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2012 FEB 13 AM 8:48

JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY

NO. PR-10-1517-3

IN RE: ESTATE OF	§	**IN THE PROBATE COURT**
	§	
MAX D. HOPPER,	§	**NO. 3**
	§	
DECEASED	§	**DALLAS COUNTY, TEXAS**
	§	

JPMORGAN CHASE BANK, N.A.'S MOTION TO ENFORCE MEDITATION ORDER

JPMorgan Chase Bank, N.A. ("JPMorgan"), in it capacity as the Independent Administrator (the "Administrator") of the Estate of Max D. Hopper (the "Estate") files this Motion to Enforce Mediation Order, as follows:

1. On October 18, 2011, Judge Peyton signed an Order granting the Administrator's Motion to Compel Mediation, stating in part

> IT IS ORDERED that JPMorgan Chase Bank, as Independent Administrator and in its corporate capacity, Jo Hopper, Laura Wassmer, Stephen Hopper, and all relevant counsel mediate the disputes in this case by Jan. 31, 2012. The Parties shall attempt to agree on the mediator and the time of mediation. If no agreement is reached before Nov. 20, 2011, the Court will pick the mediator and the date for mediation.

Order attached as **Exhibit A**.

2. Pursuant to the Order, the parties agreed to mediate the case before Judge DeShazo. See emails attached as **Exhibit B**. Although the parties attempted to schedule the mediation to occur during the last half of January, the parties ultimately agreed to extend the deadline in the Court's order and scheduled the mediation on February 13, 2012 because Judge DeShazo and certain of the parties had scheduling conflicts in January. See emails attached as **Exhibit C**.

3. After the parties agreed to that date, a dispute arose as to whether Jo Hopper and nonparty witness Doris King would be deposed before the deposition. That dispute is now the

subject of a motion to quash filed by Mrs. Hopper that is scheduled to be heard on February 17, 2012 (although the motion has previously been set for hearing on earlier dates). Counsel for Jo Hopper and counsel for Stephen Hopper and Laura Wassmer have communicated to the Administrator that they will not be participating in the February 13, 2012 mediation because of the pending discovery dispute. The Administrator has not agreed to that postponement. Email communications among counsel regarding the postponement of the mediation are attached as **Exhibit D**.

4. The parties are currently without a mediation date. Because mediation has not occurred in compliance with the Court's order and there is currently no agreement among the parties to a date certain for the mediation, the Administrator now moves the Court to enforce the Order of October 18, 2011 and order the parties to conduct the mediation on a date certain, with Judge DeShazo serving as mediator. The unfortunate rancor reflected in some of the emails in Exhibit D shows why the Court's intervention at this time is necessary to restore this litigation to the proper track. Judge DeShazo has advised the Administrator that she is available to conduct such a mediation on March 6, 2012 and the Administrator asks that the Court order the parties to mediate on that date or on such other date certain as the Court may determine.

Prayer

For the above stated reasons, the Administrator respectfully requests that the Court enforce its Order of October 18, 2011, and order the parties to mediation before Judge DeShazo on March 6, 2012, or on such other date certain as the court may determine.

Respectfully submitted,

HUNTON & WILLIAMS LLP

By: 

John C. Eichman
State Bar No. 06494800
Thomas H. Cantrill
State Bar No. 03765950

1445 Ross Avenue, Suite 3700
Dallas, Texas 75202-2700
Telephone: (214) 468-3300
Telecopy: (214) 468-3599

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

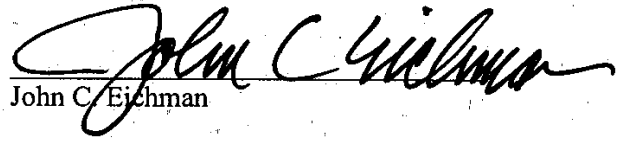
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been served by hand delivery on the following counsel of record on the 13th day of February, 2012:

James Albert Jennings
Erhard & Jennings, P.C.
1601 Elm Street, Suit 4242
Dallas, Texas 75201
Attorneys for Jo N. Hopper

Michael L. Graham
The Graham Law Firm, P.C.
100 Highland Park Village, Suite 200
Dallas, Texas 75205
Attorneys for Jo N. Hopper

Mark Enoch
Melinda H. Sims
Gary Stolbach
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, Texas 75254-1449
Attorneys for Laura Wassmer and Stephen Hopper



John C. Eichman

A

EXHIBIT A

NO. PR-10-1517-3

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
MAX D. HOPPER,	§	NO. 3
	§	
DECEASED	§	DALLAS COUNTY, TEXAS

ORDER GRANTING INDEPENDENT ADMINISTRATOR'S MOTION TO COMPEL MEDIATION

On October 7, 2011, the Court heard the Independent Administrator's Motion to Compel Mediation. Because the Court finds that this case is appropriate for mediation under TEX. CIV. PRAC. & REM. CODE § 154.023, the Independent Administrator's Motion to Compel Mediation is hereby GRANTED. Accordingly, IT IS ORDERED that the JP Morgan Chase Bank as and in its corporate capacity Independent Administrator, Jo Hopper, Laura Wassmer, Stephen Hopper, and all relevant counsel mediate the disputes in this case by Jan. 31, 2012. The ~~before~~ Parties shall attempt to agree on the mediator and the time of mediation. If no agreement is reached before Nov. 20, 2011, the Court will ~~[illegible]~~ pick the mediator and the date for mediation.

~~Signed this ___ day of _____, 2011.~~

Signed October 18, 2011

JUDGE PRESIDING

B

EXHIBIT B

Robertson, Paula

From: Cantrill, Tom

Sent: Wednesday, November 02, 2011 10:50 AM

To: James Albert Jenning (jjennings@erhardjennings.com); Mike Graham (mgraham@thegrahamlawfirm.com); GLAST, PHILLIPS & MURRAY, P.C. (stolbach@gpm-law.com); 'ktomlinson@erhardjennings.com'; Melinda Sims

Cc: Susan Kravik (susan.kravik@chase.com); Bessette, Wendy W; Susan H. Novak (susan.h.novak@jpmchase.com)

Subject: Mediation in the Hopper

Counsel

As you are aware, we are charged with trying to agree on a mediator or mediators, and a date for mediation between January 15 and January 31 of next year. I think we had pretty general agreement that Nikki DeShazo would be an acceptable candidate to be a mediator. I talked with Nikki about her availability yesterday morning, and she and Ed will be on a cruise during the week of January 16. She will be back and is available the following week, and she said the best days for her would be the 25th and 26th. I gave her the name of the parties and their counsel, and asked her if she would hold those days pending my correspondence with you to see if you all agree to her selection as mediator, and to those two days.

I also raised with her the prospect of mediation using two mediators instead of one. She had heard about such mediations, but had never done one. She was receptive to that approach if the parties were.

I do need to get back to Nikki, so if you would let me know your position on her selection I'd appreciate it. I'd also like to know if there would be support for a two member meditation team, with the second member being selected based upon demonstrated ability and willingness to push the parties to reach an agreement.

Tom

Eichman, John

From: NikkiDeS@aol.com
Sent: Friday, February 03, 2012 5:59 AM
To: gstolbach@gpm-law.com; fly63rc@verizon.net; msims@gpm-law.com; lpishny@lathropgage.com; sjohanson@law.utexas.edu; mgraham@thegrahamlawfirm.com; jstrong@thegrahamlawfirm.com; jajennings@aol.com; ktomlinson@erhardjennings.com; Tom_Featherston@baylor.edu; Cantrill, Tom; Eichman, John
Cc: janet@ehardjennings.com; nikki@deshazomediation.com
Subject: The Estate of Max D. Hopper
Attachments: HOPPER MEDIATION AGREEMENT.doc

