

# OSBORNE, HELMAN, KNEBEL & SCOTT, LLP

ATTORNEYS AT LAW

WRITER'S DIRECT NUMBER  
(512) 542-2043

WRITER'S E-MAIL  
lastanton@ohkslaw.com

301 Congress Avenue  
Suite 1910  
Austin, Texas 78701

512-542-2000  
FAX 512-542-2011

August 22, 2016

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

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

*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")*

## **INITIAL EXPERT REPORT OF LOIS ANN STANTON**

The following represents my initial expert report of the work that I have performed in connection with the above-referenced proceeding. The opinions expressed in this report are based upon the documents and other information that I have now reviewed, interviews I conducted and my experience in the administration of trusts and estates. I understand that some witnesses and documents have not yet been made available for discovery in this case. It is possible that I may be asked to review additional documents or testimony in the future, and accordingly, I reserve the right to supplement this report and the opinions contained herein based upon any new information that I receive.

### **I.**

#### **Background and Experience**

I am a duly licensed attorney in the State of Texas, and I have been so licensed since 1981. I am certified as a specialist in estate planning and probate law by the Texas Board of Legal Specialization, and I have held that certification since December, 1986. I am a Fellow in the American College of Trust and Estate Counsel and have held that membership since 1995. I am a Certified Financial Planner™ and have held that certification since 2003. I am a Certified Wealth Strategist and have held that certification since 2012.

I am a partner with the law firm of Osborne, Helman, Knebel & Scott, LLP. My practice since November 2012 consists almost entirely of matters involving estate planning and probate law and the administration of trusts and estates. The specific areas in which I practice include domestic estate planning and the administration of decedents' estates, trusts, and guardianships. I have

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represented and continue to represent corporate fiduciaries as well as individuals serving in fiduciary roles.

In September 1998, I joined Community Bank and Trust, SSB as its Executive Vice President and Director of Trust Services. I was responsible for the organization and management of a new division of Community Bank and Trust to provide fiduciary services to its clients. I was responsible for business development and meeting with prospective clients of the bank. I continued in that role after the merger of Community Bank and Trust into Texas State Bank and thereafter when Texas State Bank was purchased by BBVA. I was responsible for oversight of all fiduciary activities of Texas State Bank throughout Texas. BBVA subsequently purchased Compass Bank and merged Texas State Bank into Compass Bank. The bank conducts business as BBVA Compass. I was responsible for administration of trusts and estates for multiple regions within the State of Texas for BBVA Compass. I have been responsible for the administration of estates by the various banks in their role as independent executor and as independent administrator. I have been responsible for the administration of estates by the various banks in their role as dependent administrator. I have been responsible for the administration of testate and intestate estates by the banks in various capacities. I supervised other professional officers in the administration of trusts and estates through the bank's trust department. I participated in and supervised other officers in the development of business from existing bank customers as well as new prospective customers of the bank.

Prior to September 1998, I was in the private practice of law with Orgain, Bell & Tucker, LLP in Beaumont, Texas. I was an associate of the firm from May 1981 until December 1986. I was a partner of the firm from January 1987 until September 1998. My practice with Orgain, Bell & Tucker, LLP was primarily domestic estate planning, administration of trusts, decedents' estates and guardianship as well as probate and trust litigation.

I have written articles and presented articles at continuing education programs sponsored by the State Bar of Texas, National Business Institute, Texas Bankers Association, and various bar associations and estate planning councils. I currently serve as chairman of the Texas Board of Legal Specialization Estate Planning and Probate Law Advisory Commission (six member commission) which is responsible for the review of qualifications of attorneys seeking to take the examination to become certified in estate planning and probate law. I also serve on the Texas Bankers' Association Trust Schools Advisory Board which is responsible for the curriculum for the schools and the preparation of the examination for its trust school and graduate trust school. I have attached a copy of my current resume which provides additional information about my educational and professional experience as Exhibit A to this report.

I am an expert in the field of estate planning and probate law and I am competent to render opinions as an expert in this case. I am being compensated for my time at the rate of \$425.00 per hour. This is my standard hourly rate for work as an attorney.

## II.

### Scope of Engagement

My engagement as an expert in this case encompasses four areas:

1. The conduct of JPMorgan Chase Bank, N.A. ("JPM") prior to its appointment as the Temporary Administrator of the Estate of Max D. Hopper, Deceased;
2. The conduct of JPM in its role as Temporary Administrator of the Estate of Max D. Hopper, Deceased; and
3. The conduct of JPM in its role as Independent Administrator of the Estate of Max D. Hopper, Deceased.
4. Addressing opinions offered by experts designated by Jo Hopper, Dr. Stephen Hopper or Laura Wassmer.

## III.

### Documents and Information Reviewed and Persons Interviewed

Prior to the preparation of this report, I reviewed a number of different documents pertaining to this case, including but not limited to the documents listed in Exhibit B attached hereto and incorporated herein by reference. In addition, I had personal interviews with Susan Novak as the estate settlement officer for JPM and Thomas H. Cantrill as counsel for JPM.

## IV.

### Summary of Opinions and Relevant Facts

#### **A. Summary of Relevant Background Facts**

Max D. Hopper died on January 25, 2010. He was survived by his wife, Jo Hopper, (hereinafter Mrs. Hopper) and his two adult children by a prior marriage, Dr. Stephen B. Hopper and Laura Wassmer. Dr. Hopper and Ms. Wassmer may be jointly referred to herein as the Children. Max D. Hopper died intestate as he did not leave a last will and testament. The Court entered its Judgment Declaring Heirship on June 30, 2010 setting forth the heirs of Max D. Hopper.

JPM was appointed as the Temporary Administrator of the Estate of Max D. Hopper, Deceased in Cause No. PR10-1517-1 by the Probate Court No. 3 of Dallas County, Texas by Order dated June 14, 2010. On August 30, 2010, the Court entered its Order (1) approving the final accounting of the temporary administrator (2) discharging the temporary administrator from its trust and (3) closing the temporary administration.

JPM was appointed as Independent Administrator of the Estate of Max D. Hopper, Deceased (the "Estate") on June 30, 2010 and qualified as the Independent Administrator on that date. JPM continues to serve in that capacity as of the date of this report.

