

CAUSE NO. DC-13-09969

JO N. HOPPER	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	44 th JUDICIAL DISTRICT
LAURA S. WASSMER and	§	
STEPHEN B. HOPPER,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**AGREED MOTION FOR CONTINUANCE AND
AGREED DOCKET CONTROL PLAN/SCHEDULING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiff Jo N. Hopper (“Plaintiff”) and Defendants Laura S. Wassmer and Stephen B. Hopper (“Defendants”), by and through their attorneys of record, agree and consent to a continuance of the trial of this matter until (at least) **July 1, 2015** and would respectfully show the Court as follows:

I.

This case is currently set for Trial on February 2, 2015.

II.

A.

This case has currently been, for months, informally abated by the agreement of the parties, for the following reasons and as the following information will show. On September 10, 2012, Plaintiff filed her *Notice of Appeal* in Cause No. PR-11-3238-3 in Probate Court No. 3, Dallas County, Texas and styled *In Re: Estate of Max D. Hopper, Deceased/Jo N. Hopper v. JPMorgan*

Chase Bank, N.A., Stephen B. Hopper and Laura S. Wassmer. On October 12, 2012, Defendants filed their *Amended Notice of Appeal* in the above referenced cause.

This Appeal to the Fifth Circuit Court of Appeals, Appeal No. 05-12-01247-CV was transferred on November 2, 2012 to the Eighth Court of Appeals in El Paso, Texas and given Appeal No. 08-12-00331-CV (“the Appeal”).

Oral argument was conducted on October 24, 2013 in El Paso, Texas.

To date, the Eighth Court of Appeals has not issued an Opinion/Judgment on Appeal 08-12-00331-CV, and there is no present indication from the Court when that the Opinion will be issued, and if before the end of 2014. All parties hereto thought the Opinion would have been rendered long before now.

B.

Plaintiff and Defendants contend that good cause exists to seek a continuance of the trial date in this case due to the fact that no opinion to date has been issued in the Eighth Court of Appeals. Further, the Appellate Court decision, while it is certainly not dispositive of the issues in this cause, (nonetheless all parties hereto agree that) it could well have a material impact on the various parties’ decision to go forward (or not), with this litigation, and what form the litigation should thereafter take, and thus have significant impact on this case, for both parties. This is why the case has been effectively abated for a number of months.

C.

Furthermore, due to the current trial setting (February 2, 2015), there are deadlines fast approaching, (i.e., deadline to join parties; Plaintiff and Defendants Expert Designations, all in September, 2014) which neither party wishes to impose on the other, and which should be vacated

and removed in the interests of justice; thus all this is further evidence of the agreed need for a continuance and for a new trial date in this cause.

III.

Plaintiff and Defendants assert that additional time is needed, in the interest of justice, to allow sufficient time for expert designation, to complete discovery and to complete all other pretrial preparations required by the Court's Scheduling Order, after the Eighth Court of Appeals hands down their Opinion on the Appeal and the parties have a reasonable opportunity to evaluate their positions in this litigation (thereafter) accordingly.

IV.

For the reasons set out herein and good cause shown, a continuance of the trial date to July 1, 2015 and the vacating of all current pre-trial deadlines and resetting them, are all appropriate and in the interest of justice.

V.

As stipulated in the *Pre-Trial Order* issued by this Court on February 3, 2014, a proposed *Agreed Docket Control Plan/Scheduling Order* is attached hereto as Exhibit "A" with deadlines coordinating with a July 1, 2015 trial date.

VI.

WHEREFORE PREMISES CONSIDERED, Plaintiff and Defendant pray that the Court grant this *Agreed Motion For Continuance and Agreed Docket Control Plan/Scheduling Order*, vacating and resetting and extending all deadlines to the dates set forth in the *Agreed Docket Control Plan/Scheduling Order*, reset the trial of this case to July 1, 2015 and for any other general relief, to which Plaintiff and Defendants may be justly entitled.

Respectfully submitted,

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**Attorneys for Laura S. Wassmer and
Stephen B. Hopper**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was delivered by First Class Mail and electronic mail to all counsel of record on this the _____ day of September, 2014.

/s/James Albert Jennings

CAUSE NO. DC-13-09969

JO N. HOPPER

Plaintiff

vs.