Nikki DeShazo
4019 Wellingshire Lane
Dallas, TX 75220

February 3, 2012

Mr. Gary Stolbach
gstolbach@gpm-law.com

Mr. Mark Enoch
fly63rc@verizon.net

Ms. Melinda Sims
msims@gpm-law.com

Mr. Lyle D. Pishny
lpishny@lathropgage.com

Mr. Stanley M. Johanson
sjohanson@law.utexas.edu

Mr. Michael L. Graham
mgraham@thegrahamlawfirm.com

Ms. Janet P. Strong
jstrong@thegrahamlawfirm.com

James Albert Jennings
jajennings@aol.com

Kenneth B Tomlinson
ktomlinson@erhardjennings.com

Mr. Thomas M. Featherston, Jr.
Tom_Featherston@baylor.edu

Mr. Thomas H. Cantrill
tcantrill@hunton.com

Mr. John C. Eichman
jeichman@hunton.com

Sent via E-mail only

Re: The Estate of Max D. Hopper

Dear Counsel:

This will confirm that the mediation of this case will occur at the Offices of Glast, Phillips & Murray, P.C. at 9:30 A.M. on February 13, 2012. I will block out the entire day, and ask all parties to do the same. I will arrange for a light lunch so that we can work through the lunch hour and make the best use of our time.

I am convinced that two elements are almost always essential for a successful mediation. First, the parties must have enough information to properly evaluate the matter. Second, the critical decision-makers must be present. I will do everything I can to make the mediation successful, but only you can ensure that those two critical elements are satisfied.

It would be most helpful if you would let me and each other know now who will also be present with you at the mediation. **I will need the names of those attending in order to complete my paperwork.**

Attached is a preliminary draft of the Mediation Agreement that I will circulate for signatures prior to commencing the mediation session. Please take a moment to review it and then share it with your client. **After you have furnished me with the names of all those persons who will attend,** I will complete the Agreement and have it ready for signature at the mediation.

Also, please take the time to prepare a confidential issue paper for me, and send it to me as soon as possible. It should be for my eyes only so that you can frankly and candidly share with me, in confidence, what this case is about and the critical issues from your perspective. This is much more helpful to me than pleadings and briefs, and allows me to properly prepare for your case.

The mediation fee is $3000.00 for the day (for two parties) split between the parties or as agreed by the parties. I charge an additional $750.00 for each additional party. I would appreciate your bringing your check with you.

Most mediations result in a settlement which typically occurs near the end of a normal work day. Sometimes, however, more time is required. Unless I have a scheduling conflict, I am ordinarily willing to continue into the early evening hours if it appears that we are making progress. If we continue beyond 6:00 P.M., however, it will be necessary that I charge a supplemental fee of $250.00 per hour per party.

Very truly yours,

Nikki DeShazo

C

EXHIBIT C

Eichman, John

From: Melinda Sims [msims@gpm-law.com]
Sent: Tuesday, November 15, 2011 5:11 PM
To: Cantrill, Tom; Gary Stolbach; Mark Enoch
Cc: Eichman, John; {F1432913}.Interwoven@dms.GPMLAW.LAW
Subject: RE: Hopper Mediation Date Proposed January 26 with DeShaszo [IWOV-INTERWOVEN.FID1432913]

Tom:

Mark Enoch is the attorney on our team who is working on mediation scheduling. You should hear directly from him.

Thank you,

Melinda H. Sims, Esq.
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, Texas 75254-1449
Tel: 972-419-7174
Fax: 972-419-8329
www.gpm-law.com

From: Cantrill, Tom [mailto:tcantrill@hunton.com]
Sent: Tuesday, November 15, 2011 4:49 PM
To: Gary Stolbach; Mark Enoch; Melinda Sims
Cc: Eichman, John
Subject: Hopper Mediation Date Proposed January 26 with DeShaszo

Melinda

Is there a problem with telling us if January 26 does or does not work for the mediation. I'm only asking so I can confirm with Judge Deshazo.