**B. The conduct of JPM prior to its appointment as Temporary Administrator.**

**1. Meetings and Communications between JPM officers and prospective clients prior to appointment as Temporary Administrator.** The relationship between a corporate entity (such as JPM) serving as an executor, administrator or trustee of an estate or trust may originate from multiple types of sources, i.e., referrals from other professionals in the field (attorneys, CPA's, brokers, RIA's, etc.), friends of the prospective client, or colleagues within the bank itself. It is customary in today's banking and financial institutions for officers and employees to enhance the relationship with the bank's customers by referring customers to meet with officers within the bank that provide other services from which the customer might benefit. Employees within the wealth management division are encouraged to collaborate with other employees in the division as to their roles in the bank and the products and services offered so that more comprehensive services may be provided by the team to the clients and prospective clients of the private bank. Officers report their contacts with prospective new customers to the bank or for additional business from an existing customer of the bank through the use of a pipeline report to their manager. One or more of the officers reported the Estate of Max D. Hopper and Jo Hopper as prospects on their pipeline reports. Pipeline reports are prepared to identify current prospects that have potential for business within the next 90 days or similar short time period. It was proper that Mrs. Hopper was identified as a prospect at the beginning of the relationship as she lived in Dallas and it was reasonable to believe that she would be receiving her one-half of the community assets during the early stages of the administration. The Children, on the other hand, lived outside the State of Texas and would not be identified as prospects for the Dallas team until more information was known about them. After the administration began, JPM bankers discussed with the Children other banking and investment services that JPM could provide. Neither Stephen Hopper nor Laura Wassmer engaged JPM for other banking or investment services. The timing of the referrals was customary in the industry for referral of the names of the beneficiaries by an estate officer to an investment manager or private banker for the development of business.

Mrs. Hopper was referred to Kal Grant, a wealth advisor for JPM, by Mrs. Hopper's friends that were clients of JPM shortly after the death of Max D. Hopper. Ms. Grant contacted Mrs. Hopper to generally discuss the probate process in Texas. Ms. Grant introduced other officers of JPM to Mrs. Hopper as appropriate. These introductions included a private banking officer, Todd Baird, and an estate settlement officer, Susan Novak. At some point during this process, one or more of the JPM officers had a telephone conference with Dr. Hopper and with Ms. Wassmer as well as communication by email. The depositions that I reviewed reflect that Mrs. Hopper met with and retained legal counsel to represent her interests in the administration process. Likewise, the Children retained legal counsel to represent their interests. The Children also received a referral to JPM as a possible administrator for their father's estate independent of the referrals that were made to Mrs. Hopper by her friends and counsel.

The JPM team provided copies of the JPM marketing materials describing the services provided by JPM in the settlement of estates to Mrs. Hopper. The JPM marketing materials entitled "Solutions" describe some of the activities that may be involved in the settlement of a decedent's estate.<sup>1</sup> The marketing materials are generic and not drafted for a specific estate or for a specific state's laws. Marketing materials are approved by compliance or legal departments of financial institutions to insure compliance with applicable laws. Officers are trained that they may not create their own marketing materials nor amend the approved materials. Kal Grant and Susan Novak discussed the general probate process with Mrs. Hopper and the general services provided by the estate settlement unit of JPM. The marketing materials advise prospective clients to "consult their own legal, accounting and tax advisors with respect to their specific situations. Estate planning requires legal assistance. JPMorgan Chase & Co. does not practice estate planning law."

The JPM team did not make an affirmative disclosure to Mrs. Hopper or the Children that Debra Round was employed as an officer of JPM in the wealth management division. The Children initially retained John Round as their counsel. John Round and Debra Round are husband and wife, a fact that was known by the estate planning bar in Dallas. John Round, as well as other professionals and friends of the parties, recommended JPM to one or more of the parties as a possible administrator of the Estate. At the inception of the engagement, Debra Round was not a part of the team assigned to the Max D. Hopper relationship at JPM and therefore her marriage to John Round was not a relationship that created a conflict of interest in JPM's administration of the Estate. It is not unusual in the business world for spouses to be employed in the same professional area, such as wealth management. Under these circumstances, it would not have been customary in the industry for a bank officer to disclose the marital relationship of a person employed by the bank if that bank officer would not be involved in the services being discussed with a prospective client. Furthermore, I have seen no evidence that the existence of the marital relationship of Debra Round had any impact on the administration of the Estate by JPM.

The actions of the JPM officers and the information provided to these prospective customers of the bank were in good faith and were not misleading. The actions of the JPM officers in referring prospects to officers for the different services offered by JPM were usual and customary actions in the wealth management industry. All of these actions were consistent with the standards for business development in the wealth management industry.

**2. The JPM fee schedule is competitive for administration of estates.** The marketing materials also included JPM's fee schedule for serving as an executor or administrator of an estate in Texas. The fee schedule sets forth the method for calculation of the fee to be charged by JPM if it is appointed to serve as the Independent Administrator of the Estate.<sup>2</sup> The method for calculation of the fee based on the market value of the decedent's estate for federal estate tax purposes<sup>3</sup> is

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<sup>1</sup> Deposition Exhibit 113.

<sup>2</sup> Deposition Exhibit 7.

<sup>3</sup> The federal estate tax laws were in limbo during 2010. The laws were repealed on January 1, 2010 but were reinstated retroactively by law signed by President Obama on December 17, 2010. The Internal Revenue Service did not publish guidance for personal representatives of estates for persons dying in 2010 until August 5, 2011. JPM ultimately elected out of the estate tax regime for the Estate of Max D. Hopper and elected carry forward basis. The reference

consistent with fee schedules by other corporate fiduciaries in the administration of estates. The rates applicable to the market value of the estate's assets are competitive with the fee schedules for other corporate fiduciaries in the administration of decedent's estates. It is customary for corporate fiduciaries to charge the resulting fee against the assets that constitute the decedent's estate (i.e., decedent's separate property and one-half of the community property) for federal estate tax purposes.

In addition, the fee schedule clearly stated that JPM retains legal counsel "on every account we administer. The attorney represents the estate in court and oversees legal matters during estate administration. Attorney fees, as well as charges by other outside professionals, are an expense of the estate and are in addition to our Estate Settlement fees."

