

STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY SEP 04 2020
Court of Common Pleas
The Honorable Doyet A. Early, III Circuit Court Judge SC Court of Appeals

Appellate Case No. 2019-000362

Adele J. Pope, Appellant,

v.

Estate of James Brown and The James Brown 2000 Irrevocable Trust, Respondents.

AMENDED RECORD ON APPEAL
VOLUME V of VII
(Pages 1851 – 2328)

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Appellate Case No. 2019-000362**

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Bradley Sharp - Direct Examination by Mr. Williams

1 Q Okay. Based on your understanding of the valuation
2 approach adopted by Ms. Pope and the formula, and we can
3 look at it, what's your observation of the approach that
4 she utilized?

5 A My understanding of the valuation conducted by
6 Adele Pope was she effectively concluded to a value of \$84
7 million --

8 MR. BUNDY: I would object. This witness is giving
9 an opinion about the opinion of another witness and he's
10 established that he has not personally done an evaluation.
11 Clearly he would have the right as an expert to do an
12 evaluation and put his evaluation in. But all he's doing
13 is criticizing another witness and I don't think that's
14 appropriate for expert testimony. Thank you, Your Honor.

15 THE COURT: He is opining about the approach that
16 Ms. Pope took and the approach that Mr. Bauknight took and
17 obviously, as I told y'all yesterday, Ms. Pope's claim for
18 commissions is based on her approach, which is worlds apart
19 from the valuation given by the estate and by the IRS. So
20 obviously, it will benefit this finder of fact as to any
21 information I can receive concerning the appropriateness
22 and the validity of the approaches used by both sides. And
23 I do deem it proper for me to be assisted by this expert's
24 opinions. So therefore, I respectfully overrule the
25 objection.

Bradley Sharp - Direct Examination by Mr. Williams

1 MR. BUNDY: Thank you, Your Honor.

2 BY MR. WILLIAMS:

3 Q Mr. Sharp, I was -- if you can remember or I can
4 restate the question?

5 A I remember.

6 Q Okay.

7 A The value was approximately \$84 million which I
8 understand was derived based on the application of a
9 simplistic formula that reflected an applied multiple of --
10 or an applied range of multiples from 12 and a half to 14
11 times, which were applied to one year of publishing
12 royalties based on five year average, 50 percent of 2006
13 gross known performance contracts less the deduction of an
14 assumed outstanding debt balance of \$15 million.

15 Q Okay. In your entire experience have you ever seen
16 this type of valuation formula utilized?

17 A No, I have not. In my experience this type of
18 valuation formula has not been applied to value
19 intellectual property of this type.

20 Q Okay. And let's talk about what it is about this
21 formula that you've never seen before. Can you start with
22 the first -- there's two parts to it, right? The multiple
23 and then the performance revenue; is that correct?

24 A Yeah. To take it step by step, number one, she has
25 a derived range of valuation multiples of 12 and a half

Bradley Sharp - Direct Examination by Mr. Williams

1 Adele Pope. And then the time period of mid 2009 through
2 2016, which I understand corresponds to the administration
3 of Russell Bauknight through current. Based on our true
4 view of the information, we tried to extract three trends.

5 Number one, the total volume of clearance activity
6 that was submitted each year. Number two, the trend with
7 respect to the approval rate of those clearances over time.
8 And number three, the total dollar value of fees that were
9 agreed to for each of those clearances. Appreciating that
10 in certain cases the underlying fees that were agreed to
11 were variable or contingent upon specific aspects of their
12 usage. And so in those cases, we were not able to
13 specifically quantify them.

14 Based on my review of the underlying information,
15 there was a significant increase --

16 MR. BUNDY: Your Honor, this is the last time I'm
17 going to object on this, but I take the position that he's
18 getting ready to give you a verbal summary. And this rule
19 1006 does not limit itself to charts. It says charts,
20 summaries, or calculations. I take the position that
21 without the underlying data, he's not entitled -- he's
22 going to make a summary statement. He can give his
23 opinion, but I don't think he can give a summary verbally
24 or in the chart. That's my objection. Thank you.

25 THE COURT: Overruled. Move along.

Bradley Sharp - Direct Examination by Mr. Williams

1 THE WITNESS: Based on my review of the underlying
2 data, and again I will speak approximately, there was a
3 dramatic increase in clearance requests to the estate
4 between 2009, 2010, and thereafter. I believe that that
5 increase in the volume of clearances was at least twofold.
6 The approval rate of those clearances, I believe, increased
7 from the 60 percent to below 60 percent level to north of
8 80 percent in 2010 and thereafter.

9 BY MR. WILLIAMS:

10 Q Let's stop. The 60 percent was in what year?

11 A I believe that was in 2008.

12 Q Okay. And then it went down in 2009, is that what
13 I just heard you say?

14 A There's a significant decline in 2009.

15 Q Okay. And then in 2010, what happened?

16 A That approval rate increased to approximately 85
17 percent and has maintained at this level from 2010 and
18 beyond.

19 Q Okay. And the actual number of clearances that
20 came into the estate, what type of increase did that --
21 what type of increase occurred with respect to that?

22 THE COURT: Increase from when to when?

23 BY MR. WILLIAMS:

24 Q From when -- from when Mr. Bauknight became the
25 fiduciary of the estate and trust, what type of increase in

Bradley Sharp - Direct Examination by Mr. Williams

1 the actual number of clearances that were asked occurred?

2 A Based on my recollection --

3 THE COURT: Clearances that were requested.

4 MR. WILLIAMS: Yes, Your Honor. The number of --

5 THE WITNESS: Clearance requests.

6 BY MR. WILLIAMS:

7 Q Sure.

8 A The number of clearance requests in 2008, I believe
9 that number was approximately 150, maybe a little higher,
10 maybe a little lower. In 2009, that number went down. I
11 don't recall the approximate figure. In 2010 and
12 thereafter, the clearance requests were in the hundred's.

13 Q Okay. And did they stay that way thereafter based
14 on the data you saw?

15 A There was a slight decline subsequent to 2010. I
16 believe that might be a function of, you know, potentially
17 pent up demand with respect to those clearance requests.
18 But they've -- they've settled to a more steady state in
19 recent years.

20 Q All right.

21 MR. BUNDY: I'm sorry, they settled to what?

22 THE WITNESS: A steady state.

23 MR. BUNDY: Oh, a steady state.

24 THE WITNESS: The dollar value, as well as,
25 significantly increased. And again, this is a dollar value

Bradley Sharp - Direct Examination by Mr. Williams

1 of total fees that were effectively agreed to. Again,
2 based on my recollection in 2008 and 2009 -- in 2008 that
3 total dollar value of fees agreed to was around a million.
4 In 2009, there was a significant decline. In 2010, that
5 number was in excess of 9 million. And subsequent to 2010,
6 there was some variability, but I believe that those --
7 those amounts varied between 3 and a half, or else just say
8 \$3 to \$4 million per year.