Tom

From: Cantrill, Tom

Sent: Friday, November 11, 2011 2:31 PM
To: GLAST, PHILLIPS & MURRAY, P.C. (stolbach@gpm-law.com); Mark Enoch; Melinda Sims
Cc: Eichman, John
Subject: Hopper Mediation Date Proposed January 26 with DeShaszo

I'm still trying to confirm the mediation date with Judge DeShazo. I'd like to be sure we have this on her calendar. Jennings is OK with it. Will you please confirm?

Tom Cantrill

Eichman, John

From: Melinda Sims [msims@gpm-law.com]
Sent: Thursday, November 17, 2011 4:20 PM
To: Cantrill, Tom; jjennings@erhardjennings.com; Eichman, John; mgraham@thegrahamlawfirm.com
Cc: Gary Stolbach; fly63rc@verizon.net; {F1432917}.Interwoven@dms.GPMLAW.LAW
Subject: Hopper Estate--mediation [IWOV-INTERWOVEN.FID1432917]

Counsel:

Tom Cantrill proposed January 25th and 26th to mediate with Judge DeShazo. Jim Jennings objected to January 25th, and we have a conflict on January 26th. Tom also informed us that Judge DeShazo is not available during the week of January 16th.

We recommend a two-day mediation—the first day to be a mediation among the beneficiaries, and the second day to be a mediation that includes JPMorgan. We can try to schedule with Judge DeShazo as soon as possible after the January 25th/26th time frame, or we can agree upon a different mediator for sometime during the week of January 16th. I have already left a voice mail message and sent an email to Judge DeShazo to find out her additional availability. I have not asked her to remove the hold she placed on January 26th, out of respect for Tom having been the one who requested that day be reserved.

Please let me and the respective parties know what will work for each of you.

Thank you,

Melinda H. Sims, Esq.
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, Texas 75254-1449
Tel: 972-419-7174
Fax: 972-419-8329
www.gpm-law.com

Eichman, John

From: Melinda Sims [msims@gpm-law.com]
Sent: Friday, November 18, 2011 5:53 PM
To: 'Janet Elkins'; Cantrill, Tom; Eichman, John; Gary Stolbach; fly63RC@verizon.net
Cc: jajennings@aol.com; 'Michael L. Graham'; 'Ken Tomlinson'; 'Janet Strong'; 'Megan Martinez'; {F1432917}.Interwoven@dms.GPMLAW.LAW
Subject: RE: FROM JAMES JENNINGS - Hopper Estate [IWOV-INTERWOVEN.FID1432917]

All:

I heard back from Judge DeShazo. Since she is out of town during the week of January 16, I asked for her availability for the week of January 30 and the following week (week of February 6). She replied that she will be on a trip but then available on February 13, 14, and 16. She is gone the following week.

I will circulate these dates among my clients and co-counsel, but wanted to go ahead and send them to you so that you also could check your and your clients' calendars.
Thank you,

Melinda H. Sims, Esq.
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, TX 75254
Tel: 972-419-7174
Fax: 972-419-8329
http:\\www.gpm-law.com

From: Janet Elkins [mailto:janet@erhardjennings.com]

Sent: Friday, November 18, 2011 9:22 AM
To: 'Cantrill, Tom'; 'Eichman, John'; Gary Stolbach; Melinda Sims; fly63RC@verizon.net
Cc: jajennings@aol.com; 'Michael L. Graham'; 'Ken Tomlinson'; 'Janet Strong'; 'Megan Martinez'
Subject: FROM JAMES JENNINGS - Hopper Estate

Dear Counsel,

Yesterday evening I saw correspondence exchanged between Melinda Sims and John Eichman regarding mediation-related topics. We just want to make the following limited observation:

1. We did not "block: either January 25th or January 26th as being unsuitable. Either day is acceptable even though January 25th is the anniversary of Mr. Hopper's death.

2. We respectfully disagree with any statement by any party that a mediation – in addition to – the court ordered mediation cannot be had between "any two consenting adults" so to speak. The Court's Order regarding mediation does not on its face prohibit or impair other additional mediations by less than all of the parties if they so agree, in our view.

