

recoverable under statute, such as Tex. Civ. Prac. & Rem. Code § 38.001(8). The Bank's motion must be denied with respect to the Heirs' damages.

I. FACTS

1. Max D. Hopper died intestate in January 25, 2010. **Exhibit A**, Hopper Aff. ¶ 4; **Exhibit Q**, Wassmer Aff. ¶ 4.
2. Jo Hopper was Max D. Hopper's second wife. The Heirs are Max D. Hopper's natural children from his first marriage. **Exhibit A**, Hopper Aff. ¶ 2-3; **Exhibit Q**, Wassmer Aff. ¶ 2-3.
3. On Max D. Hopper's death, the Heirs desired a neutral, independent third-party to administer their father's estate. The Bank held itself out to the public generally, including to Jo Hopper and the Heirs, as being able to competently, impartially, and cost-effectively provide estate settlement/administration services. **Exhibit A**, Hopper Aff. ¶ 5-6; **Exhibit Q**, ¶ 5-6; **Exhibit G**, Dep. of Stephen Hopper, April 8, 2016, 40:21-24; **Exhibit B**, Letter Agreement (listing one of the Bank's estate settlement services as "remaining impartial to determine what to distribute to beneficiaries or trusts based on specifications in the will or state laws" and stating ". . . we provide cost-effective service.").
4. On April 15, 2010, Susan Novak, senior fiduciary officer in the Bank's estate administration division, sent a letter addressed to Jo Hopper and the Heirs. **Exhibit B**. Attached to this letter was a document in which the Bank represented its services/capabilities and a fee schedule (hereinafter "the Letter Agreement"). **Exhibit B**. Stephen B. Hopper signed this document on April 15, 2010. Laura S. Wassmer signed

this document on April 27, 2010. Jo Hopper signed this document on April 27, 2010. **Exhibit A**, Hopper Aff. ¶ 7; **Exhibit Q**, Wassmer Aff. ¶ 7; **Exhibit B**.

5. The Heirs believed, at the time they signed the Letter Agreement, that the Bank was capable of competently, impartially, and cost-effectively providing estate settlement and administration services. **Exhibit A**, Hopper Aff. ¶ 7; **Exhibit Q**, Wassmer Aff. ¶ 7. Had the Heirs believed the Bank to be anything less than competent and impartial, they would not have retained its services. **Exhibit A**, Hopper Aff. ¶ 7 **Exhibit Q**, ¶ 7. As it turned out, the Bank was anything but impartial despite the contractual and fiduciary duties it owed the Heirs.
6. Unbeknownst to the Heirs, the Bank's personnel had negotiated a separate fee arrangement favorable to Jo Hopper. Under this arrangement, Jo Hopper would not be charged for administration of Max D. Hopper's estate, leaving the Heirs burdened with the estate administration costs and expenses. *See* **Exhibit C**, Dep. Of Jo Hopper, Vol. I, May 5, 2016, 112:9-113:4.
7. The Bank concealed from the Heirs its attempts to gain Jo Hopper's personal banking business, despite such business creating a significant conflict of interest. The Bank went so far as to entertain Jo Hopper in New York City, where it paid for her to attend a showing of Phantom of the Opera and treated her to dinner. **Exhibit D**, Dep. of Jo Hopper, Vol. II, May 6, 2016, 290:1-291:4. The Bank failed to offer the Heirs similar banking and investment opportunities contemporaneously with Jo Hopper and has provided no cogent explanation for this failure. Ultimately, Jo Hopper did place her own assets with the Bank's private wealth management division.

8. The Bank retained the firm of Hunton & Williams, LLP (“H&W”) to assist it in the administration of Max D. Hopper’s estate. *See* **Exhibit F**; **Exhibit R**, Dep. of Susan Novak, Vol. I, May 10, 2016, 72:25-74:7. The Bank knew Tom Cantrill, the H&W lawyer assisting the Bank with the administration, used to be Jo Hopper’s lawyer. **Exhibit E**, Dep. of Tom Cantrill, May 25, 2016, 33:1-34:15; **Exhibit F**.¹ Despite recognizing this as a potential conflict of interest, the Bank proceeded to use Tom Cantrill’s services during the administration of Max D. Hopper’s estate, even though it knew any conflict check Tom Cantrill actually performed took only seven minutes. **Exhibit F**. The Bank did not inform the Heirs of the prior professional relationship between Jo Hopper and Tom Cantrill before the Heirs signed the Letter Agreement. **Exhibit G**, 21:21-22:13.
9. The Bank made numerous errors in the administration of the Estate of Max D. Hopper. The Bank erroneously and unnecessarily paid over \$300,000 to the IRS in or around January 2011 and lied to the Heirs about the necessity of and purpose for the payment. **Exhibit H**; **Exhibit I**. The Bank filed an incorrect Form 8939 estate return for 2010. **Exhibit J**, Dep. of Wendy Bessette, 294:3-296:6. The Bank failed to timely and completely marshal estate assets, including documents of Max D. Hopper & Associates. The Bank allowed these documents to be shredded without the Bank’s review or presence at the shred site. **Exhibit K**, Dep. of Doris King, June 8, 2016, 77:1-79:25. The Bank simply seems to have taken Jo Hopper’s and Celia Doris King’s word that they properly preserved relevant documents from shredding. **Exhibit L**.² The Bank failed to timely