The JPM fee schedule was provided to Mrs. Hopper and to the Children. Susan Novak encouraged each of them to share it with their counsel. Each of the parties was represented by legal counsel prior to the signing of the fee agreement and throughout the administration of the Estate. Records reflect that Mike Graham as counsel for Mrs. Hopper<sup>4</sup> and John Round as counsel for the Children<sup>5</sup> received copies of the fee schedule prior to its acceptance by their respective clients.

Susan Novak sent a letter dated April 15, 2010 addressed to Mrs. Hopper and the Children setting forth the financial terms upon which JPM would serve as independent administrator of the Estate. Ms. Novak states "Clearly, we are agreeing to serve on the basis of our standard fees for service as an executor of an estate, and will not be charging the fees that could be charged in we were follow [sic] the provisions of Section 241 of the Texas Probate Code which governs compensation for personal representatives who are under court supervision." In my experience it is very unusual for a corporate fiduciary serving as an independent executor or independent administrator in Texas to agree to be compensated in any manner other than its published fee schedule. The duties and responsibilities imposed upon the fiduciary in an independent administration apply to the exercise of judgement over and management of all assets of the estate and accordingly the industry standard is for the fee to be based on a percentage of the gross estate. The standard compensation formula set forth in Section 241 of the Texas Probate Code (now Sections 352.002 and 352.003 of the Texas Estates Code<sup>6</sup>) are based on transactions of receipts and disbursements made by the executor, administrator or temporary administrator. These provisions are used primarily in dependent administrations wherein each of the actions of the executor, administrator or temporary administrator are made at the direction of and under the supervision of the court.

The JPM Fee Schedule sets forth the calculation of the estate settlement fee as a percentage of the market value of assets included on a federal estate tax return, which would be 100% of Max Hopper's separate property and his one-half interest in all of the community property of the

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in corporate fiduciary fee schedules to "federal estate tax return" refers to what would be included if a return is filed and is not limited to the actual filing of an estate tax return for the particular estate.

<sup>4</sup> JHopper 000004-5.

<sup>5</sup> John K. Round deposition pages 79-82.

<sup>6</sup> The Texas Probate Code was repealed effective January 1, 2014. The Texas Probate Code was recodified as the Texas Estates Code without substantive changes. Tex. Estates Code Ann. § 21.001 (West 2013). All section references in this report are to the Texas Estates Code unless otherwise specifically denoted.

marriage.<sup>7</sup> In addition, it sets forth the activities that are included as the estate settlement services. The services listed are all related to the administration of the assets of the decedent's estate and are charged to the decedent's estate. Kal Grant informed Mrs. Hopper that the estate settlement fee would be calculated on the value of Max Hopper's assets (which would be Max Hopper's property included on a federal estate tax return) and not on the value of Mrs. Hopper's community one-half interest in any of those assets. Likewise, she informed her that the estate settlement fee would be charged against the assets of the Estate.<sup>8</sup> This structure for an estate settlement fee is consistent with the fee structure used by corporate fiduciaries in the State of Texas.

Section 453.009 of the Texas Estates Code provides that a qualified personal representative of a deceased spouse's estate may administer the following property:

- (1) The separate property of the deceased spouse;
- (2) The community property that was by law under the management of the deceased spouse during the marriage; and
- (3) The community property that was by law under the joint control of the spouses during the marriage.

The JPM fee schedule provides that attorney fees are an expense of the estate and are in addition to the estate settlement fees. Mrs. Hopper was apprised through her attorney prior to her execution and acceptance of the fee schedule that some of the fees may be charged to her one-half of the community property. Tom Cantrill and Mike Graham (counsel for Mrs. Hopper) discussed the costs of the administration and the portion that Mrs. Hopper would have to pay after a professional meeting around April 9, 2010<sup>9</sup>. The issue was also specifically addressed in letters dated April 13, 2010<sup>10</sup> and April 15, 2010<sup>11</sup>. Tom Cantrill states "I don't think the Bank at this point can agree that it will not charge any fees to the one-half community estate of Jo N. Hopper, for it remains to be seen what administrative action is anticipated with respect to the community estate."<sup>12</sup>

The allocation of legal expenses to the surviving spouse's community share is determined by the personal representative to reflect the fair and impartial division of the time and expense incurred based on the actual administration of the decedent's estate and the surviving spouse's community share of the assets. In some estates, there may be no allocation of fees and expenses to the surviving spouse's community share as the time and expense related to the community share was minimal. An example may be an estate that consists of a home and an investment portfolio of marketable securities. The personal representative would gather 100% of the assets, make a reserve for payment of community debts and taxes, and rather quickly distribute the surviving spouse's share of the community assets to the surviving spouse.

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<sup>7</sup> An estate tax return typically describes 100% of the community property of a marriage and deducts the surviving spouse's community one-half interest in the assets to determine the total value of the decedent's share of the community assets.

<sup>8</sup> Deposition Exhibit 72.

<sup>9</sup> Thomas H. Cantrill deposition pages 56 and 59.

<sup>10</sup> Deposition Exhibit 73.

<sup>11</sup> Deposition Exhibit 74.

<sup>12</sup> Deposition Exhibit 74.

The Hopper Estate and the administration of the community assets was very complex. Mr. and Mrs. Hopper owned multiple alternative assets in the form of investments in closely-held entities, some of which had restrictions on transfers by the governing documents for the entity and/or federal and state securities laws. The management of the community assets was further complicated by the actions of the surviving spouse and her counsel in contacting third parties for transfer of assets, valuation of assets and other administrative functions without coordinating her actions with JPM. JPM and its counsel, Tom Cantrill, have made a good faith effort to propose an allocation of the legal fees relating to the administration of the Estate assets and the community property assets between the surviving spouse and the Estate based upon the services rendered.<sup>13</sup>

In the administration of most estates, the personal representative will communicate with the surviving spouse, heirs or other beneficiaries as needed to efficiently gather the assets, pay the debts and taxes and distribute the assets to the beneficiaries. In the Hopper Estate, all parties were represented by counsel. If Mrs. Hopper or one of the Children contacted Susan Novak as the estate officer and copied their own counsel, Susan Novak rightfully copied Tom Cantrill as counsel for the Estate. This increased the amount of involvement by the Estate's attorney in the administration of the Estate.

