response to Stephen B. Hopper and Laura S. Wassmer's Application for Distribution of Property and Motion for Protective Order
- Defendant JPMorgan Chase Bank, N.A.'s Response to Defendants First Amended Application for Distribution of Property and Motion for Protective Order
- Order dated March 25, 2016 denying First Amended Application for Distribution of Property and Motion for Protective Order
- Hunton & Williams LLP's invoices for attorneys' fees and expenses incurred in connection with the Estate Proceeding and the administration of the Estate (collectively, the "Estate Administration").
- Court filings in the Estate Proceeding.
- Discovery requests and responses served in the Estate Proceeding.
- Part 1 of the Deposition of Wendy W. Bessette taken on April 5, 2016.
- Part 2 of the Deposition of Wendy W. Bessette taken on April 6, 2016.
- Part 1 of the Deposition of Susan H. Novak taken on May 10, 2016.
- Part 2 of the Deposition of Susan H. Novak taken on May 11, 2016.
- Deposition of Thomas H. Cantrill taken on May 25, 2016.
- Various correspondence by and between the parties to the Lawsuit and their respective counsel, employees, and representatives in the form of emails and letters related to the Estate Administration.

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

### **III. REASONABLENESS OF ATTORNEYS' FEES INCURRED IN ESTATE ADMINISTRATION**

An independent administrator is entitled to recover reasonable attorneys' fees necessarily incurred in the proceedings and management of the estate. *See* Tex. Estates Code § 352.051.

JPM's fee agreement with the Beneficiaries also provides for the recovery of attorneys' fees. The factors that are relevant to the reasonableness of attorney's fees were set forth in a non-exclusive list by the Texas Supreme Court in *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997), which is nearly identical to the factors listed in Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct, and include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

JPM has incurred \$1,015,568.44 in attorneys' fees and expenses with Hunton & Williams LLP for the administration of the Estate during the period from March 2010 through May 2016.<sup>1</sup> As discussed below, these attorneys' fees and expenses were reasonable and necessary.

***A. Time and Labor Required; Novelty and Difficulty of the Questions Involved; and Skill Required.***

Due to the contentiousness between the Decedent's widow and his two adult children from a prior marriage, the nature and type of assets involved in the Estate, and the difficulty in obtaining information regarding the assets of the Estate, it was necessary for Hunton & Williams LLP ("HW") to have extensive involvement in the administration of the Estate on behalf of JPM. Through May 2016, HW has spent 1,669.3 hours of attorney time, 745.9 hours of paralegal time, and 36.1 hours of other staff time on the Estate Administration. The services provided by HW in the Estate Administration included but were not limited to those described in this Section III.A.

HW prepared and filed an application to open a temporary administration at the urging of Jo Hopper, the Decedent's widow, in order to sell certain securities. HW also filed an

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

accounting in connection with the temporary administration and an application for discharge of the temporary administrator, which was granted by the Court.

HW searched for a will executed by the Decedent. No executed will was located and, thus, the Estate was administered as an intestate estate.

HW prepared and filed an application of independent administration and for an heirship determination. This necessitated coordination and communication with Mrs. Hopper, the Decedent's children – Laura Wassmer and Stephen Hopper, each of their respective counsel, and the attorney ad litem appointed by the Court. HW also had to appear and offer evidence at a hearing on the applications for independent administration and heirship determination.

HW's assistance was required in the process of identifying and valuing assets of the Estate, including securities, business interests, and private equity investments; options in certain securities; extensive collections of wine, golf clubs, golf memorabilia, art, and coins; automobiles; other tangible personal property; non-homestead real estate in Lufkin, Texas; and Mr. and Mrs. Hopper's residence in Dallas, Texas. Jo Hopper, Laura Wassmer, and Stephen Hopper (collectively, the "Beneficiaries") disagreed about the process for valuing many of these assets. When valuations were obtained, they disagreed about the value determined. The Beneficiaries further disagreed about the separate property or community property characterization of certain items of art and tangible personal property. The Beneficiaries and their respective counsel, who were involved in the administration early in the process, communicated these issues and related questions to JPM. HW advised JPM on the issues and questions raised by the Beneficiaries regarding the valuations. HW also communicated with the Beneficiaries' respective counsel about these issues.

