

**Expert Report of John C. Eichman  
July 13, 2016**

**In Re: Estate of Max D. Hopper, Deceased – Jo N. Hopper vs. JP  
Morgan Chase, N.A., Stephen B. Hopper and Laura S. Wassmer  
In the Probate Court No. 1, Dallas County, Texas  
Cause No. PR-11-3238-1**

My name is John C. Eichman. I am the lead trial counsel in this matter for JPMorgan Chase Bank, N.A. (“JPMorgan”), in its capacity as Independent Administrator (the “IA”) for the Estate of Max Hopper (the “Estate”) and in its corporate capacity. I might testify at trial as an expert witness on the issue of attorneys’ fees and expenses incurred by the IA in the referenced litigation, including in connection with claims that were severed and appealed in 2012 (collectively, the “Litigation”). This report summarizes my qualifications, the subject matter on which I will testify, the general substance of my opinions concerning the subject matter, a brief summary of the basis for those opinions and a description of the documents and other materials I have used or prepared in anticipation of my testimony.

**I. Subject Matter of Testimony.**

I expect to testify concerning whether the attorneys’ fees and related expenses incurred by the IA in the Litigation are reasonable and necessary, what the contractual and/or statutory basis is for the recovery or award of such fees and expenses, how the issue of segregation is satisfied and what the IA’s reasonable and necessary attorneys’ fees would be in the event of any appeal in the future. I also might testify in response to opinions offered by experts identified by Plaintiff Jo N. Hopper (“Mrs. Hopper”) and Defendants Stephen Hopper and Laura Wassmer (the “Heirs”) concerning attorneys’ fees and expenses in the Litigation after those opinions are served.

**II. Qualifications.**

I am a partner on the Litigation Team at Hunton & Williams LLP. While with Hunton & Williams, I have served as a co-head of the firm’s Complex Commercial Litigation and Business Litigation practice groups. I was licensed as an attorney by the Supreme Court of Texas in 1982 and have practiced commercial litigation since that time, handling cases at both the trial and appellate levels in state and federal courts. I have litigated cases in Dallas County, in many other parts of Texas and in cities in other parts of the United States. For approximately the last 12 years I have practiced extensively in the area of fiduciary litigation, representing parties in disputes concerning trusts and estates. Based on my experience, I am knowledgeable concerning customary hourly rates for attorneys’ and paralegals practicing in Dallas County in the area of complex commercial and fiduciary litigation and what reasonable attorneys’ fees and expenses would be in litigation of this type. My current resume and bibliography are attached to this report as **Exhibit A**.

### **III. Basis for Opinions.**

My opinions and mental impressions regarding the IA's attorneys' fees are based on the applicable legal standards (as summarized below), my experience as described above and in Exhibit A; my work as lead trial counsel for the IA since the inception of the Litigation; my review of, and/or involvement with, the pleadings, discovery requests and responses, depositions, motions, briefs, hearings, mediations, communications with opposing counsel, and similar activities in the Litigation; my review of the billing statements issued by Hunton & Williams to the IA as produced to all parties in the Litigation, and my review of the billing statements (some of which have been very heavily redacted) issued by various attorneys for Mrs. Hopper and the Heirs. I have also prepared or had others at my firm prepare certain summaries that are attached to this report as **Exhibits B, C, D and E**.

### **IV. Applicable Legal Standards and Related Opinions.**

In Texas, a party to litigation may recover its attorneys' fees and expenses if there is a contractual provision allowing for the recovery of fees and expenses or there is a statute allowing for the recovery of fees. Here, there is a provision in a contract allowing for the recovery of fees and there are provisions in Texas statutes allowing for the recovery of fees.

#### **A. Contractual Basis for the Recovery of Fees and Expenses.**

The fee schedule agreed to between Mrs. Hopper, the Heirs and JPMorgan contains the following provision relevant to fees incurred by the IA:

Legal counsel is retained 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 administration of the Estate has been ongoing throughout the time the Litigation has been pending and the Litigation is part of the administration and is pending as part of the estate administration proceeding. All of the claims and defenses relate to the administration of the Estate. This contractual provision is a basis for the IA's recovery, as an "expense of the estate," of all attorneys' fees and expenses incurred in the Litigation.

#### **B. Statutory Basis for the Recovery of Fees and Expenses.**

There are at least three relevant statutory bases for the IA's recovery of attorneys' fees and expenses incurred in the Litigation--Texas Estates Code § 404.0037(a), Texas Estates Code § 352.051, and Texas Civil Practice & Remedies Code § 37.009.

**1. Texas Estates Code § 404.0037(a).**

Texas Estates Code § 404.0037(a) provides that:

(a) 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 attorney's fees, in the removal proceedings.

TEX. EST. CODE ANN. § 404.0037(a) (formerly cited as TEX. PROB. CODE ANN. § 149C). Mrs. Hopper sought the IA's removal (the "Removal Action") when she filed her original petition in the Litigation on September 21, 2011 and when she filed her first amended petition on November 30, 2011, and she continued to seek the IA's removal until she abandoned that effort when she filed her second amended petition on December 7, 2015. Mrs. Hopper relied on every allegation in both petitions as support for her Removal Action. See Original Petition at ¶VI. A. and First Amended Petition at ¶VI. A. In my opinion, the IA's defense of the Removal Action falls within the scope of this provision, all the issues raised in the Litigation were related to and part of the Removal Action while it was pending, and virtually all the legal services Hunton & Williams provided in the Litigation through December 6, 2015 advanced the defense of the Removal Action.

**2. Texas Estates Code § 352.051.**

Texas Estates Code § 352.051 states:

On proof satisfactory to the court, a personal representative of an estate is entitled to:

- (1) necessary and reasonable expenses incurred by the representative in:
  - (A) preserving, safekeeping, and managing the estate;
  - (B) collecting or attempting to collect claims or debts; and
  - (C) recovering or attempting to recover property to which the estate has a title or claim; and
- (2) reasonable attorney's fees necessarily incurred in connection with the proceedings and management of the estate.

TEX. EST. CODE ANN. § 352.051 (formerly cited as TEX. PROB. CODE ANN. § 242). In my opinion, attorneys' fees and expenses incurred by the IA in connection with the Litigation fall within the scope of this section, as explained in Defendant JPMorgan Chase Bank, N.A.'s Response to Defendants' First Amended Application for Distribution of Property and Motion for Protective Order, attached to this report as **Exhibit F**.

### **3. Texas Civil Practice & Remedies Code § 37.009.**

Texas Civil Practice & Remedies Code § 37.009, which is part of the Uniform Declaratory Judgments Act, provides that:

In any proceeding under this chapter, the court may award costs and reasonable and necessary attorney's fees as are equitable and just.

Tex. Civ. Prac. & Rem Code § 37.009. Mrs. Hopper's petitions, the Heirs' cross-claims and the IA's cross-claims and counterclaims have sought declaratory relief under the Uniform Declaratory Judgment Act. This statutory provision provides another basis for the IA's recovery of its attorneys' fees and expenses in the Litigation.

#### **C. Standard for Determining Reasonable and Necessary Attorneys' Fees.**

The applicable standard for the factfinder's consideration of an award of reasonable and necessary attorneys' fees is set out in the Texas Supreme Court's opinion in *Arthur Anderson & Co. v. Perry Equip. Corp.*:

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

*Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997) (citing to TEX. DISCIPLINARY R. PROF. CONDUCT 1.04). Further, the Texas Supreme Court in *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299 (Tex. 2006), addressed the issue of segregation of attorneys' fees between claims and defenses for which there

is a basis for the recovery of attorneys' fees and claims and defenses for which there is not a basis for the recovery of attorneys' fees. In relevant part the court stated:

[W]e reaffirm the rule that if any attorney's fees relate solely to a claim for which such fees are unrecoverable, a claimant must segregate recoverable from unrecoverable fees. Intertwined facts do not make tort fees recoverable; it is only when discrete legal services advance both a recoverable and unrecoverable claim that they are so intertwined that they need not be segregated.

*Chapa*, 212 S.W.3d at 313-14.

#### V. Opinions Regarding Reasonable and Necessary Attorneys' Fees.

Hunton & Williams has billed the IA a net amount of \$1,710,888.30 in legal fees for services provided to the IA in connection with the Litigation through May 31, 2016 and \$61,980.46 for related expenses. See **Exhibit B**. Broken down slightly differently, Hunton & Williams' billing statements reflect legal fees in the amount of \$1,723,152.60, expenses of \$63,929.66 and fee adjustments and credits of \$14,213.50. See **Exhibit C**. Based upon my review and analysis of the Hunton & Williams billing statements that have been produced, my experience in the Litigation and my experience generally, \$1,185,775 of those fees and expenses (essentially 100% of those incurred through December 6, 2015) are in my opinion attributable to the defense of the Removal Action (the "Removal Action Fees"), including approximately \$280,000 in fees in connection with the appeal to the El Paso court of appeals. Of the Removal Action Fees, approximately \$964,798 are in my opinion attributable to the dispute over the distribution of ownership interests in Mr. and Mrs. Hopper's residence ("Robledo" or the "Robledo Property").

Four professionals at Hunton & Williams have performed the vast majority of the services on the Litigation since it began in September 2011: John Eichman, Thomas Cantrill, Grayson Linyard and Lori Wester. The following chart summarizes their hours and rates from the filing of the Litigation through May 31, 2016:

	<u>Hours</u>	<u>Rate</u>
John Eichman (partner)	1433	\$600 - \$650 per hour
Thomas Cantrill (partner)	352.5	\$575 - \$650 per hour
Grayson Linyard (associate)	1107.7	\$265 - \$375 per hour
Lori Wester (paralegal)	840.7	\$185 - \$235 per hour

Other partners billed a total of 32.20 hours at a range of rates from \$265 to \$555 per hour, a counsel billed a total of 8 hours at a range of rates from \$455 to \$480, other associates billed a total of 170.9 hours at a range of rates from \$220 to \$455 per hour, other paralegals billed a total of 91.8 hours at a range of rates from \$194 to \$240 and

trial support staff billed a total of 56 hours at a range of rates from \$135 to \$265 per hour. All of the hours and rates are summarized in **Exhibit C**.

**A. Arthur Andersen Factors.**

In my opinion, the eight factors listed in *Arthur Andersen v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997) support the reasonableness of the fees billed by Hunton & Williams to the IA in the Litigation.