**3. The independent administration of an estate requires the same skills and expertise whether the decedent died testate or intestate.** Max D. Hopper died without leaving a last will and testament. The beneficiaries of his estate were determined under the Texas Statutes of Descent and Distribution set forth in Chapter 201 of the Texas Estates Code. Chapter 401 of the Texas Estates Code governs the independent administration of estates. An independent administration may be established in three ways:

- a. The expression of the testator's intent in a Will (Section 401.001);
- b. The agreement of all of the distributees named in the decedent's Will (Section 401.002); or
- c. The agreement of all of the distributees of a decedent dying intestate (Section 401.003).

The duties and responsibilities of an independent executor and those of an independent administrator are the same as the term "independent executor" is defined in Section 22.017 to include an "independent administrator". The primary difference in the administration of an estate as an independent executor and as an independent administrator is the determination of the beneficiaries of the estate. If an executor is appointed, the decedent left a valid last will and testament and named his beneficiaries. If an administrator is appointed, the decedent died without leaving a valid last will and testament and the beneficiaries of his estate are determined under the Texas Statutes of Descent and Distribution.<sup>14</sup>

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<sup>13</sup> Deposition Exhibit 132.

<sup>14</sup> An administrator may also be appointed when a decedent leaves a valid last will and testament but fails to name a qualified executor to administer the estate.



Mrs. Hopper and the Children allege that JPM misrepresented its ability to administer the Estate of Max D. Hopper because the officers did not expressly state the number of times that JPM had served as the independent administrator of an intestate estate involving a surviving spouse of the second marriage and children by the first marriage. The expertise and skills that JPM has in the independent administration of estates under the laws of the State of Texas is not based on who the actual beneficiaries of the estate might be or whether the beneficiaries are determined under a last will and testament or under the laws of descent and distribution. The expertise and skills were developed by its administration of estates under the laws of the State of Texas and dealing with all types of assets and beneficiaries that may or may not have conflicting interests, whether the beneficiaries are named in a last will and testament or determined by applicable law. The statements in the marketing materials, in the fee schedule and by the officers of JPM as to JPM's experience in the administration of estates in the State of Texas were usual and customary in the wealth management industry and were not misleading.

**4. Selection of legal counsel to represent the Estate.** One of the first actions of an entity or person considering the appointment as the personal representative of an estate is to retain competent legal counsel to represent it in all matters that may arise in the administration of an estate. Susan Novak considered multiple attorneys before retaining Tom Cantrill as the attorney to represent the independent administrator. Tom Cantrill is a very experienced attorney in the estate planning and probate field. He is board certified in Estate Planning and Probate by the Texas Board of Legal Specialization. He is a fellow in the American College of Trust and Estate Counsel (ACTEC) which is considered as a high honor and recognition of his expertise by persons knowledgeable in the field. Tom Cantrill had provided estate planning counsel to Max D. Hopper and Mrs. Hopper in a joint representation more than 10 years prior to Mr. Hopper's death. While a personal representative of an estate may retain any licensed attorney to represent it in the administration of an estate, it is customary to retain the decedent's estate planning attorney for the administration process. Susan Novak advised the Children of her selection of Tom Cantrill to represent the Estate and Dr. Hopper agreed that he was an "excellent choice".<sup>15</sup> Susan Novak advised Tom Cantrill that "there are some tense conversations and strained feelings with Max's children".<sup>16</sup> Susan Novak's actions in the selection of counsel to represent JPM were reasonable and consistent with the procedures used by corporate fiduciaries in the industry.

Tom Cantrill's joint representation of Max and Mrs. Hopper had terminated more than ten years prior to Mr. Hopper's death. Mr. Cantrill reviewed his prior representation of Mrs. Hopper prior to his engagement by JPM and determined that the representation of JPM was independent of the estate planning engagement and was a different representation.<sup>17</sup> Tom Cantrill disclosed his prior representation of Jo and Max Hopper to Stephen Hopper prior to the appointment of JPM in any fiduciary capacity.<sup>18</sup> In addition, Tom Cantrill made his estate planning file for the joint representation of Jo and Max Hopper available to counsel for Mrs. Hopper and counsel for the Children prior to the appointment of JPM in any fiduciary capacity.<sup>19</sup> Tom Cantrill's representation

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<sup>15</sup> Deposition Exhibit 200A.

<sup>16</sup> Deposition Exhibit 118.

<sup>17</sup> Deposition of Thomas H. Cantrill, Page 32 – 34.

<sup>18</sup> Deposition of Stephen Hopper, pages 38-40; Deposition of Thomas H. Cantrill, page 239.

<sup>19</sup> Deposition Exhibit 193; Deposition of Thomas H. Cantrill, pages 267-268

of Mrs. Hopper as a part of his joint representation of Jo and Max Hopper did not constitute a conflict of interest for his representation of the Estate of Max D. Hopper, Deceased.

**5. Fiduciary relationship was not established until JPM was appointed as Temporary Administrator.**

JPM assumed the role of a fiduciary when it qualified as the Independent Administrator of the Estate of Max D. Hopper, Deceased on June 30, 2010. JPM had a fiduciary duty to Mrs. Hopper and the Children with respect to its limited authority granted in the Order Appointing Temporary Administrator dated June 14, 2010. JPM was not a fiduciary prior to its acceptance of these formal roles.

Texas law recognizes that a fiduciary relationship is an extraordinary one that will not be lightly created.<sup>20</sup> The relationship between Mrs. Hopper and the Children with JPM regarding the administration of the Estate prior to the appointment of JPM as the Temporary Administrator was informal and exploratory in nature. Mrs. Hopper and the Children were represented by experienced legal counsel after the death of Max D. Hopper as they began the legal process of the administration of a decedent's estate. There were multiple options available to Mrs. Hopper and the Children for the administration of the Estate of Max D. Hopper, one of which was the appointment of JPM as the Independent Administrator.

The JPM Team provided general information regarding the estate settlement process and the fee schedule under which it would operate if and when it was appointed as the representative of the Estate. The information and discussions held with Mrs. Hopper, the Children, and their respective counsel were consistent with the discussions JPM wealth management officers have had and continue to have with prospective clients of the private bank. A fiduciary relationship is not created during discussions between a bank and prospective clients regarding the administration of an estate.