LAURA S. WASSMER and
STEPHEN B. HOPPER,

Defendant.

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IN THE DISTRICT COURT

44th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

LEVEL 3 SCHEDULING ORDER

In accordance with Rules 166, 190 and 192 of the Texas Rules of Civil Procedure, the Court makes the following order to control discovery and the schedule of this cause:

1. This case is set for jury trial on **July 1, 2015 at 9:00 a.m.**
2. Pretrial matters will be complete by the following dates:

Deadline for Objections to Self-Authentication of Document. A party must serve written objections to the self-authentication of documents it has produced, as provided for by Rule 193.7, within 10 days after receiving written notice of an opposing Party's intent to use those documents at trial, or such objection is waived.

DATE	RELATIVE TIME LIMIT	DEADLINE
01/31/2015	150 days before trial	Deadline for filing Amended Pleadings Asserting New Claims or Defenses * - Parties shall file all amended pleadings asserting new claims or defenses by this date. * Amended pleadings responsive to timely filed pleadings under this scheduling order may be filed after this deadline, if filed within 2 weeks after the pleadings to which they respond.
01/31/2015	150 days before trial	Deadline to Join Additional Parties. No additional parties may be joined after this date, except on motion to leave

showing good cause. This paragraph does not otherwise alter the requirements of Rule 38. This paragraph does not limit a claimant's ability to join a person designated as a responsible third party, as provided for under §33.004 Civ. Prac. & Rem. Code. This party joining an additional party shall serve a copy of this Order on the new party concurrently with the pleading joining the party.

02/28/2015 120 days
before trial

Deadline For Any Party Seeking Affirmative Relief to Designate Expert Witnesses and Produce Expert Reports. Any party seeking affirmative relief shall designate all witnesses from whom that Party intends to elicit expert opinion testimony no later than the date and shall simultaneously produce written reports, containing information described in Rule 195.5 for all experts retained by, employed by, or otherwise subject to that Party's control.

03/27/2015 90 days
before trial

Deadline for Any Party Opposing Affirmative Relief To Designate Expert Witnesses and Produce Expert Reports. Any Party opposing affirmative relief shall designate all witnesses from whom that Party intends to elicit expert opinion testimony no later than this date and shall simultaneously produce written reports, containing information described in Rule 195.5 for all other experts retained by, employed by, or otherwise subject to that Party's control.

03/17/2015 75 days
before trial

Deadline for Designation of Rebuttal Experts and Provide Reports. The Parties shall designate rebuttal experts from whom they intend to elicit expert opinion testimony regarding matters not reasonably anticipated prior to that Party's original expert designation deadline. Any Party designating a rebuttal expert shall simultaneously produce written reports, containing information described in Rule 195.5 for all rebuttal experts retained by, employed by, or otherwise subject to the designation Party's control.

05/01/2015 60 days
before trial

Deadline to hear Motions Challenging Expert Qualifications (Daubert/Robinson Motions). Any objection or motion to exclude or limit expert testimony due to

qualifications of the expert or reliability of opinions must be filed no later than this date. All evidence to offer in support of such motion must be filed with the motion.

05/01/2015 60 days
before trial

Deadline to hear Dispositive Motions: All dispositive motions shall be filed no later than this date.

05/01/2015 60 days
before trial

Deadline to Designate Responsible Third Parties. Defendants shall file any motions for leave to designate responsible third parties, under §33.04 Civ. Prac. & Rem. Code by this date.

05/01/2015 60 days
before trial

Discovery Closes. All depositions shall be completed by this date and all written discovery requests shall be served so that responses are due no later than this date.

05/01/2015 60 days
before trial

Deadline to File Motion to Compel. Any motion to compel responses to discovery must be filed and heard no later than this date, except for motions for sanctions as provided for by Rule 193.6.

05/15/2015 45 days
before trial

Mediation Deadline. The Parties shall mediate the case no later than this date.

05/22/2015 40 days
before trial

Exchange Trial Deadline to Materials. The Parties shall exchange* the following materials by this date.

1. Proposed jury panel questionnaires, if any;
2. Motions in Limine;
3. Information described in Rule 166 (h) (*fact witness information*), (i)(*expert witness information*), and (k)(*jury charge information*);
4. Designations of deposition testimony to be offered in direct examination;
5. List of Exhibits; ** ***
6. Any demonstrative aids and affidavits; and
7. Any Exhibits not previously produced.

