

Estate of Max D. Hopper - October 18, 2011

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REPORTER'S RECORD

VOLUME 1 OF 1 VOLUMES

TRIAL CAUSE NO. PR-11-3238-3

IN RE: ESTATE OF § IN THE PROBATE COURT

§

MAX D. HOPPER, §

§

DECEASED §

§

JO N. HOPPER, § NO. 3

§

Plaintiff, §

§

v. §

§

JP MORGAN CHASE, N.A. §

STEPHEN B. HOPPER and §

LAURA S. WASSMER, §

§

Defendants. §

§

§ DALLAS COUNTY, TEXAS

09:00:49

TRANSCRIPT OF PROCEEDINGS

On the 18th day of October, 2011, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable John B. Peyton, Associate Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

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A P P E A R A N C E S

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- AND -

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Dallas, Texas 75232
ATTORNEYS FOR JP MORGAN CHASE BANK, N.A.
IN ITS CAPACITY AS INDEPENDENT ADMINISTRATOR
OF THE ESTATE OF MAX D. HOPPER, RESPONDENT

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08:59:46

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P R O C E E D I N G S

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THE COURT: Be seated. This is Cause No.

4

PR-10-3238-3, the Estate of Max D. Hopper.

5

Gentlemen and lady, if you would,

6

announce your appearances for the record, please.

7

MR. EICHMAN: Your Honor, John Eichman

8

and Tom Cantrill for the Independent Administrator JP

9

Morgan Chase Bank, N.A., and for JP Morgan Chase Bank,

10

N.A., in its corporate capacity.

11

MS. SIMS: Melinda Sims with Glast,

12

Phillips & Murray. I represent Dr. Stephen Hopper and

13

Laura Wassmer, children of the decedent.

14

MR. JENNINGS: Your Honor, I'm James

09:00:56

15

Albert Jennings, and this is Ken Tomlinson of my firm,

16

Erhard & Jennings, and we represent Jo N. Hopper, the

17

Plaintiff in the case and the widow, and, of course,

18

Michael Graham from the Graham Law Firm is here with

19

us today, too, on the same --

20

THE COURT: My name is John Peyton. I'm

21

the Associate Judge for the Probate Courts of Dallas

22

County. I was assigned to this matter for hearing on

23

the Motion to Compel -- I can't remember the formal

24

title of it. The --

25

MR. JENNINGS: Turn over our papers, Your

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09:01:29 1 Honor.

2 THE COURT: Yeah. Independent
3 Administrator's Complaint to Compel Delivery of Papers
4 and the Motion to Compel Mediation.

5 THE REPORTER: I'm sorry. Is -- I'm
6 having --

7 THE COURT: And the Motion to Compel
8 Mediation.

9 Here, let me get wired up here. I've got
10 power.

11 THE REPORTER: Is there anything I'm
12 supposed to turn on down here?

13 THE COURT: No, I don't think there's
14 anything you have to do. Anything that's

09:01:59 15 battery-powered has to be repowered on occasion, and I
16 think this is one of those occasions. And in the
17 meantime, I'll just yell.

18 Gentlemen, I understand that you-all have
19 settled the matter which was carried over from the
20 last hearing, that the Court has received a Rule 11
21 Agreement.

22 MR. EICHMAN: Yes, Your Honor. The
23 Independent Administrator has reached a resolution on
24 its Amended Complaint to compel the delivery of
25 documents by Sara Williamson, CPA, and in conjunction

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09:02:43 1 with that resolution, has filed a Notice of Nonsuit of
2 that complaint, and there's been a Rule 11 Agreement
3 filed with the Court relating to the resolution.

4 THE COURT: All right. That leaves the
5 Motion to Compel Mediation to be Disposed of, and I
6 understand there are also special exceptions that
7 are -- that need to be heard. This Court has not --
8 or the special exceptions have not been referred to me
9 for hearing.