9 BY MR. WILLIAMS:

10 Q Okay. And when you talk about the actual requests,
11 what are we talking about? Make sure the court understands
12 what it is that's being cleared. The million or so in 2008
13 versus the 9 million or so in 2010?

14 A Yes. The majority of these clearance requests are
15 requests to use the music for a particular purpose. So for
16 example, I believe, there was a request by Chanel to use
17 the music, or the song, It's a Man's World in conjunction
18 with an advertising campaign and effectively this is an
19 approval or a question to approve the right to use the
20 music for that purpose.

21 Q Okay. Did you track down, for example, on the jump
22 between 2009 and 2010, what did that -- what do you
23 attribute that jump to?

24 A I would attribute that increase to better
25 management and better administration of the estate.

Bradley Sharp - Cross-Examination by Mr. Bundy

1 can proffer.

2 MR. WILLIAMS: Thank you, Your Honor.

3 Mr. Bundy, it's your witness.

4 MR. BUNDY: With regard to the proffer, I'm not
5 familiar with a rule that allows you to proffer. You
6 haven't even moved in to put into evidence. As I
7 understand it --

8 THE COURT: They moved and you objected before he
9 moved and we had that discussion, so --

10 MR. BUNDY: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MR. BUNDY:

13 Q Good morning, Mr. Sharp. What information were you
14 provided by or from the defendants? What information did
15 you receive and what form did it take?

16 A The documents that I received included the
17 inventory and appraisal.

18 Q The -- which inventory and appraisal?

19 A There is an inventory and appraisal document. It's
20 in conjunction with the tax return that was prepared.

21 Q Okay. All right.

22 A A copy of the tax return.

23 Q The estate tax return?

24 A Correct.

25 Q You didn't get any income tax returns? Or did you?

Bradley Sharp - Cross-Examination by Mr. Bundy

1 Q Okay. Did you call him and talk to him?

2 A I did not.

3 Q Okay. Did -- was his -- other than -- and how long

4 is the affidavit?

5 A How many pages?

6 Q Yes, sir.

7 A I don't recall.

8 Q Okay. And you don't know Mr. Alexander?

9 A I've never met Mr. Alexander.

10 Q Okay. Did you do any background check on him? Did

11 you see what his credentials were outside of the affidavit?

12 A I don't recall.

13 Q Did anybody who provided this to you tell you

14 anything about Mr. Alexander? In other words he's

15 incompetent, he's a clown, or he doesn't know what he's

16 talking about?

17 A No.

18 Q Okay. So your entire universe of making your

19 decision that he was unqualified to give an opinion was

20 based on the pages in that affidavit?

21 A The results of a deposition transcript that I

22 reviewed.

23 Q Oh, so you reviewed a deposition transcript. Okay.

24 And so you read that and you -- by reading those two

25 things, you just came to the conclusion that he just didn't

Bradley Sharp - Cross-Examination by Mr. Bundy

- 1 A I was provided with clearance data.
- 2 Q Clearance data. And I believe that came in the
- 3 form of an Excel spreadsheet prepared by someone else?
- 4 A Several Excel spreadsheets.
- 5 Q Prepared by someone else?
- 6 A Yes.
- 7 Q Okay. And you didn't test -- you didn't audit that
- 8 spreadsheet, did you? You didn't go and check the
- 9 underlying data, did you?
- 10 A We relied upon the Excel spreadsheets that were
- 11 provided to us.
- 12 Q And your opinions therefore about the clearances
- 13 are based on representations in a document that you did not
- 14 audit and do not know as a matter of fact are accurate?
- 15 A We relied upon the Excel files that were provided
- 16 to us with the clearance data.
- 17 Q And that's the assumption upon which your
- 18 conclusions and opinions are based.
- 19 A We relied upon the information that we --
- 20 Q And if that was unreliable, would that change your
- 21 opinion?
- 22 A Under the Pope scenario that that information was
- 23 not reliable, it's possible it may impact.
- 24 Q Sure. I mean just junk in, junk out, right?
- 25 So other than the spreadsheet, what did you get?

Bradley Sharp - Cross-Examination by Mr. Bundy

1 A There may have been other information that was
2 provided. I believe that list that I provided comprises
3 the majority of the information that -- that --

4 Q I notice that you didn't bring any documents with
5 you to the stand. Do you have any documents here in the
6 courtroom that would help you refresh your recollection
7 about what in fact you were provided?

8 A I do not.

9 Q Okay. You're from California?

10 A Yes.

11 Q So those documents are back in California? Or do
12 you still have them?

13 A I brought some documents along with me.

14 Q And what did you bring with you?

15 A The majority of those documents are the ones that I
16 provided in that list.

17 Q I see. Okay. Did you sign a confidentiality
18 agreement?

19 A Yes.

20 Q Okay. When did you sign it?

21 A I don't recall.

22 Q When were you hired?

23 A I don't recall precisely.

24 Q Was it last year? Year before last? Can you tell
25 me was it in the -- was it -- can you tell me what decade

Bradley Sharp - Cross-Examination by Mr. Bundy

1 you were hired in?

2 A I don't recall the precise date that we were hired.

3 Q Can you tell me the year?

4 A I don't want to speculate. I don't recall

5 precisely.

6 Q Were you hired before James Brown died?

7 A I was not.

8 Q Okay. So at least we know you weren't hired in

9 2005. Okay. Were you hired during Ms. Pope's tenure as

10 administrator, trustee? Between 2007 and let's say 2009?

11 Were you hired in that time period?

12 A No.

13 Q Okay. Were you hired before Wilson versus Dallas,

14 the decision was rendered? You familiar with that

15 decision?

16 A No.

17 Q You've never heard about the decision in this case

18 where the Supreme Court reversed a settlement that -- at

19 which settlement was the initiation of Mr. Bauknight's

20 presence in the case? You didn't know anything about that?

21 A I'm not familiar with that.

22 Q Okay. Well, do you remember how much you're

23 getting paid? Do you know how much you're charging by the

24 hour?

25 A Yes.

Bradley Sharp - Cross-Examination by Mr. Bundy

1 A 29.

2 Q If we could, let's look at Exhibit 29, please. You
3 prepared this document?

4 A Yes.

5 Q And the information in that document comes from, in
6 part, the estate tax return, does it not? Schedule F of
7 the estate tax return -- of the estate tax return?