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly.**

The Litigation has been pending for nearly 5 years. Mrs. Hopper and the Heirs have aggressively pursued their positions in the trial court, in the court of appeals and then back in the trial court after the appeal. Summaries of the services performed by Hunton & Williams in the Litigation and of the litigation activity are attached to this report as **Exhibits D and E**. Mrs. Hopper and the Heirs hired well-known law professors to act as their co-counsel early in the Litigation, reflecting the complexity and novelty of the legal issues presented in the Litigation, particularly regarding the Robledo Property. They filed many lengthy motions and briefs to argue, re-argue and re-argue again their legal positions and to attack each other's' and the IA's positions. The IA's lawyers had to devote significant time and labor addressing Mrs. Hopper's and the Heirs' numerous, lengthy filings in the trial court and the court of appeals. Written discovery before the appeal and after the appeal and deposition discovery after the appeal have been extensive and very time-consuming. Mrs. Hopper and the Heirs have filed numerous motions, some of which were abandoned after responses were filed. A high level of legal skill has been required to navigate the many substantive and procedural issues that have arisen in the Litigation. All of these considerations support the reasonableness and necessity of the fees Hunton & Williams has charged.

- (2) the likelihood ... that the acceptance of the particular employment will preclude other employment by the lawyer.**

Hunton & Williams' acceptance of this particular employment did not preclude the firm from accepting other employment, although attorneys' working on this matter over time would not be able to spend that time on other matters. Overall, this factor is neutral.

- (3) the fee customarily charged in the locality for similar legal services.**

In my opinion the hourly rates charged by Hunton & Williams in this matter (discussed above) are consistent with hourly rates customarily charged in Dallas County for similar legal services. The hourly rates are comparable to the hourly rates charged

by Mrs. Hoppers' and the Heirs' various counsel. The total hours spent by Hunton & Williams have been significantly impacted by the aggressive litigation tactics employed by Mrs. Hopper and the Heirs, including voluminous pleadings and numerous hearings. In my opinion the total fees charged are consistent with fees customarily charged in Dallas County for litigation of this type.

**(4) the amount involved and the results obtained.**

Mrs. Hopper and the Heirs both aggressively pursued legal positions concerning Robledo without regard to the value of their respective equity interests in the property. For over 4 years Mrs. Hopper sought the IA's removal. The IA is obligated to defend the Estate and to reach the legally correct result in its management of the Estate. Now Mrs. Hopper purports to seek extensive damages from the Estate and/or the IA concerning the management of the Estate. The Heirs likewise purport to seek extensive damages concerning the management of the Estate. Mrs. Hopper's voluntary abandonment of her claim for removal of the IA in December 2015 demonstrates that the IA's defense of that claim was reasonable. Further, the various rulings by the trial court and then the court of appeals demonstrate that the IA acted correctly in its distribution of the Robledo Property and support the reasonableness of the fees incurred by the IA in connection with the dispute over the Robledo Property and the Removal Action.

**(5) the time limitations imposed by the client or by the circumstances.**

Though this factor does not weigh heavily in the analysis, the fees charged to the IA by Hunton & Williams reflect compliance with the typical time limitations imposed by the Texas Rules of Civil Procedure and the Texas Rules of Appellate procedure.

**(6) the nature and length of the professional relationship with the client.**

Though this factor does not weigh heavily in the analysis, Hunton & Williams has represented JPMorgan on various litigation and non-litigation matters over the last several years, which supports the reasonableness of the fees charged.

**(7) the experience, reputation, and ability of the lawyer or lawyers performing the services.**

I am familiar with experience, reputation, and ability of the lawyers performing the services for the IA. In particular, I have over 30 years of experience, Tom Cantrill has over 40 years of experience, and Grayson Linyard has over six years of experience that we have each utilized in representing the IA in this case. Each of us has a good reputation in the legal community, and we have all employed our respective abilities in performing the services. In my opinion, this factor further supports the reasonableness of the fees charged by Hunton & Williams to the IA.

**(8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.**

Hunton & Williams has billed the IA on an hourly basis. As discussed above, the hourly rates are customary in Dallas County for similar legal services.

In summary, it is my opinion, after consideration of all the matters described above that: (a) the rates charged by Hunton & Williams for the attorneys, paralegals and support staff who have provided services in the Litigation have been reasonable and customary; (b) the hours billed have been reasonable and necessary; and (c) the fees and related expenses charged to the IA by Hunton & Williams in connection with all phases of the Litigation through May 31, 2016 in the total amount of \$1,772,868.76 are reasonable and necessary.

**B. Segregation Between Recoverable and Non-Recoverable Claims.**

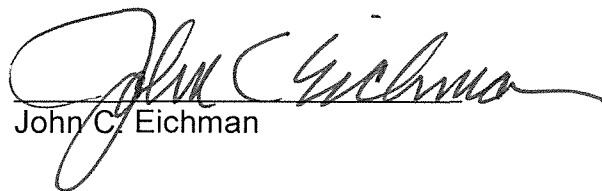
As discussed above, there are several grounds—both contractual and statutory—for the IA’s recovery of its fees for both pursuing and defending against claims in the Litigation. In my opinion, those grounds make it unnecessary for the IA to segregate any of its attorneys’ fees and expenses between recoverable and non-recoverable claims.

**C. Appellate Fees.**

As noted above, this case has already been in the court of appeals. The IA incurred attorneys’ fees of approximately \$280,000 in connection with that appeal and they are included in the fees discussed above. I have an opinion about the IA’s future fees in the event there is another appeal after the entry of a final judgment in the Litigation. In my opinion, reasonable and necessary attorneys’ fees for an appeal would be as follows: for an appeal the court of appeals--\$250,000; for preparing or responding to a petition for review in the Texas Supreme Court--\$75,000; for preparing briefs on the merits and appearing at oral argument--\$100,000.

**VI. Supplementation.**

I reserve the right to supplement or amend my opinions and this report as additional information becomes available and the Litigation progresses to trial.

  
John C. Eichman



# Exhibit A



**John C. Eichman**  
Partner

**PRACTICES**

Business Litigation  
Fiduciary Litigation  
Insurance Coverage  
Counseling and Litigation  
Patent Litigation

**CONTACT**

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**EDUCATION**

JD, University of Chicago,  
1982

AB, Georgetown University,  
magna cum laude, 1979

**BAR ADMISSIONS**

Texas

**BLOGS**

Hunton Insurance Recovery  
Blog

## John's practice focuses on representing clients in complex commercial and fiduciary litigation.

John has represented plaintiffs and defendants from around the United States and abroad, including Fortune 500 corporations, privately-held businesses and individuals. During his 33 years in practice, he has tried cases involving business torts, contract disputes, fiduciary and estate claims, insurance coverage and intellectual property. John is admitted to practice in the US Courts of Appeals for the 5th, 9th and Federal Circuits, and the US District Courts for the Northern, Eastern, Western and Southern Districts of Texas.

**Relevant Experience**

- Defended major financial institution against breach of fiduciary duty claims brought by trust beneficiaries seeking nine-figure damages relating to Eagle Ford Shale oil and gas leases.
- Represented Texas investors in asserting securities fraud claims against promoters of Italian fire-suppressant businesses.
- Defended major financial institution and trusts against claims for undue influence and breach of fiduciary duty in multi-week trial of will contest and trust contest case, after obtaining summary judgment on tortious interference with inheritance claims before trial.
- Defended client in bill of review action in which the State of Texas sought to set aside a judgment in a prior case and recover over \$300 million.
- Defended trust beneficiaries and their trusts against claims brought by beneficiaries' half-sisters seeking in excess of \$100 million arising out of deceased father's alleged contract to make a will.
- Represented pro bono client in successfully contesting provisions in his mother's will that resulted from a relative's undue influence.
- Represented Texas family in asserting securities fraud claims arising out of purchase of interest in luxury resort development in the Bahamas.
- Defended major financial institution against trust beneficiaries' putative class action claims for breach of fiduciary duty relating to the Enron failure where Plaintiffs unsuccessfully sought to invalidate the ethical wall between the bank's trust and investment banking operations.
- Represented two Texas families in asserting claims for breach of

fiduciary duty and mismanagement against clients' uncles arising out of the administration of nine family trusts and the management of several substantial family-owned businesses, including a residential real estate development company and a home building company.

- Tried fraudulent conveyance cases successfully attacking \$50 million loan guarantee arising out of leveraged buyout of real estate syndication company.
- Represented financial institutions in trials of fidelity bond claims arising out of complex fraud and embezzlement schemes by former officers.
- Tried patent infringement claims for manufacturer of plastic geomembrane liner and obtained multi-million dollar willful infringement verdict.
- Defended luxury goods company in patent, trademark, copyright and trade secrets case relating to its jewelry products.
- Conducted numerous internal investigations of complex fraud schemes at financial institutions and other businesses and successfully pursued related insurance recoveries.
- Defended major telecommunications carrier in several putative class actions alleging deceptive billing and advertising claims.
- Defended financial institution in multiple RICO lawsuits arising out of former president's involvement in multi-million dollar check kiting scheme.
- Defended a financial services company in trial of professional malpractice case.
- Defended financial institution in trial of lender liability case arising out of failed real estate project.
- Represented corporate executive in trial of claims relating to stock repurchase agreement.
- Tried case for a federal agency involving coverage under a directors' and officers' liability insurance policy.
- Represented a major automobile retailer in the trial of an insurance coverage dispute arising out of a complex credit repair scam.
- Represented watch company in defending trademark, design patent and unfair competition claims.
- Represented digital printing company in trial of misappropriation of trade secrets claims.
- Represented semiconductor manufacturer asserting patent infringement claims.
- Represented manufacturer of digital cellular telephones and infrastructure in defending patent infringement claims.