10 Now, if you wish me to hear them, then
11 I'll certainly take your agreement and be happy to
12 hear them. If you cannot agree on that, then those
13 will be remanded to Judge Miller for him to hear.

14 MR. EICHMAN: Judge, we'd be happy to
09:03:36 15 have this Court hear the special exceptions in the --
16 in the lawsuit that Ms. Hopper has filed, but I
17 understand Mr. Jennings has expressed some concern and
18 has, in fact, objected to Your Honor hearing those
19 exceptions, and I assume he still is standing on those
20 objections.

21 MR. JENNINGS: Your Honor, this is no
22 insult to Your Honor or this Court.

23 THE COURT: I understand.

24 MR. JENNINGS: We -- we purely felt that
25 this was a matter that the City Judge, who is going to

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09:04:07 1 ultimately try to case, should hear since it -- it
2 really goes to a real analysis of completing, so we --
3 we felt that -- that was our position yesterday, and
4 it remains our position today, with no offense to the
5 Court.

6 We're -- we're delighted to have you here
7 on the matters, but we also -- because you had said at
8 the opening of the other hearing that if -- if anyone
9 wants to appeal my ruling, I -- I won't hear it at
10 all. I -- I wanted to be clear that it -- you know,
11 we were not in -- in a blanket way saying, oh, sure,
12 we aren't going to appeal anything. We reserve that
13 right if, as, and when this offer ever need
14 exercising.

09:04:45 15 Thank you, Your Honor.

16 THE COURT: All right. Well, then that
17 leaves us with only the mediation matter to be
18 disposed of.

19 MR. EICHMAN: Yes, Your Honor.

20 When we were here on October 7, the Court
21 stated that you were granting our Motion to Compel
22 Mediation, and during the intervening period between
23 then and this reset hearing, the Court expected the
24 parties to confer and see if they could make any
25 progress on agreeing to timing and a procedure and had

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09:05:21 1 a feeling had the Court would further put some more
2 flesh on its -- on its ruling, so to speak.

3 We have conferred. The administrator
4 thought it was making some progress with at least one
5 of the parties, but last night we determined that,
6 based on further communication, that we haven't made
7 progress between the administrator and either of the
8 parties.

9 Our view, Judge, as we expressed at the
10 hearing on the 7th, is that this mediation ought to go
11 forward much sooner than later, and our primary
12 concern as the administrator is that, as we pointed
13 out with a room full of -- well, not quite a room full
14 but the numerous lawyers we had at the hearing on the
09:06:19 15 7th and the several lawyers that are here present
16 today, the meters on all these lawyers are running,
17 and the burn rate of attorney's fees, we believe, is
18 going to continue to be very substantial over the next
19 few months, at a monthly rate, the administrator
20 believes, in the hundreds of thousands of dollars.

21 And in an effort to try to get this thing
22 resolved before there's even more spent in litigation
23 and argument and the like, we thought it appropriate
24 for the Court to -- to send the parties to mediation
25 in November, and if the parties can't agree on

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09:07:18 1 mediators, for the Court to -- to select mediators.

2 Now, we've heard from one of the -- one
3 of the group's parties here that they believe that
4 formal and informal discovery needs to be conducted,
5 and I think they -- Ms. Sims mentioned that in the
6 letter she sent the Court late yesterday. We haven't
7 heard anything about what kind of formal and informal
8 discovery they want.

9 I mentioned when we were here last time
10 that we filed -- the administrator filed its inventory
11 and appraisal and list of claims. In June there
12 were objection filed, and we wanted those objections
13 to be heard quickly, but they set them in January on
14 the pretext that there needed to be a bunch of
09:08:09 15 discovery done.

16 Well, since that time, there's been zero
17 discovery done by -- by Ms. Sims' clients with respect
18 to that inventory. We haven't heard yet what kind of
19 discovery they think needs to be done before there can
20 be a meaningful mediation, and we would expect that if
21 they think that, indeed, there is discovery that needs
22 to be done, they -- they should come forward and
23 identify exactly what that is and why it's going to
24 take a few months to get that -- to get that done.