8 A Which number are you referencing?

9 Q Well, I'm referencing the number at the top and the
10 way you've taken things out. Are those -- isn't it true --
11 let me ask it to you this way: Isn't it true that Schedule
12 F is where that information came from and what it was made
13 up of?

14 A Are you referencing the \$84 million?

15 Q Yes, sir. The \$84 million and the deductions for
16 your analysis of what the \$84 million included.

17 A My understanding was the concluded value by Adele
18 Pope was \$84 million, so that's the number I included here.

19 Q Where did it come from? What's your source
20 document for the \$84 million?

21 A It was referenced in a number of the documents that
22 I received.

23 Q Including the estate tax return which I believe you
24 previously received was provided to you?

25 A It may have been included there. It was referenced

Bradley Sharp - Redirect Examination by Mr. Williams

1 which is Plaintiff's Number 4.

2 A This is that document.

3 Q Thank you. So Plaintiff's 4 has the formula that

4 we talked about and that you gave an opinion on this

5 morning?

6 A Yes.

7 Q Okay. You were questioned on direct and you were

8 also questioned extensively on cross about your clearance

9 analysis. If I were to hand you -- or first of all, I'm

10 going to mark this, if I may as -- for identification

11 Defendant's 30 -- no, I'm not going to mark it.

12 If I were to hand you this, could you identify

13 that?

14 A Yes.

15 Q Okay. And what is that?

16 A This is an analysis that I prepared based on review

17 of the clearance data from 2008 to 2016.

18 Q Okay. I heard you testify that you saw 150

19 clearances run through the estate in 2008. Is that --

20 after reviewing that, is that still your recollection?

21 A No.

22 Q Okay. Having the benefit of reviewing that

23 document, can you tell the Court what you now recall?

24 A In 2008, it was approximately 65.

25 Q Okay.

Bradley Sharp - Redirect Examination by Mr. Williams

1 A Clearance requests.

2 Q Okay. And then in 2009?

3 A In the first portion of 2009 that's associated with
4 Adele Pope administration, it's approximately 60.

5 Q Okay. And then can you tell me what you observed
6 once Mr. Bauknight's administration began?

7 A In 2000 -- the second half of 2009, the number of
8 clearance requests increases to 119 approximately.

9 Q Okay. And how about in 2010?

10 A In 2010, that number increases to approximately
11 304.

12 Q Okay. And how about in 2011?

13 A In 2011, that number increases to approximately --
14 I'm sorry it decreased slightly from 2010, but the number's
15 approximately 268.

16 Q Okay. How about 2012?

17 A 2012 that number is approximately 234.

18 Q 2013?

19 A 2013, that number is approximately 215.

20 Q Okay. You were questioned extensively, and I just
21 want to talk in as very general sense as possible about
22 what's called Schedule F of an estate tax return. You
23 recall that during cross-examination?

24 A Yes.

25 Q And you were asked if you could identify specific

Louis Levinson - Cross-Examination by Mr. Silvernail

1 Q Were you involved in the PR/Trustees discussion of
2 what to do with that information?

3 A No, sir.

4 Q So you don't know sitting here whether they
5 investigated that?

6 A That is correct.

7 Q Or whether they made a decision not to do it?

8 A That is correct.

9 Q Or so, of course, on what information that decision
10 might have been based?

11 A Yes, sir.

12 Q Now, in the Spring of 2008, do you recall that the
13 attorney general was challenging Ms. Pope and Judge
14 Buchanan's appointment?

15 A Yes. I don't remember when it was, but I do
16 remember the challenge, yes.

17 Q And do you recall that Mr. Dallas and Mr. Bradley
18 had also challenged the acceptance of their resignation and
19 thus the appointment of Ms. Pope and Judge Buchanan?

20 A Okay. Let me -- let me answer yes and explain what
21 I think your asking. I know that no sooner had Buddy
22 Dallas and Judge Bradley resigned that they contended --
23 that they contended that they'd either been coerced into it
24 or it wasn't voluntary or some nonsense like that and filed
25 something to be reinstated, yes.

Louis Levinson - Cross-Examination by Mr. Silvernail

1 If that's the question you're asking me, that's
2 what I understood. And there was some other lawsuit in
3 federal court in South Carolina that sought to enjoin
4 something while Dallas, Cannon -- no, while Dallas and
5 Bradley sought to be reinstated.

6 Q Is that last suit you're referring to the case
7 filed by Forlando Brown in early 2008?

8 A I think so.

9 Q And in addition to those, isn't it correct that
10 there were also pending contests to the validity of
11 Mr. Brown's 2000 will and 2000 Irrevocable Trust by your
12 clients and separately by Ms. Tomi Rae Hynie?

13 A By the end of 2006, yes. Those would have been
14 filed because there was the statute about to run, so in
15 2008 -- am I right? Yes. That's right. In 2008 that
16 would have existed, that's right. By that point the
17 caveats would have been filed, yes.

18 Q And so in early 2008, Ms. Pope and Mr. Buchanan --
19 Judge Buchanan, rather, were operated in a world where the
20 documents under which they served were being contested by a
21 number of people, where their authority was being
22 challenged by a number of people, where the permanence of
23 their appointment was being challenged by at least some
24 people. Is that fair to say?

25 A I didn't write that down. The only people who were

Louis Levinson - Cross-Examination by Mr. Silvernail

1 challenging their authority were Dallas and Bradley, to my
2 knowledge. If that's your question. My clients never
3 challenged their authority pursuant to the appointment of
4 this Court after November 20th, 2007.

5 Q I'm asking generally. We have many people and many
6 lawsuits at this point. This point being --

7 A Well, my clients --

8 Q -- early 2008?

9 A -- never challenged their authority to serve until
10 the settlement agreement was approved by this Court in 2009
11 and it was only pursuant to the statute that said they
12 would have to sign the settlement agreement and be replaced
13 by the named successors.

14 Q But in early 2008, there were challenges to their
15 appointment, generally?

16 A The answer to that question is if you consider the
17 ludicrous claims by Dallas and Bradley to withdraw a
18 voluntary resignation in the face of being removed for
19 cause to be a challenge, yes.

20 Q And Ms. Pope and Mr. -- Judge Buchanan faced
21 opposition from the attorney general, as well, didn't they?

22 A Yes.

23 Q Basically from their appointment forward?

24 A The basis of that was different, but yes, sir, that
25 is correct.

Louis Levinson - Cross-Examination by Mr. Silvernail

1 Q But regardless of the basis, lack of authority to
2 act is lack of authority to act, correct?

3 A Yes, sir. You're correct.

4 Q And the challenges to the documents under which
5 they served called into question who the ultimate
6 beneficiaries of any of this property would have been,
7 didn't they?

