

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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DALLAS COUNTY, TEXAS

RULE 166(e)-(l) JOINT PRE-TRIAL REPORT

Plaintiff Jo N. Hopper, 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, and Defendants Stephen B. Hopper and Laura S. Wassmer (all collectively, the “Parties”) hereby submit this Rule 166(e)-(l) Joint Pre-Trial Report (“Report”). The Parties have conferred regarding the matters required by Rules 166(e)-(g),(j) and (l), and present this Joint Pre-Trial Report, as follows. By submitting this Report, no party herein waives any claim or defense or position that an issue is contested as a matter of fact or law on the basis that it is not identified in this Report, nor does any party waive a position that an issue is not properly a contested issue of law or fact by its inclusion in this Report. This Report does not constitute an amendment to any pleading or a supplement to any discovery disclosures, and the Parties reserve their right to object to any issue that has not been properly pled or disclosed.

ESTIMATED LENGTH OF TRIAL

The Parties anticipate the trial will last 14 trial days.

Rule 166(e): CONTESTED ISSUES OF FACT/SIMPLIFICATION OF THE ISSUES¹

Without waiver of the right to challenge the existence or sufficiency of the evidence to support any of the following facts, for the purposes of this Joint Pre-trial Report, the Parties set forth the following list of contested issues of fact:

A. Jo Hopper's Claims

Joint Statement of Contested Issues of Fact

1. Did JPMorgan breach the Fee Agreement (contained in Plaintiff's Exhibit 7) with Jo Hopper? If so, what is the amount of Jo Hopper's damages resulting from that breach of contract?
2. Did JPMorgan² breach its fiduciary duty to Jo Hopper? If so:
 - a. What is the amount of her damages proximately caused by such breach of fiduciary duty?
 - b. Did the negligence or knowing participation in that breach of fiduciary duty of any of the following contribute to cause in any way the harm to Jo Hopper: Stephen Hopper, Laura Wassmer, Jo Hopper, Gary Stolbach, and/or Glast, Phillips & Murray, P.C.? If so, what is the percentage of responsibility attributable to each of them and to JPMorgan?
 - c. Did Jo Hopper establish by clear and convincing evidence that the harm to her from JPMorgan's breach of fiduciary duty resulted from malice? If so, what sum of money should be assessed against JPMorgan as exemplary damages, if any, for that breach of fiduciary duty?

¹ If a stated contested issue of fact is a contested issue of law, it is incorporated by reference in the contested issues of law.

² JPMorgan contends that it owed a fiduciary duty to Jo Hopper only in its capacity as Independent Administrator, and not in its corporate capacity. Jo Hopper does not agree with this contention.

3. What is a reasonable fee for the necessary services of Jo Hoppers' attorneys in pursuing claims for the breach of contract against JPMorgan?

4. What is a reasonable fee for the necessary services of Jo Hopper's attorneys in obtaining a ruling that Jo Hopper does not owe the Estate any money for attorneys' fees under the Fee Agreement?

Jo Hopper's Additional Statement of Contested Issues of Fact

5. What is a reasonable fee for the necessary services of Jo Hopper's attorneys relating to pursuing the declarations regarding the partition of the homestead and related issues?

6. Has JPMorgan obtained a benefit from Jo Hopper by the taking of an undue advantage? If so, by what amount has JPMorgan been unjustly enriched?

7. Did JPMorgan hold money that in equity and good conscience belongs to Jo Hopper? If so, what is the amount of money held by JPMorgan that in equity and good conscience belongs to Jo Hopper?³

B. Stephen Hopper's and Laura Wassmer's Claims

Joint Statement of Contested Issues of Fact

8. Did JPMorgan⁴ breach its fiduciary duty to Stephen Hopper or Laura Wassmer?

9. If JPMorgan breached its fiduciary duty to Stephen B. Hopper and Laura S.

Wassmer:

a. What was the amount of the account administration fee JPMorgan charged for the administration of the Estate? What was the amount of Estate funds expended in (i)

³ JPMorgan contends that the claims referenced in paragraphs 6 and 7 are claims against JPMorgan only in its capacity as Independent Administrator.