**C. The Conduct of JPM in its Role as Temporary Administrator**

JPM agreed to serve as Temporary Administrator of the Estate at the request of Mrs. Hopper and her counsel. They believed a temporary administration was in the best interest of the Estate due to the potential market volatility that may affect the value of the investments. The Children and their counsel agreed with the strategy and the appointment of JPM as the Temporary Administrator. Counsel for all parties approved the Order Appointing Temporary Administrator entered on June 14, 2010, setting forth the specific powers granted to the Temporary Administrator.

JPM, in its capacity as the Temporary Administrator, was granted the power to sell any and all stock and stock options of Gartner Corporation that it believed was reasonably necessary to preserve and protect the Estate from market risk. The stock and stock options were reviewed by a

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<sup>20</sup> *Hoggett v. Brown*, 971 S.W.2d 472, 488 (Tex. App.-Houston [14<sup>th</sup> Dist.] 1997, pet. den'd.; Furthermore, as a general rule a bank does not have a fiduciary relationship with its customers. *Farah v. Mafrige & Kormanik, P.C.*, 927 S.W.2d 663, 675 (Tex. App.-Houston [1<sup>st</sup> Dist.] 1996, no writ; *Manufacturers Hanover Trust Company v. Kingston Investors Corporation*, 819 S.W.2d 607, 610 (Tex. App.-Houston [1<sup>st</sup> Dist.] 1991, no writ.

senior portfolio manager of JPM's portfolio management group. The review of the Gartner Corporation stock and options and the decisions made by JPM with respect to such securities were made in good faith and were within the authority granted in the Court's Order dated June 14, 2010. The actions taken by JPM were consistent with the procedures that are exercised by corporate fiduciaries in similar positions.

The results of the actions taken by JPM with respect to the Gartner Corporation stock and options were accurately reported in its Final Accounting of Temporary Administrator with Application for Discharge and the Affidavits attached thereto. The Court entered its Order Approving Final Accounting of Temporary Administrator and Discharge on August 30, 2010.

#### **D. The Conduct of JPM in its Role as Independent Administrator**

##### **1. Administration of the Estate by the Independent Administrator.**

There are three broad phases involved in the administration of any decedent's estate. The personal representative of an estate must (1) identify, gather and safeguard the assets as of the date of death, (2) pay the debts, expenses and taxes and (3) distribute the remaining assets to the beneficiaries or heirs. The actual activities that will happen in an estate are totally dependent upon the specific assets, liabilities, the cooperation of the family, the cooperation of professionals who served as the decedent's advisors during his life and the applicable law. The list of Estate Settlement Services in the JPM fee schedule sets out examples of general steps that may be taken in the administration of an estate but is neither exhaustive nor is each step applicable to a particular estate. Similarly, the amount of time it takes to complete the administration of an estate also depends on the specific assets, liabilities, beneficiaries of the estate and the applicable law.

Everything cannot happen immediately and the personal representative must exercise its discretion in determining the priority of completing its tasks. Section 404.001 of the Texas Estates Code recognizes that the administration takes time by providing that a person interested in an estate may not demand an accounting from an independent executor until the expiration of 15 months after letters testamentary or of administration have been issued. In addition, Section 405.001 of the Texas Estates Code provides that a person interested in the estate may not petition the court for distribution of the estate until the expiration of two years after letters are issued.<sup>21</sup> The court will conduct a hearing to determine if there is a continued necessity for administration of the estate. The court may order partial distribution of the estate while other assets remain subject to administration.

The assets subject to administration by JPM as Independent Administrator of the Estate of Max D. Hopper included his separate property, all of the community property subject to his sole control and all of the community property subject to the joint control of Max and Jo Hopper. As shown in the Second Amended Inventory, Appraisal and List of Claims, the assets of the Estate were diverse including real estate, bank accounts, publicly traded stocks and bonds, closely-held private equity investments, stock options, hedge funds, automobiles, jewelry, household furniture

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<sup>21</sup> Section 360.001 of the Texas Estates Code does not apply to independent administrations.

and effects, and personal property collections including coins, wine, golf clubs and golf memorabilia, and art. Some of the investment assets were subject to restrictions on transfer and ownership.

JPM set out promptly to fulfill its duties as the Independent Administrator. Susan Novak, an estate settlement officer with more than 20 years of experience, was assigned as the point officer for the estate. Susan Novak did not attempt to manage this complex estate alone but brought in many resources of JPM from across the country to assist in the administration. Some of these resources included the closely-held assets management group, portfolio managers, the tax services group, real estate officers, fiduciary legal accounting team, and the operations group. Priorities were identified as quickly as possible with a focus on financial assets that could be subject to volatility in value outside the control of the Independent Administrator. According to Susan Novak, she devoted more than 65% of her time on the administration of the Estate during the first year of JPM's service as Independent Administrator.

The relationship between Mrs. Hopper and the Children added complexity to the administration of the Estate. Mrs. Hopper, as the surviving spouse, was the person with the most information about the assets and liabilities of her husband's estate. Mrs. Hopper occupied the homestead and was a co-owner of the household furnishings and other personal effects. Mrs. Hopper had physical custody of the financial records that were not in the custody of their CPA. Those facts alone meant that Susan Novak had more direct contact with Mrs. Hopper than with the Children as she set about to administer the Estate. It did not in any fashion mean that JPM or Susan Novak had any secret agreements with Mrs. Hopper or gave her favorable treatment in the administration of the Estate. In addition, the fact that Mrs. Hopper established an investment account with the JPM private bank did not affect the decisions made by Susan Novak in the administration of the Estate. Deposition testimony did not show any improper sharing of information between the estate settlement unit and the other officers of the private bank. Likewise, the deposition testimony did not show any attempt on the part of the private bank officers to influence the administration of the Estate by the estate settlement unit.

Each party was represented by legal counsel of his or her own selection. If Susan Novak received an email from Mrs. Hopper or one of the Children wherein he or she copied his or her counsel, then it was prudent for Susan Novak to copy Tom Cantrill as the attorney for the Estate, particularly when legal issues were raised by the parties. As stated above, this increased the amount of attorney time involved in the administration of the Estate. However, it did not mean that Susan Novak or JPM was delegating the administration of the Estate to Tom Cantrill or Hunton & Williams. The JPM team identified above performed the tasks required by the Independent Administrator to administer the Estate. Legal counsel represented the Estate in court and oversaw legal matters during the administration. The legal matters in the administration of the Hopper Estate were greater than in many estates because of the actions of the family members and their respective counsel. JPM's involvement of its legal counsel was necessary for its administration of the Estate.

