

Exhibit 7

NO. PR-11-3238-1

IN RE: ESTATE OF
MAX D. HOPPER,
DECEASED

JO N. HOPPER,
Plaintiff,

v.

JP MORGAN CHASE, N.A.,
STEPHEN B. HOPPER and
LAURA S. WASSMER

Defendants.

§ IN THE PROBATE COURT

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NO. 1

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DALLAS COUNTY, TEXAS

DEFENDANT JPMORGAN CHASE BANK, N.A.’S PROPOSED JURY CHARGE

Pursuant to the Court’s Amended Trial Setting Order, Defendant JPMorgan Chase Bank, N.A. (“JPMorgan”), in its capacity as Independent Administrator of the Estate of Max D. Hopper, and in its corporate capacity, submits its proposed jury charge in accordance with Rule 166(k), as follows. Though JPMorgan files its proposed jury charge prior to trial, JPMorgan hereby reserves the right to amend its proposed jury charge based upon subsequent rulings by the Court and the evidence (or lack of evidence) presented at trial. JPMorgan does not waive its right to move for a directed verdict on any issue or claim, and does not waive its position that there is no evidence to support any judgment against it, and that it is entitled to judgment as a matter of law on all claims asserted against it by Jo Hopper, Stephen Hopper, and Laura Wassmer.

Respectfully submitted,

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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 AND
IN ITS CORPORATE CAPACITY**

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 18th day of July, 2017.

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§ IN THE PROBATE COURT

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DALLAS COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given

you by the Court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may answer a question upon the vote of five or more members of the jury. If you answer more than one question upon the vote of five or more jurors, the same group of at least five of you must agree upon the answers to each of those questions. The same five jurors must agree on every answer in the charge. This means you may not have one group of five jurors agree on one answer and a different group of five jurors agree on another answer. If five jurors agree on every answer, those five jurors sign the verdict. If all six of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

7. These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you

have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

8. The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

9. When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

10. Answer "Yes" or "No" to all questions unless otherwise instructed. Unless otherwise indicated, a "Yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

11. The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

12. A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

13. A party's conduct includes the conduct of another who acts with the party's authority or apparent authority. Authority for another to act for a party must arise from the

party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized. Apparent authority exists if a party (1) knowingly permits another to hold himself out as having authority or, (2) through lack of ordinary care, bestows on another such indications of authority that lead a reasonably prudent person to rely on the apparent existence of authority to his detriment. Only the acts of the party sought to be charged with responsibility for the conduct of another may be considered in determining whether apparent authority exists.¹

14. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

15. After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

16. It is the duty of the presiding juror --
- a. to preside during your deliberations;
 - b. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;
 - c. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge;
 - d. to vote on the questions;

¹ PJC 101.4

- e. to write your answers to the questions in the spaces provided; and
- f. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

17. All jurors should deliberate on every question. You may end up with all six of you agreeing on some answers, while only five of you agree on other answers. But when you sign the verdict, only those five who agree on every answer will sign the verdict.

18. You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

19. When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into Court with your verdict.

JUDGE PRESIDING

DEFINITIONS

“**Fee Agreement**” means the “Estate Settlement Services Fee Schedule – Texas” attached to Plaintiff’s Exhibit 7 and agreed to by Jo Hopper, Stephen Hopper, Laura Wassmer, and JPMorgan Chase Bank, N.A. in April 2010.

“**Estate**” means the Estate of Max D. Hopper, deceased.

“**JPMorgan**” means JPMorgan Chase Bank, N.A. On June 30, 2010, JPMorgan was appointed as the Independent Administrator of the Estate of Max D. Hopper. JPMorgan acting in its role as Independent Administrator will be referred to as “JPMorgan as Independent Administrator.”

“**Robledo**” means the house and lot located at 9 Robledo Drive, Dallas, Texas, 75230.

“**Robledo Litigation**” means various claims asking the Probate Court for declaratory judgment rulings about Robledo that were originally part of this Lawsuit but, after the Probate Court made rulings, were then separated by the Court into a separate lawsuit and appealed by Jo Hopper, Stephen Hopper and Laura Wassmer to the Court of Appeals.