⁴ JPMorgan contends that it owed a fiduciary duty to Stephen Hopper and Laura Wassmer only in its capacity as Independent Administrator, and not in its corporate capacity. Stephen Hopper and Laura Wassmer do not agree with this contention.

defending the appeal of the Robledo Litigation; and (ii) defending the lawsuit after December 7, 2015?

b. Did the negligence or knowing participation in that breach of fiduciary duty of any of the following contribute to cause in any way the harm to the Estate: Stephen Hopper, Laura Wassmer, Jo Hopper, Gary Stolbach, and/or Glast, Phillips & Murray, P.C.? If so, what is the percentage of responsibility attributable to each of them and to JPMorgan?

10. Did the negligence, if any, of any of the following proximately cause injury to the Estate: Stephen Hopper; Laura Wassmer; Jo Hopper; JPMorgan; Gary Stolbach; Glast, Phillips & Murray. If so,

a. Were there payments of Estate funds that resulted from such negligence, if any, for (i) defending the appeal of the Robledo Litigation; (ii) defending this lawsuit after December 7, 2015; or (iii) JPMorgan's fee for its administration of the Estate, and if so, what amount of any such payments proximately resulted from such negligence?

b. Did the negligence or knowing participation in a breach of fiduciary duty of any of the following contribute to cause in any way the harm to Stephen Hopper or Laura Wassmer: Stephen Hopper, Laura Wassmer, Jo Hopper, Gary Stolbach, and/or Glast, Phillips & Murray, P.C.? If so, what is the percentage of responsibility attributable to each (including JPMorgan)?

11. If JPMorgan⁵ committed a breach of fiduciary duty, did Stephen Hopper or Laura Wassmer establish by clear and convincing evidence that the harm to the Estate resulted from

⁵ JPMorgan contends that any claim for breach of fiduciary duty is against it only in its capacity as Independent Administrator.

malice or gross negligence? If so, what sum of money should be assessed against JPMorgan as exemplary damages, if any, for that breach of fiduciary duty?

Stephen Hopper's and Laura Wassmer's Additional Statement of Contested Issues of Fact⁶

12. Regarding Stephen Hopper's and Laura Wassmer's claim for breach of fiduciary duty:

a. Were the transactions comprising the negotiation for the execution of the Fee Agreement and the administration of the Estate of Max D. Hopper fair and equitable to Stephen B. Hopper and Laura S. Wassmer?

b. Did JPMorgan make reasonable use of the confidence that Stephen B. Hopper and Laura S. Wassmer placed in it?

c. Did JPMorgan act in the utmost good faith and exhibit the most scrupulous honesty toward Stephen B. Hopper and Laura S. Wassmer?

d. Did JPMorgan place the interests of Stephen B. Hopper and Laura S. Wassmer before its own?

e. Did JPMorgan refrain from using the advantage of its position to gain any benefit for itself at the expense of Stephen B. Hopper and Laura S. Wassmer?;

f. Did JPMorgan fully and fairly disclose all important information to Stephen B. Hopper and Laura S. Wassmer concerning the negotiation of the Fee Agreement and the administration of the Estate of Max D. Hopper?

13. If JPMorgan breached its fiduciary duties to Stephen B. Hopper and Laura S. Wassmer:

⁶ JPMorgan does not agree that these are proper contested issues of fact.

a. What was the amount of Estate funds expended in paying representatives of Hunton & Williams to perform estate administration expenses JPMorgan was obligated to perform under the Fee Agreement?

b. What was the amount of profit JPMorgan made related to the administration of the Estate and for performing private banking services for Jo N. Hopper?

c. What was the amount of Estate funds expended in defending against claims and prosecuting claims at the trial level prior to appeal in the Robledo Litigation?