* The Parties shall not file these materials with the Court at this time.

- ** Each exhibit must be identified separately (rather than by category or group), except for records to be offered by way of business records affidavit.
- *** Over-designation is strongly discouraged and may be sanctioned.

06/01/2015 30 days
before trial

Deadline to Exchange Objections to Opposing Party's Trial Materials. The Parties shall exchange* the following materials by this date:

1. Objections to opposing Party's proposed jury panel questionnaires, if any;
2. Written objections to the opposing Party's Motion in Limine;
3. Cross-designation of deposition testimony to be offered in direct examination;
4. Written objections to the opposing Party's proposed exhibits, demonstrative aides, or affidavits; and
5. Written objections to the opposing Party's designations of deposition testimony to be offered in direct examination.

* The Parties shall not file these materials with the Court at this time.

06/10/2015 21 days
before trial

Deadline to Confer on Trial Matters. The attorneys in charge for all Parties shall meet in person to confer on agreements and stipulations regarding the materials listed below and make every effort to maximize agreement:

1. Jury panel questionnaires, if any;
2. Motions in Limine;
3. Exhibits, demonstrative aides, or affidavits;
4. Designations (and cross-designations) of deposition testimony to be offered at trial; and
5. Items and Materials specified in Rule 168 (d)-(m).

06/17/2015 14 days
before trial

Deadline for Parties * ** to File Materials with the Court. The Parties shall file the following materials with the Court by this date:

1. An estimate of the length of trial;
2. Motions in Limine;

3. Items and Materials stated in Rule 166 (d)-(m);
 4. Designation of deposition testimony to be offered in direct examination;
 5. Cross-designation of deposition testimony to be offered; and
 6. Objections to opposing Parties’ Proposed jury panel questionnaire; Motion in Limine; Designation of deposition testimony; Proposed exhibits; Demonstrative sides; and Affidavits.
- * Plaintiff shall be responsible for filing a joint Pre-Trial Statement of the Parties containing all information required under this deadline that is agreed upon by the Parties.
- ** Each Party shall file materials separately that are not agreed upon by the Parties.

06/26/2015 Friday before week of trial if reached.

Pretrial Conference. *** A conference shall be held with the Court on this date, during which the Court shall consider (*and rule upon, to the extent possible*): Motions in Limine; Designations (*and cross-designation*) of deposition testimony; Exhibits; Witness lists; Demonstrative Aids; Affidavits; and Proposed jury instructions and questions.

* The Parties shall be prepared to present to the Court all documentary evidence (*including deposition designations, exhibits, and demonstrative aids*) for consideration of authenticity and admissibility to which stipulation could not be reached.

** Evidence may be used during Voir Dire and Opening Statements. The Parties will be permitted to use pre-admitted exhibits, documentary evidence, and pre-admitted deposition testimony (*either by written transcript or videotape*) during voir dire and opening statements.

06/25/2015 Thursday before week of trial

Deadline to Announce Ready for Trial.

07/01/2015 9:00 a.m.

TRIAL DATE - JURY DOCKET

The parties may by written agreement alter these deadlines.

1. A Mediation Order was signed by the Court on December 30, 2013 and a mediator was appointed, Mr. Paul Salzburger. Per the Mediation Order, mediation is to be completed in this case no later than forty-five (45) days before the Trial setting, unless Modified by a written Order of the Court.

2. All pleadings, papers or notices required to be served pursuant to Rule 21a of the Texas Rules of Civil Procedure (unless personal service is required after citation, under the Rules) may be served by email and email service shall be treated the same as facsimile service under the Rules (i.e., that is service by email will be considered to be served, just like facsimile service, on the date emailed, if emailed on or before 5:00 p.m. on said day, and if emailed after 5:00 p.m., will be considered served the next day). For all purposes hereunder, whenever email service is employed, three additional counting days shall be added to the prescribed period for response, just as the Rule applies under Rule 21a for facsimile service. Said email service must be made (to be effective) on at least two attorneys per firm, of the attorneys appearing herein, per each law firm referenced below, at the email addresses found for each attorney below.

SIGNED on this _____ day of _____, 2014.

PRESIDING JUDGE

APPROVED:



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