“**Removal Action**” means Mrs. Hopper’s claims in this lawsuit for removal of JPMorgan as Independent Administrator, which Mrs. Hopper voluntarily dropped on December 7, 2015.

QUESTION 1. Did JPMorgan fail to comply with the Fee Agreement with Jo Hopper in any of the following ways?

A failure to comply must be material. The circumstances to consider in determining whether a failure to comply is material include:

1. the extent to which the injured party will be deprived of the benefit which she reasonably expected;
2. the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
3. the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
4. the likelihood that the party failing to perform or to offer to perform will cure its failure, taking into account the circumstances including any reasonable assurances;
5. the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Answer “Yes” or “No” for each.

- a. With respect to the timing of decisions on the filing of IRS form 8939:**

- b. With respect to the timing of the distribution of Robledo:** _____

Source: PJC 101.2 (Basic Question-Compliance, Materiality); Jo Hopper’s Original, Amended Supplemental, and Second Supplemental Answers to JPMorgan’s/IA’s Interrogatories; Jo Hopper’s Fifth Supplemental Responses to JPMorgan’s Request for Disclosures.

If you answered “Yes” to any part of Question 1, then answer that part of Question 2. Otherwise, do not answer that part of Question 2.

QUESTION 2. What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Jo Hopper for her damages, if any, that resulted from such failure to comply with the Fee Agreement?

Consider the following elements of damages, if any, and none other.

The reasonable and necessary costs or expenses, if any, incurred by Jo Hopper as a result of JPMorgan’s failure to comply with the terms of the Fee Agreement.

Do not include attorneys’ fees paid by Jo Hopper.

Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

- a. **Amount resulting from failure to comply with the Fee Agreement regarding the timing of decisions on the filing of IRS form 8939: \$_____**
- b. **Amount resulting from failure to comply with the Fee Agreement regarding the timing of the distribution of Robledo: \$_____**

Source: PJC 115.3 (Question on Contract Damages); PJC 115.4 (Sample Instructions on Damages – Contracts) (see Comment: “Because damages instructions in contract suits are necessarily fact-specific, no true “pattern” instructions are given—only samples of some measures of general damages available in contract actions. This list is not exhaustive. The samples are illustrative only, adapted to a hypothetical fact situation, and must be rewritten to fit the particular damages raised by the pleadings and proof and recoverable under a legally accepted theory. The instructions should be drafted in an attempt to make the plaintiff factually whole but not to put the plaintiff in a better position than he would have been in had the defendant fully performed the contract.”); Jo Hopper’s Original, Amended Supplemental, and Second Supplemental Answers to JPMorgan’s/IA’s Interrogatories; Jo Hopper’s Fifth Supplemental Responses to JPMorgan’s Request for Disclosure.

Regarding attorneys' fees as damages, *see Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. Nat'l Dev. & Research Corp.*, 299 S.W.3d 106, 120 (Tex. 2009) ("It has long been the rule in Texas that 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."); Plaintiff's Response to JPMorgan's Motion for Partial Summary Judgment Regarding Attorneys' Fees as Damages (at 5, citing *Akin Gump*); *Marquis Acquisitions, Inc. v. Steadfast Ins. Co.*, 409 S.W.3d 808, 815 (Tex. App.—Dallas 2013, no pet.) (emphasis added) (Fees incurred by the plaintiff prior to filing suit over the alleged breach are not an exception to this rule. Accordingly, attorney's fees incurred as a result of efforts to force an insurer to comply with the insurance contract cannot be recovered as the sole 'damages' caused by the breach."); *MBM Fin. Corp. v. Woodlands Operating Co., L.P.*, 292 S.W.3d 660, 667 (Tex. 2009) ("[Plaintiff's] fee claim was not based on MBM's litigation conduct but on its pre-litigation conduct; such fees are recoverable only if a contract or statute so provides [i.e., not as damages].")

QUESTION 3. Did JPMorgan as Independent Administrator fail to comply with the following fiduciary duty to Jo Hopper?