¹ The Bank has marked Exhibit F “Confidential”. A slip sheet has been filed with this response, and a copy of the actual exhibit will be provided for the Court for in camera review.

² The Bank has marked Exhibit L “Confidential”. A slip sheet has been filed with this response, and a copy of the actual exhibit will be provided for the Court for in camera review.

and effectively obtain financial records—including cost-basis information necessary for tax reporting—from Sarah Williamson, a CPA who performed services for Max D. Hopper individually, Max D. Hopper & Associates, and Jo Hopper. **Exhibit M.** The Bank also routinely “farmed-out” estate administration duties that it represented it could do—and should, in fact, have done in the interest of providing cost-effective service (*see Exhibit B*)—to high-priced attorneys and legal staff at Hunton & Williams, LLP. *See, e.g., Exhibit R*, Dep. of Susan Novak, Vol. I, May 10, 2016, 74:9-76:24; **Exhibits S, T, and U** (containing time entries from Margaret Alford, a Hunton & Williams, LLP timekeeper, for canvas calling other banks regarding fee schedules). In fact, the Bank’s compensation structure *dis-incentivized* its own fiduciary officers, including Susan Novak, from working past 5:00 p.m. because she was not eligible for overtime pay. **Exhibit V; Exhibit W; Exhibit R**, 77:12-78:7; 70:17-72:24. This list is by no means complete, but it provides the Court a flavor of the ineptitude the Heirs were subjected to.

10. Despite deteriorating relations between the Heirs and Jo Hopper through 2010 and into the summer of 2011, the Bank failed to move the Probate Court for dependent administration of the Estate of Max D. Hopper or to voluntarily resign from its position as IA.
11. The Heirs retained multiple counsel during the period between April 15, 2010 and September 21, 2011. The Heirs retained Lyle Pishney of Lathrop & Gage, LLP, after which they retained Gary Stolbach of Glast, Phillips & Murray, P.C. (“GPM”) on July 7, 2011. **Exhibit N.** Stephen Hopper was also represented by John Round of Strasburger & Price, LLP for a period of time. **Exhibit Y.** During their representation of the Heirs, Round, Pishney, and Stolbach engaged in heated correspondence with legal

- representatives for Jo Hopper and the Bank regarding, among other issues, the Bank's failure to properly marshal estate assets and to obtain full and accurate cost-basis information for tax reporting. *See, e.g.*, **Exhibit M, Exhibit A**, Aff. of Stephen Hopper ¶ 8. GPM legal invoices submitted to the Heirs for legal services performed between June 23, 2011 and September 20, 2011 total between \$250,000 and \$300,000. **Exhibit O, Exhibit A**, Aff. of Stephen Hopper ¶ 9. The Heirs incurred approximately \$59,000 in legal fees for Mr. Pishney's representation prior to September 21, 2011. **Exhibit X.** Stephen Hopper incurred \$9,792 in legal fees at Stransburger & Price, LLP. **Exhibit Y.**
12. Tensions between Jo Hopper, the Heirs, and the Bank came to a head in September 2011. On September 21, 2011, Jo Hopper filed a suit seeking, in part, declaratory judgment and removal of the Bank from its position as Independent Administrator of the estate of Max D. Hopper.³ This filing sparked a firestorm of litigation surrounding the estate administration. On October 31, 2012, the Heirs filed a motion for substitution of counsel. The Court granted that motion on November 2, 2012 and allowed GPM and Stolbach to withdraw from representation.
13. The Heirs subsequently retained Chris McNeil of Block and Garden, LLP, Anthony L. Vitullo of Fee, Smith, Sharp & Vitullo, LLP ("FSSV"), and James S. Bell of James S. Bell, P.C. (the "Bell firm") to continue their representation in this litigation. **Exhibit A**, Aff. of Stephen Hopper ¶ 10.
14. Rather than expending its own money to fund its legal defense, the Bank depleted funds it held as the Heirs' fiduciary related to Max D. Hopper's estate for that purpose. The Bank's depletion of these funds continues to this day, even though Jo Hopper is no longer seeking removal of the Bank as IA. **Exhibit P.**

³ The Heirs move the Court to take judicial notice of all filings referenced in this response.