### **Memberships**

- Member, American Bar Association and Dallas Bar Association

- Board of Trustees and Member of Executive Committee, Center for American and International Law
- Master, Patrick E. Higginbotham American Inn of Court
- Sustaining Life Fellow, Texas Bar Foundation
- Fellow, Dallas Bar Foundation

### **Publications**

- Co-author, Trustee Conflicts of Interest in Texas-Revisiting Risser, *Real Estate, Probate and Trust Law Reporter*, State Bar of Texas, September 2015
- Author, Insurance Coverage Issues for the Troubled Financial Institution, *RMA Journal*, April 2011
- Author, Navigate Carefully to Preserve D&O Coverage, *American Banker*, December 21, 2010

### **Events**

- Speaker, “Cybercrime Claims,” American Bar Association Tort Trial & Insurance Practice Section’s Fidelity & Surety Law Committee Teleconference/Webinar CLE Series, February 10, 2014
- Panelist, “Hot Issues in Employee Dishonesty Coverage” and “Cyber Crime Claims,” Financial Institution Bond Claims in the 21st Century, American Bar Association Conference, November 7, 2013
- Speaker, “Hot Issues in Insurance – Questions You Should Be Asking About D&O, Cyber and Bond Coverage,” Independent Community Bankers Association Webinar, October 8, 2013
- Moderator, “‘And Counselor’ – Challenges of Managing Client Relationships,” Dallas Bar Association’s Annual Bench Bar Conference, September 26, 2013
- Co-chair, Dallas Bar Association’s Annual Bench Bar Conference, Horseshoe Bay, Texas, September 26-27, 2013

### **Awards & Recognition**

- Named among the *Best Lawyers in America*, Commercial Litigation, 2016

# Exhibit B

Updated 7/13/2016

Estate of Max D. Hopper -- Hunton & Williams Fees & Expenses - Matter 02

<u>Invoice</u>	<u>Date</u>	<u>Fee</u>	<u>Expense</u>	<u>Total</u>
116013573-02	10/06/2011	13,314.00	0	13,314.00
116015325-02	11/28/2011	65,457.50	1,429.45	66,886.95
116015797-02	12/21/2011	102,968.00	7,473.79	110,441.79
116017362-02	01/18/2012	77,093.50	1,208.89	78,302.39
116018805-02	02/24/2012	82,951.50	1,277.72	84,229.22
116019053-02	03/06/2012	76,811.00	1,122.14	77,933.14
116020391-02	04/12/2012	39,845.00	329.61	40,174.61
116021650-02	05/14/2012	58,016.00	4,795.02	62,811.02
116022760-02	06/15/2012	25,798.00	463.25	26,261.25
116023778-02	07/13/2012	26,749.80	623.75	27,373.55
116024928-02	08/13/2012	15,798.90	626.46	16,425.36
116026151-02	09/19/2012	46,580.90	811.81	47,392.71
116027650-02	10/29/2012	37,891.00	2,515.29	40,406.29
116028226-02	11/14/2012	15,066.70	627.29	15,693.99
116029478-02	12/19/2012	32,875.40	584.39	33,459.79
116030223-02	01/14/2013	24,423.70	786.56	25,210.26
116031336-02	02/13/2013	8,320.50	633.39	8,953.89
116032219-02	03/08/2013	13,402.50	369.05	13,771.55
116033086-02	04/10/2013	83,656.30	1,309.93	84,966.23
116034399-02	05/15/2013	22,344.50	819.50	23,164.00
116035062-02	06/07/2013	9,484.50	412.62	9,897.12
116036225-02	07/09/2013	3,545.00	322.55	3,867.55
116037353-02	08/13/2013	1,510.50	309.75	1,820.25

Updated 7/13/2016

Estate of Max D. Hopper -- Hunton & Williams Fees & Expenses - Matter 02

<u>Invoice</u>	<u>Date</u>	<u>Fee</u>	<u>Expense</u>	<u>Total</u>
116038231-02	09/12/2013	10,032.00	1,886.78	11,918.78
116039162-02	10/14/2013	4,738.00	309.75	5,047.75
116039910-02	11/08/2013	56,822.00	1,640.38	58,462.38
116040929-02	12/11/2013	0.00	967.51	967.51
116041781-02	01/09/2014	960.00	309.75	1,269.75
116042727-02	02/11/2014	0.00	309.75	309.75
116049885-02	02/11/2014	0.00	70.47	70.47
116043889-02	03/10/2014	0.00	310.00	310.00
116044869-02	04/10/2014	0.00	310.00	310.00
116045579-02	05/08/2014	712.50	425.11	1,137.61
116046272-02	06/05/2014	125.00	310.00	435.00
116047426-02	07/11/2014	187.50	310.00	497.50
116048381-02	08/13/2014	0.00	310.00	310.00
116049340-02	09/10/2014	0.00	310.00	310.00
116050126-02	10/08/2014	0.00	310.00	310.00
116051124-02	11/11/2014	0.00	310.00	310.00
116053358-02	01/23/2015	31,104.50	823.62	31,928.12
116054477-02	03/06/2015	750.00	310.00	1,060.00
116055649-02	04/10/2015	3,117.50	1,644.30	4,761.80
116056639-02	05/13/2015	16,000.00	772.48	16,772.48
116057035-02	06/05/2015	325.00	585.00	910.00
116058037-02	07/10/2015	9,709.50	585.00	10,294.50
116059063-02	08/14/2015	0.00	585.00	585.00
116060609-02	10/13/2015	26,829.00	121.10	26,950.10

Estate of Max D. Hopper -- Hunton & Williams Fees & Expenses - Matter 02

<u>Invoice</u>	<u>Date</u>	<u>Fee</u>	<u>Expense</u>	<u>Total</u>
116061797-02	11/20/2015	53,596.00	0.00	53,596.00
116065114-02	03/25/2016 <sup>1</sup>	56,863.60	1,856.70	58,720.30
116065117-02	03/25/2016 <sup>2</sup>	47,621.40	609.96	48,231.36
116065118-02	03/25/2016 <sup>3</sup>	118,781.00	1,922.08	120,703.08
116065154-02	03/31/2016 <sup>4</sup>	55,960.50	1,409.65	57,370.15
116066651-02	05/20/2016 <sup>5</sup>	82,007.50	1,768.35	83,775.85
116067437-02	06/27/2016 <sup>6</sup>	121,218.20	5,811.16	127,029.36
116067444-02	06/27/2016 <sup>7</sup>	<u>129,522.90</u>	<u>5,924.35</u>	<u>135,447.25</u>
Totals		1,710,888.30	61,980.46	1,772,868.76

- <sup>1</sup> For services ending 11/2015.
- <sup>2</sup> For services ending 12/2015.
- <sup>3</sup> For services ending 01/2016.
- <sup>4</sup> For services ending 02/2016.
- <sup>5</sup> For services ending 03/2016.
- <sup>6</sup> For services ending 04/2016.
- <sup>7</sup> For services ending 05/2016.



# Exhibit C

**Estate of Max D. Hopper - 76995.02**

Invoice	Invoice Date	C/M#	Timekeeper	Billing Rate	Hours Billed	Fees Billed	Expenses Billed	Credits & Fee Adjustments
116014454	10/06/2011	76995.2	Cantrill	575.00	7.70	4,427.50		
			Eichman	600.00	13.80	8,280.00		
			Linyard	265.00	1.80	477.00		
			Wester	185.00	0.70	129.50		
						<b>13,314.00</b>	-	
116015325	11/28/2011	76995.2	Cantrill	575.00	19.30	11,097.50		
			Eichman	600.00	64.20	38,520.00		
			Marcuis	555.00	0.70	388.50		
			Alford	455.00	0.40	182.00		
			Linyard	265.00	49.90	13,223.50		
			Lunday	200.00	0.60	120.00		
			Wester	185.00	10.80	1,998.00		
						<b>65,529.50</b>	<b>1,429.45</b>	<b>(72.00)</b>
116015797	12/21/2011	76995.2	Cantrill	575.00	19.70	11,327.50		
			JC Edwards	265.00	31.50	8,347.50		
			Eichman	600.00	67.60	40,560.00		
			Alford	455.00	2.30	1,046.50		
			Linyard	265.00	83.40	22,101.00		
			McKenney	235.00	19.00	4,465.00		
			Wester	185.00	80.30	14,855.50		
			Brunot	80.00	2.80	224.00		
			Lefebvre	205.00	0.20	41.00		
						<b>102,968.00</b>	<b>7,473.79</b>	
116017362	01/18/2012	76995.2	Cantrill	575.00	32.60	18,745.00		
			Eichman	600.00	63.90	38,340.00		
			Alford	455.00	2.90	1,319.50		
			Linyard	265.00	63.80	16,907.00		
			Schellenberg	235.00	0.80	188.00		
			Wester	185.00	7.40	1,369.00		
			Yang	225.00	1.00	225.00		
						<b>77,093.50</b>	<b>1,208.89</b>	
116018805	02/24/2012	76995.2	Cantrill	575.00	16.80	9,660.00		
			Eichman	600.00	75.50	45,300.00		
			Linyard	265.00	72.30	19,159.50		
			McKenney	235.00	5.70	1,339.50		
			Wester	185.00	40.50	7,492.50		
						<b>82,951.50</b>	<b>1,277.72</b>	
116019053	03/06/2012	76995.2	Cantrill	575.00	26.00	14,950.00		
			Eichman	600.00	73.50	44,100.00		
			J Alexander	305.00	10.50	3,202.50		
			Linyard	265.00	31.40	8,321.00		
			Littleton	135.00	0.70	94.50		
			McKenney	235.00	1.50	352.50		
			Wester	185.00	31.30	5,790.50		
						<b>76,811.00</b>	<b>1,122.14</b>	
116020391	04/12/2012	76995.2	Cantrill	575.00	14.50	8,337.50		
			Eichman	600.00	42.50	25,500.00		
			Alford	455.00	0.30	136.50		
			Linyard	265.00	8.80	2,332.00		
			McKenney	235.00	6.40	1,504.00		
			Wester	185.00	11.00	2,035.00		
						<b>39,845.00</b>	<b>329.61</b>	
116021650	05/14/2012	76995.2	Cantrill	595.00	22.40	13,328.00		
			Eichman	600.00	55.40	33,240.00		
			Linyard	265.00	31.90	8,453.50		