After being appointed as Independent Administrator on June 30, 2010, JPMorgan as Independent Administrator owed a duty to Jo Hopper to take care of Estate property as a prudent person would take care of that person's own property.

Answer "Yes" or "No."

Answer: _____

Source: PJC 232.1; Tex. Estates Code 351.101.

If you answered “Yes” to Question 3, then answer Question 4. Otherwise, do not answer Question 4.

QUESTION 4. What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Jo Hopper for her damages, if any, resulting from the conduct inquired about in Question 3?

Consider the following elements of damages, if any, and none other.

The reasonable and necessary costs or expenses incurred by Jo Hopper proximately caused by JPMorgan as Independent Administrator’s failure to comply with its duty to Jo Hopper;

and

The compensable mental anguish suffered by Jo Hopper that was proximately caused by JPMorgan as Independent Administrator’s failure to comply with its duty to Jo Hopper.

“Proximate cause” means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Do not include attorneys’ fees paid by Jo Hopper.

“Compensable mental anguish” means a relatively high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger. Any award of mental anguish damages must be based upon direct evidence of the nature, duration, and severity of her mental anguish, thus establishing a substantial disruption in her daily routine. Generalized conclusory descriptions of how an event affected Jo Hopper are insufficient evidence on which to base mental anguish damages.

Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

a. Amount regarding the timing of decisions on the filing of IRS form 8939:

Economic Damages \$_____

Compensable Mental Anguish \$_____

b. Amount regarding the timing of the distribution of Robledo:

Economic Damages \$_____

Compensable Mental Anguish \$_____

Source: PJC 232.4; Regarding mental anguish damages, “[t]o recover for mental anguish, the plaintiff must show a relatively high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger.” *Holland v. Friedman & Feiger*, 05-12-01714-CV, 2014 WL 6778394, at *3 (Tex. App.—Dallas Dec. 2, 2014) (emphasis added), opinion supplemented on reh’g, 05-12-01714-CV, 2015 WL 1786217 (Tex. App.—Dallas Apr. 20, 2015, no pet.). A plaintiff must present “direct evidence of the nature, duration, and severity of their mental anguish, thus establishing a substantial disruption in their daily routine.” *Id.* (emphasis added) (citing *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 444 (Tex. 1995)). “Generalized conclusory descriptions of how an event affected a person are insufficient evidence on which to base mental anguish damages.” *Id.* (citing *Serv.Corp. Intern. v. Guerra*, 348 S.W.3d 221, 232 (Tex. 2011)).

Regarding attorneys’ fees as damages, *see Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. Nat’l Dev. & Research Corp.*, 299 S.W.3d 106, 120 (Tex. 2009) (“It has long been the rule in Texas that 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.”); Plaintiff’s Response to JPMorgan’s Motion for Partial Summary Judgment Regarding Attorneys’ Fees as Damages (at 5, citing *Akin Gump*); *Marquis Acquisitions, Inc. v. Steadfast Ins. Co.*, 409 S.W.3d 808, 815 (Tex. App.—Dallas 2013, no pet.) (emphasis added) (Fees incurred by the plaintiff prior to filing suit over the alleged breach are not an exception to this rule. Accordingly, attorney’s fees incurred as a result of efforts to force an insurer to comply with the insurance contract cannot be recovered as the sole ‘damages’ caused by the breach.”); *MBM Fin. Corp. v. Woodlands Operating Co., L.P.*, 292 S.W.3d 660, 667 (Tex. 2009) (“[Plaintiff’s] fee claim was not based on MBM’s litigation conduct but on its pre-litigation conduct; such fees are recoverable only if a contract or statute so provides [i.e., not as damages].”).

If you answered “Yes” to Question 3, then answer the following question. Otherwise, do not answer the following question.

QUESTION 5. Did the negligence or knowing participation, if any, of those named below cause or contribute to cause in any way the harm to Jo Hopper you found in Question 4?