8 A Yes, but that's -- yes. But as I've said,
9 Mr. Silvernail, that's really not the province -- I mean
10 this is my opinion, and I understand I defer to the Court.
11 That's --

12 Q Well, I don't --

13 THE COURT: Hold on, he can answer the question.

14 THE WITNESS: But that is not the province of the
15 PR's to -- that is not their fight. They were not the
16 chosen PR's by the deceased and the argument that I
17 understand and I know this is about fees; the argument is
18 they spent X number of hours and X number of millions of
19 dollars of the estate's time. There is a limit in this
20 context of the value of the estate to how much money should
21 be spent defending an estate plan when there are other
22 people out there fighting it for or against my clients.

23 And that's -- that's the grievance that I think
24 troubled me and created the discord in the context also of
25 the settlement agreement.

Louis Levinson - Cross-Examination by Mr. Silvernail

1 This Court approved the settlement agreement. This
2 Court appointed Ms. Pope and Judge Buchanan. It just
3 strikes me as odd that -- and inconsistent with their
4 appointments to challenge the Court that appoints them when
5 this Court decides to approve a settlement.

6 Now, I realize this settlement was reversed under
7 the grounds. I'll grant you that. But that wasn't the
8 issue raised in this Court when we went through the
9 approval process hearings in 2009.

10 BY MR. SILVERNAIL:

11 Q Mr. Levinson, I think in our talk about the
12 Christies sale, I understood you to say that the PR's and
13 trustees at the time, regardless of the mandatory court
14 order, should have done something different from what they
15 did. Is that a fair summary?

16 A No, not they should have. They could have, is what
17 I'm saying. I understand they asked for approval. They
18 got approval and the order is very specific that it's a
19 mandate. So I agree with you. But before doing that,
20 there probably were some turns that could have been taken
21 that would have avoided that.

22 Q But approved is approved?

23 A Yes, sir.

24 Q And so also just to contextualize what we've
25 arrived at a moment ago, and I understood you to take issue

Louis Levinson - Cross-Examination by Mr. Silvernail

1 with the level of defense Judge Buchanan and Ms. Pope gave
2 the estate plan. You have, throughout your involvement in
3 this, represented individuals who contested the estate
4 plan, correct?

5 A Until that issue was settled; that is correct.

6 Q And so you were representing folks who were
7 fighting the documents Ms. Pope and Judge Buchanan were
8 appointed to defend?

9 A We've had this -- you may -- if you're asking it in
10 a slightly different way, I'll answer it the same way. I
11 don't believe that it was Mr. Buchanan and Ms. Pope's duty
12 to defend Mr. Brown's estate plan. Now, I may be wrong,
13 but that is my opinion.

14 I could give you all kinds of chapter and verse on
15 it, but I just don't think that that was their duty and
16 certainly not in some interpretation of that duty to an
17 unlimited financial extent as a charge on the estate.

18 Q Take a look at Tab 28, the April 1st order we were
19 just looking at. Take a look at page 5 with me.

20 A 28, page 5?

21 Q Yes.

22 A Yes, sir, I got it. I'm looking at it. I know
23 what you're going to ask me about, so go ahead and ask me.

24 Q I appreciate that. We still want to get it in the
25 record.

Louis Levinson - Cross-Examination by Mr. Silvernail

1 A Go right ahead.

2 Q Would you publish into the record the last sentence
3 that appears on that page?

4 A Those contesting the estate plan must not be
5 allowed to control the pursestrings of the PR/Trustees.

6 Q This would be another finding of this Court?

7 A Yes. May I also read that the Court finds the
8 PR/Trustees under Franklin versus Chavis have the right to
9 raise all funds necessary for a reasonable defense of the
10 estate plan. That is the pivotal issue when you, one as a
11 fiduciary you're not spending your own money. You're
12 spending someone else's money. Therefore, you must balance
13 the cost of the defense against the benefit to the estate,
14 likelihood of success. It is not an absolute mandate that
15 you spend -- that you defend the estate to its last dollar.

16 And that is, I think -- I think Judge Early's order
17 is a correct interpretation of the duty, which is, it must
18 be evaluated in the context of a lot of circumstances.

19 Q Under James Brown's 2000 will and 2000 Irrevocable
20 Trust --

21 A Yes.

22 Q -- your clients collectively, but maybe differently
23 among them received Mr. Brown's tangible or I believe it
24 was called personal and household effects in that document,
25 correct?

Louis Levinson - Cross-Examination by Mr. Silvernail

- 1 A Could you say that again? I'm sorry.
- 2 Q Your clients who were designated as children of
- 3 James Brown under his 2000 estate plan received his
- 4 personal and household effects?
- 5 A Yes, sir, that's correct.
- 6 Q Your clients who were designated as grandchildren
- 7 as defined in those documents received an interest in a \$2
- 8 million education fund?
- 9 A That is correct again.
- 10 Q And those two things under that estate plan were
- 11 collectively all your clients got?
- 12 A Correct. If that will was admitted to -- accepted
- 13 as the final will of Mr. Brown, that's correct.
- 14 Q And then the vast bulk of the estate or trust as
- 15 pulled together under those documents went to a charitable
- 16 trust, correct?
- 17 A That's also correct.
- 18 Q If your clients were all heirs of James Brown and
- 19 were successful in voiding those documents and achieving an
- 20 intestacy, they would have received a substantial portion
- 21 of his property, wouldn't they.
- 22 A They would have received their intestate shares.
- 23 That's right.
- 24 Q And, of course, exactly what that is would depend
- 25 on how many total children there are and whether there's a

Louis Levinson - Cross-Examination by Mr. Silvernail

1 spouse?

2 A And the spouse issue was very much also in the mix
3 of that conversation, yes.

4 Q And so, your clients were contesting a plan that
5 left them a minority share to better their on financial
6 position, correct?

7 A That is correct. And I don't apologize for
8 advancing any interests to better their position.

9 Q We all litigated some will contests, Mr. Levinson.
10 But I want to clarify exactly what context your testimony
11 comes in.

12 A Okay.

13 Q Your clients were attacking the estate plan.
14 Ms. Pope and Judge Buchanan were defending the estate plan?

15 A Correct. But there is a difference. My clients
16 knew what the facts were and Ms. Pope and Mr. Buchanan did
17 not. They knew what the factual basis was for attacking
18 the will because they knew intimately that the people who
19 were around their dad exploited him, him Mr. Brown,
20 unmercifully and Mr. Buchanan and Ms. Pope did not know
21 that. And there inlay the -- the nucleus of the
22 disagreement between them. Them meaning my clients and
23 Ms. Pope and Judge Buchanan. And they're not supposed to
24 know what my clients know because they weren't intimately
25 involved in it.