We are also available, at least at this time, for a mediation in early February, as an accommodation to the children's schedule, if that becomes necessary.

Let us hear from you.

Thanks,
Jim

Eichman, John

From: MMAF13@aol.com
Sent: Wednesday, November 23, 2011 1:28 PM
To: Cantrill, Tom
Cc: Eichman, John; msims@gpm-law.com; stolbach@gpm-law.com
Subject: Hopper - Mediation

Counsel:

We are in agreement with mid-February for Mediation.

Thank you,

James Albert Jennings
Erhard & Jennings, P.C.

Eichman, John

From: Melinda Sims [msims@gpm-law.com]
Sent: Thursday, December 01, 2011 4:15 PM
To: Eichman, John; Cantrill, Tom; jajennings@aol.com; 'Michael L. Graham'
Cc: Gary Stolbach; 'Mark Enoch'; Carol Hatch; Cherie Zalstein; {F1432917}.Interwoven@dms.GPMLAW.LAW
Subject: Hopper--mediation [IWOV-INTERWOVEN.FID1432917]

Dear Counsel:

Everyone has confirmed that they are available for mediation on February 13 and 14. Nikki DeShazo has reserved these dates for us.

Thank you,
Melinda H. Sims, Esq.
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, TX 75254
Tel: 972-419-7174
Fax: 972-419-8329
http:\\www.gpm-law.com

D

EXHIBIT D

Eichman, John

From: Eichman, John
Sent: Monday, February 06, 2012 9:56 AM
To: 'Janet Elkins'; 'jajennings@aol.com'; 'fly63rc@verizon.net'; 'msims@gpm-law.com'
Cc: Cantrill, Tom
Subject: RE: Hopper--Mediation Date

Mark and Jim,

Let me update my proposal from Friday. We have communicated with Judge DeShazo about her availability. She is not available on February 23. However, she is available on March 5 or March 6. So, we now propose March 5 or March 6 as new dates for the mediation. This proposal is conditioned on the parties exchanging a settlement proposal and a response regarding Robledo within the timeframe set forth in my email below.

As I told Mark, I will leave to you the issue of the depositions of Mrs. Hopper and Doris King. We do not believe it is necessary for the IA to incur the expense of preparing for and and taking Mrs. Hopper's deposition before the mediation. But we don't oppose Mark's taking short depositions to prepare for the mediation if he believes those are necessary. It seems to us that the new dates we are proposing for the mediation allow for the scheduling of those depositions, even with Jim's scheduled vacation.

John C. Eichman
Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
(214) 468-3321
(214) 740-7118 (fax)

From: Eichman, John
Sent: Friday, February 03, 2012 2:45 PM
To: 'Janet Elkins'; jajennings@aol.com; fly63rc@verizon.net; msims@gpm-law.com
Cc: Cantrill, Tom
Subject: Hopper--Mediation Date

Following up on my conversations with Mark and Jim, here is what we propose in response to your proposal to move the mediation. We will agree to move the mediation. The date we propose is February 23 (we have an inquiry in to Judge DeShazo about her availability on that date). Our agreement to move the mediation date would be conditioned on Mark and Melinda's clients agreeing that they will make, by February 8, a substantive offer (something with a dollar sign attached to it) to Jim's client to resolve the Robledo dispute and Jim's client agreeing to make a substantive response to that offer by February 13. That seems to us a good way to get the mediation process rolling in lieu of starting the mediation on February 13.

John C. Eichman
Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
(214) 468-3321
(214) 740-7118 (fax)

Eichman, John

From: Mark Enoch [fly63rc@verizon.net]
Sent: Tuesday, February 07, 2012 10:32 AM
To: janet@erhardjennings.com; ktomlinson@erhardjennings.com
Cc: Cherie Zalstein; jjennings@erhardjennings.com; Eichman, John; 'Gary Stolbach'
Subject: Agreement??