The process of identifying and valuing the Estate's assets and preparing an accurate inventory was further complicated by the resistance of Mr. and Mrs. Hopper's CPA – Sarah Williamson – to providing necessary information to JPM. HW filed pleadings with the Court seeking to compel the production of documents and attended multiple hearings on this issue. HW negotiated a protective order demanded by Mrs. Hopper's lawyer and Ms. Williamson's lawyer. HW also reviewed multiple boxes of documents that Ms. Williamson ultimately produced.

HW advised and assisted JPM in the preparation and filing of an Inventory, Appraisement, and List of Claims filed with the Court on June 24, 2011 (the "Original Inventory"); a First Amended Inventory, Appraisement, and List of Claims filed with the Court on June 29, 2012 (the "First Amended Inventory"); and a Second Amended Inventory, Appraisement, and List of Claims filed with the Court on November 1, 2013 (the "Second Amended Inventory"). JPM and HW communicated extensively with the Beneficiaries and their respective counsel regarding the Original Inventory, the First Amended Inventory, and the Second Amended Inventory (collectively, the "Inventories"). The Beneficiaries raised objections to the Original Inventory and the First Amended Inventory. However, JPM and HW faced substantial difficulties and resistance from the Beneficiaries (particularly Mrs. Hopper and her counsel) in identifying the specific objections to the Inventories. Only after over two years of extensive (and often heated) discussions, negotiations, court filings, and hearings were JPM and

HW able to obtain the resolution of the Beneficiaries' objections and the Court's approval of the Second Amended Inventory.

HW's services were required in connection with a dispute between the Beneficiaries regarding the treatment and distribution of Mr. and Mrs. Hopper's residence on Robledo Drive in Dallas, Texas (the "Robledo Property"). Following Mr. Hopper's death, Mrs. Hopper had a 50% interest and Laura Wassmer and Stephen Hopper each had a 25% interest in the Robledo Property. Mrs. Hopper also had a lifetime homestead right in the Robledo Property. JPM initially encouraged the Beneficiaries to reach an agreement amongst themselves regarding the distribution of the Robledo Property. When the Beneficiaries did not reach an agreement, JPM stated it would distribute the Robledo Property to the Beneficiaries in undivided interests subject to Mrs. Hopper's homestead right. Mrs. Hopper agreed with this proposal and insisted that the Robledo Property be so distributed. Laura Wassmer and Stephen Hopper (the "Children") asserted that the distribution of the Robledo Property in undivided interests would harm them and would be a breach of JPM's fiduciary duties. The Children insisted that JPM was required to seek a partition from the Court that would allocate the Robledo Property to Mrs. Hopper as part of her one-half community property interest and other assets of similar value to the Children. HW conducted research on this issue and prepared two memoranda that were shared with counsel for the Beneficiaries. JPM and HW received multiple requests and demands from counsel for the Children and counsel for Mrs. Hopper regarding their opposing positions concerning the distribution of the Robledo Property. JPM properly sought the guidance of the Court as to the handling of the Robledo Property.<sup>2</sup>

Similar disputes arose between the beneficiaries regarding the distribution of tangible personal property, including wine and golf clubs, in undivided interest. HW had to respond to multiple requests and demands from Mrs. Hopper and the Children regarding the distribution of these items.

HW assisted and advised JPM in the preparation of an IRS Form 8939. This report was unique to the estates of persons who passed away during 2010. Because the IRS Form 8939 report was a new report for the estates of 2010 decedents, it was necessary for HW to analyze the requirements for the report and work on both the form and substance of the report. HW also communicated with counsel for the Beneficiaries regarding the content of the report.

HW advised JPM regarding the preparation of two accountings pursuant to former Texas Probate Code section 149A.

HW prepared assignments and conveyance documents for the transfer of both real property and personal property from the Estate to the Beneficiaries.