25 So, Judge, bottom line is, we would ask

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09:08:48 1 the Court to set this mediation for the month of
2 November and that parties get about the business of
3 seeing if they can get this case resolved or as many
4 of the issues as possible sooner rather than later.

5 Thank you, Judge.

6 THE COURT: Ms. Sims.

7 MS. SIMS: Yes, Your Honor. We do
8 believe that various forms of formal and informal
9 discovery need to be done. While the inventory was
10 filed, I guess, in June's time period, there are
11 numerous matters that we've had to deal with between
12 that time and now, including significant work on the
13 homestead issue -- we'll refer to it as Robledo, given
14 its address.

09:09:33 15 That's what we'll refer to it as -- and
16 had really hoped that we may have been able to make
17 more progress with the bank at this point and avoided
18 some of this discovery, attempts of ours to set up
19 some meetings under terms that we felt were reasonable
20 to do so and make progress on these. Unfortunately we
21 haven't been able to meet with the bank. So we are
22 now in the position that we need to do this discovery.

23 Things that we need to know about include
24 questions we have as the inventory, when it was filed,
25 it was labeled "work in progress." There are items

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09:10:08 1 that the beneficiary actually agree need to go on
2 there. They have yet to go on that inventory, and
3 then there are other assets on there that we yet have
4 enough information on to be able to say what assets
5 are we really, truly dealing with in this estate to
6 come up with a global settlement.

7 We have just now gotten the accountant's
8 record. We have spent months trying to get the
9 accountant's records. Without those records, there's
10 a certain amount of discovery that we felt we have not
11 been able to do or would be inefficient. We can't
12 effectively talk to the accountant until we see those
13 records. We now have those in our possession.

14 And so we have them in our possession,
09:10:41 15 and we really couldn't work with them. So, you know,
16 the -- the -- the most recent causes with the global
17 issues have only recently been filed within the last
18 few weeks, and so we need to address information in
19 there. There's some depositions that we anticipate
20 may need to be taken. There are expenses that are
21 being asserted by Joe Hopper for reimbursement out of
22 the estate. We do not know what those are. We need
23 to find out what those are.

24 There are questions about allocation of
25 other expenses and administration expenses that we'll

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09:11:14 1 be issuing a global settlement. Got to get the
2 specifics and details on that.

3 We are all for the attempt to settle this
4 and have mediation, but my clients need the time to
5 know that they are going in and, indeed, know what are
6 all the assets in this estate. It is a big question
7 mark. Until we are able to effectively talk with the
8 accountant and some other people who are involved
9 and -- and get additional documents.

10 So it's those types of things that we
11 need to do to feel that we go into mediation and can
12 really get it done and have the information that we
13 need. So we -- you know, we -- we were looking at
14 something a little beyond January. We're willing to
09:11:51 15 say we're going to do everything we can to be ready by
16 the end of January.

17 I've understood from Mr. Jennings that
18 that would work with his clients, as well, and
19 hopefully that's still the case today. We had
20 originally set our hearing for around January 27th,
21 and we thought, why don't we use that time frame
22 instead to try and mediate, and if we need to, then we
23 can have a -- a hearing at a later date.

24 THE COURT: Okay.

25 MR. JENNINGS: If I could get -- pardon

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09:12:15 1 me, Your Honor. If I could give the Court just a
2 brief overview, the inventory that the bank filed in
3 this case was filed a year after they took over to the
4 day after three extensions of time. It came with a
5 letter from Mr. Cantrill that described it as a "work
6 in progress." Ms. Sims is absolutely correct about
7 that.

8 We got on top of that immediately and
9 filed objections to the inventory because the
10 inventory was so flawed in so many ways, on so many
11 levels. We -- we filed very, very quickly. We had
12 been having ongoing discussions with the bank about
13 the items that should be included in the inventory
14 there. It's been, what, three months or so now
09:13:02 15 because that was in July that the inventory was filed.
16 Three months or so has gone by.