**Estate of Max D. Hopper - 76995.02**

Invoice	Invoice Date	C/M#	Timekeeper	Billing Rate	Hours Billed	Fees Billed	Expenses Billed	Credits & Fee Adjustments
			McKenney	245.00	1.00	245.00		
			Wester	195.00	14.10	2,749.50		
						<b>58,016.00</b>	<b>4,795.02</b>	
<b>116022760</b>	<b>06/15/2012</b>	<b>76995.2</b>	Cantrill	595.00	14.40	8,568.00		
			Eichman	629.00	25.00	15,725.00		
			Linyard	302.00	1.00	302.00		
			Lunday	210.00	4.80	1,008.00		
			Wester	195.00	1.00	195.00		
						<b>25,798.00</b>	<b>463.25</b>	
<b>116023778</b>	<b>07/13/2012</b>	<b>76995.2</b>	Cantrill	595.00	2.80	1,666.00		
			Eichman	629.00	27.30	17,171.70		
			Alford	480.00	0.30	144.00		
			Linyard	302.00	22.30	6,734.60		
			Wester	195.00	5.30	1,033.50		
						<b>26,749.80</b>	<b>623.75</b>	
<b>116024928</b>	<b>08/13/2012</b>	<b>76995.2</b>	Cantrill	595.00	4.90	2,915.50		
			Eichman	629.00	5.90	3,711.10		
			Linyard	302.00	25.40	7,670.80		
			Wester	195.00	7.70	1,501.50		
						<b>15,798.90</b>	<b>626.46</b>	
<b>116026151</b>	<b>09/19/2012</b>	<b>76995.2</b>	Cantrill	595.00	24.50	14,577.50		
			Eichman	629.00	23.60	14,844.40		
			Alford	480.00	0.20	96.00		
			Linyard	302.00	35.50	10,721.00		
			McKenney	245.00	0.80	196.00		
			Yang	235.00	0.80	188.00		
			Lunday	210.00	18.90	3,969.00		
			Wester	195.00	10.20	1,989.00		
						<b>46,580.90</b>	<b>811.81</b>	
<b>116027650</b>	<b>10/29/2012</b>	<b>76995.2</b>	Cantrill	595.00	5.70	3,391.50		
			Eichman	629.00	24.50	15,410.50		
			Linyard	302.00	15.00	4,530.00		
			Lunday	210.00	60.60	12,726.00		
			Wester	195.00	9.40	1,833.00		
						<b>37,891.00</b>	<b>2,515.29</b>	
<b>116028226</b>	<b>11/14/2012</b>	<b>76995.2</b>	Cantrill	595.00	1.70	1,011.50		
			Eichman	629.00	17.00	10,693.00		
			Linyard	302.00	2.60	785.20		
			Lunday	210.00	1.50	315.00		
			Wester	195.00	11.60	2,262.00		
						<b>15,066.70</b>	<b>627.29</b>	
<b>116029478</b>	<b>12/19/2012</b>	<b>76995.2</b>	Cantrill	595.00	5.70	3,391.50		
			Eichman	629.00	33.60	21,134.40		
			Linyard	302.00	6.50	1,963.00		
			Yang	235.00	10.00	2,350.00		
			Wester	195.00	20.70	4,036.50		
						<b>32,875.40</b>	<b>584.39</b>	
<b>116030224</b>	<b>01/14/2013</b>	<b>76995.2</b>	Cantrill	595.00	0.60	357.00		
			Eichman	629.00	9.90	6,227.10		
			Linyard	302.00	51.80	15,643.60		
			Yang	235.00	0.30	70.50		
			Wester	195.00	10.90	2,125.50		

**Estate of Max D. Hopper - 76995.02**

Invoice	Invoice Date	C/M#	Timekeeper	Billing Rate	Hours Billed	Fees Billed	Expenses Billed	Credits & Fee Adjustments
						<b>24,423.70</b>	<b>786.56</b>	
116031336	02/13/2013	76995.2	Cantrill	595.00	2.00	1,190.00		
			Eichman	629.00	9.50	5,975.50		
			Linyard	302.00	1.50	453.00		
			Wester	195.00	3.60	702.00		
						<b>8,320.50</b>	<b>633.39</b>	
116032219	03/08/2013	76995.2	Cantrill	595.00	2.10	1,249.50		
			Eichman	629.00	18.50	11,636.50		
			Linyard	302.00	1.00	302.00		
			Wester	195.00	1.10	214.50		
						<b>13,402.50</b>	<b>369.05</b>	
116033086	04/10/2013	76995.2	Cantrill	595.00	22.60	13,447.00		
			Eichman	629.00	75.90	47,741.10		
			Linyard	302.00	45.60	13,771.20		
			Wester	195.00	44.60	8,697.00		
						<b>83,656.30</b>	<b>1,309.93</b>	
116034399	05/15/2013	76995.2	Cantrill	615.00	2.00	1,230.00		
			Eichman	630.00	19.80	12,474.00		
			Linyard	340.00	14.60	4,964.00		
			Wester	215.00	17.10	3,676.50		
						<b>22,344.50</b>	<b>819.50</b>	
116035062	06/07/2013	76995.2	Cantrill	615.00	1.10	676.50		
			Eichman	630.00	9.60	6,048.00		
			Linyard	340.00	6.60	2,244.00		
			Wester	215.00	2.40	516.00		
						<b>9,484.50</b>	<b>412.62</b>	
116036225	07/09/2013	76995.2	Cantrill	615.00	0.80	492.00		
			Eichman	630.00	4.30	2,709.00		
			Wester	215.00	1.60	344.00		
						<b>3,545.00</b>	<b>322.55</b>	
116037353	08/13/2013	76995.2	Cantrill	615.00	0.30	184.50		
			Linyard	340.00	3.90	1,326.00		
						<b>1,510.50</b>	<b>309.75</b>	
116038231	09/12/2013	76995.2	Cantrill	615.00	1.90	1,168.50		
			Eichman	630.00	13.00	8,190.00		
			Linyard	340.00	0.40	136.00		
			Wester	215.00	2.50	537.50		
						<b>10,032.00</b>	<b>1,886.78</b>	
116039162	10/14/2013	76995.2	Eichman	630.00	5.40	3,402.00		
			Alford	495.00	1.60	792.00		
			Linyard	340.00	1.60	544.00		
						<b>4,738.00</b>	<b>309.75</b>	
116039910	11/08/2013	76995.2	Cantrill	615.00	11.30	6,949.50		
			Eichman	630.00	70.30	44,289.00		
			Linyard	340.00	11.30	3,842.00		
			Wester	215.00	8.10	1,741.50		
						<b>56,822.00</b>	<b>1,640.38</b>	
116040929	12/11/2013	76995.2				-	<b>967.51</b>	

**Estate of Max D. Hopper - 76995.02**

Invoice	Invoice Date	C/M#	Timekeeper	Billing Rate	Hours Billed	Fees Billed	Expenses Billed	Credits & Fee Adjustments
116041781	01/09/2014	76995.2	Cantrill Wester	630.00 215.00	0.50 3.00	315.00 645.00		
						<b>960.00</b>	<b>309.75</b>	
116042727	02/11/2014	76995.2				-		<b>309.75</b>
116049885	02/11/2014	76995.2				-		<b>70.47</b>
116043889	03/10/2014	76995.2				-		<b>310.00</b>
116044869	04/10/2014	76995.2				-		<b>310.00</b>
116045579	05/08/2014	76995.2	Cantrill Littleton	625.00 150.00	0.30 3.50	187.50 525.00		
						<b>712.50</b>	<b>425.11</b>	
116046272	06/05/2014	76995.2	Cantrill	625.00	0.20	125.00		
						<b>125.00</b>	<b>310.00</b>	
116047426	07/11/2014	76995.2	Cantrill	625.00	0.30	187.50		
						<b>187.50</b>	<b>310.00</b>	
116048381	08/13/2014	76995.2				-		<b>310.00</b>
116049340	09/10/2014	76995.2				-		<b>310.00</b>
116050126	10/08/2014	76995.2				-		<b>310.00</b>
116051124	11/11/2014	76995.2				-		<b>310.00</b>
116053358	01/23/2015	76995.2	Cantrill Eichman Bond Linyard Wester	650.00 650.00 295.00 375.00 235.00	10.50 20.00 1.40 37.20 3.90	6,825.00 13,000.00 413.00 13,950.00 916.50		
						<b>35,104.50</b>	<b>823.62</b>	<b>(4,000.00)</b>
116054477	03/06/2015	76995.2	Linyard	375.00	2.00	750.00		
						<b>750.00</b>	<b>310.00</b>	
116055649	04/10/2015	76995.2	Cantrill Eichman Wester	650.00 650.00 235.00	0.30 0.70 10.50	195.00 455.00 2,467.50		
						<b>3,117.50</b>	<b>1,644.30</b>	
116056639	05/13/2015	76995.2	Cantrill Eichman Bond Linyard Roberts Wester	650.00 650.00 295.00 375.00 265.00 235.00	0.50 2.00 9.90 23.60 4.50 9.90	325.00 1,300.00 2,920.50 8,850.00 1,192.50 2,326.50		
						<b>16,914.50</b>	<b>772.48</b>	<b>(914.50)</b>
116057035	06/05/2015	76995.2	Cantrill	650.00	0.50	325.00		
						<b>325.00</b>	<b>585.00</b>	
116058037	07/10/2015	76995.2	Cantrill Eichman Linyard	650.00 650.00 375.00	3.60 6.90 2.20	2,340.00 4,485.00 825.00		

**Estate of Max D. Hopper - 76995.02**

Invoice	Invoice Date	C/M#	Timekeeper	Billing Rate	Hours Billed	Fees Billed	Expenses Billed	Credits & Fee Adjustments
			Downing	285.00	0.30	85.50		
			Wester	235.00	8.40	1,974.00		
						<b>9,709.50</b>	<b>585.00</b>	
<b>116059063</b>	<b>08/14/2015</b>	<b>76995.2</b>				-	<b>585.00</b>	
<b>116060609</b>	<b>10/13/2015</b>	<b>76995.2</b>	Cantrill	650.00	5.10	3,315.00		
			Eichman	650.00	29.30	19,045.00		
			Bond	295.00	1.10	324.50		
			Linyard	375.00	3.40	1,275.00		
			Lunday	240.00	0.50	120.00		
			Wester	235.00	11.70	2,749.50		
						<b>26,829.00</b>	<b>121.10</b>	
<b>116061797</b>	<b>11/20/2015</b>	<b>76995.2</b>	Cantrill	650.00	5.30	3,445.00		
			Eichman	650.00	44.20	28,730.00		
			Allen	270.00	29.10	7,857.00		
			Linyard	375.00	19.00	7,125.00		
			Wester	235.00	27.40	6,439.00		
						<b>53,596.00</b>	-	
<b>116065114</b>	<b>03/25/2016</b> <b>(11/2015)</b>	<b>76995.2</b>	Cantrill	650.00	2.90	1,885.00		
			Eichman	650.00	35.90	23,335.00		
			Allen	220.00	19.00	4,180.00		
			Linyard	375.00	70.40	26,400.00		
			Wester	204.00	31.60	6,446.40		
						<b>62,246.40</b>	<b>1,856.70</b>	<b>(5,382.80)</b>
<b>116065117</b>	<b>03/25/2016</b> <b>(12/2015)</b>	<b>76995.2</b>	Cantrill	650.00	5.10	3,315.00		
			Eichman	650.00	35.80	23,270.00		
			Allen	220.00	7.30	1,606.00		
			Linyard	375.00	36.80	13,800.00		
			Wester	204.00	27.60	5,630.40		
						<b>47,621.40</b>	<b>609.96</b>	
<b>116065118</b>	<b>03/25/2016</b> <b>(01/2016)</b>	<b>76995.2</b>	Cantrill	650.00	13.30	8,645.00		
			Eichman	650.00	89.30	58,045.00		
			Allen	220.00	7.30	1,606.00		
			Linyard	375.00	91.00	34,125.00		
			Wester	204.00	80.20	16,360.00		
						<b>118,781.00</b>	<b>1,922.08</b>	
<b>116065154</b>	<b>03/31/2016</b> <b>(02/2016)</b>	<b>76995.2</b>	Cantrill	650.00	6.50	4,225.00		
			Eichman	650.00	44.10	28,665.00		
			Allen	220.00	10.50	2,310.00		
			Bowen, A.	455.00	7.10	3,230.50		
			Linyard	375.00	23.80	8,925.00		
			Downing	194.00	0.60	116.40		
			Wester	204.00	50.90	10,383.60		
						<b>57,855.50</b>	<b>1,409.65</b>	<b>(1,895.00)</b>
<b>116066651</b>	<b>05/20/2016</b> <b>(03/2016)</b>	<b>76995.2</b>	Cantrill	650.00	23.40	15,210.00		
			Eichman	650.00	59.20	38,480.00		
			Allen	220.00	17.90	3,938.00		
			Linyard	375.00	38.90	14,587.50		
			Wester	204.00	48.00	9,792.00		
						<b>82,007.50</b>	<b>1,768.35</b>	
<b>116067437</b>	<b>06/27/2016</b> <b>(04/2016)</b>	<b>76995.2</b>	Cantrill	650.00	5.80	3,770.00		
			Eichman	650.00	111.30	72,345.00		
			Allen	220.00	13.80	3,036.00		