“Negligence” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Knowing participation” means that the person or entity was aware of the fiduciary duty owed by JPMorgan as Independent Administrator to Jo Hopper, and was aware that he, she, or it was causing, contributing to, or participating in the Independent Administrator’s breach of that duty.

Answer “Yes” or “No” for each of the following:

Stephen Hopper _____

Laura Wassmer _____

Jo Hopper _____

Gary Stolbach _____ (Knowing Participation Only)

Glast, Phillips, & Murray _____ (Knowing Participation Only)

Source: TEX. CIV. PRAC. & REM. CODE § 33.003; PJC 4.1. Regarding “knowing participation,” “[i]t is settled as the law of this State that where a third party knowingly participates in the breach of duty of a fiduciary, such third party becomes a joint tortfeasor with the fiduciary and is liable as such.” *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 138 Tex. 565, 574, 160 S.W.2d 509, 514 (1942); *see CBIF Ltd. P’ship v. TGI Friday’s Inc.*, 05-15-00157-CV, 2017 WL 1455407, at *16 (Tex. App.—Dallas Apr. 21, 2017, no pet. h.) (“In addition to the existence of a fiduciary duty, the plaintiff must show the defendant knew of the fiduciary relationship and was aware of his participation in the third party’s breach of its duty.”).

If you answered “Yes” to any part of Question 5, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only those you found to have caused or contributed to cause in any way the harm to Jo Hopper you found in response to Question 4. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION 6. For each person you found to have caused or contributed to cause in any way the harm to Jo Hopper you found in response to Question 4, find the percentage of responsibility attributable to each:

JPMorgan	_____	%
Stephen Hopper	_____	%
Laura Wassmer	_____	%
Jo Hopper	_____	%
Gary Stolbach	_____	%
Glast, Phillips, & Murray	_____	%
Total	100	%

Source: PJC 4.3.

QUESTION 7. Does the Estate owe any money to Jo Hopper for reimbursement of expenses that she paid on behalf of the Estate, if any?

Answer “Yes” or “No.”

Answer: _____

Source: PJC 204.1

Answer the following question only if you answered “Yes” to Question 7. Otherwise, do not answer the following question.

QUESTION 8. What sum of money does the Estate owe to Jo Hopper for reimbursement of expenses that she paid on behalf of the Estate, if any?

Answer in dollars and cents.

Answer: \$ _____

Source: PJC 204.1

Answer the following question only if you unanimously answered “Yes” to Question 3. Otherwise, do not answer the following question.

To answer “Yes” to the following question, your answer must be unanimous. If all jurors do not agree that the answer is “Yes,” you must answer “No.”

QUESTION 9. Do you find by clear and convincing evidence that the harm to Jo Hopper from JPMorgan as Independent Administrator’s breach of fiduciary duty resulted from malice?

“Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

“Malice” means a specific intent by JPMorgan as Independent Administrator to cause substantial injury or harm to Jo Hopper.

Answer “Yes” or “No.”

Answer: _____

Source: PJC 115.37B.

Exemplary damages are not recoverable for breach of contract: “A willful breach of contract is not a tort: ‘Even if the breach is malicious, intentional or capricious, exemplary damages may not be recovered unless a distinct tort is alleged and proved.’” *McConnell v. Coventry Health Care Nat'l Network*, 05-13-01365-CV, 2015 WL 4572431, at *6 (Tex. App.—Dallas July 30, 2015, pet. denied) (quoting *Amoco Prod. Co. v. Alexander*, 622 S.W.2d 563, 571 (Tex. 1981)).

Answer the following question only if you unanimously answered “Yes” to Question 9. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

QUESTION 10. What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to Jo Hopper as exemplary damages, if any, for JPMorgan as Independent Administrator’s breach of fiduciary duty?

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of JPMorgan.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of JPMorgan.

Answer in dollars and cents, if any.

Answer: \$ _____

Source: PJC 115.38.

QUESTION 11. What is a reasonable fee for the necessary services of Jo Hoppers' attorneys in pursuing the Robledo Litigation, stated in dollars and cents?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services 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.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer: \$ _____

Source: PJC 115.47.