17 You -- the -- the Court -- either you,
18 Your Honor, or Judge Miller -- have not been pestered
19 with motion after motion by the bank saying, well,
20 gee, now that these have been pointed out to us not
21 only before but in writing again, let's -- let's go
22 down and correct that inventory -- can we have yet a
23 motion before the court to correct the inventory.

24 Nothing like that has come from the
25 independent administrator, even though they know that

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09:13:33 1 the inventory is flawed, even though they know that
2 the Court itself has told them in letter that the
3 inventory had problems with it.

4 So all that's the backdrop for where we
5 are today. And all I would say to Your Honor is, you
6 know, at first, we were all for an early mediation.
7 My client very much wants to see this over.
8 Mr. Eichman in his, you know, appeal -- the reason
9 that the fees are being generated at this enormous
10 rate, frankly, one suspects some crocodile tears there
11 because what's really happened here for a long time is
12 that we've been pointing out these flaws to the
13 administrator. The administrator has sat on its hands
14 and done nothing about it.

09:14:10 15 Now, we wrote a letter the other day to
16 the bank, and we said, look, we want -- you're our
17 fiduciary. You're absolutely our fiduciary. You've
18 admitted in writing you're our fiduciary. We want the
19 bank to turn over its records to us so we can save
20 time and expense and get this thing moving.

21 Yesterday afternoon -- and I thought I
22 brought it with me but I apparently did not.
23 Yesterday afternoon I get a letter from Mr. Cantrill
24 that we -- the -- the time frame I had given for
25 responding to the document request was just way too --

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09:14:40 1 way too short and he really needs at least a full 30
2 days.

3 I want to respond to that letter formally
4 today because I don't think it's a reasonable
5 response. But you can't come down here and tell
6 everybody, oh, we want to mediate; we want to mediate;
7 we want to mediate. By the way, we want to hold on to
8 our records, hold on to our records -- actually hold
9 on to your records all the time.

10 It doesn't work that way. You get to
11 pick one path or another. You're going to really come
12 forward, lay it all on the table. That might spur us
13 to an earlier mediation, irrespective of what Ms. Sims
14 says, for her own reasons, which are different than
09:15:11 15 our reasons.

16 But I -- I -- I am very troubled by the
17 bank's two-faced nature in this matter, and I -- I --
18 I, therefore, find myself reluctantly -- very
19 reluctantly having to essentially support Ms. Sims'
20 position. We said before that we think a mediation
21 ought to take place by January 15th. Our position on
22 that really hasn't changed. We can go to the end of
23 the month. I think Ms. Sims has just now basically
24 said no to the Court, and we would join in this.

25 If we're going to have a mediation as

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09:15:38 1 late as January, we probably don't want to have the
2 inventory challenges heard or the objections to
3 inventory that both she filed and we filed -- or Ms.
4 Staubach filed -- whoever filed them -- heard in
5 January. If we're trying mediate this, it's waste of
6 time to prepare for that hearing.

7 But that aside -- and I -- I'm very
8 troubled by the bank's posture in this. They've --
9 they've burned enormous amounts of money. They've
10 wasted huge amounts of money. They've taken time that
11 they never needed to take. They've gone on a wild
12 goose chase for documents that they knew were
13 irrelevant, but they've done it anyway, and they just
14 haven't cared how long it took.

09:16:13 15 And when you take that whole year to do
16 an inventory, after three extensions, and then you
17 describe it as a work in progress, and then you just
18 keep on with this game of stall and delay, and then
19 you say, oh, Your Honor -- to the Court, oh, we want a
20 mediation right away. Well, I'm sure they do now.

21 Well, it's a little late for all that.
22 That's why we had to file our lawsuit. So from our
23 perspective, we think January is probably real -- a
24 realistic time frame. We thought the 15th. Ms. Sims
25 thinks 10 or 15 days later. It probably doesn't

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09:16:43 1 matter very much, frankly, at that point.