**Estate of Max D. Hopper - 76995.02**

Invoice	Invoice Date	C/M#	Timekeeper	Billing Rate	Hours Billed	Fees Billed	Expenses Billed	Credits & Fee Adjustments
			Linyard	375.00	68.80	25,800.00		
			Douning	194.00	1.20	232.80		
			Wester	204.00	78.60	16,034.40		
						<b>121,218.20</b>	<b>7,071.16</b>	<b>(1,260.00)</b>
<b>116067444</b>	<b>06/27/2016</b>	<b>76995.2</b>	Cantrill	650.00	5.00	3,250.00		
	<b>(05/2016)</b>		Eichman	650.00	104.80	68,120.00		
			Allen	220.00	4.50	990.00		
			Linyard	375.00	100.70	37,762.50		
			Wester	204.00	95.10	19,400.40		
						<b>129,522.90</b>	<b>6,613.55</b>	<b>(689.20)</b>
<b>Grand Totals</b>						<b>1,723,152.60</b>	<b>63,929.66</b>	<b>(14,213.50)</b>
<b>Fees + Expenses - Credits/Fee Adjustments =</b>				<b>1,772,868.76</b>				

# Exhibit D



## Summary of Hunton & Williams' Services--Removal Action/Estate Litigation

1. Pleadings
  - Analyzed Mrs. Hopper's lengthy original, amended and second amended petitions and the Heirs' original, first amended, second amended, and third amended counterclaims and cross-claims.
  - Prepared original, first amended, second amended and third amended answers, counterclaims and cross-claims.
  - Prepared special exceptions to Mrs. Hopper's pleadings and analyzed potential jurisdictional defects in her claims.
  - Attention to potential TRO application by children.
  
2. Discovery
  - Responded to Mrs. Hopper's fiduciary demand for documents and her litigation document requests, request for disclosures and interrogatories.
  - Responded to heirs' document requests (two sets), request for disclosures and interrogatories.
  - Analyzed JPMorgan document custodians.
  - Collected approximately 80,000 pages of documents from JPMorgan's files and H&W files and produced approximately 47,000 pages after conducting relevance and privilege review. Also prepared privilege log.
  - Prepared document requests, interrogatories and requests for disclosure to Mrs. Hopper and the children and followed up with their attorneys' regarding deficiencies in responses.
  - Reviewed: approximately 32 boxes of documents and an additional 7,700 pages of documents produced by Mrs. Hopper; approximately 5,500 pages of documents produced by the children; approximately 6,500 pages of documents produced by third parties.
  - Took/defended the depositions of: Mrs. Hopper, Stephen Hopper, Laura Wassmer, Doris King, Gary Stolbach, John Round; JPMorgan's corporate representative/Wendy Bessette, Susan Novak, and Tom Cantrill.
  - Prepared for depositions.
  - Met with witnesses regarding depositions.
  - Prepared document requests and deposition notices to third-parties.
  - Document review in preparation for depositions.
  - Negotiated provisions of original and amended scheduling orders.
  - Responded to multiple inquiries from Mrs. Hopper's attorney regarding JPMorgan's discovery responses.
  - Multiple communications with beneficiaries' counsel regarding scheduling of depositions.
  - Client meetings in preparation for corporate representative deposition.
  - Analysis of ESI discovery issues, negotiations with Mrs. Hopper's lawyer and conferences with clients regarding ESI discovery issues.
  - Prepared response to motion to compel regarding ESI.
  - Prepared motion to quash regarding topics in corporate representative deposition notice.
  
3. Research
  - Family allowance issues.
  - Liability of estate distributees for unpaid claims.

- Administrator's authority to allocate expenses to community estate of surviving spouse.
  - Administrator's authority to distribute property without seeking a partition.
  - Multiple issues raised by motions for summary judgment, motions for new trial, motions for reconsideration and motions for severance.
  - Anti-SLAPP motion issues.
  - Severance, consolidation and finality issues.
  - Attorneys' fees issues.
4. Client conferences and witness interviews.
- Multiple telephone and in-person client conferences to discuss status and strategy.
  - Interviews of JPMorgan employees.
5. Hearings—H&W prepared for and attended at least 16 hearings in the trial court on the following matters:
- Special exceptions.
  - Motion to compel mediation/enforce mediation order.
  - Motion for continuance of hearing on motions for summary judgment.
  - Motions for summary judgment.
  - Motion to quash deposition notices.
  - Motions for new trial and motion for reconsideration following February 14, 2012 order on motions for summary judgment.
  - Motion to enter scheduling order.
  - Motion for new trial and motion to sever following May 18, 2012 order on motions for summary judgment (2 hearings).
  - Motion to partition and distribute.
  - Motion to enter new severance order.
  - Status/scheduling conference before Judge Johnson.
  - Status/scheduling conferences before Judge Thompson.
  - Amended motion to lift stay.
  - Application for Distribution of Property and Protective Order.
  - Motion to determine length of depositions.
  - Motions to compel discovery.
  - Motions to modify scheduling order.
6. Mediation
- Communicated with mediator, prepared mediation statement and prepared for and participated in first mediation.
  - Communicated with second mediator and prepared mediation statement.
7. Experts
- Selection of experts.
  - Communicated with experts regarding facts.
8. Dealings with opposing counsel
- Multiple telephone conferences and in-person meetings with opposing counsel, including many lengthy communications with Mrs. Hopper's prior counsel.
  - Responding to multiple letter demands from opposing counsel.

- Addressing multiple scheduling and discovery issues with opposing counsel.

9. Motions for summary judgment

- Analyzed multi-issue motion for summary judgment filed by Mrs. Hopper and multi-issue motion for summary judgment and amended motion for summary judgment filed by children.
- Analyzed opinions offered by expert/co-counsel retained by children (Professor Stanley Johanson) and by expert/co-counsel retained by Mrs. Hopper (Professor Tom Featherston).
- Research of several issues raised by motions and preparation of responses.
- Prepared for January 31, 2012 hearing on motions for summary judgment.
- Analyzed February 14, 2012 order on motions for summary judgment.
- Analyzed Mrs. Hopper's and children's motions for new trial and for reconsideration and prepared response.
- Argued at hearing on motions for new trial.
- Analyzed May 18, 2012 order on motions for summary judgment.
- Analyzed Mrs. Hopper's and children's motion for new trial regarding May 2012 order, prepared response and argued at hearing on motions.
- Analyzed August 15, 2012 orders on motions for summary judgment and other motions and addressed follow-up correspondence to the court.

10. Appeal

- Analyzed Mrs. Hopper's 130-plus pages of briefs.
- Analyzed children's 130-plus pages of briefs.
- Researched multiple legal issues in appeal.
- Prepared 80-page appellant's brief.
- Prepared for and participated in oral argument in October 2013.
- Analyzed court's opinion issued in December 2014.
- Prepared motion for rehearing seeking clarification of court's opinion.
- Reviewed Mrs. Hopper's and children's responses to motion for rehearing.

# Exhibit E

**Hopper Litigation & Appeal Summary as of 07/12/2016 (76995.02)**

PLEADINGS: ~340 filed to date  
HEARINGS: ~17 to date

DISCOVERY: ~180 served (Requests/Responses/Notices)  
INTERROGATORIES: Jo Hopper to JPMC: 21 interrogatories, with 36 subparts  
Heirs to JPMC: 5 interrogatories

DEPOSITIONS: 10 depositions; 14 days; ~56 hours; ~2,852 pages of transcripts;  
237 exhibits (with 2 additional depositions noticed; pending are a  
Motion to Continue the Cantrill Deposition and 3 Motions to  
Quash Depositions (Eichman, Additional of Stephen Hopper,  
Additional of Laura Wassmer)

DOCS PRODUCED: JPMC (as IA) ~48,000 pages (reviewed ~65,000 pages)  
Jo Hopper – 32 boxes and ~7,700 additional pages  
Heirs ~5,500 pages  
Third-Parties ~6,500 pages

PRIVILEGE LOGS: JPMC (as IA) – 40 pages (~1,700 documents and ~800 redactions)  
Jo Hopper – 5 pages  
Heirs – 3 pages

# Exhibit F



Estate Assets<sup>2</sup> because “there is no basis for Chase to use the Account as its own personal slush fund.” First Amended Application at 3. However, the Heirs completely gloss over three key points that are fatal to their First Amended Application: (1) a continued need for administration exists due to the IA’s defense of Mrs. Hopper’s claims against the Estate Assets; (2) the Fee Agreement signed by the Heirs states that the IA may pay its legal fees from the Estate Assets; and (3) Texas Estates Code Section 352.051 and the cases interpreting the same authorize an independent administrator to use estate funds for attorneys’ fees *unless there is a finding of wrongdoing*, and there has been no such finding here. Each of these points demonstrates that the Heirs’ First Amended Application must be denied.

Additionally, contrary to the Heirs’ rhetoric that the IA is now using “bullying tactics” against them, it is *the Heirs* (as well as Mrs. Hopper) who made the decision to file suit and pursue an aggressive litigation strategy for years through the Probate Court and through the Court of Appeals. Now that the Probate Court and the Court of Appeals have ruled that the Heirs’ interpretation of Texas law regarding the distribution of Robledo is wrong, the Court should reject the Heirs attempt to reframe themselves as victims of the IA’s “bullying.”