If you answered “Yes” to any part of Question 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION 12. What is a reasonable fee for the necessary services of Jo Hoppers’ attorneys in pursuing the claim for the breach of contract you found in response to Question 1, stated in dollars and cents?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services 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.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Do not include in your answer any attorneys’ fees that you included in response to Question 11.

Answer with an amount for each of the following:

1. For representation through trial and the completion of proceedings in the trial court.

Answer: \$ _____

2. For representation through appeal to the court of appeals.

Answer: \$ _____

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$ _____

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ _____

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$_____

Source: PJC 115.47.

QUESTION 13. What is a reasonable fee for the necessary services of Jo Hoppers' attorneys, in obtaining a ruling that Jo Hopper does not owe the Estate any money for attorneys' fees, stated in dollars and cents?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services 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.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Do not include in your answer any attorneys' fees that you included in response to Question 11.

Do not include in your answer any attorneys' fees that you included in response to Question 12.

Answer in dollars and cents, if any.

Answer: \$ _____

Source: PJC 115.47.

QUESTION 14. Did JPMorgan as Independent Administrator fail to comply with the following fiduciary duty to the Estate?

After being appointed as Independent Administrator on June 30, 2010, JPMorgan as Independent Administrator owed a duty to the Estate to take care of Estate Property as a prudent person would take care of that person's own property.

"Estate Property" means Max Hopper's separate property and one-half of the community property.

Answer "Yes" or "No."

Answer: _____

Source: PJC 232.1; Tex. Estates Code 351.101.

If you answered “Yes” to Question 14, then answer the following question. Otherwise, do not answer the following question.

QUESTION 15. What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Estate for damages, if any, that were proximately caused by the conduct inquired about in Question 14?

“Proximate cause” means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other.

Any loss or depreciation in value of the Estate proximately caused by the Independent Administrator’s breach of duty.

Do not include any amount for the IA’s reasonable and necessary attorneys’ fees.

Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

- a. **Unreasonable or unnecessary attorneys’ fees, if any, paid to defend the appeal of the Robledo Litigation \$_____**
- b. **Unreasonable or unnecessary attorneys’ fees, if any, paid to defend this lawsuit after December 7, 2015 \$_____**
- c. **Payment of JPMorgan’s account administration fee for its administration of the Estate \$_____**

Source: PJC 232.4B; Stephen Hopper’s and Laura Wassmer’s Second Supplemental Responses to JPMorgan’s Request for Disclosure (identifying damages).

If you answered “Yes” to Question 14, then answer the following question. Otherwise, do not answer the following question.

QUESTION 16. Did the negligence or knowing participation, if any, of those named below cause or contribute to cause in any way the harm to the Estate you found in Question 14?

“Negligence” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Knowing participation” means that the person or entity was aware of the fiduciary duty owed by JPMorgan as Independent Administrator to the Estate, and was aware that he, she, or it was causing, contributing to, or participating in JPMorgan as Independent Administrator’s breach of that duty.

Answer “Yes” or “No” for each of the following:

Stephen Hopper	_____
Laura Wassmer	_____
Jo Hopper	_____
Gary Stolbach	_____
Glast, Phillips, & Murray	_____

Source: TEX. CIV. PRAC. & REM. CODE § 33.003; PJC 4.1. Regarding “knowing participation,” “[i]t is settled as the law of this State that where a third party knowingly participates in the breach of duty of a fiduciary, such third party becomes a joint tortfeasor with the fiduciary and is liable as such.” *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 138 Tex. 565, 574, 160 S.W.2d 509, 514 (1942); *see CBIF Ltd. P’ship v. TGI Friday’s Inc.*, 05-15-00157-CV, 2017 WL 1455407, at *16 (Tex. App.—Dallas Apr. 21, 2017, no pet. h.) (“In addition to the existence of a fiduciary duty, the plaintiff must show the defendant knew of the fiduciary relationship and was aware of his participation in the third party’s breach of its duty.”).