2 But that's where we are, and so we -- let
3 me say, with great reluctance, we have to join in Ms.
4 Sims' approach to this, as opposed to the earlier
5 approach, which we wanted and embraced originally.

6 That's our position, Your Honor.

7 THE COURT: All right.

8 MR. EICHMAN: Judge, very -- very
9 quickly, the problem that -- that we're seeing, Judge,
10 is there's been nothing concrete pointed to that needs
11 to be done over the course of the next three months.
12 Ms. Sims refers to, well, I've got to take
13 depositions. I've got to do discovery. Whose
14 depositions? What -- what specific discovery?

09:17:22 15 Mr. Jennings says, well -- I sent him a
16 letter here recently asking for the entire bank file
17 on this administration, every document they've got,
18 and he said he wants it in five days. The only reason
19 he said that was because he wanted to try to get our
20 entire file before the hearing today because he
21 thought that there was a chance that the Williamson
22 matter would be continued to today and he wanted to
23 try to get some informal discovery on the quick with
24 respect to those documents.

25 We've told him that we will give him the

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09:17:59 1 documents that his client is -- is entitled to as
2 quickly as we can. Basically he sent us what is, in
3 effect, a document request, and that we would get him
4 the documents within 30 days of the date of his
5 request, which was -- which was about a week ago now,
6 and that we would make every effort to get him the --
7 the documents that his client is entitled to in a
8 shorter period of time.

9 Will get them the -- the necessary
10 documents or the documents that they're entitled to
11 within the first half of -- of November. It's -- it's
12 unclear to us why he needs the entire bank file to
13 conduct this mediation where, among other things,
14 there are going to be some pure matters of law that
09:18:53 15 are going to need -- need to be mediated.

16 So the bottom line, Judge, is they
17 haven't come up with anything concrete they need to do
18 between now and January. Mr. Jennings hasn't pointed
19 to anything that he needs to get done, and we think
20 that -- that mediation before January is appropriate.

21 Thanks, Judge.

22 THE COURT: Anything further on that
23 issue?

24 MR. JENNINGS: Well, I -- I just would,
25 again reiterate, Your Honor, that that all sounds

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09:19:21 1 well, but the reality and the litany of the real
2 chronology of this case doesn't match up at all with
3 what Mr. Eichman has -- has told the Court.

4 You saw -- you heard no challenges to my
5 statements about the inventory situation, et cetera,
6 et cetera. It's because they can't be challenged.
7 There's nothing he can really say about that.

8 It took him a year. They've known that
9 there are defects. They still haven't addressed them.
10 They haven't approached the Court for any leave to
11 amend the -- the flawed inventory that they filed.
12 It's just problem after problem after problem.

13 They've gone on wild goose chases for
14 documents that they had already seen and knew
09:19:56 15 perfectly well didn't matter, so we just think that --
16 that all that put together militates toward Ms. Sims'
17 position.

18 That's our position.

19 THE COURT: Mr. Eichman --

20 MR. EICHMAN: Judge -- Judge, I'm not
21 going to sit here and attack every point -- every weak
22 point that Mr. Jennings makes in -- in his argument.
23 If -- if he has a complaint about this inventory,
24 let's -- let's get the objections heard, instead of
25 pushing them off and pushing them off.

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09:20:28 1 I'll just leave it at that, Judge. I
2 don't want to take the Court's time until noon talking
3 about the problems with his argument.

4 THE COURT: All right. The Court's going
5 to order that mediation take place on or before the
6 end of January of 2012. The parties shall choose and
7 agree upon a mediator on or before the 20th of
8 November. If an agreement is not reached by that
9 date, the Court will then appoint the mediator to
10 conduct the mediation.