Louis Levinson - Cross-Examination by Mr. Silvernail

1 THE COURT: Talking to Mr. Bundy.

2 MR. WILLIAMS: Yeah.

3 THE COURT: Go ahead.

4 MR. WILLIAMS: We have copies of it and I can enter
5 it into the record.

6 THE COURT: What is it. Tell me first of all.

7 MR. NEWSOME: It's case 322, Your Honor.

8 MR. WILLIAMS: It's the state court 322. It's the
9 Adele Pope and Bob Buchanan against David Cannon, Albert
10 Dallas, Alfred Bradley, Joel Kass, GT, Enterprise Bank, all
11 of those.

12 THE COURT: Do you have a copy over there?

13 MR. WILLIAMS: Yes. I've got my own notes, would
14 you like --

15 THE COURT: Well, just let me look at it and we'll
16 make it a part of the record. I'll make it a Court's
17 record.

18 (Retrieving the document and handing it to the
19 Court.)

20 THE COURT: All right. Let's move along.

21 BY MR. SILVERNAIL:

22 Q Mr. Levinson, all of these actions you were just
23 referring to or all these allegations in case 322, arrived
24 as a place where Cannon, Dallas, and Bradley ended up with
25 James Brown's money, correct?

Louis Levinson - Cross-Examination by Mr. Silvernail

1 A If Dallas, Cannon, and Bradley had willingly
2 abdicated their interest in making that claim, they would
3 have. It's possible, but since I know that Dallas, Cannon,
4 and Bradley continued to claim against, at least
5 Mr. Bauknight, amounts that they claim were due under a
6 number of imaginative theories, I don't think that was
7 likely to happen. That they would abandon their claim up
8 to 50 percent interest for their services as trustees of
9 the charitable trust.

10 Q Wouldn't you agree with me that there is a factual
11 distinction between unduly influencing someone to obtain
12 their money or property and unduly influencing someone to
13 put almost all their property in a charitable trust that
14 you managed?

15 A I would agree. It's a substantive difference, yes.

16 Q And so these were not exactly the same allegations
17 in case 322 as in your lawsuit?

18 A But in fairness, by the time -- by the time of
19 Mr. Brown's death, they had already raped his personal
20 assets to the tune of \$15 or \$20 million.

21 Q I --

22 A And mostly from Mr. Cannon, from what I can tell,
23 through a variety of methodologies, but -- but -- but
24 nonetheless, there were significant payouts to everyone.
25 So -- so that was only done because in my view and from the

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1 Manges, New York, practicing corporate law. And in 1994, I
2 moved to the firm of Shukat, Arrow, Hafer and Weber, a firm
3 that specializes in the entertainment area. I've been with
4 the firm since 1994. About 16 years ago, I became a
5 partner of the firm. I'm the managing partner of the firm
6 and I represent musicians, artists, music publishers,
7 record companies, managers, live music venues, and I have a
8 particular specialization in representing the estates and
9 heirs of well known musicians.

10 I represent the estates of John Lennon, Jimmy
11 Hendrix, I work with the Bob Marley estate; Roy Orbison;
12 John Coltrain, Charles Mingus. I am the co-trustee of the
13 John Phillips Trust. John Phillips was the main songwriter
14 and lead singer of the Pop group the Mama's and the Papa's
15 and I am a co-trustee of the Bob Marley Family Trust.

16 THE COURT: I Shot the Sheriff.

17 THE WITNESS: Exactly.

18 BY MR. NEWSOME:

19 Q Tell us, perhaps, using John Lennon's estate as an
20 example. What was your role with that estate?

21 A Well, for the Lennon estate, I'm actually the -- I
22 am the attorney and also the -- basically the day-to-day
23 business manager. So all requests that come into the
24 estate to utilize John Lennon's music, both individually
25 and when requests come with respect the Beatles music would

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1 stop that. But at any rate.

2 I'm going to qualify him. He'll be able to give
3 opinions as long as it's admissible and if he gives an
4 opinion where you think it's beyond the scope of an expert,
5 state your opinion and we'll -- state your objection and
6 we'll hash that out and I'll make a ruling on it.

7 MR. BUNDY: Thank you very much, Your Honor.

8 MR. NEWSOME: Thank you, Your Honor.

9 BY MR. NEWSOME:

10 Q So Mr. Herbsman, when a celebrity musician dies,
11 what action should a fiduciary take with regard to
12 contracts?

13 A Well, the first step would be to gather all of the
14 agreements and make sure you understand what obligations
15 and responsibilities the estate has, what the artist was
16 subject to: Recording agreements, publishing agreements,
17 agreements with performing rights societies, any place
18 where there is royalty streams that come in. You need to
19 collect them, review them and prepare summaries of all of
20 them so you can understand where you could and couldn't
21 exploit rights.

22 Q Okay. And have you reviewed Ms. Pope's description
23 of her work in this estate?

24 A I did. I reviewed extensive time records.

25 Q Okay. And did you see any evidence that Ms. Pope

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 conducted a contract review?

2 A I did not.

3 Q Okay. And did you find any evidence that she
4 retained experts to advise her or to handle such a review?

5 A I did not.

6 Q Okay. What actions should a fiduciary of the
7 estate of a celebrity musician take with respect to
8 exploitation of unreleased recordings?

9 A Well, a prudent fiduciary would determine whether
10 there are archives of recordings that the deceased musician
11 holds, catalog those, make sure what's available, preserve
12 them, and potentially put together a plan of how to exploit
13 them and where to exploit them.

14 Q Okay. Is that a valuable estate asset?

15 A It can be, yes.

16 Q Okay. And in your review of the estate records and
17 Ms. Pope's records, did you see any evidence that Ms. Pope
18 conducted a review of unreleased recordings?

19 A I did not.

20 Q Okay. And did you find any evidence that she
21 retained an expert to conduct that -- such a review?

22 A No.

23 Q What actions should a fiduciary of a celebrity, the
24 estate of a celebrity musician take with respect to name,
25 signature, and trademarks of a deceased performer?

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 A Well, you need to check to make sure what's
2 registered and what's not registered as a trademark. Make
3 sure that you protect the trademark. Depending on the
4 state where the individual has passed away and what the
5 laws are of the state it can be extremely important to make
6 sure that you protect the trademarks because you may have
7 problems with right of publicity rights in certain places
8 and it's an additional protection that you can have. And
9 also, you want to stop third parties from going out and
10 bootlegging. Especially when someone has passed away.
11 It's an opportunity for people to go out and start making
12 T-shirts and products and things using -- using the
13 celebrity's name, image, logos; and so it would be prudent
14 to make sure that everything's registered with the
15 trademark office.