The Beneficiaries raised numerous issues and complaints concerning the amount and allocation of the costs of the Estate Administration, including JPM's administrator's fee and

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<sup>2</sup> The fees associated with the action seeking the Court's guidance regarding the distribution and/or partition of the Robledo Property were billed separately from the Estate administration matter. This report only addresses the fees billed to the Estate administration matter.

HW's attorneys' fees. HW incurred time conducting research concerning the allocation of such expenses, calculating allocations of its attorneys' fees, and communicating with counsel for the Beneficiaries about the amount and allocation of expenses.

HW prepared and filed responses to an Application for Distribution of Property and for Protective Order filed by counsel for the Children. HW also appeared and presented arguments at a hearing with the Court concerning the Children's Application for Distribution of Property and for Protective Order.

The Estate Administration involved unique and complex issues as described above that required the attention of counsel experienced and knowledgeable in matters concerning estate administration and estate taxation. The amount of time HW was required to spend on the Estate Administration was greatly increased by the nearly constant disputes between the Beneficiaries; the numerous demands and threats made by the Beneficiaries and their respective counsel to JPM and HW; and the contentiousness of the communications between the Beneficiaries and their respective counsel, on the one hand, and JPM and HW, on the other hand. Based on the foregoing, the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly weigh in favor of the reasonableness and necessity of the fees incurred by HW in the Estate Administration.

***B. The Likelihood that the Acceptance of the Particular Employment will Preclude Other Employment by the Lawyer.***

Considering the substantial amount of time HW spent on the Estate Administration matter, this factor is neutral or weighs somewhat in favor of the reasonableness and necessity of HW's fees.

***C. The Fee Customarily Charged in the Locality for Similar Legal Services.***

The fees charged by HW in the Estate Administration are consistent with fees customarily charged by attorneys and law firms in the Dallas-Fort Worth area for legal services similar to those provided in the Estate Administration considering the size of the Estate, complexity of the assets, and contentiousness of the Beneficiaries. This factor weighs in favor of the reasonableness and necessity of HW's fees in the Estate Administration.

***D. The Amount Involved and Results Obtained.***

The Estate Administration involved assets valued at approximately \$19.8 million (including Mrs. Hopper's one-half interest in community property assets). Approximately \$10 million of that amount constitutes the Decedent's separate property or one-half interest in community property assets. The results obtained have been discussed previously in section III.A of this report. More than half of the assets of the \$19.8 million were applied to claims or distributed within the first year of the Estate Administration. When considered in the light of the external challenges faced by HW and JPM in the Estate Administration, this factor weighs in favor of the reasonableness and necessity of HW's fees.

***E. Time Limitations Imposed by the Client or by the Circumstances.***

Time limitations imposed by the circumstances have been a factor in the Estate Administration, particularly with respect to the preparation and filing of the Inventories and the carryover basis report. JPM and HW faced significant challenges in obtaining information and input from the Beneficiaries and third parties necessary to prepare the Inventories and the carryover basis report within the timeframes required by law, as previously discussed in Section III.A. This factor weighs in favor of the reasonableness and necessity of HW's fees.

***F. Nature and Length of the Professional Relationship with the Client.***

I understand that HW has represented JPM in a number of legal matters over the years. The nature and length of the professional relationship between JPM and HW weighs in favor of the reasonableness and necessity of the fees charged.

***G. Experience, Reputation, and Ability of the Lawyers Performing the Services.***

The experience, reputation, and ability of the lawyers at HW who performed services in connection with the Estate Administration weigh in favor of the reasonableness and necessity of HW's fees. Thomas Cantrill and Margaret S. Alford both have over thirty (30) years of experience in probate and estate administration matters and Board Certified in Estate and Probate Law by the Texas Board of Legal Specialization. John Eichman has over thirty (30) years of experience in commercial litigation, including fiduciary litigation. Grayson Linyard similarly focuses his practice on commercial and fiduciary litigation. Two experienced paralegals – Sally Lunday and Lori Wester – also worked on the Estate Administration matter.

***H. Whether the Fee is Fixed or Contingent on Results Obtained or Uncertainty of Collection before the Legal Services have been Rendered.***

HW's fees in the Estate Administration have been charged on an hourly rate basis. Thus, this factor is not applicable.