Ken,
I need to hear today from you re John's proposal for mediation in early March with depositions of Jo and Doris on agreeable dates before then. If we can't reach agreement, I need to get a hearing.

Again, these are the dates I can do these depositions:

Feb 13 (because mediation is no longer that day if this schedule is agreed to), 15,16,17,24, 27 and 29.

Mark

GLAST, PHILLIPS & MURRAY
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

MARK C. ENOCH
(972) 419-8366
fly63rc@verizon.net

BOARD CERTIFIED – CIVIL TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

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DALLAS, TEXAS 75254-1449

(972) 419-8300
FACSIMILE (469) 206-5022

HOUSTON
(713) 237-3111

February 7, 2012

Via Email and CM-RRR
John C. Eichman
Tom Cantrill
Hunton & Williams
1445 Ross Avenue, Suite 3700
Dallas, TX 75202

Michael L. Graham
The Graham Law Firm, P.C.
100 Highland Park Village, Suite 200
Dallas, TX 75205

James Albert Jennings
Erhard & Jennings
1601 Elm Street, Suite 4242
Dallas, TX 75201

Re: *In re: Estate of Max D. Hopper, Deceased; Jo N. Hopper v. JPMorgan Chase, N.A., Stephen B. Hopper and Laura Wassmer*, No. PR-11-3238-3; In the Probate Court No. 3, Dallas County, Texas

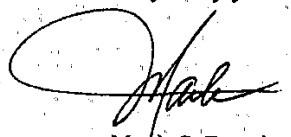
Dear Counsel:

Please note that Mr. Jennings' client's Motions to Quash, as well as our clients' Response, and In the Alternative, Motion to Postpone Mediation, are set for hearing before Judge Miller at 9:00 a.m. on Friday, February 17, 2012.

Furthermore, please be advised that our clients do not intend on attending the previously-scheduled mediation which was to have occurred this Monday, February 13, 2012.

We will advise Judge DeShazo of the indefinite postponement of the mediation. We will work with all counsel and the Court to determine when the mediation should occur.

Very truly yours,



Mark C. Enoch

MCE:cez

cc: Gary Stolbach
Melinda Sims

PLEASE NOTE THAT MY FACSIMILE NUMBER HAS CHANGED.
MY NEW DEDICATED FACSIMILE NUMBER IS 469-206-5022

Eichman, John

From: Janet Elkins [janet@erhardjennings.com]
Sent: Thursday, February 09, 2012 11:12 AM
To: Eichman, John
Cc: jajennings@aol.com; 'Michael L. Graham'; ktomlinson@erhardjennings.com; 'Megan Martinez'; Cantrill, Tom
Subject: RE: Hopper - Response to Eichman email of 020912 at 9:17 am

John,

As the old saying goes, it's not what you say, it's what you don't say. You have no comeback to our wholly proper upset over your plan for multiple depositions. So in typical fashion, you just ignore it – as if it doesn't exist. You can't have it both ways. You were perfectly willing to support Enoch's request for depositions pre-mediation, yet you wanted to not have to take yours pre-mediation. It doesn't work that way, for at least the reasons (among others) set out in our email of February 8th at 11:16 a.m. Your "I'll have my cake and eat it, too", strategy is inappropriate at best.

As usual, you have taken a position without support or authority.

There was nothing surprising in our position; it was laid out clearly in our Motion to Quash regarding the whole topic of multi-day depositions. Your real agenda is quite transparent.

But notwithstanding all that, to try and work with everyone, despite the valid points in our Motion, we were prepared to negotiate to accommodate Enoch's request for pre-mediation deposition. But you scuttled that deal by your refusal to take your deposition when the witnesses were offered (the period between March 5th and March 8th) as part of that deal. Once Enoch saw you weren't going to go along, he reneged on the arrangement he made and agreed to Saturday evening when he was trying to reach me repeatedly to come to an accommodation – plainly so that he wouldn't have to prepare over Super Bowl weekend for the depositions that he, himself, had noticed starting Monday, February 6th.