14. Did JP Morgan commit fraud against Stephen B. Hopper and Laura S. Wassmer either by making material misrepresentations of fact or by failing to disclose material facts within the knowledge of JPMorgan? If so:

a. What is the amount of fees paid by Stephen Hopper and Laura Wassmer to JP Morgan for administration of the estate?

b. What is amount of profit made by JPMorgan in the administration of the Estate and for performing private banking services for Jo Hopper?

c. What is the amount of fees paid by JPMorgan from monies belonging to the Estate of Max D. Hopper to Hunton & Williams, LLP for estate administration services in the past?

d. What is the amount of fees paid by JPMorgan from monies belonging to the Estate of Max D. Hopper to Hunton & Williams, LLP for estate administration services in the future?

e. What is the amount of fees paid by JPMorgan to Hunton & Williams, LLP from monies belonging to the Estate of Max D. Hopper for legal services associated with defense of the Robledo Litigation?

f. What is the amount of fees paid by JPMorgan to Hunton & Williams, LLP from monies belonging to the Estate of Max D. Hopper defending this lawsuit after December 7, 2015?

g. What is the amount of fees paid by JPMorgan to Hunton & Williams, LLP from monies belonging to the Estate of Max D. Hopper for legal services associated with the prosecution of this lawsuit in the future?

15. If JPMorgan committed negligence, were there payments of Estate funds that resulted from such negligence, if any, for defending against claims and prosecuting claims at the trial level prior to appeal in the Robledo Litigation; and if so, what amount of any such payments proximately resulted from such negligence?

16. Did JPMorgan hold money that in equity and good conscience belongs to Stephen Hopper and Laura Wassmer? If so, what is the amount of money held by JPMorgan that in equity and good conscience belongs to Stephen Hopper and Laura Wassmer?⁷

c. JPMorgan as Independent Administrator's Claims

Joint Statement of Contested Issues of Fact

17. Does Jo Hopper owe the Estate any money for funds the Estate expended on her behalf (or that she received on behalf of the Estate) during the administration, and if so, how much?

⁷ JPMorgan contends that this is a claim against JPMorgan only in its capacity as Independent Administrator.

18. Did JPMorgan as Independent Administrator defend against Jo Hopper's claims in this lawsuit for its removal (the "Removal Action") in good faith before Jo Hopper dropped her Removal Action on December 7, 2015?

19. 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?

20. 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?

Rule 166(f): STIPULATIONS OF FACT

1. Max D. Hopper died on January 25, 2010 without a will.

2. Jo Hopper is the surviving spouse of Max Hopper.

3. Stephen Hopper and Laura Wassmer are the natural, adult children of Max Hopper.

4. Max Hopper and Jo Hopper lived together in the residence at 9 Robledo Drive, Dallas, Texas 75230 ("Robledo") at the time of Max Hopper's death.

5. Robledo was the community property of Max Hopper and Jo Hopper.

6. Between April 15, 2010 and April 29, 2010, Jo Hopper, Stephen Hopper, Laura Wassmer, and JPMorgan entered into the "Estate Settlement Services Fee Schedule – Texas" attached to Plaintiff's Exhibit 7.

7. Stephen B. Hopper knew before April 15, 2010 that Tom Cantrill had previously represented Jo Hopper as an attorney and had prepared a Will for Jo Hopper. (Stipulation filed September 22, 2016).

8. On June 30, 2010, JPMorgan was appointed as the Independent Administrator of the Estate of Max D. Hopper.

Rule 166(g): IDENTIFICATION OF LEGAL MATTERS TO BE RULED ON OR DECIDED BY THE COURT

1. The parties' Joint Motion for Pre-Admission of Trial Exhibits.
2. The parties' Motions in Limine.
3. Stephen Hopper's and Laura Wassmer's Motion for Partial Summary Judgment (filed July 20, 2016).
4. JPMorgan's Motion to Compel the Production of Documents by Mrs. Hopper (filed September 16, 2016).
5. JPMorgan's Motion to Compel the Heirs to Answer Interrogatories (filed September 16, 2016) regarding Stephen Hopper's and Laura Wassmer's economic damages.
6. JPMorgan's Plea to the Jurisdiction regarding the Heirs' standing to assert individual claims for damages to the Estate and Special Exception regarding any claims by the Heirs on behalf of the Estate.
7. The number of strikes to be allotted to JPMorgan, Jo Hopper, and the Heirs during voir dire.
8. The Parties' objections to designations of deposition testimony.
9. The Parties' jury questionnaire attached as **Exhibit 1**.
10. Time limits for each of the parties for (a) voir dire; (b) opening statements; (c) presentation of the party's case; and (d) closing arguments.