Considering the circumstances of the Estate Administration and the foregoing factors, HW's attorneys' fees and expenses incurred in connection with the Estate Administration are necessary and reasonable. Thus, JPM is entitled to recover such fees.

**IV. REASONABLENESS OF ALLOCATION OF ESTATE ADMINISTRATION ATTORNEYS' FEES**

Texas courts have long recognized that the entire community estate is liable for the expenses incurred in the administration of community property, but expenses are not necessarily borne equally by the decedent's share and the surviving spouse's share of community property. See *Moore v. Wooten*, 280 S.W. 742 (Tex. Comm'n App. 1926); *Goggans v. Simmons*, 319 S.W.2d 442 (Tex. Civ. App. – Fort Worth 1958); *Ray v. United States*, 385 F. Supp. 372 (S. D. Tex. 1974). Further, expenses incurred in the administration of the separate property of a decedent's estate are properly allocable to decedent's separate property. See *Goggans*, 319



S.W.2d 442; *Ray*, 385 F. Supp. 372. The Texas legislature has provided direction regarding the allocation of certain estate administration expenses—e.g., funeral expenses must be charged against the decedent’s share of community property or his separate estate. See Tex. Estates Code § 355.110. Case law also provides guidance for the allocation of certain estate administration expenses—e.g., expenses related to the routine probating of an estate are properly charged to the decedent’s share of community property or his separate property. See *Ray*, 385 F. Supp. 372. However, with regards to the remaining estate administration expenses, an independent administrator is given discretion in allocating the expenses so long as the allocation is reasonable. *Id.* In exercising its discretion, the independent administrator must consider the purpose of each expenditure and the portion of the estate benefited by the service rendered and expense incurred. *Id.* As discussed below, JPM’s allocation of Estate Administration attorneys’ fees, as I understand it, was based upon consideration of such purposes and benefits and was therefore reasonable.

***A. Attorneys’ Fees Incurred during Temporary Administration.***

The temporary administration was required to sell specific community assets for the purpose of mitigating certain market risks associated with such assets. Because the entire community estate benefitted from the temporary administration, the attorneys’ fees associated with securing the appointment of the temporary administrator and preparing and filing the temporary administrator’s final account and discharge were allocated in equal proportions to each of Mr. Hopper’s and Mrs. Hopper’s shares of community property. This was a reasonable allocation of such attorneys’ fees.

***B. Attorneys’ Fees Related to the Routine Probating of the Estate.***

The purpose of the routine probating of an estate is to comply with state law regarding certain duties of the independent administrator arising solely because of the death of the decedent. Expenses related thereto do not directly benefit the surviving spouse’s share of community property. *Ray*, 385 F. Supp. at 383. Instead, any benefit to the surviving spouse’s share of community property is achieved by operation of law—e.g., a basis adjustment resulting from an estate’s tax filing. *Id.* Accordingly, it was reasonable to allocate attorneys’ fees related to the routine probating of the Estate to Mr. Hopper’s share of community property and his separate property. Such attorneys’ fees include those related to securing the appointment of JPM as independent executor, preparing the probate inventory, preparing the IRS Form 8939 tax filing, acquiring asset appraisals related the probate inventory and tax filing, and consideration of the applicability of the Widow’s Allowance for Mrs. Hopper.

Notwithstanding the foregoing, in certain instances attorneys’ fees incurred during the preparation of the probate inventory and the IRS Form 8939 were allocated to Mr. Hopper’s share of community property and separate property or Mrs. Hopper share of community property because such fees were related to responses to specific inquiries from either Mrs. Hopper and/or the Children related to the probate inventory and the IRS Form 8939, the classification of assets as either community or separate property, and the appraisal of estate assets. JPM was reasonable in determining that such attorneys’ fees were more properly classified and allocated as being

related to the management of community and separate property as provided in paragraphs IV.C. and D. below.