## **BACKGROUND**

The IA was appointed as the Independent Administrator of Mr. Hopper’s Estate in June 2010. During the first year of this administration, the IA distributed a significant part of the assets under administration to Mrs. Hopper and the Heirs. In July 2011, a dispute arose between Jo Hopper (“Plaintiff” or “Mrs. Hopper”) and the Heirs, with the IA caught in the middle, concerning whether the Hopper’s residence (“Robledo”) could be distributed to Mrs. Hopper and

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<sup>2</sup> For purposes of this Response only, the IA will refer to Mr. Hopper’s share of the community estate and his separate property, which as of February 29, 2015, consisted of about \$782,000 in cash and no other assets as the “Estate Assets.”



the Heirs in undivided interests, subject to Mrs. Hopper's homestead right, or whether it must first be subject to a partition action under Estates Code § 405.008 (formerly Probate Code §150). Fomented by the then-attorneys for the Heirs and Mrs. Hopper, that dispute resulted in the filing of this litigation, multiple legal rulings by Judge Miller concerning Robledo, a two-year appeal process (with the Heirs' position ultimately being rejected by both Judge Miller and the court of appeals), the expenditure of millions of dollars in attorneys' fees by all parties, and now the continuation of this litigation.

Beyond the various claims for declaratory judgment regarding the distribution of Robledo that have been resolved, both Mrs. Hopper and the Heirs have asserted various claims against the IA regarding the administration. Mrs. Hopper has also asserted claims that implicate the Estate Assets, seeking:

- an award of attorneys' fees (probably in excess of \$2 million) incurred in connection with the litigation over the Robledo issues, either under Texas Civil Practice & Remedies Code Section 37.009 or as damages (Mrs. Hopper's Second Amended Petition at 10, 21);
- a "family allowance" from Estate Assets (Mrs. Hopper's Second Amended Petition at 9);
- a declaration that the IA should use Estate Assets to pay the mortgage on Robledo (*id.* at 9);
- a declaration that certain items are her separate property (*id.* at 10);
- a declaration that she does not owe "the Bank or the Estate or the Heirs" for any professional fees (*id.* at 12);
- reimbursement "from the Estate and the Heirs" for expenses (*id.* at 15);
- recovery from Estate Assets under a theory of unjust enrichment and money had and received (*id.* at 17-18);

The IA has also asserted claims on behalf of Mr. Hopper's estate against Mrs. Hopper, including a claim for a declaratory judgment regarding the mortgage on Robledo and a declaratory

judgment that the IA may recover expenses of administration from Mrs. Hopper. *See* Defendant JPMorgan Chase Bank, N.A.'s Second Amended Answer, Special Exceptions, Counterclaim, and Cross-Claim (JPMorgan's Answer) at 13-14. The pendency of all of these claims shows that the administration is far from over.

The Heirs' own actions in this litigation demonstrate that the administration of Mr. Hopper's estate is not concluded. They have served an amended notice for the deposition of JPMorgan's corporate representative (scheduled for April 5, 2016) that lists numerous examination topics regarding administration issues. For example, it lists the following:

- Topic 2 – “Agreement for the administration of the estate of Max Hopper”;
- Topic 6 – “JP Morgan Chase work and appraisal of the Robledo house”;
- Topic 8 – “JP Morgan Chase work and appraisal of furniture and personal property of the Estate of Max Hopper”;
- Topic 9 – “JP Morgan Chase preparation of the Inventory of the Estate of Max Hopper”;
- Topic 10 – “JP Morgan Chase work and analysis of the Estate Tax valuation of the Max Hopper estate”;
- Topic 12 – “JP Morgan Chase Accounting of the Estate of Max Hopper”;
- Topic 15 – “Any services performed by JP Morgan Chase in the administration of the Estate of Max Hopper”;
- Topic 22 – “JP Morgan Chase work performed in calculating the tax cost basis of the property of the Estate of Max Hopper.”

Amended Notice of Intent to Take Oral Deposition of A Designated Corporate Representative of JP Morgan Chase Bank NA with Subpoena Duces Tecum, at 3-4 (attached as **Exhibit 1**). In addressing those topics in the deposition, JPMorgan, as IA, will be continuing with the administration of Mr. Hopper's estate.

Additionally, JPMorgan notes that it has been sued both in its capacity as IA and also in its corporate capacity. *See* Mrs. Hopper's Second Amended Petition at 1; Order on Special Exceptions dated November 15, 2011 (“Mrs. Hopper is to replead on or before December 31,

2011 to allege specifically as to each count of her petition and each claim in each count, the capacity or capacities in which JPMorgan Chase Bank, N.A. is being sued.”). JPMorgan is paying the attorneys’ fees it is incurring in its corporate capacity, and has paid the attorneys’ fees it has incurred in its corporate capacity. JPMorgan does not currently seek to recover any attorneys’ fees incurred by it in its corporate capacity in this action from any party or Mr. Hopper’s estate.

### **ARGUMENT AND AUTHORITIES**

#### **A. The Heirs Have Made No Showing Under the Estates Code that a Final Distribution is Appropriate.**

A court’s authority to require an independent administrator or executor to make a distribution is limited. “The only section in the Probate Code regarding mandatory distribution of an estate by an independent executor is TEX. PROB. CODE ANN. § 149B [now Estates Code § 405.001].” *Baker v. Hammett*, 789 S.W.2d 682, 685 (Tex. App.—Texarkana 1990, no writ).

Estates Code Section 405.001 states in part as follows:

(a) In addition to or in lieu of the right to an accounting provided by Section 404.001, at any time after the expiration of two years after the date the court clerk first issues letters testamentary or of administration to any personal representative of an estate, a person interested in the estate then subject to independent administration may petition the court for an accounting and distribution. The court may order an accounting to be made with the court by the independent executor at such time as the court considers proper. The accounting shall include the information that the court considers necessary to determine whether any part of the estate should be distributed.

(b) On receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, the court shall order its distribution by the independent executor to the distributees entitled to the property. If the court finds there is a continued necessity for administration of the estate, the court shall order the distribution of any portion of the estate that the court

finds should not be subject to further administration by the independent executor.

TEX. EST. CODE ANN. § 405.001. The key inquiry then is whether there is a continued necessity for the administration of Mr. Hopper's estate.

The Heirs have failed to show that there is no continued necessity for administration in this case. They do not mention, let alone address, the many claims asserted by Mrs. Hopper that implicate Mr. Hopper's estate. Indeed, the Heirs' two-sentence argument for an order of final distribution is entirely conclusory and argumentative:

There is simply no valid excuse for Chase's conduct, other than to steamroll the rights of the Heirs by bullying tactics of withholding their inheritance. Chase, as one of the biggest corporations in the world worth more than a hundred billion dollars, knows that the Heirs cannot match their financial strength, so Chase seeks to pound them into submission by depleting their inheritance with a complete disregard of the law and any concept of fairness, equity or its own fiduciary duties.

First Amended Application at 5. The Heirs do not attempt to explain how the various claims asserted by Mrs. Hopper and by the IA on behalf of Mr. Hopper's estate do not establish a continued need for administration. And they cannot do so because the pending claims implicating Mr. Hopper's estate and affecting the Estate Assets *do* constitute a continued necessity for administration.

Further, Mrs. Hopper, as part of the discovery in this litigation, seeks to compel the IA to conduct an extensive search for emails and the Heirs have joined in that effort.<sup>3</sup> The cost of such a search could be hundreds of thousands of dollars. *See* JPMorgan's Response to Motion to Compel Production of Documents Responsive to Request for Production filed February 8, 2016

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<sup>3</sup> *See* Plaintiffs' Motion to Compel Production of Documents Responsive to Requests Served on JPMorgan Chase Bank, N.A. filed January 27, 2016; Laura S. Wassmer and Stephen B. Hopper's Joinder to Plaintiff's Motion to Compel Production of Documents Responsive to Request for Production Served on JP Morgan Chase Bank, N.A. filed January 29, 2016.

at 10. If the Court requires such a search and does not shift the cost to the requesting party as would be appropriate under Texas Rule of Civil Procedure 196.4 and under Texas Finance Code § 59.006, that cost will need to be paid out of the Estate Assets.<sup>4</sup> Because this continued need for administration exists, the Heirs are not entitled to a final distribution under Section 405.001.

In their Reply, the Heirs continue to ignore the various claims asserted in this litigation that implicate the Estate Assets. But the Reply goes further than the Application, making statements such as “Chase’s only involvement in the estate going forward is defending claims made against it” (Reply at 2) and “there is no administration of the estate to be done except disbursing cash accounts” (Reply at 3). These statements are wrong. A simple reading of the live pleadings show that Mrs. Hopper has asserted numerous claims seeking recovery from Estate Assets, and the IA has asserted claims on behalf of Mr. Hopper’s estate against Mrs. Hopper regarding expenses. Tellingly, the Heirs do not cite to the live pleadings or even attempt to discuss how their refrain that “there is nothing left for the IA to do” is at all compatible with the pendency of these various claims. Because these assertions are unsupported, they should be given no weight.

**B. The IA’s Fee Agreement and Section 352.051 of the Estates Code Authorize the IA to Pay its Attorneys’ Fees from the Remaining Estate Assets.**

In addition to the continued need for administration discussed above, the Heirs First Amended Application must be denied because the relief sought is contrary to the terms of the Fee Agreement and Estates Code Section 352.051, both of which entitle the IA to pay its attorneys’ fees from the Estate Assets. Both are discussed in turn.

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<sup>4</sup> Counsel for the IA and Mrs. Hopper are attempting to reach a resolution of the email discovery dispute but it is uncertain whether it will be resolved and, even if it is, how the e-discovery costs will be borne.

**1. The Fee Agreement**

The IA's Fee Agreement with the beneficiaries provides that:

Legal counsel is retained 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.**

*See* Exhibit A to Plaintiff's Second Amended Petition, filed December 7, 2015 (emphasis added).

Thus, the Fee Agreement expressly authorizes the IA to pay its attorneys' fees from the Estate Assets.<sup>5</sup>

The Heirs do not address the Fee Agreement in their First Amended Application. Instead, they ignore it, and ask the Court to ignore it as well. In their Reply, the Heirs first argue that this contractual provision in the fee agreement is irrelevant because the administration "is complete." Reply at 3. As discussed above, the administration is not complete; the IA is currently asserting and defending claims on behalf of Mr. Hopper's estate. The Heirs also argue that the provision "attorneys fees . . . are an expense of the estate" does not apply to the IA's defense of claims for wrongdoing. Reply at 3-4. However, the limitation is nowhere in the Fee Agreement, and grafting such a limitation onto the language of the Fee Agreement is contrary to its plain meaning. Accordingly, the IA is entitled to pay its attorneys' fees from the Estate Assets under the terms of the Fee Agreement, and the Heirs are not entitled to a ruling contrary to the Fee Agreement's terms.

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<sup>5</sup> The Estate Assets (defined in this Response as Mr. Hopper's share of the community estate and his separate property) certainly fall within the term "estate" as it appears in the sentence "Attorney fees...are an expense of the estate..." Mrs. Hopper contends that the term "estate" in that sentence only includes Mr. Hopper's separate property and his share of the community estate and does not include Mrs. Hopper's share of the community estate that the IA has administered. That issue is not before the court in the Application and does not need to be decided to resolve the issues raised by the Application.