Rule 166(h): EXCHANGE OF A LIST OF DIRECT FACT WITNESSES

The parties' Witness Lists with the information required by Rule 166(h) are attached hereto as **Exhibits 2-4**.

Rule 166(i): EXCHANGE OF A LIST OF EXPERT WITNESSES

The parties Witness Lists contain the expert witness information required by Rule 166(i) as well. *See Exhibits 2-4.*

Rule 166(j): AGREED APPLICABLE PROPOSITIONS OF LAW AND CONTESTED ISSUES OF LAW⁸

A. Agreed Applicable Propositions of Law

1. After being appointed as Independent Administrator on June 30, 2010, JPMorgan as Independent Administrator owed a fiduciary duty Jo Hopper, Stephen Hopper, and Laura Wassmer when acting as Independent Administrator.

B. Contested Issues of Law

Joint Statement of Contested Issues of Law

2. After being appointed as Independent Administrator on June 30, 2010, did JPMorgan owe a fiduciary duty Jo Hopper, Stephen Hopper, or Laura Wassmer in any capacity other than as Independent Administrator?

3. Did JPMorgan, as Independent Administrator or in any other capacity, owe a fiduciary duty Jo Hopper, Stephen Hopper, or Laura Wassmer prior to being appointed Independent Administrator on June 30, 2010? If so, when did that duty begin?

4. Does Texas law allow the recovery of mental anguish damages on Jo Hopper's claim for breach of contract?

5. Can Jo Hopper recover the attorneys' fees she incurred prior to the date of filing of her lawsuit as "damages" in this case?

6. Has Jo Hopper properly segregated her attorneys' fees between recoverable and non-recoverable causes of action?

⁸ If a stated contested issue of law is a contested issue of fact, it is incorporated by reference in the contested issues of fact.

7. Can Jo Hopper recover under Texas law for expenses for property taxes and repairs to Robledo that she incurred as the homestead occupant?

8. Does the Court have jurisdiction over, and can Jo Hopper maintain a claim for, breach of contract or breach of fiduciary duty regarding the timing of the distribution of Robledo, given Texas Estates Code § 405.001 and that that the distribution of Robledo occurred within two years of the Independent Administrator's appointment and consistent with Judge Miller's May 18, 2012 Order on Motions for Summary Judgment?

9. Does the Court have jurisdiction over claims asserted by Stephen Hopper or Laura Wassmer against JPMorgan for actions prior to June 30, 2010, given that the Court's June 30, 2010 Order Appointing JPMorgan as Independent Administrator is a final judgment finding that "it is in the best interest of the distributees, Laura S. Wassmer, Stephen Hopper, and Jo N. Hopper, to grant independent administration and to appoint JPMorgan Chase Bank, N.A. as Independent Administrator"?

10. Given Jo Hopper's claim for "Reimbursement of Miscellaneous Expenses" from the Estate, can Jo Hopper claim those same damages from JPMorgan for breach of contract or from the IA for breach of fiduciary duty?

11. Can Jo Hopper maintain a cause of action against JPMorgan or JPMorgan as Independent Administrator for "unjust enrichment," independent of, or in the alternative to, her reimbursement claim against the Estate for the same damages?

12. Can Jo Hopper maintain a cause of action against JPMorgan or JPMorgan as Independent Administrator for "money had and received," independent of, or in the alternative to, her reimbursement claim against the Estate for the same damages?

13. Do Stephen Hopper and Laura Wassmer have standing to bring individual claims for fraud or breach of contract based upon damages to the Estate?

14. Can Stephen Hopper and Laura Wassmer seek to recover any of their attorneys' fees without any expert testimony that such fees were reasonable and necessary?

15. Does the economic loss rule bar Stephen Hopper's and Laura Wassmer's claim for negligence?

16. Are Stephen Hopper's and Laura Wassmer's fraud and breach of contract claims in which they contend that the attorneys' fees incurred by JPMorgan as Independent Administrator and paid by the Estate are not exclusively an expense of the Estate now barred by the Court's ruling on Jo Hopper's motion for summary judgment?