In short, both of you have repeatedly tried to play both sides against the middle. Your approach is improper, just as is Enoch's in withdrawing a deal he made, without reservation.

By the way, "harangue" was exactly the right word.

Jim

From: Eichman, John [mailto:jeichman@hunton.com]
Sent: Thursday, February 09, 2012 9:17 AM
To: Janet Elkins
Cc: jajennings@aol.com; Michael L. Graham; ktomlinson@erhardjennings.com; Megan Martinez; Cantrill, Tom; fly63rc@verizon.net; msims@gpm-law.com
Subject: RE: Hopper - Response to Eichman email of 020812 at 9:45 am

Jim,

I responded to the points in your lengthy February 7 email that I believe warranted a response.

With respect to your February 8 email, I find it hard to believe that **you** are accusing me of authoring "harangues." (By the way, Webster's defines a "harangue" as a long, blustering speech.)

The court has ordered a mediation. We are focused on abiding by the court's order. I don't think it will be productive to debate with you whether following the court's order is, to use your words, a "useful approach." With respect to Mrs. Hopper's deposition, we look forward to examining her thoroughly about her claims in this case. We just don't think it is necessary for us to incur the expense to do so before the mediation the court has ordered. I told you in the letter I sent you last fall that we want to take Mrs. Hopper's deposition but were willing to hold off on it until after the mediation. Also, you know full well that multi-day depositions (my examination alone will last a full day) are not necessarily taken on back to back days. Nevertheless, if Judge Miller decides that her deposition is to be taken before the mediation and that all examination has to be conducted on consecutive days, we will certainly abide by that ruling as well.

We will see you at the courthouse.

John

John C. Eichman
Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
(214) 468-3321
(214) 740-7118 (fax)

From: Janet Elkins [mailto:janet@erhardjennings.com]
Sent: Wednesday, February 08, 2012 11:16 AM
To: Eichman, John
Cc: jajennings@aol.com; 'Michael L. Graham'; ktomlinson@erhardjennings.com; 'Megan Martinez'
Subject: RE: Hopper - Response to Eichman email of 020812 at 9:45 am

John,

With the exception of your opinions about the scheduling topic, you don't address, in any constructive way, a single point in our long email to you of February 7th.

What authority do you have, or do you rely upon, for your view that a witness's deposition may be taken multiple times when the claims involving that witness are already before the parties and Court at the time the deposition is noticed? Is it really your position that if a plaintiff sues five defendants in a case, that each of the defendants gets to pick a separate date and time to take the plaintiff's deposition – and the Plaintiff gets their deposition taken five separate times? It would be one thing if a plaintiff sued one defendant, the first defendant

took the plaintiff's deposition, and then later in sequential order, plaintiff sued other defendants who then each wanted to take their own deposition after they had been sued (with the later defendants not yet joined). But here the issues and parties have already been joined. You do not get to "hold back". We know of no precedent for your position whatsoever. It is wholly arbitrary and singular to you.

As to the scheduling order, I thought that is something we were going to talk about but we will go ahead and circulate such a draft in the next few days.

The craziest thing of all about your letter is the idea that forcing people to mediation is somehow a useful approach. The old aphorism, "you can lead a horse to water but you can't make him drink" has apparently escaped you.

For mediation to work, the parties need to go in in the right frame of mind. Your harangues have done nothing to promote "the right frame of mind". We also note that you totally ignore the fact that we made two trips to the courthouse within the last five days to try to have a hearing on these issues and through no fault of our own, the Judge was unavailable due to illness. While we will reserve final comment until we see whatever "motion to enforce" you file, any idea you try to promote that the (other) parties are not acting in good faith to try to sort this out, is simply wrong. We will see you in Court on the 17th.