16 Q And you heard some testimony earlier from
17 Mr. Sharp. Is that common that there's an increased
18 interest after death?

19 A Oh, absolutely. Yeah, a death bomb, basically.
20 Yeah.

21 Q Is that a technical term?

22 A Yeah (laughter).

23 Q I thought that was a South Carolina term.

24 Did you see any evidence that Ms. Pope took any
25 action with respect to James Brown's name, signatures or

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 trademarks?

2 A I saw nothing in the time records that indicated
3 that.

4 Q Okay. And did you find any evidence of her hiring
5 an expert to handle that on behalf of the estate?

6 A No.

7 Q What is -- what is third party content? What is
8 that?

9 A Well, there may be material that's not owned by the
10 estate or not owned by the record label with which the
11 artist is associated. For instance, an artist may have
12 done a live performance and it may have been recorded by
13 the venue where the performance occurred, it may have been
14 recorded by a local radio station for broadcast. It occurs
15 a lot at festivals or someone may have attended a show and
16 just had a camera on hand and taken some footage, recorded.

17 So it would make sense to go out and try and find
18 those people to put the word out that you're looking for
19 that material to acquire it so that it doesn't become
20 material that's exploited by third parties without your
21 permission and competing with the legitimate product in the
22 marketplace.

23 Q And did you find any evidence of Ms. Pope taking
24 steps --

25 A I did not.

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 Q Did you find any evidence of her acquiring an
2 expert to advise her or assist the estate in locating that
3 third party content?

4 A No.

5 Q Okay. What role does social media play in the
6 estate of a deceased celebrity musician?

7 A Over time it's become much more important as social
8 media has played a more important role in marketing,
9 promotion, and just day-to-day communication. But, now --
10 so Mr. Brown passed away in 2008 is that -- 6, 2006, I'm
11 sorry. '8 is when -- so in 2006 -- but in 2008 is when the
12 PR appointment was done. At that time something like
13 MySpace, a very popular site at the time for music, would
14 have been something to have made sure that you had a page
15 on that you were registered and out there with the public.

16 Facebook had just started not long before then, but
17 it would be prudent to go out and secure domain names and
18 make sure that you're protecting the potential marketing
19 that you can do with a name.

20 Q Okay. And did you find any evidence that Ms. Pope
21 took that action on behalf of the estate of James Brown?

22 A No, I didn't see any.

23 Q Okay. And did you find any evidence that she hired
24 and expert to handle that on behalf of the estate?

25 A I did not.

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 Q What action should a fiduciary of an estate of a
2 celebrity musician take with respect to new recording
3 projects?

4 A Well, if your prudent, you would want to make sure
5 that there is a flow of product out on the market. As I've
6 said, you don't want to have a problem where third parties
7 are putting product out and you also don't want to have the
8 fan base dissipate, so it's important to make sure that you
9 have a flow of new product. And when I say new, obviously,
10 the musician is no longer alive, so it's not newly recorded
11 product, but things from what one would call the vault and
12 you release things, say for an anniversary project, a
13 particular birthday, boxed sets, previously unreleased
14 materials.

15 Q Okay. You mentioned a birthday. Did you find any
16 evidence of those types of projects in this estate?

17 A Not on the recording release side. The one thing I
18 did see was I believe there was talk of a tribute concert,
19 70 or 75 -- 75th, on his 75th birthday, but I saw some
20 mention of it and then no further mention of it. And I
21 don't believe it actually occurred.

22 Q Okay. With regard to the new recording projects,
23 did you see any evidence that Ms. Pope secured any new
24 recording projects for the estate of James Brown?

25 A I didn't see any evidence that she did and there

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 was no documentation of communication with the record label
2 as to whether anything was being done. I didn't see
3 anything.

4 Q Did you see any evidence of an attempt?

5 A I did not.

6 Q Okay. Did you see any evidence of her retaining an
7 expert to assist the estate with regard the new recording
8 projects?

9 A I did not.

10 Q What other revenue opportunities would be available
11 for an estate of a deceased celebrity musician like
12 Mr. Brown?

13 A So there would be the possibility for things like a
14 touring exhibition, of memorabilia, say museum exhibitions,
15 live stage shows, tribute type shows, review type shows
16 where someone could play James Brown in the review. Shows
17 -- sit down shows like in Las Vegas a Cirque du Soleil
18 type of a show; movies, documentaries, publishing
19 opportunities for books, things of that nature.

20 Q So in a Cirque du Soleil show, is that an
21 opportunity to generate significant revenue?

22 A Yes.

23 Q Do you have any example?

24 A I've been involved -- sure, the Beatles Cirque du
25 Soleil show, a show -- it's been running in Las Vegas for

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 about 11 years -- has been extremely successful and there
2 are others. The Michael Jackson show in Vegas, also a
3 Cirque du Soleil show.

4 Q Okay. And did you see any evidence of Ms. Pope
5 took any actions with respect to these other types of
6 revenue opportunities for the estate of James Brown?

7 A I did not.

8 Q Okay. Did you find any evidence in the estate
9 records where she might have retained an expert to explore
10 those type of revenue opportunities?

11 A The only thing I did see would have been, there was
12 an engagement of an attorney, Ray Gonzales who's a music
13 industry attorney who worked at Warner Music, I believe,
14 for a while and was in private practice. And there was
15 some indication of communication with Ray regarding the
16 75th Birthday Tribute. That's where I saw that reference,
17 but it was fairly minimal and then it disappeared.

18 Q Okay. And you've heard some testimony about
19 clearance requests. You have any experience with clearance
20 requests?

21 A Yeah, I handle clearance requests every day.

22 Q Okay. And what action should a fiduciary take --
23 of a celebrity musicians estate take with respect to
24 clearance requests?

25 A Well, clearances -- and it's a general

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 categorically, it's more than just music. You can have
2 music clearances, you can have human likeness clearances,
3 publishing clearances, master recording clearances; and
4 they come from a variety of different sources. So the most
5 important thing that someone would do to be prudent is to
6 make sure you have somebody who is aware of the market,
7 understands what the market will bear because there's a big
8 difference between licensing a hit song and licensing a
9 song that is just a part of an artists category. You can
10 license a James Brown song that is not a well-known song
11 and you wouldn't expect to pay a large fee relative to a
12 James Brown song that was a big hit song.

13 And you need to know what the market bears in terms
14 of what other songs have received, what other licenses have
15 been. You need to know what a particular type of movie
16 budget will allow for a particular license. So it's a
17 fairly specialized area. You need a lot of experience
18 seeing the same thing over and over again in order to know
19 what you can and can't negotiate.