15. The Heirs have asserted their right to recover, in part, the following damages:

Table 1: Summary of the Heirs' Damages

| <u>Damage Amount</u> | |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| \$1.1 million | Paid by the Bank to H&W from funds belonging to the Heirs to defend against Plaintiff Jo Hopper's action to remove the Bank as Independent Administrator of the Estate of Max D. Hopper |
| \$1 million | Paid by the Bank to H&W from funds belonging to the Heirs to defend an appeal of the Probate Court's judgment against Stephen B. Hopper and Laura S. Wassmer on the issue of partitioning 9 Robledo Dr., Dallas, TX 75230 |
| \$800,000 (amount continually increasing) | Paid by the Bank to H&W from funds belonging to the Heirs in defense of the instant litigation |
| \$250,000 | Administration fees charged by the Bank and taken out of funds belonging to the Heirs |
| \$300,000 | Attorneys' fees incurred by the Heirs at Glast, Philips & Murray, P.C. to remedy the Bank's failures to properly prepare and/or file tax returns, to properly calculate the cost basis of assets reported on said tax returns, and to diligently and timely marshal the assets of the Estate of Max D. Hopper <i>before</i> this litigation commenced |
| \$3.9 million | Attorneys' fees allegedly paid by Jo Hopper to her various counsel to litigate the issue of partitioning the property located at 9 Robledo Dr., Dallas, Texas 75230 and to litigate claims against JPMorgan Chase Bank, N.A., in its corporate capacity and/or in its capacity as Independent Administrator of the Estate of Max D. Hopper, Deceased |
| \$59,000 | Attorneys' fees incurred by the Heirs at Lathrop & Gage, LLP to remedy the Bank's failures to properly prepare and/or file tax returns, to properly calculate the cost basis of assets reported on said tax returns, and to diligently and timely marshal the assets of the Estate of Max D. Hopper <i>before</i> this litigation commenced |

| | |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| \$9,792 | Attorneys' fees incurred by Stephen B. Hopper at Strasburger & Price, LLP to remedy the Bank's failures to properly prepare and/or file tax returns, to properly calculate the cost basis of assets reported on said tax returns, and to diligently and timely marshal the assets of the Estate of Max D. Hopper <i>before</i> this litigation commenced |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

II. SUMMARY JUDGMENT STANDARD

The Court is doubtless familiar with traditional summary judgment standards. As movant, the Bank must establish that no genuine issue of material fact exists and judgment should be granted in its favor as a matter of law. *Shah v. Moss*, 67 S.W.3d 836, 842 (Tex.2001). In deciding whether there is a genuine issue of material fact, this Court must resolve any doubt against the Bank, view the evidence in a light most favorable to the Heirs as the non-movants, and take as true evidence favorable to the Heirs. *Id.*; *see Am. Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 425 (Tex.1997) (citing *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex.1985)).

III. ARGUMENT AND AUTHORITY

The Bank's motion for summary judgment is based on a complete mischaracterization of most of the damages the Heirs seek. Little of the Bank's case law is relevant to the Heirs' damages, and the primary case the Bank relies on actually supports the Heirs' position, not the Bank's. The Bank's requested relief against the Heirs must be denied.

a. The Heirs' Pleadings and Table of Relevant Attorneys and Firms

The Heirs have pled the following four paragraphs with respect to attorneys' fees:

“88. The Heirs have incurred reasonable and necessary attorneys' fees, expenses, and costs in the administration of the Estate and this court proceeding. The heirs are entitled to reimbursement from the Bank and Mrs. Hopper for their reasonable and necessary

attorneys' fees, expenses and costs of this proceeding because they have had to hire attorneys to conduct work that the Bank has failed to do, to correct the Bank's errors, and to resist the Bank's and Mrs. Hopper's wrongdoing.