JPM promptly created accounts in its computer system to account for the assets of the Estate and Mrs. Hopper's one-half of the community assets. Assets were not posted to the accounting system until they were in the actual control and possession of JPM, consistent with standard practice in the industry. The main account reflects transactions involving the assets of the Estate. A sub-

account was created for Mrs. Hopper's community property assets. Whenever 100% of a community asset was received, it was initially booked to the Estate account and Mrs. Hopper's one-half interest transferred to the sub-account. The Children received monthly statements on the main account. Jo Hopper received monthly statements on the sub-account from the inception and later, monthly statements on the main account. During the course of the administration, JPM disclosed all material information to Mrs. Hopper and the Children.

JPM properly sought legal advice from Tom Cantrill and Hunton & Williams as the disputes between Mrs. Hopper and the Children escalated. Mrs. Hopper and her counsel's involvement in the valuation and transfer of community assets led to more distrust by the Children. Transfer agents became confused requiring additional work for JPM and, when necessary, its counsel. Mrs. Hopper engaged appraisers for certain assets without coordination with JPM. Some of the appraisals were performed by appraisers that were known to JPM as reputable in their fields while others were not. Mrs. Hopper made representations to Susan Novak that records stored in a warehouse were from board meetings Max Hopper attended and not relevant to the administration of the Estate. Susan Novak appropriately exercised her judgment in the delicate balance between needing Mrs. Hopper's cooperation for the administration of the Estate while safeguarding the Estate's assets.

Identification of assets and valuation were delayed when Mr. and Mrs. Hopper's CPA, Sarah Williamson, refused to provide the financial and tax records JPM needed for the administration of the Estate. Again, Hunton & Williams had to be brought in as legal counsel for the Estate to file pleadings with the Court to compel the production of the documents by the CPA.

Despite the complicating factors involved in the Estate, JPM was able to distribute most of Mrs. Hopper's community property interest in the investment assets to her as they were received by JPM.<sup>22</sup> In addition, virtually all of the investment assets were distributed to the Children within 12 months of JPM being appointed as the Independent Administrator,<sup>23</sup> well in advance of the two year time frame that Mrs. Hopper and the Children had been told by other persons to expect.<sup>24</sup>

All the while Susan Novak and the JPM estate team were working to administer the Estate, Susan Novak and JPM's counsel encouraged Mrs. Hopper and the Children and their respective counsel, to come to an agreement for the division of the real estate and the personal property, specifically the golf clubs, the wine collection, art and the household furnishings.<sup>25</sup> Susan Novak also encouraged the Children to work out an agreement regarding the home early in the administration of the Estate.<sup>26</sup> JPM was not in position to propose distribution of these assets other than in undivided interests. While it would seem logical to sell the assets and distribute cash, this was not an option available to JPM. JPM could not sell the assets without the consent of the parties when there was no administrative need for cash to pay claims or expenses of administration.

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<sup>22</sup> There was no reason for JPM to anticipate the extensive litigation and related costs that would be incurred regarding the distribution of the Robledo property and the allegation that the prior distributions to Mrs. Hopper and the Children were wrongful.

<sup>23</sup> Deposition Exhibit 43.

<sup>24</sup> Deposition Exhibit 38.

<sup>25</sup> Deposition Exhibit 43.

<sup>26</sup> Deposition Exhibit 42.

When the parties failed to reach an agreement, JPM advised the parties that it would distribute the homestead property, known as the Robledo property, in undivided interests, subject to Mrs. Hopper's homestead rights and subject to the mortgage. Counsel for the Children contended that the law was clear that not only was JPM required to partition the assets remaining in its custody subject to administration (including Robledo) but that all of the distributions of assets JPM had previously made were subject to partition and had been wrongfully distributed. Counsel for Mrs. Hopper insisted that the Robledo property must be distributed in undivided interests and that JPM should distribute the property without further delay. JPM's counsel responded to multiple demands and positions from counsel for the Children and counsel for Mrs. Hopper and their opposing positions on what action JPM should take with respect to the Robledo property and other assets. JPM's counsel briefed the issues and did not agree that the law was clear as to the applicability of a partition action to the distribution of the assets.

JPM counsel met with counsel for Mrs. Hopper and counsel for the Children to resolve their differences. Faced with the conflicting positions of Mrs. Hopper and the Children and seeking to take the right action, JPM advised counsel for Mrs. Hopper and counsel for the Children that it intended to seek instructions from the Court under the Uniform Declaratory Judgment Act. Before JPM's counsel could file its petition for declaratory judgment, counsel for Mrs. Hopper filed a petition against JPM and the Children that was more than fifty pages in length alleging multiple claims against JPM and seeking removal of JPM as the Independent Administrator.

At that point, extensive litigation commenced. JPM through its counsel properly answered the suit and included its own request for declaratory judgment seeking among other declarations, a declaration of its right to distribute community property and separate property in undivided interests in accordance with intestate shares when it believes that such a distribution is consistent with its fiduciary duties to all of the defendants in the suit, and that such a distribution be effectuated without resorting to a court approved partition under section 150 and 380, *et seq.*, of the Texas Probate Code. JPM's request for instructions from the Court were prudent and expressly authorized by § 37.005 the Texas Uniform Declaratory Judgments Act. This statute specifically applies to independent executors and administrators and is routinely used by corporate fiduciaries when the positions of persons interested in an estate cannot be resolved without involvement of a court. JPM's decision to delay distribution of the property in undivided interests until it received guidance from the Court was prudent and consistent with its fiduciary duties. After receiving the ruling of the Probate Court, JPM promptly distributed the Robledo property in undivided interests subject to the mortgage and homestead rights to Mrs. Hopper and the Children. The distribution was a prudent act in accordance with the Court's ruling and consistent with its fiduciary duties.

JPM timely filed the Inventory, Appraisal and List of Claims on June 24, 2011 (the "Original Inventory") in accordance with extensions of time granted by the Court. The extensions of time to file the Inventory were not sought for the purpose of delay but to enable JPM to file a complete inventory of the assets of the Estate. Extensions of time to file the required inventory, appraisal and list of claims are routinely applied for by personal representatives and granted by courts for estates with complex assets so that complete information can be received and analyzed.