***C. Attorneys' Fees Incurred in the Transfer, Management, and Division of Community Property.***

The purpose of transferring, managing, and dividing the community property is to fulfill the independent administrator's duty to estate beneficiaries to collect, safeguard, and distribute such assets in a manner that is consistent with state law. Such activities benefit both Mr. Hopper's and Mrs. Hopper's share of community property. Accordingly, it was reasonable to allocate the attorneys' fees related thereto in equal proportions to each of Mr. Hopper's and Mrs. Hopper's shares of community property.

***D. Attorneys' Fees Incurred in the Transfer, Management, and Division of Decedent's Separate Property.***

The purpose of transferring, managing, and dividing the separate property is to fulfill the independent administrator's duty to collect, safeguard, and distribute such assets in a manner that is consistent with state law. Such activities benefit only Mr. Hopper's separate property interest. Accordingly, it was reasonable to allocate the attorneys' fees related thereto to Mr. Hopper's separate property.

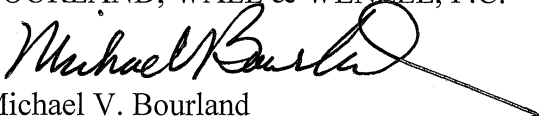
Based on my understanding of the circumstances of the Estate Administration and the foregoing purposes and benefits of each attorneys' fees category related thereto, JPM allocated the attorneys' fees related to Estate Administration in a reasonable manner.

**V. CONCLUSION**

The attorneys' fees and expenses incurred by HW in connection with the Estate Administration were reasonable and necessary and may be recovered by JPM. Further, JPM's allocation of Estate Administration attorneys' fees among Mrs. Hopper's share of community property, Mr. Hopper's share of community property, and Mr. Hopper's separate property was reasonable. I reserve the right to amend or supplement this report as additional information becomes available or is reviewed.

Sincerely,

BOURLAND, WALL & WENZEL, P.C.

  
Michael V. Bourland

**MICHAEL V. BOURLAND**  
**Bourland, Wall & Wenzel, P.C.**  
**Fort Worth, Texas**

Mr. Bourland is the founding shareholder of Bourland, Wall & Wenzel, P.C., a Fort Worth, Texas law firm which represents individuals, fiduciaries, closely held and family businesses, professional practices and nonprofit entities (including charitable organizations) within its areas of legal practice. Mr. Bourland was born in Fort Worth, Texas on October 2, 1943. He earned a B.A. from Baylor University and his J.D. from Baylor University School of Law. He earned his LL.M. in Taxation from University of Miami, Florida. Additionally, he was a Captain in JAGC, USAF, 1970-1975.

Mr. Bourland was admitted to practice law in Texas in 1969 and is Board Certified in Estate Planning and Probate Law (Texas Board of Legal Specialization). He is a member of the American Bar Association; State Bar of Texas and its Real Estate, Probate and Trust Law Section (Real Estate, Probate and Trust Law Council, 1993-1996); Tarrant County Bar Association (Director, 1987-1989); Tarrant County Probate Bar Association; Fort Worth Business and Estate Council (Chair, 1992-1993); and a Fellow of the American College of Trust and Estate Counsel.

Mr. Bourland's practice is directed to entity planning, (corporations, limited partnerships, limited liability companies, etc.) tax, estate planning, trusts, probate, charitable entity and charitable giving law. Mr. Bourland has been/is currently a guest lecturer in estate planning at Baylor University School of Law (where he lectures on estate planning and serves as adjunct professor of law, co-teaching the Nonprofit Organizations course), Baylor University School of Business, Southern Methodist University School of Law, University of Texas School of Law and The Center for American and International Law. He speaks regularly throughout the United States on subjects within his practice areas at seminars conducted by, among others, American Bar Association, American Law Institute, Texas Bar Association, American Institute of CPAs, Salk Institute for Biological Research and Texas Society of CPAs, Notre Dame, Duke and Tulane Universities.

Additionally, he has spoken to churches and church leaders on the creation of church foundations and the governance of church organizations. Mr. Bourland has contributed on subjects within his practice areas to publications including the New York Times, Nation's Business, Business Week and Money magazine. Mr. Bourland is a co-author of Keeping Your Church Out of Court, first, second and third editions.