17. Can Stephen Hopper and Laura Wassmer maintain a claim for fraud based upon statements in the Fee Agreement?

18. Can Stephen Hopper and Laura Wassmer maintain a claim against JPMorgan or JPMorgan as Independent Administrator for "money had and received," independent of their breach of contract and breach of fiduciary duty claims for the same damages?

19. Can Stephen Hopper and Laura Wassmer maintain a claim against JPMorgan or JPMorgan as Independent Administrator for "conversion" of money, and independent of their breach of contract and breach of fiduciary duty claims for the same damages?

20. What amount of attorneys' fees, if any, should be awarded to Jo Hopper under Texas Civil Practice and Remedies Code § 38.001 et seq. in connection with her claim that JPMorgan breached the Fee Agreement?

21. What amount of attorneys' fees would it be equitable and just to award to Jo Hopper and against JPMorgan⁹ under Texas Civil Practice and Remedies Code § 37.009, if any, in connection with her claim for declaratory judgment regarding her responsibility under the Fee Agreement for the Independent Administrator's attorneys' fees?

22. If JPMorgan as Independent Administrator is found to have breached a fiduciary duty owed to Stephen Hopper or Laura Wassmer, must JPMorgan disgorge any part of its account administration fee and if so, in what amount?

JPMorgan's, Stephen Hopper's and Laura Wassmer's Statement of Contested Issues of Law

23. Can Jo Hopper seek/recover her attorneys' fees in this proceeding under Texas Civil Practice and Remedies Code § 37.009 regarding the declarations relating to the Robledo residence that were later severed, or does the Court lack jurisdiction over the claim or is it barred by either waiver or res judicata? If she may seek such fees, what amount of fees would be "equitable and just," if any to award to Jo Hopper and against JPMorgan¹⁰, Stephen Hopper, or Laura Wassmer?

JPMorgan's Additional Statement of Contested Issues of Law¹¹

24. What is the "monetary value" of the settlement consideration received by Jo Hopper from Stephen Hopper and Laura Wassmer and what was the "monetary value" of the settlement consideration received by Stephen Hopper and Laura Wassmer from Jo Hopper under the settlement and release agreement those parties executed on or about September 27, 2016 and

⁹ JPMorgan contends that any award of attorneys' fees against it on this cause of action would be solely against JPMorgan as Independent Administrator. Jo Hopper disputes this contention.

¹⁰ JPMorgan contends that any such attorneys' fees awarded against it would be in its capacity as Independent Administrator, and properly payable from the Estate. Jo Hopper, Stephen Hopper, and Laura Wassmer dispute this contention.

¹¹ Jo Hopper does not agree that these are proper contested issues of law. Stephen Hopper and Laura Wassmer also dispute that these are proper contested issues of law.

what settlement credit is JPMorgan entitled to against any damages that might be awarded against it?

25. What is the “monetary value” of the settlement consideration received by Stephen Hopper and Laura Wassmer under the compromise settlement agreement and release they entered into with Gary Stolbach, Glast, Phillips & Murray PC and Mark C. Enoch those parties executed in or about November 2016 and what settlement credit is JPMorgan entitled against any damages that might be awarded against it?

Rule 166(k): PROPOSED JURY CHARGE QUESTIONS, INSTRUCTIONS, AND DEFINITIONS

Plaintiff Jo Hopper’s proposed jury charge is attached hereto as **Exhibit 5**.

Third Party Plaintiffs Stephen Hopper and Laura Wassmer’s proposed jury charge is attached hereto as **Exhibit 6**.

Defendant JPMorgan Chase Bank, N.A.’s proposed jury charge is attached hereto as **Exhibit 7**.

Rule 166(l): MARKING AND EXCHANGING OF ALL EXHIBITS THAT ANY PARTY MAY USE AT TRIAL AND STIPULATION TO THE AUTHENTICITY AND ADMISSIBILITY OF EXHIBITS TO BE USED AT TRIAL

The Parties current Trial Exhibit Lists are attached hereto as **Exhibits 8-10**.

Respectfully submitted,

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

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