The extensions in time to file also allowed JPM to coordinate the inventory with the preparation of the carryover basis return.

Additional information was received after the filing of the Original Inventory from the CPA, some of the closely-held companies, Mrs. Hopper, the Children and their respective counsel that required JPM to amend the inventory. The parties continued to argue about some of the valuations in the inventory after JPM filed the First Amended Inventory, Appraisement and List of Claims on June 29, 2012. The Second Amended Inventory, Appraisement and List of Claims was filed on November 1, 2013. The Court approved the Second Amended Inventory by Order dated December 30, 2013.

The Estate Settlement fee was calculated based upon the aggregate market value of all assets of the Estate of Max D. Hopper which would be includable on a federal estate tax return. Applying the formula to the market value of the Estate resulted in an Estate Settlement fee of \$259,419.00, of which \$230,000.00 has been paid to JPM. The Estate Settlement fee is reasonable for the work performed by JPM in the administration of the Estate and is consistent with the fees charged by corporate fiduciaries in the State of Texas.

As stated by the Texas Supreme Court in *Corpus Christi Bank & Trust v. Alice Nat'l Bank*, 444 S.W.2d 632, 634 (Tex. 1969) the purpose of an independent administration of an estate is to "free an estate of the often onerous and expensive judicial supervision which had developed under the common law system, and in its place, to permit an executor, free of judicial supervision, to effect the distribution of an estate with a minimum of cost and delay." JPM had substantially accomplished that goal by the summer of 2011 when it had distributed virtually all of the investment assets to Mrs. Hopper and the Children. When it became clear that the dispute regarding the distribution of the Robledo property could not be resolved, JPM prudently decided to file for guidance from the Court under the Uniform Declaratory Judgments Act. JPM could have requested that the Court convert the independent administration to a dependent administration; however, such an action would not have resolved the dispute. The unresolved issues would still be before the Court. Completing the administration of the estate as a dependent administration would more likely than not have increased the amount of time it would take and increase the costs of doing so, as each and every act taken by the dependent administrator (other than the limited acts authorized to be taken without court order<sup>27</sup>) would require prior approval of the Court. JPM acted prudently and in accordance with industry standards by seeking guidance from the Court under the Uniform Declaratory Judgments Act.

**2. Payment of legal fees when Estate is involved in litigation.** The fee schedule, the Sections 404.0037 and 352.051 of the Texas Estates Code each allow the Independent Administrator to pay its legal fees in defending itself in this litigation from Estate assets. Specifically, the fee schedule provides that "attorney's fees, as well as charges by other outside professionals, are an expense of the estate and are in addition to our Estate Settlement fees." Section 404.0037 of the Texas Estates Code provides that "an independent executor who defends an action for the independent executor's removal in good faith, whether successful or not, shall be allowed out of the estate the independent executor's necessary expenses and disbursements, including reasonable

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<sup>27</sup> Texas Estates Code § 351.052

Mr. John Eichman  
August 22, 2016  
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attorney's fees, in the removal proceedings." JPM as the Independent Administrator defended the action for its removal in good faith until Mrs. Hopper dropped her claim for removal in December, 2015. Finally, Section 352.051 of the Texas Estates Code provides a further basis for the Independent Administrator to use Estate assets to pay its attorney's fees in the litigation. That section provides that "on proof satisfactory to the court, a personal representative of an estate is entitled to ... reasonable attorney's fees necessarily incurred in connection with the proceedings and management of the estate." The Independent Administrator's use of Estate assets to pay its attorney's fees in the litigation is consistent with the standard practice in the industry for corporate fiduciaries in the administration of decedent's estates.

#### **E. Summary**

The administration of the Estate of Max D. Hopper, Deceased was a complex administration due to the types of assets and the relationship between Mrs. Hopper and the Children. I have reviewed the opinions of Jerry Frank Jones provided to counsel for the Children dated July 13, 2016 and for the reasons set forth above, disagree with his conclusory opinions expressed therein. After reviewing the administration of the Estate by JPM as a whole, including the litigation between the parties, it is my opinion that JPM has performed its duties within the standards of the industry and satisfied the fiduciary duties imposed upon it as a Temporary Administrator and as Independent Administrator.

Very truly yours,

OSBORNE, HELMAN,  
KNEBEL & SCOTT, LLP

By: 

Lois Ann Stanton



**LOIS ANN STANTON**  
Osborne, Helman, Knebel & Scott, LLP  
301 Congress Avenue, Suite 1910  
Austin, Texas 78701  
(512) 542-2043  
[lastanton@ohkslaw.com](mailto:lastanton@ohkslaw.com)

**Career:**

**Osborne, Helman, Knebel & Scott, LLP – November 2012 – Present**

(formerly Osborne, Helman, Knebel & Deleery, L.L.P.)

Partner in a twelve attorney boutique firm concentrating on domestic estate planning, estate and trust administration, and philanthropy and charitable planning.

**BBVA Compass – Austin 2008 – October 2012**

Executive Vice President and Regional Wealth Management Executive for Eastern and Southern regions of Texas. Responsible for oversight of fiduciary and private banking activities. Member of the Account Acceptance and Account Administration Fiduciary committees.

**Texas State Bank – March 2003 – August 2008 (merged into BBVA Compass)**

Executive Vice President and Director of Trust Services. Responsible for strategic development and management of all fiduciary and investment activities.

**Texas States Bank Regional President – December 2006 – August 2008**

Served as Bank President for 28 branches in East Texas (retail, commercial and private banking) until reorganization under BBVA Compass.

**Community Bank & Trust – September 1998 – March 2003 (merged into Texas State Bank)**

Executive Vice President and Director of Trust Services. Organized and established new fiduciary and investment services division for regional bank.

**Orgain, Bell & Tucker, LLP**

Associate Attorney, May 1981 – December 1986

Partner, January 1987 – 1998

Extensive experience in estate planning and probate including fiduciary litigation. Member of legal team representing fiduciary activities for Texas Commerce Bank Beaumont (n/k/a/ Capital One).