Jim

From: Eichman, John [mailto:jeichman@hunton.com]
Sent: Wednesday, February 08, 2012 9:45 AM
To: Janet Elkins; jajennings@aol.com; Megan Martinez
Cc: mgraham@thegrahamlawfirm.com; ktomlinson@erhardjennings.com; janet@erhardjennings.com; fly63rc@verizon.net; msims@gpm-law.com; Cantrill, Tom
Subject: RE: Hopper

Jim,

It's unfortunate that your client and Mark's clients will not be going forward with a mediation that Judge Peyton ordered, and all parties then agreed would occur on February 13. We will be filing a motion to enforce Judge Peyton's order granting our motion to compel mediation and we will ask the court to order that the mediation take place on March 6. It is becoming very obvious that the court will need to set a date certain for this mediation.

We will also leave it to the court to decide, during the February 17 hearing on the motion to quash, when and under what terms you will need to produce Mrs. Hopper for a deposition.

With respect to the issue of the scheduling order, after a hearing before Judge Peyton in October you said that you would circulate a draft of such an order. I am still waiting to get that order from you.

John C. Eichman
Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
(214) 468-3321
(214) 740-7118 (fax)

From: MMAF13@aol.com [mailto:MMAF13@aol.com]

Sent: Tuesday, February 07, 2012 12:22 PM
To: Eichman, John
Cc: jajennings@aol.com; mgraham@thegrahamlawfirm.com; ktomlinson@erhardjennings.com; janet@erhardjennings.com
Subject: Hopper

Dear John,
We appreciate your efforts to address the Robledo issue. But, it is not up to you to tell the other parties in this case how to settle or not settle or what the arrangements should be. If you are so interested in pushing settlement, then why don't you make an offer to Mrs. Hopper to settle her several million dollar claim against the Bank? You and Tom have been very quiet on that topic. If one reads your various emails, one could quickly get the impression that you think if the Robledo issue is resolved, the rest of the case somehow "melts" away. It doesn't. We can't speak for the children, but we do speak for Mrs. Hopper and she is deadly serious about pursuing her claims against the Bank.
In that regard we note you have skirted the issues regarding Susan Novak. We do not intend to let that stand. We will be deposing a number of people at that Bank – her among them. We intend to get to the bottom of all our client's reasonable concerns about Susan's abilities, personal issues and capacity and what the Bank has known about them, all along.
By the way, as to the whole "Robledo" issue you are so worried about, a great deal of time and expense would have been saved if the Bank/IA had kept the promise contained in Tom Cantrill's letter of July 15th where he stated "*The Administrator will, absent a request **from all of you** to the contrary, deed Robledo to Jo and the children . . . ".* [emphasis added] There was no such request from all of the parties – but the Bank/IA failed to follow through on its promise.
As to your idea that you have some control over the deposition process and whether Mark takes "long" or "short" depositions, that is just nonsense. Whenever Mrs. Hopper is deposed, as we have told you before, we will expect you to take your deposition of Mrs. Hopper as well or your opportunity to do so is gone. We do not intend to offer Mrs. Hopper up on a number of dates. That is not the practice of any lawyer we know of and we don't care to be groundbreakers in this regard. Mrs. Hopper is not going to be served up as the other parties' piñata on multiple occasions for people to take a swipe at her. She is going to sit for her deposition once, just as we presume you would insist for any of your client's representatives in your client's various capacities.

In light of the case generally, we would like to visit about a scheduling order about the case given it is a Level 3 case and no order has been entered to date.

One final thing. Mark is agreeable, or so he told us, to depositions of Mrs. Hopper and Ms. King on various dates from March 5th and March 8th. We told him we would go along with that and then do the mediation thereafter. We think you are beating a dead horse with your email. Our motions to quash are on file and they served to quash the depositions as noticed, upon their filing. The Court has not ordered any alternative relief. As to the mediation date, given that the parties have made an agreement about that outside of and beyond the Court's original Order – the time for which has long passed – it appears to us that the whole topic of mediation at this point, as to a date, is purely by agreement. Based on what Mark told us as late as Saturday evening, two of the three parties don't agree with your position.

Sincerely,

James Albert Jennings