20 Q And you heard Mr. Sharp's testimony this morning
21 and he was asked whether clearance requests were really
22 sitting waiting for the phone to ring; is that how it
23 works?

24 A No. No. If you sit and you wait for the phone to
25 ring, you'll just get -- you're just getting what -- what

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 comes to you. You know, some people have an idea in
2 advance, they know what it is they want. But there is a
3 whole process of marketing and promoting the music because
4 honestly there are -- you know, if there are 250 feature
5 films released a year, there are a lot more than 250
6 artists out there who would like their music to be used in
7 a movie. So you need to -- a music placement consultant
8 would create a sampler of music of your artist, send it out
9 to music supervisors of movies and of television shows,
10 send it to add agency creative people. And there's also,
11 you need to have relationships with those people. It's a
12 fairly insolate community and so you need to know who the
13 ad agency creatives are who are making the decision as to
14 this song is what I want for this advertisement; this is
15 what I'm going to pitch to this particular client.

16 And the same with the music supervisors. Movie
17 after movie, it will be the same group of music supervisors
18 who are hired to supervise and if you have relationships
19 with them they keep you updated as to what projects they're
20 working on, what's coming up and you have the opportunity
21 to pitch your music then in advance before the general
22 public knows about the project.

23 Q And I believe you heard Mr. Sharp testify as to his
24 opinion about why clearance requests might have increased
25 after Mr. Bauknight's appointment. Do you have an opinion

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 as to a reason why clearance requests might have increased
2 after his appointment?

3 A I do. It's -- in my opinion it's because they
4 hired Peter Afterman who is an expert in music clearances.
5 So -- that's what he does for a living.

6 Q Okay. And what do you base that opinion on?

7 A I've worked with him. I've had clients -- one of
8 my clients is a very large music video production company.
9 They make and distribute substantial numbers of music
10 videos, including a James Brown product; and so I've had to
11 go to Pete Afterman for clearances so I'm aware of what it
12 is he does and for other clients as well. He also
13 represents the Rolling Stones.

14 THE COURT: He represents who?

15 THE WITNESS: The Rolling Stones. And that's what
16 he does day in and day out.

17 BY MR. NEWSOME:

18 Q Okay. Defendant's 43. I ask you to take a second
19 and take a look at that, please, sir.

20 A Okay. I've reviewed it.

21 Q All right. And on the first page there at the
22 bottom you'll see an e-mail from Adele J. Pope --

23 A Uh-huh.

24 Q -- to Tracy Johnson. And if -- I would ask you to
25 publish the last sentence of the second paragraph beginning

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 with, Could you also please?

2 A Could you also please give us our recommendations
3 on the basic license term and all three options.

4 Q Now, is that typical for a fiduciary to ask, in
5 this case Warner Chappell, for recommendations on clearance
6 requests?

7 A Well, you would hope that you would have your own
8 opinions as to what the appropriate fees should be. It's
9 -- it's not uncommon to ask the publisher you're working
10 with if they feel that the fees are good, but you should
11 also have your own opinion.

12 Q Okay. Or have an expert that can provide that for
13 you?

14 A Right. When I say your own opinion, via you
15 working with somebody. Sure. Who would be able to confirm
16 to you whether or not it's a good offer of not.

17 Q Okay.

18 A And the reason I say that is not that Warner
19 Chappell doesn't know. Warner Chappell does this
20 regularly. They should be aware of what fees are good
21 fees, but honestly Warner Chappell, you know, they have two
22 million copyrights and so they do this in a -- and their
23 viewpoint is very different. Their -- their viewpoint is
24 to maximize the amount of money that they're receiving and
25 so honestly, Warner Chappell isn't concerned about whether

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 the song is going to get used again next week, next month,
2 that's not -- you know, their concern is they got people
3 who are getting bonuses by how much they take in in a
4 particular quarter.

5 So their desire is a desire to license as much as
6 possible and if you're not willing to do it at the
7 particular fee because there are other considerations that
8 you have, they got another song they can offer because
9 they've got 2 million copyrights to offer.

10 So I find that when I deal with music publishers
11 it's more important that I make sure that I'm comfortable
12 and I know that everything is the way that it should be
13 because we're not necessarily always looking for the same
14 end result. We have different -- different desires
15 sometimes.

16 Q Okay. And does this question confirm Ms. Pope did
17 not have an independent expert to advise on these terms?

18 A Well, it does appear that way because she's asking
19 Warner to tell her whether or not these are good terms,
20 yes.

21 Q And the next paragraph, can you publish the last
22 sentence beginning with, We would very.

23 A We would very much appreciate it if you have any
24 summary of 2008 approvals you could send us.

25 Q So is it common to ask the music publisher to keep

Jonas E. Herbsman - Direct Examination by Mr. Newsome

1 BY MR. NEWSOME:

2 Q Okay. Did you find any evidence in the estate
3 records that Ms. Pope took any action with regard to the
4 Bowie Bond in this estate?

5 A I did not.

6 Q Okay. Did you see -- did you find any evidence of
7 her retaining an expert on behalf of the estate to come up
8 with a plan or action with regard to the Bowie Bonds?

9 A No.

10 Q Okay. Is it common for estates of celebrity
11 musicians to lack the funds to pay expenses?

12 A Yes.

13 Q Okay. And what steps should a fiduciary of a
14 celebrity estate take with regard to hiring experts when
15 they lack funds? In your opinion.

16 A If you don't have the money to pay, which is not
17 uncommon at the time or shortly after the time of death,
18 you would look to engage people on a deferred compensation
19 basis.

20 Q Is that common with celebrity estates?

21 A Sure, I've done that a number of times, yeah.

22 Q Okay. Did you see any evidence of Ms. Pope
23 retaining anybody on a deferred-pay basis?

24 A I did not.

25 Q Okay. What action should a fiduciary take with

Jonas E. Herbsman - Cross-Examination by Mr. Bundy

1 rehabilitated by being shot --

2 A Uh-huh.

3 Q -- et cetera. Okay. Your rate is \$550 an hour,

4 right?

5 A No, it's 500, just increased to 525 or so.

6 Q 525, so you don't get -- you don't command the kind

7 of fees your colleague in Los Angeles gets of 700?

8 A I did realize this morning I should --

9 Q You did?

10 A -- raise my rates, yeah.

11 Q Maybe it's time to raise your rates, don't you

12 think?

13 A Yeah.

14 MR. NEWSOME: We object, Your Honor.

15 THE COURT: To the raising right now?

16 BY MR. BUNDY:

17 Q I think it was Mr. Sharp is that his name?

18 A I'm not sure.

19 Q You're not sure.

20 A Yeah.

21 Q He was -- he couldn't remember how many hours he

22 had worked. Can you?