Concentration in corporate finance activities including representation of Gulf State Utilities Company in numerous financing activities including common, preferred and preference stocks, mortgage bonds, debentures and eurobonds. Assisted in preparation of all SEC filings and member of merger legal team.

Served as bond counsel for municipalities, school districts and economic development corporations for issuance of bonds.

**Education and Certifications:**

University of Texas at Austin School of Law 1978 – 1980  
Doctor of Jurisprudence awarded December 1980  
University of Texas at Austin 1974 – 1978  
BBA with honors in finance awarded May 1978  
School of Business Honors Program 1975 – 1978  
Alpha Lambda Delta  
Beta Gamma Sigma  
College Scholar

Licensed to practice law State Bar of Texas May 1981 – Present  
Admitted to practice before the United States Tax Court

Board Certified – Estate Planning and Probate Law – Texas Board of Legal Specialization in December 1986. Recertification awarded on five year terms in 1991, 1996, 2001, 2006, 2011, 2016.

Fellow – American College of Trust and Estate Counsel 1995 - Present  
Technology in the Practice Committee Member  
Fiduciary Litigation Committee Member  
Charitable Planning and Exempt Organization Committee – Former Member

Estate Planning and Probate Law Advisory Commission of the Texas Board of Legal Specialization, 2013 – Present

Certified Financial Planner® 2003 – Present  
Certified Wealth Strategist® 2012 – Present

Texas Super Lawyers

College of the State Bar of Texas

**Professional Associations and Recognitions:**

Martindale Hubbell AV rating  
Martindale Hubbell, Bar Register of Preeminent Women Lawyers  
Austin Bar Association 2012 – Present  
Estate Planning Council of Central Texas 2013 – Present  
Outstanding Young Lawyer of Jefferson County 1989  
Trust School Advisory Board, Texas Bankers Association Wealth Management and Trust Division  
Life Fellow – Texas Bar Foundation  
Master, Michelle F. Mehaffy American Inn of Court  
Jefferson County Bar Association 1981 – 2012  
Director 1987 – 1990  
Treasurer 1989 – 1990  
Secretary 1988 – 1989  
Southeast Texas Estate Planning Council 1981 – 2012  
Director 1987 – 1988

Jefferson County Bar Foundation  
Board of Directors 2009 – 2012  
Secretary 2010 - 2011  
American Bar Association 1983 – Present  
Real Property, Probate and Trust Law Section of the State Bar of Texas  
Texas Association of Bank Counsel 1984 – 2011  
Guardianship Advisory Board for State of Texas  
Region 5 appointed representative 2004 – 2007

**Civic Activities:**

University of Texas Gift Planning Advisory Council 2006 – Present  
Chairman 2013 – Present

**Prior civic boards:**

Beaumont Camp Fire Council  
Beaumont Chamber of Commerce  
Beaumont Chamber Foundation  
Beaumont Symphony League  
Family Resource Center  
Family Services Association of Beaumont  
First City Bank – Central (Advisory Board)  
Goodwill Industries of Beaumont  
Junior League of Beaumont  
Jefferson Theatre Preservation Society  
Lamar University Planned Giving Council  
Lamar Institute of Technology Foundation  
Leadership Beaumont  
Leadership Texas  
Memorial Herman Baptist Hospital Foundation  
100 Club of Jefferson & Hardin Counties, Texas  
Rotary Club of Beaumont  
Shorkey Rehabilitation and Education Center  
Southeast Texas Workforce Development Board  
Texas Energy Museum  
Three Rivers Council of Boy Scouts of America  
Trinity United Methodist Church Foundation  
United Way of Beaumont and North Jefferson County  
University of Texas School of Nursing (Advisory Board)

**Recent Presentations:**

- Author/Presenter, "Administration Pitfalls and Making Discretionary Decisions in Preparation of Court Review", Wealth Management & Trust's 2016 Graduate Trust School (2016)
- Author/Presenter, Hot Topics, Texas Bankers Association's Intermediate Trust & Estate Administration Seminar (2016)
- Author/Presenter, "It's a Matter of Discretion – How Trustees Make Discretionary Decisions in Preparation of Court Review," American College of Trust and Estate Counsel, Fiduciary Litigation Committee (Fall 2014)

- Author/Presenter, "Adding Value to Relationships – Always a Hot Topic," Texas Bankers Association Trust and Estate Administration Seminar (2014)
- Presenter, "What Every Planned Giving Professional Needs to Know About the Estate Planning Process," Planned Giving Council of Central Texas (2014)
- Author/Presenter, "Hot Topics for Trust Administration," Texas Bankers Association Trust and Estate Administration Seminar (2013)

## **Exhibit B**

### **Estate of Max D. Hopper, Deceased Documents and Information Reviewed**

- Protective Order
- Hunton & Williams invoices (IA 032000-032110, IA 32197-032227, IA 032240-032246, IA 046039-046203, IA 047868-047886)
- All papers filed and served in PR-10-1517-1 (as of 5/27/16, with index)
- All papers filed and served in PR-11-3238-1 (as of 8/16/16 with index)
- All papers filed and served in 08-12-00331-CV (as of 5/27/16 with index)
- Depositions of Susan Novak, Wendy Bessette, Jo N. Hopper, Laura Wassmer, Stephen Hopper, Thomas H. Cantrill, Doris King, Gary Stolbach, Todd Baird, John K. Round, Kal Grant, and Sarah Williamson
- Deposition Errata Sheets for Susan Novak, Thomas H. Cantrill, Wendy Bessette, and Doris King
- Deposition Exhibits (1-329)
- Heirs' Expert Reports – Jerry Frank Jones, Anthony L. Vitullo
- Jo Hopper's Expert Report – John T. Cox, III
- JPMorgan's Expert Reports – Michael V. Bourland, Mark K. Sales, Thomas H. Cantrill, and John C. Eichman
- 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.
- Hearing Transcripts dated 10/18/2011, 11/9/2011, 1/31/2012, 4/13/2012, 8/6/2012, and 11/2/2012
- DC-13-09969 Docket Sheet, Original Petition, and Settlement and Release Agreement
- Various banks' fee schedules (IA 000871, IA 005219, IA 005232, IA 007699)
- JPMorgan Policies & Procedures (IA 042754-042934, IA 043630-043660)
- JPMorgan Statements for Estate Account No. P19276008 & Sub-Account No. P19276305