89. The Heirs are entitled to an award of attorneys' fees and expenses pursuant to Texas Civil Practice & Remedies Code Section 38.001(8) because this proceeding involves an oral or written Contract. In this regard, more than 30 days before the trial of this cause, the Heirs made demands upon the Bank and such demands were refused. Thus the Heirs were forced to engage counsel and have incurred reasonable and necessary attorneys' fees for which they are entitled reimbursement from the Bank.

90. The Heirs are further entitled to an award of attorneys' fees and expenses pursuant to Texas Civil Practice & Remedies Code Section 37.001(9).

91. The Heirs request that the Court award them the reasonable and necessary attorneys' fees, expenses, and costs to which they are entitled in law or in equity, including under Texas Civil Practice & Remedies Code Section 38.001(8), Texas Rule of Civil Procedure 131, and other applicable law, and including under the principle of attorneys' fees-as-damages.

Crucially and with respect to the damages the Heirs seek, the Heirs have incurred attorneys' fees with *six* different firms in *procedurally different* scenarios, as the following table demonstrates:

Table 2: Firms at Issue with Respect to the Heirs' Damage Model

| Firm/Attorney | Point of Retention | Primary Purpose for Retention |
|--------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| GPM/Stolbach Strasburger & Price, LLP/John Round Lathrop & Gage, LLP/Pishney | <i>Prior</i> to initiation of any litigation, which began when Jo Hopper filed her removal action and other claims on September 21, 2011 | Help correct the Bank's breaches of contractual and fiduciary duties; help secure remedial action on the Bank's past breaches of its contractual and fiduciary duties and to help secure prospective performance of those duties |

| | | |
|-------------------------------------|-------------------------------------------|--------------------------------------------------------------|
| Fee, Smith, Sharp & Vitullo, LLP | Mid-litigation after withdrawal of GPM | Prosecute and defend the Heirs' claims in this litigation |
| James S. Bell, P.C. | | |
| Block & Garden, LLP | | |

As developed below, *when* and *why* the Heirs incurred attorneys' fees determines whether they are entitled to recover those fees as damages or under statutory authorization.

b. \$300,000 Incurred at GPM, \$59,000 Incurred at Lathrop & Gage, LLP, and \$9,792 Incurred at Strasburger & Price, LLP are Recoverable as either "Attorneys' Fees as Damages" or as Authorized Under Tex. Civ. Prac. & Rem Code. § 38.001

The Bank's opening salvo - "Texas law is clear that attorneys' fees are not damages" - is overbroad. Def. Mot. for Sum. Judgment, p. 1. The breadth of the Bank's statement is particularly perplexing given its heavy reliance on *Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. Nat'l Dev. & Research Corp.*, 299 S.W.3d 106, 120 (Tex. 2009)—a case in which the Texas Supreme Court *authorized* recovery of attorneys' fees as damages. The only components of the Heirs' damage model encompassing *their own* attorneys' fees are (1) the \$300,000 incurred at GPM (2) the \$59,000 incurred at Lathrop & Gage, LLP, (3) the \$9,792 incurred at Strasburger & Price, LLP, and (4) the reasonable and necessary attorneys' fees incurred for the prosecution and defense of this suit by Fee, Smith, Sharp & Vitullo, LLP, Block & Garden, LLP, and James S. Bell, P.C. The Heirs' entitlement to the two distinct categories of attorneys' fees contained in Table 2, above, rest on different legal bases, both of which have been explicitly alleged in the Heirs' Third Amended Cross-Claim and Counter Claim.

i. *Akin Gump Authorizes Recovery as Damages of the Attorneys' Fees Incurred at GPM, Lathrop & Gage, LLP, and Strasburger & Price, LLP*

The legal fees incurred at GPM, Lathrop & Gage, LLP, and Strasburger & Price, LLP are not meaningfully distinguishable from the attorneys' fees the Texas Supreme Court *allowed* to

be recovered as damages in *Akin Gump*. *Akin Gump* involved two lawsuits. The first lawsuit was a declaratory judgment action. *Id.* at 110. The plaintiff in that action, Panda Global Energy Company (“Panda Global”), filed a declaratory judgment action for a determination of rights under a contract between Panda Global and the defendant, National Development and Research Corporation (“NDR”). *Id.* NDR retained the services of Akin, Gump, Strauss, Hauer & Feld, L.L.P. to represent it in the declaratory judgment action (“*Akin Gump*”). *Id.*

The case was tried to a jury. *Id.* During this phase of the trial, Akin Gump failed to request a jury instruction relating to Panda Global’s breach of contract. *Id.* at 111. In an effort to remedy this error on the part of their fiduciary, NDR hired two other lawyers during post-trial proceedings, William Dorsaneo and Maureen Armour, to help Akin Gump convince the trial court to enter judgments in their favor despite Akin Gump’s error. *Id.* at 123. However, the trial court entered four judgments generally in favor of Panda Global. *Id.* at 110. The court of appeals affirmed the judgments. *Id.*