**2. Section 352.051 of the Estates Code.**

Section 352.051 of the Estates Code also authorizes the IA to pay its attorneys' fees in connection with the litigation from the Estate Assets:

On proof satisfactory to the court, a personal representative of an estate is entitled to:

(1) necessary and reasonable expenses incurred by the representative in:

- (A) preserving, safekeeping, and managing the estate;
- (B) collecting or attempting to collect claims or debts; and
- (C) recovering or attempting to recover property to which the estate has a title or claim; and

**(2) reasonable attorney's fees necessarily incurred in connection with the proceedings and management of the estate.**

TEX. EST. CODE ANN. § 352.051 (formerly cited as TEX. PROB. CODE ANN. § 242) (emphasis added). The IA's pursuit of claims for declaratory judgment regarding the administration and its defense of claims relating to the administration, including Mrs. Hopper's claims seeking to recover attorneys' fees and damages from the Estate Assets, involve "proceedings and management of the estate" and serve as a basis for its paying its attorneys' fees from the Estate Assets.<sup>6</sup>

a. Section 352.051 allows the IA to pay its attorneys' fees unless there is a *finding of wrongdoing*.

In their Reply, the Heirs cite various cases for the proposition that "Texas courts do not allow reimbursement of an administrator's attorneys' fees related to their own malfeasance."

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<sup>6</sup> And the language: "[o]n proof satisfactory to the court, a personal representative of an estate is entitled to" at the beginning of this section does not prevent the IA, as opposed to a dependent administrator, from paying its attorneys' fees as incurred from the Estate Assets. As the Court knows, Texas Estates Code Section 22.031(b), which defines "personal representative" to include an independent executor and independent administrator, provides that the inclusion of an independent executor [or independent administrator] in the definition of personal representative "may not be construed to subject an independent executor [or independent administrator] to the control of the courts in probate matters with respect to the settlement of estates, except as expressly provided by law." TEX. EST. CODE ANN. § 22.031. The term "independent executor" includes an independent administrator. TEX. EST. CODE ANN. § 22.017. Section 352.031 therefore provides the IA with further authorization to pay its attorneys' fees incurred in this litigation from the Estate Assets.

Reply at 4. But this statement of law is inaccurate. Instead, the cases cited by the Heirs demonstrate that *once there is a finding of wrongdoing*, an administrator cannot recover attorneys' fees related to its wrongful conduct. In each of the three cases cited by the Heirs (*Bessire*, *Tindall*, and *Pouncy*), a finding of wrongdoing was the basis for the denial of fees:

- In *In re Estate of Bessire*, 399 S.W.3d 642, 650 (Tex. App.—Amarillo 2013, pet denied), the trial court found that the independent executor had breached its fiduciary duties by pursuing frivolous claims, and therefore denied the independent executor's request for fees incurred pursuing those claims. *Id.* ("In light of the record before this Court, the trial court did not abuse its discretion in ordering that Alsdurf personally pay the stated attorney's fees and that they not be allowed to be a charge against the estate. Alsdurf's actions in pursuing Stadler violated his duty as a fiduciary toward the estate and beneficiaries.")
- In *Tindall v. Tex. Dep't of Mental Health and Mental Retardation*, 671 S.W.2d 691, 693 (Tex. App.—San Antonio 1984, writ ref'd n.r.e.), the guardian erred in making a tax gift without notifying the state. *Id.* at 692. The state filed a bill of review proceeding contending that it should have received notice of the gift, and won. *Id.* The guardian then requested fees for his unsuccessful defense of the bill of review proceeding, and the trial court denied the disbursement for those fees. *Id.* The Court of Appeals affirmed the denial of fees, based upon the fact that the guardian's error caused the "unnecessary" bill of review proceeding. *Id.* at 693-94 ("All we know is that the fees generated by the bill of review proceeding would not have been incurred had the State been properly notified of the motion to establish the trust. . . . The order denying disbursement of attorneys' fees for this unnecessary proceeding was proper.");
- In *Pouncy v. Garner*, 626 S.W.2d 337, 339 (Tex. App.—Tyler 1981, writ ref'd n.r.e.), Pouncy filed suit individually and as administrator of the estate to have himself declared the sole heir of the decedent, and in the alternative, to determine the heirs and their respective shares. *Id.* at 339. The jury found against him, that he was not the sole heir. *Id.* Though the trial court had approved Pouncy's first two requests for fees in connection with alternative application to determine heirship, the trial court denied Pouncy's third request for fees because he had not properly segregated between fees incurred in seeking to be declared sole heir and fees incurred in connection with the alternative application to determine



heirship. *Id.* at 345. The Court of Appeals affirmed the trial court's denial of fees.

Thus, in each of these cases, the court's denial of fees under § 352.051 (formerly Probate Code § 242) was not based upon mere *allegations* of wrongdoing. Instead, the appeals courts affirmed denials of fees after *rulings* against the independent executor, guardian, or administrator.

In fact, the San Antonio Court of Appeals' statement in *Tindall* is instructive in this case. The Court stated that “[a]ssuming that there was a *legitimate question* as to whether the ward's estate was eligible to make tax-motivated gift and that the State had been notified and had *contested* the gift in the original proceeding, an award of attorneys' fees *might well have been proper.*” *Tindall*, 671 S.W.2d at 694 (emphasis added). Thus, if there were no finding of wrongdoing, an award of attorneys' fees incurred by the personal representative in defending the state's “contest” of the gift “may have been proper.” Applying this reasoning to the case at hand, if there is no finding of wrongdoing by the IA, then an award of attorneys' fees incurred by the IA in defending the Heirs' contest of the IA's actions may also be proper.

Accordingly, the Heirs contention that “the facts here are just like *Tindall* and *Bessire*” (Reply at 5) is incorrect. Unlike those cases, there has been no ruling by the Court or a jury in this case that the IA has committed wrongdoing. Until such ruling, the IA is entitled to its “reasonable attorney's fees necessarily incurred in connection with the proceedings and management of the estate” under § 352.051.

b. The IA is proceeding in this action on behalf of Mr. Hopper's estate.

In their Reply, the Heirs also cite various cases attempting to argue that the IA is not entitled to its attorneys' fees under Section 352.051 in this action because it has no “legal duty” to defend itself. This argument is misplaced because, as discussed above, many of the claims asserted by Mrs. Hopper implicate Estate Assets, and the IA has also asserted claims against

Mrs. Hopper on behalf of Mr. Hopper's estate. These claims, or the circumstances underlying them, require the IA to act for Mr. Hopper's estate. These claims disprove the Heirs' contention that the IA's only involvement in this case is to defend itself.

- c. The statute does not contain the limitation argued by the Heirs, and the cases cited by the Heirs do not support their contention.

Additionally, the Heirs appear to argue that an administrator may *never* obtain its fees under Section 352.051 in defending claims against it, even if the administrator is successful or the claims are frivolous, because the administrator has no "legal duty" to defend itself. Reply at 6. However, the Heirs' argument is not supported by the text of the statute or cases they cite.

Again, § 352.051(2) provides that "[o]n proof satisfactory to the court, a personal representative of an estate is entitled to: . . . (2) **reasonable attorney's fees necessarily incurred in connection with the proceedings and management of the estate.**" TEX. ESTATES CODE ANN. § 352.051 (emphasis added). The text of the statute does not support the Heirs' argument that an administrator can never obtain its attorneys' fees for the defense of claims against it regarding the administration. If the Texas Legislature had wished to include the Heirs' proposed limitation, it could have done so. But it did not. Instead, the statute requires only that the attorneys' fees be reasonable, "necessarily incurred," and "in connection with the proceedings and management of the estate." *Id.* The Heirs have not attempted to explain how an administrator's attorneys' fees incurred in the successful defense of claims against it by beneficiaries regarding administration would not be "necessarily incurred" and "in connection with the proceedings and management of the estate." Such fees are covered under the text of the statute.

Beyond the fact that the Heirs' contention goes against the plain language of the statute, the Heirs also fail to cite any case where a court actually denied a recovery of fees under the statute for claims successfully defended by a personal representative. Specifically:

- In *Drake v. Muse, Currie & Kohen*, 532 S.W.2d 369, 374 (Tex. Civ. App.—Dallas 1975), writ ref'd n.r.e.) the administratrix did not seek to recover attorneys' fees for defending claims; instead, the administratrix sought to recover the fees she had incurred in contesting the probate of a foreign will (which would have removed her as personal representative of the estate). The Court ruled that the administratrix's attorneys fees in contesting the probate of the foreign will were not allowable from the estate under Probate Code Section 242 because such contest was not undertaken "in the preservation, safe-keeping, and management of the estate." *Id.* at 374.
- In *Dumitrov v. Hitt*, 601 S.W.2d 472, 475 (Tex. App.—Houston [14th Dist.] 1980, writ ref'd n.r.e.), the administrator was successfully removed. The Court of Appeals held that the administrator was not entitled to attorneys' fees incurred by him in unsuccessfully defending the removal action. The Court cited *Ogden v. Shropshire & Adkins*, 37 S.W.2d 249 (Tex. Civ. App.—Austin 1931, writ ref'd) for the proposition that "the right to an allowance of fees depends on whether the plaintiffs had just ground to proceed against the representative," and stated that "[a]pplying this rule to the present case, since the plaintiff prevailed in removing Hitt for cause, she did have a just ground to proceed against him."
- In *In re Estate of Washington*, 289 S.W.3d 362, 365 (Tex. App.—Texarkana 2009, pet. denied), after the administratrix was removed, she sought attorney's fees for her unsuccessful defense against removal, as well as fees for her post-removal participation in a declaratory judgment action construing a provision of decedent's will. The trial court denied both of the fee requests. *Id.* The Court of Appeals affirmed, holding that her unsuccessful defense of removal "involved neither the preservation or safekeeping of the estate, nor the 'management of the estate' as that phrase is used in Section 242." *Id.* at 369. Once again, *Washington* supports the principle that *once an administrator has been removed*, the administrator is not entitled to attorneys' fees under this statutory provision in attempting to defeat removal.
- In *In re Higginbotham's Estate*, 192 S.W.2d 285, 287 (Tex. Civ. App.—Beaumont 1946, no writ), grandparents of minor wards

filed suit against the guardian for failure to file accountings and for removal. The trial court removed the guardian, and denied her request for fees incurred in preparing an accounting and unsuccessfully defending against removal. The Court of Appeals affirmed the removal and the denial of fees. *Id.* at 290-291 (“Her failure to meet the statutory requirements for filing annual accounts justified this proceeding against her and supported the order removing her from the guardianship of the estates; the fee incurred for the services of her attorney in contesting her removal is thus shown to be an incident of her own misconduct”). Thus, Higginbotham stands for the same principle that *once there is a finding of wrongdoing*, the representative is not entitled to attorneys’ fees in connection with defending those claims.