If you answered “Yes” to any part of Question 16, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found to have caused or contributed to cause the harm to the Estate you found in Question 14. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION 17. For each person you found to have to have caused or contributed to cause in any way the harm to the Estate you found in Question 14, find the percentage of responsibility attributable to each:

JPMorgan	_____	%
Stephen Hopper	_____	%
Laura Wassmer	_____	%
Jo Hopper	_____	%
Gary Stolbach	_____	%
Glast, Phillips, & Murray	_____	%
Total	100	%

Source: PJC 4.3.

Answer the following question only if you unanimously answered “Yes” to Question 14 Otherwise, do not answer the following question.

To answer “Yes” to any part of the following question, your answer must be unanimous. If all jurors do not agree that the answer is “Yes,” you must answer “No.”

QUESTION 18. Do you find by clear and convincing evidence that the harm to the Estate at issue in Question 14 resulted from the malice or gross negligence of JPMorgan?

“Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

“Malice” means a specific intent by JPMorgan to cause substantial injury or harm to the Estate.

“Gross negligence” means an act or omission by JPMorgan,

1. which when viewed objectively from the standpoint of JPMorgan at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. of which JPMorgan has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Answer “Yes” or “No” for each:

Malice: _____

Gross Negligence: _____

Source: PJC 115.37B.

Answer the following question only if you unanimously answered “Yes” to part of Question 18. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

QUESTION 19. What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to the Estate as exemplary damages, if any, for the conduct found in response to Question 14?

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of *JPMorgan*.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of *JPMorgan*.

Answer in dollars and cents, if any.

\$ _____

Source: PJC 115.38.

QUESTION 20. Does Jo Hopper owe any money to the Estate for reimbursement of expenses that the Estate paid on behalf of Jo Hopper, if any?

Answer “Yes” or “No.”

Answer: _____

Source: PJC 204.1

Answer the following question only if you answered “Yes” to Question 20. Otherwise, do not answer the following question.

QUESTION 21. What sum of money does Jo Hopper owe to the Estate for reimbursement of expenses that the Estate paid on behalf of Jo Hopper, if any?

Answer in dollars and cents.

Answer: \$ _____

Source: PJC 204.1

From September 21, 2011 through December 6, 2015, JPMorgan as Independent Administrator defended Jo Hopper’s Removal Action. Jo Hopper voluntarily dropped her Removal Action on December 7, 2015.

QUESTION 22. Did JPMorgan as Independent Administrator defend against the Removal Action in good faith?

An administrator defends an action for removal in good faith when it subjectively believes the defense is viable, if that belief is reasonable in light of existing law.

Answer “Yes” or “No.”

Answer: _____

Source: TEX. ESTATES CODE § 404.0037; *Lee v. Lee*, 47 S.W.3d 767, 796 (Tex. App.—Houston [14th Dist.] 2001, pet. denied)(“ We hold that an executor acts in good faith when he or she subjectively believes his or her defense is viable, if that belief is reasonable in light of existing law. This standard should protect all but the plainly incompetent executors or those who willfully breach their fiduciary duties.”).

QUESTION 23. What is a reasonable fee for the necessary services of the attorneys for JPMorgan as Independent Administrator in connection with its defense of the Removal Action, stated in dollars and cents?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services 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.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Attorneys' Fees Incurred in Defense of the Removal Action:

\$_____

Source: PJC 115.47.

QUESTION 24. What is a reasonable fee for the necessary services of the attorneys for JPMorgan as Independent Administrator after December 7, 2015 in defending this case, stated in dollars and cents?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services 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.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Do not include in your answer any attorneys' fees that you included in response to Question 23.

Answer with an amount for each of the following:

- 1. For representation from December 7, 2015 through trial and the completion of proceedings in the trial court. Answer: \$ _____**
- 2. For representation through appeal to the court of appeals. Answer: \$ _____**
- 3. For representation at the petition for review stage in the Supreme Court of Texas. Answer: \$ _____**
- 4. For representation at the merits briefing stage in the Supreme Court of Texas. Answer: \$ _____**
- 5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas. Answer: \$ _____**

Source: PJC 115.47.