NDR subsequently sued Akin Gump for legal malpractice for the botched jury instruction. *Id.* at 111. The malpractice case was tried to a jury that awarded NDR, in part, \$216,590.00 for attorneys’ fees and expenses paid by NDR in the declaratory judgment action, including fees incurred on direct appeal of the judgments in that action. *Id.* at 111. On direct appeal in the malpractice action, the appellate court reversed the portion of the judgment awarding attorneys’ fees. *Id.* The Texas Supreme Court granted petitions for review to answer, in part, whether NDR could recover its attorneys’ fees as damages.

The Texas Supreme Court engaged in a two-step analysis to determine whether NDR could recover its attorneys’ fees as damages: (1) did the American rule apply to the facts to bar recovery, and (2) if not, was there sufficient evidence in the appellate record to support the jury’s

award of fees? *Id.* at 120-24. The Texas Supreme Court articulated the American Rule thusly: “. . . attorney's fees paid to prosecute or defend a lawsuit cannot be recovered in that suit absent a statute or contract that allows for their recovery.” *Id.* at 120.

The Texas Supreme Court quickly concluded the case before it was *not* governed by the American Rule: “NDR does not seek to recover attorney's fees for prosecuting its malpractice suit against Akin Gump. *It seeks damages measured by the economic harm it suffered from Akin Gump's breach of its duty of care* in prosecuting the Panda suit.” *Id.* at 121 (emphasis added). Likewise, in the case at bar, the attorneys’ fees incurred at GPM, Lathrop & Gage, LLP, and Strasburger & Price, LLP constitute a measure of economic harm suffered by the Heirs because of the Bank’s breaches of its contract with the Heirs and its breaches of the fiduciary duties it owed the Heirs. In *Akin Gump*, the attorneys’ fees NDR sought to recover were incurred and paid *before and outside* the malpractice litigation. In the case at bar, the Heirs incurred the \$300,000 in attorneys’ fees at GPM, Lathrop & Gage, LLP, and Strasburger & Price, LLP it seeks to recover *before and outside* the instant litigation. As in *Akin Gump*, the American Rule simply does not apply to the Heirs’ claimed attorneys’ fees.

The Texas Supreme Court then analyzed whether sufficient evidence existed on the record to affirm the jury’s award of attorneys’ fees. *Id.* at 122-24. The Texas Supreme Court allowed one category of fees and disallowed another on purely evidentiary grounds. *Id.* NDR sought two categories of attorneys’ fees it had paid in the declaratory judgment suit: (1) the fees it paid to Dorsaneo and Armour to assist Akin Gump in post-trial proceedings, and (2) the fees it paid Akin Gump to prosecute an appeal of the adverse judgments.⁴ *Id.* Without applying the “tort of another” exception, the Texas Supreme Court *allowed* NDR to recover a portion of its

⁴ The Texas Supreme Court disallowed recovery of this second category of attorneys’ fees as damages *not* because such recovery was barred by the American Rule, but because there was no evidence of proximate causation with respect to attorneys’ fees incurred on appeal of the declaratory judgment action.

attorneys' fees as damages. Specifically, the Court found the fees NDR paid to Dorsaneo and Armour to help convince the trial court to enter judgment in NDR's favor despite Akin Gump's error were attorneys' fees compensable as damages. *Id.* at 123-24. The Texas Supreme Court noted the following:

“Post-trial proceedings focused on whether the jury verdict entitled NDR to specific performance of the Letter and Shareholder Agreements calling for NDR's Pan-Sino stock to be purchased by Panda upon termination of the agreements, or whether NDR waived its claims by failing to request jury questions as to breach of the agreements. NDR at that point retained law Professors William Dorsaneo and Maureen Armour to help Akin Gump convince the trial judge to render judgment favorable to NDR. *There was evidence that Professors Dorsaneo and Armour were retained to focus on the jury charge and argue to the trial court that despite the absence of a jury finding that Panda breached the agreements, the verdict supported judgment for NDR.* The evidence is legally sufficient to support the jury finding that Akin Gump's negligence was a cause in fact of NDR's retaining the processors and, thus, that the firm's negligence proximately caused NDR to pay the fees and expenses of the professors.”