11 MR. GRAHAM: And the date, Your Honor?

12 MR. EICHMAN: Thank you, Your Honor.

13 MS. SIMS: Thank you, Your Honor.

14 MR. GRAHAM: Agree on the mediator and
09:21:02 15 the date?

16 THE COURT: And the date.

17 MS. SIMS: As of November which date?

18 THE COURT: 20th.

19 MR. JENNINGS: Thank you, Your Honor.

20 MR. EICHMAN: Judge, I've got an order
21 that's got some blanks in it, if -- if --

22 THE COURT: Okay.

23 MR. JENNINGS: Can we see it, too?

24 MR. EICHMAN: Oh, absolutely. It's like
25 the Williamson documents.

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THE COURT: You'll argue about the blanks.

MS. SIMS: Do you have an extra?

MR. EICHMAN: I've got plenty.

MR. JENNINGS: The first problem is, October 7th date -- I think we'll have to change.

MR. EICHMAN: See, Judge, we can't even agree on the date that the hearing took place.

MR. JENNINGS: Well, it also has a place in it for the mediator and the Court's -- this -- this order probably doesn't really -- I guess you could just handwrite it in, Your Honor, but it's probably not a very good form given what you just ordered.

MR. EICHMAN: It has plenty of blanks and the Court has a pen.

MR. JENNINGS: Your Honor, I'm not sure if the -- if their motion is really being granted fully either, and that's another concern that we have about the format of the order. I didn't unfortunately didn't bring a copy of it with me.

THE COURT: Okay. What I have underlined is beginning with the line above the first blank beginning with the word Independent Administrator, Jo Hopper, Laura Wassmer and Stephen Hopper and all the other counsel is going to mediate in this case by

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09:25:07 1 January, 31, 2012. Parties shall attempt -- new
2 sentence, the parties shall attempt to agree on the
3 mediator and a time of mediation. If no agreement is
4 reached before November 20th, 2011, the Court will
5 pick the mediator and the date for the mediation.

6 I think that is everything.

7 MR. JENNINGS: Your Honor, we -- we would
8 ask one more thing, that the independent administrator
9 and -- and the bank in all capacities so there's no
10 question that the bank in all capacities is joined,
11 not simply the independent administrator.

12 MR. EICHMAN: Oh, we don't have a problem
13 at all with that, Judge, and if --

14 THE COURT: Okay.

09:26:04 15 MR. EICHMAN: It -- it -- it might be
16 appropriate to say, the independent administrator and
17 the bank in its corporate capacity, as opposed to all
18 capacities.

19 THE COURT: And the bank is Morgan?

20 MR. EICHMAN: JP Morgan Chase Bank, NA.

21 THE COURT: You-all agree to redo this
22 and send it back down in -- in typed form, if you so
23 choose.

24 MR. EICHMAN: That'd be fine, Judge.

25 THE COURT: Okay. I -- it is therefore

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09:27:34 1 ordered that JP Morgan Chase Bank as independent
2 administrator and in its corporate capacity.
3 MR. JENNINGS: We can just get a
4 photocopy done. That'd probably be good enough, Your
5 Honor.
6 THE COURT: Today's the 18th; correct?
7 MR. JENNINGS: Yes, it is, Your Honor.
8 THE COURT: All right.
9 (End of proceedings.)
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1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3
4 I, Kathy E. Weldon, Deputy Official Court Reporter
5 for the Probate Court No. 3 of Dallas County, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included
10 in the reporter's record and the above-styled and
11 -numbered cause, all of which occurred in open court
12 or in chambers and were reported by me.

13 I further certify that this transcription of the
14 proceedings truly and correctly reflects the exhibits,
15 if any, offered by the respective parties.

16 WITNESS my hand this the 31st day of October,
17 2011.



Kathy E. Weldon

KATHY E. WELDON

21 CERTIFIED SHORTHAND REPORTER

22 256th Judicial District Court

Dallas County, Texas

Dickman Davenport, Inc.

23 Firm Registration #312

Certification No. 6166

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