Accordingly, none of the cases cited by the Heirs actually supports their contention that the statute categorically does not apply to a personal representative’s defense of claims regarding administration. Instead, these cases support the unremarkable proposition that *if* a removal action is successful, the removed personal representative is not entitled under Section 352.051 to attorneys’ fees incurred in contesting the removal.

In contrast to the Heirs’ contention, in *Hartmann v. Solbrig*, 12 S.W.3d 587, 595 (Tex. App.—San Antonio 2000, pet. denied) the Court noted that “[a]lthough some of appellants’ causes of action were filed against [the executrix], individually”, “[t]he trial court specifically found that necessary and reasonable fees were incurred in the preservation, safekeeping and management of the estate.” The Court affirmed the trial court’s award of attorneys’ fees to the executrix in defending the claims against her on multiple grounds, including under Probate Code Section 242. *Id.* at 594-95. The Court distinguished the facts before it from those in the *Tindall* case (where there was a finding of wrongdoing) noting that “nothing in the court’s findings of fact or in the judgment itself supports appellants’ contention that the executor acted inappropriately in the performance of her duties as executrix.” *Id.* at 594-95.

Also in contrast to the Heirs’ contention that an administrator may never recover fees for (even successfully) defending claims against it is the Court’s statement in *Tindall* (a case relied

upon by the Heirs) that: “[a]ssuming that there was a legitimate question as to whether the ward’s estate was eligible to make tax-motivated gift [i.e., a question as to whether the act was proper] and that the State had been notified and had *contested* the gift in the original proceeding, an award of attorneys’ fees *might well have been proper.*” *Tindall*, 671 S.W.2d at 694 (emphasis added). Again, this statement refutes the Heir’s contention that an award of fees under Section 352.051 to a personal representative for defending its own actions regarding an estate would “never” be proper. Because there has been no finding of wrongdoing against the IA in this case, there is no basis for denying the IA’s attorneys’ fees under Section 352.051.

**C. The Heirs are not Entitled to a “Protective Order” or an Injunction.**

The Heirs move the court to “protect the assets of the estate and enter a protective order preventing JPMorgan from making any further withdrawals from the Account for its own benefit.” *See* Application at 5. However, “protective order” has no application to the type of relief the Heirs are truly seeking. *See* TEX R. CIV. P. 192.6 (providing for protective orders to protect a person from whom *discovery* is being sought). And the Estates Code provides no such remedy. What the Heirs are truly seeking is an injunction—they seek to enjoin the IA from using the Estate Assets (as the IA is entitled to do in accordance with the terms of the Fee Agreement and the provisions of the Estates Code). Yet the Heirs make no effort to establish any of the necessary elements of an injunction, nor can they.

To obtain a temporary injunction, the Heirs must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary

standard. *Id.* The Heirs have not proved any cause of action against the IA. They also have not shown that they have a “probable right to relief” by establishing that the IA is without any authority to pay its attorneys’ fees. In fact, the Fee Agreement and the Estates Code show the opposite: that the Heirs do *not* have a probable right to the relief sought. And even if it is ultimately determined that the IA is not authorized to pay its attorneys’ fees from the Estate Assets, the Heirs will have a legal remedy against JPMorgan Chase Bank, N.A. In sum, the Heirs have not come remotely close to establishing that they are entitled to the injunction they seek.

Additionally, in their Reply, the Heirs appear to abandon their motion for a “protective order.” First Amended Application at 8-9 (“Nowhere does either statutory scheme suggest that this [disbursement] constitutes an injunction or protective order. . . . there is nothing in either statute suggesting that this such a disbursement constitutes a protective order or injunction.”) However, despite these statements in their Reply, their Application is styled as “First Amended Application for Distribution of Property **and Motion for Protective Order.**” First Amended Application at 1 (emphasis added). If the Heirs have abandoned the “Motion for Protective Order” part of their Application, they are correct to do so because a protective order has no relevance to the relief sought. If the Heirs have not abandoned this part of their Application, it must be denied for the same reason, and the Heirs have failed to establish their entitlement to an injunction preventing the IA from continuing to pay its attorney’s fees from Estate Assets.

### **CONCLUSION**

No basis exists for the Court to compel the IA to make a final distribution from the Estate Assets at this time. The Heirs’ Application seeks relief contrary to the distribution statute because there is a continued necessity for administration of Mr. Hopper’s estate due to the claims

asserted in this litigation. Further, the IA is both contractually and statutorily authorized to pay its attorneys' fees as incurred in this litigation from Estate Assets. The Heirs have provided no basis for the Court to bar the IA from using the Estate Assets for that purpose, and have made no showing that they are entitled to the injunctive relief they seek. The Application should be denied.

WHEREFORE, JPMorgan Chase Bank, N.A., as Independent Administrator, respectfully requests that the Court deny Defendants' First Amended Application and Distribution of Property and Motion for Protective Order.

Respectfully submitted,

**HUNTON & WILLIAMS LLP**

By: /s/ John C. Eichman

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**ATTORNEYS FOR JPMORGAN CHASE  
BANK, N.A. IN ITS CAPACITY AS  
INDEPENDENT ADMINISTRATOR OF THE  
ESTATE OF MAX D. HOPPER, DECEASED**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record via the electronic service manager and/or by email on this 22nd day of March, 2016.

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**Laura Wassmer and Stephen Hopper**

/s/ John C. Eichman \_\_\_\_\_  
John C. Eichman



# Exhibit 1

CAUSE NO. PR-11-3238-3

<b>IN RE: ESTATE OF MAX D. HAPPER</b>	§	<b>IN THE PROBATE COURT</b>
<b>DECEASED</b>	§	
	§	
<b>JO N. HOPPER</b>	§	
<b>Plaintiff</b>	§	<b>NO. 3</b>
	§	
<b>v.</b>	§	
	§	
<b>JP MORGAN CHASE BANK, NA</b>	§	
<b>STEPHEN B. HOPPER AND LAURA</b>	§	
<b>S. WASSMER,</b>	§	
<b>Defendants</b>	§	<b>DALLAS COUNTY, TEXAS</b>

**AMENDED NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF**  
**A DESIGNATED CORPORATE REPRESENTATIVE OF JP**  
**MORGAN CHASE BANK NA WITH SUBPOENA DUCES TECUM**

TO: JP MORGAN CHASE BANK by and through its attorney of record, John C. Eichman, Thomas H. Cantrill, Hunton & Williams, LLP, 1445 Ross Avenue, Suite 3700, Dallas, Texas 75202.

PLEASE TAKE NOTICE that the Defendants will take the oral deposition of a corporate representative of JP Morgan Chase Bank NA. The deposition will be held at the offices of John C. Eichman, Thomas H. Cantrill, Hunton & Williams, LLP, 1445 Ross Avenue, Suite 3700, Dallas, Texas 75202. The deposition will be taken on February 2, 2016, beginning at 9:00 am, and will continue from day to day until complete.

Pursuant to Tex. R. Civ. P. 199.1(c), notice is given that the deposition may be recorded by stenographic means and by non-stenographic videotape recording before a certified court reporter. JP Morgan Chase Bank NA is to designate a person or persons to testify as to each of the matters described in Exhibit "A", which is attached to this Notice. JP Morgan Chase Bank NA may designate the matters on which each person will testify. All designated persons

must appear at the time and place in this Notice. Pursuant to Tex. R. Civ. P. 199.2(b)(5), the designated person is also directed to produce all documents reviewed to prepare to testify at this deposition.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

Pursuant to FRCP Rule 5, the undersigned hereby certifies that on the 2nd **day of December, 2015**, a true and correct copy of the above and foregoing document was forwarded via facsimile and U.S. first class postage prepaid mail, to the following counsel of record:

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Anthony L. Vitullo

## EXHIBIT "A"

### DEFINITIONS

“Robledo Issue” is defined as the issue related to the homestead of Jo Hopper located on Robledo street that involved the dispute between Jo Hopper and Steven Hopper and Laura Wassmar in regards to the allocation of the Robledo homestead to Jo Hopper and any partition of the homestead.

### TOPICS

1. JP Morgan Chase relationship with Jo Hopper including but not limited to any business relationship Jo Hopper has ever
2. Agreement for the administration of the estate of Max Hopper
3. Fee Schedule and Estate Settlement Services Agreement of JP Morgan Chase for the work on the estate of Max Hopper
4. Additional Services Fee Schedule referenced in the Estate Settlement Services Agreement of JP Morgan Chase for the services provided on the Estate of Max Hopper
5. The accounting of the Administration Fee and application of the Administration Fee charged by JP Morgan Chase for the administration of the Estate of Max Hopper
6. JP Morgan Chase work and appraisal of the Robledo house
7. JP Morgan Chase decision to provide Jo Hopper with homestead rights on two different real estate properties
8. JP Morgan Chase work and appraisal of furniture and personal property of the Estate of Max Hopper
9. JP Morgan Chase preparation of the Inventory of the Estate of Max Hopper
10. JP Morgan Chase work and analysis of the Estate Tax valuation of the Max Hopper estate
11. The Attorney fees paid for the administration of the Estate of Max Hopper and the litigation
12. JP Morgan Chase Accounting of the Estate of Max Hopper
13. The Fee agreement with JP Morgan Chase’s attorneys that worked on the Estate of Max Hopper probate matter and litigation matter
14. JP Morgan Chase decision and analysis on incurring legal fees to handle the “Robledo issue”
15. Any services performed by JP Morgan Chase in the administration of the Estate of Max Hopper
16. Amount of attorney fees incurred dealing with the “Robledo issue”
17. Amount of attorney fees incurred on general estate issue for the Estate of Max Hopper

18. Services provided under the services agreement for the administration of the Estate of Max Hopper
19. Chase Banks preparation of the inventory of the Estate of Max Hopper
20. Chase Banks efforts, estate administration tasks, work, performance in obtaining the records of Sarah Williamson
21. JP Morgan Chase allocation of tax cost basis to the property of the Estate of Max Hopper
22. JP Morgan Chase work performed in calculating the tax cost basis of the property of the Estate of Max Hopper
23. JP Morgan Chase work, analysis and application of the Estate Tax Credit for the Estate of Max Hopper in the Administration of the Estate of Max Hopper.
24. JP Morgan Chase filing of the tax returns and the reasons why the returns were filed late
25. \$1million incurred on general estate issues and \$1million on Robledo
26. Services provided by Hunton and Williams for the \$2million in legal fees charged
27. Administration fee of \$260,000 charged by JP Morgan Chase
28. All of the expenses identified on Schedule C of the Inventory
29. Communications from Glast, Phillips, and Murray
30. Communications from Jo Hopper and her attorneys