(emphasis added). In other words, because there was evidence NDR hired Dorsaneo and Armour to help remedy the breaches committed by Akin Gump (NDR's fiduciary), the Texas Supreme Court found there was legally sufficient evidence to support the jury's award of the attorneys' fees paid to Dorsaneo and Armour as damages.

The legal fees the Heirs incurred at GPM, Lathrop & Gage, LLP, and Strasburger & Price, LLP prior to Jo Hopper filing her removal action are of the same nature as those NDA paid to Dorsaneo and Armour. In the case at bar, the Heirs retained GPM and Lathrop & Gage, LLP (and Stephen Hopper retained Strasburger & Price, LLP, individually) to ameliorate the harm caused by Bank's breaches of contract and breaches of its fiduciary duties, including failure to timely marshal estate assets and failure to secure Sarah Williamson's compliance with the Bank's already belated requests for Max D. Hopper's financial documents. Thus, the fees

incurred at GPM, Lathrop & Gage, LLP, and Strasburger & Price, LLP were proximately caused by the Bank's failures and, under *Akin Gump*, are recoverable as damages.

ii. Recovery of other attorneys' fees authorized by statute

Statutes authorize recovery of reasonable and necessary attorneys' fees incurred by litigation counsel at Block & Garden, LLP, Fee, Smith, Sharp & Vitullo, LLP, and James S. Bell, P.C. The Heirs have alleged breach of contract against the Bank. Texas Civil Practice and Remedies Code Section 38.001(8) authorizes recovery of reasonable and necessary attorneys' fees in actions for breach of contract. Tex. Civ. Prac. & Rem. Code 38.001(8). The Heirs have expressly pled this statute as a partial basis for their entitlement to recover reasonable and necessary attorneys' fees in their Third Amended Cross-Claim and Counter Claim.

Additionally, and strictly in the alternative to the argument contained in III.b.i. above, should the Court find the attorneys' fees incurred at GPM, Lathrop & Gage, LLP, and Strasburger & Price, LLP to nevertheless be a part of this litigation, recovery of those fees is also authorized by Tex. Civ. Prac. & Rem. Code 38.001(8), as they were incurred to correct and remedy the Bank's breach of its contractual duties to the Heirs.

iii. The Heirs' other damages are unrelated to their attorneys' fees

The rest of the Heirs' damages are not measures of the Heirs' attorneys' fees at all. The Heirs seek \$250,000 in estate administration fees as damages, and at least⁵ \$2.9 million in damages for money the Bank unlawfully appropriated from the Heirs' funds held in administration to pay *the Bank's* legal fees. Finally, the Heirs seek at least \$3.9 million, which represents the amount of attorneys' fees Jo Hopper allegedly incurred litigating the issue of partitioning the property located a 9 Robledo Dr., Dallas, Texas 75230 ("Robledo"). Of that

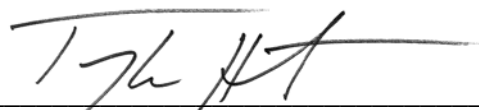
⁵ This number is constantly increasing as Hunton & Williams, LLP performs more legal services in this litigation for the Bank. The Bank persists in using funds rightfully belonging to the Heirs and held in administration to bankroll its own defense.

amount, \$3.1 million was allegedly incurred litigating the issue of partitioning Robledo, and \$800,000 was allegedly incurred litigating claims against JPMorgan Chase Bank, N.A., in its corporate capacity and/or in its capacity as Independent Administrator of the Estate of Max D. Hopper, Deceased. None of these damages represent the Heirs' attorneys' fees, much less the specific type of attorneys' fees the American Rule would prevent the Heirs from recovering damages.

Conclusion

The Bank's Motion for Partial Summary Judgment against the Heirs was ill-conceived. The vast bulk of the Heirs' damages are simply not attorneys' fees at all, and the small portion that does consist of attorneys' fees is the kind that the Texas Supreme Court found to be recoverable in *Akin Gump*. The Bank failed to show that no genuine issue of material fact exists with respect to the nature of the attorneys' fees at issue, and it has also failed to show it is entitled to judgment against the Heirs as a matter of law. The Court should deny the Bank's Motion for Partial Summary Judgment with respect to the Heirs' damages.

Respectfully submitted,



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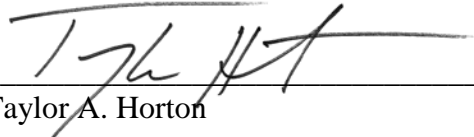
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on September 7, 2016, in accordance with the Texas Rules of Civil Procedure to:

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