

The Honorable Judge Peyton
October 17, 2011
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argued on October 7th and you stated you would rule on same as soon as the Complaint topic was concluded – and now that is done with. We believe the Court can now appropriately rule on the Motion to Compel Mediation, without further review or need of the parties before the Court.

The other reason we are writing is that on Thursday afternoon (October 13th), late in the day, while I was out of town on a trip that the Independent Administrator's counsel knew about² we received another hand-delivered notice of a hearing as to a new matter. Now the Independent Administrator has set some Special Exceptions at the same time as the hearing which was set to be reconvened before you. This was not done with our agreement or consent. Particularly based on the nature of the Special Exceptions, we believe that this is a matter that Judge Miller himself should hear, as it will require an analysis of our client's Petition presently before the Court, and we believe Judge Miller should have the opportunity to familiarize himself directly with Mrs. Hopper's Petition, and thus make his own judgment on the Special Exceptions accordingly. This is especially important as he will be hearing the case over the long term.

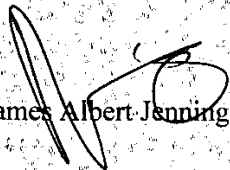
Be all that as it may, the Clerk went ahead and set the Special Exceptions, obviously at opposing counsel's urging, again without consulting us. We do not think these Special Exceptions should be heard tomorrow at the same time as continuation of the hearing on the mediation topic – which we believe is ripe for ruling without further hearing. If they are heard as a new matter--and certainly they are a new matter not previously set to be heard before the Court on October 7--our client will not waive in advance her right to appeal any ruling by your Honor in the event that that option is desirable in her view after the Special Exceptions are heard.

We did not want to surprise anyone by this position and given what occurred on October 7th, felt it incumbent (upon us) to so advise the Court of this immediately upon my return this date to the office from Seattle.

All counsel are being copied contemporaneously upon this correspondence.

We thank the Court in advance for its courtesies in reviewing this correspondence.

Respectfully submitted,



James Albert Jennings

JAJ:je

cc: Mr. Michael Graham (via facsimile)
Mr. Tom Cantrill and Mr. John Eichman (via facsimile)
Mr. Gary Stolbach and Ms. Melinda Sims (via facsimile)
Client

² I was at an ABA meeting in Seattle – in fact the trip was also directly mentioned in open Court before you.