23 A I can, yes.

24 Q Okay. That lower rate, I guess, it's easier to

25 remember.

Jonas E. Herbsman - Cross-Examination by Mr. Bundy

1 A As of --

2 Q How much have you been paid?

3 A Not including December, I've worked about 50 hours.

4 Q 50 hours?

5 A Yeah, I bill monthly, so I haven't done the

6 December bills yet --

7 Q Okay..

8 A -- so, yeah the time is done, but I haven't added

9 it up yet.

10 Q All right. And I believe you were provided

11 documents to review?

12 A I was.

13 Q Have you looked and reviewed any deposition

14 testimony?

15 A I'm sure I did.

16 Q Can you tell me which depositions?

17 A I reviewed Mr. Bauknight's deposition. I reviewed

18 Bob, I'm sorry I'm forgetting his last name.

19 Q Buchanan?

20 A Buchanan. Thank you. Two depositions of his. I

21 reviewed my own deposition. And I think those may have

22 been -- oh, and Ray Gonzales. I think I reviewed Ray

23 Gonzales's deposition.

24 Q Have you reviewed any trial transcripts? Did you

25 review Ms. Pope's transcript of her testimony at the trial

Jonas E. Herbsman - Cross-Examination by Mr. Bundy

1 of this matter earlier?

2 A I don't recall if I did exactly.

3 Q In the documents that you did review which were
4 provided to you, what was the representation made to you,
5 if anything, about those documents? As a whole?

6 A I don't think any specific representation was made.
7 They were given to me as documents to review in connection
8 with --

9 Q Did you request any --

10 A The record --

11 Q -- additional documents once you reviewed those
12 documents?

13 A I did not.

14 Q Okay. And the decision to decide what documents to
15 send you was made by whom?

16 A I don't know who made the decision. I only know
17 who sent me the documents.

18 Q It wasn't you?

19 A No, I wouldn't have knowledge of what the documents
20 were. I was provided with a printout of a list of
21 documents that accompanied what it was that was sent to me,
22 but I didn't choose what documents were sent to me.

23 Q You had an index?

24 A Right.

25 Q Of documents?

Jonas E. Herbsman - Cross-Examination by Mr. Bundy

1 Q Okay. In the documents you were given, were you
2 given the entire closing documentation for the Pullman or
3 Bowie Bond?
4 A No.
5 Q Okay. So -- and so then you don't know what was in
6 that information?
7 A Correct.
8 Q And you don't know that, in fact, Ms. Pope studied
9 that document from end to end? You can't deny that, can
10 you?
11 A Whether she studied or not wasn't what I was
12 opining on.
13 Q Okay. Okay. Well, you're familiar with Bowie
14 Bonds --
15 A Yes.
16 Q -- right?
17 Have you ever closed one of those?
18 A I haven't, but I have clients who have.
19 Q Okay. And typically that would be a pretty large
20 closing document, would it not?
21 A Correct.
22 Q Okay. Because you've got -- if it's a \$25 million
23 loan and you got twenty New York lawyers working on it,
24 they at least are going to create a lot of paper if nothing
25 else, right?

Jonas E. Herbsman - Cross-Examination by Mr. Bundy

1 A I don't know how many work on it, but --

2 Q Okay. And so part of the things you would expect
3 in that documentation would be a list of all the
4 copyrighted songs that were being put up as collateral,
5 would you not?

6 A I would expect there could be some reference to
7 what the copyrights are, but the songs that are being put
8 up for collateral don't necessarily comprise the entire
9 universe of songs that are available. It depends on what
10 -- it depends on what the terms of the bond are.

11 Q Exactly. And if the terms of the bond are 850
12 copyrights, you'd expect to have each one of them listed in
13 that bond somewhere. With some attachment?

14 A If someone's doing their work.

15 Q Okay. So if, in fact, that was in those documents
16 and you weren't provided them, that would allow you to
17 testify that you saw no evidence that Ms. Pope was aware of
18 how many copyrighted songs there were, right?

19 A I didn't say that Ms. Pope wasn't aware of how many
20 copyrighted songs there were.

21 Q Have you ever -- you're not a litigator, are you?
22 You're not a trial lawyer?

23 A I'm not.

24 Q Okay. Have you ever turned down the representation
25 of a client who had an estate they wanted -- a music estate

Jonas E. Herbsman - Cross-Examination by Mr. Bundy

1 you take that into consideration arriving at a conclusion
2 as to whether or not you'd take it under a contingency?

3 A Human nature is what it is. I don't think I have
4 one estate client that doesn't have this going on.

5 Q All of this?

6 A Not as -- not anymore as much as this, but
7 unfortunately, Bob Marley had 11 children and a wife and no
8 will. You know --

9 Q Did he have children?

10 A -- John Lennon had an ex-wife and -- and an
11 estranged son and --

12 Q I got you.

13 A -- and, you know, in each instance, it's a similar
14 situation. It's -- Miles Davis disinherited two children,
15 you know, it --

16 Q Well, in addition to all of that, did Mr. Marley or
17 Mr. Davis or whoever have three trustees that'd been
18 stealing from him, at least one or two of them, stealing
19 from him for 10 years previous?

20 A Well, I don't think that would impact my decision
21 as to whether I was representing or not, I'd look at -- I'd
22 be looking at what's going --

23 Q In fact, those three --

24 A -- forward.

25 Q -- gentlemen were in total control of all the

Jonas E. Herbsman - Cross-Examination by Mr. Bundy

1 records, wouldn't turn the records over; and in fact, had
2 all the in -- and by records, I don't mean vinyls or CD's.
3 I'm talking about documentation, okay?

4 A Sure.

5 Q They had all this documentation, they wouldn't turn
6 it over and the trial judge sitting in this case had to
7 hold one of them in contempt of court because he wouldn't
8 do it. Is that the same kind of problem you had with Bob
9 Marley?

10 A It's unfortunately not uncommon. In -- in -- in
11 the music industry because of the rights and the fact that
12 people sell things off when they're young and then people
13 seek to recover rights or -- and you also have a lot of,
14 you know, the only way one can put it is a lot of shady
15 characters, you know, who see this as an opportunity to
16 latch onto somebody and to line their own pockets. So in
17 most every instance I've been involved with, unfortunately,
18 something along those lines comes along as part of the
19 baggage.

20 Q Have you looked into see if this is any worse than
21 those?

22 A I haven't and -- because the question that I was
23 asked was --

24 Q Correct?

25 A -- what was done from the day when someone came in,

Jonas E. Herbsman - Cross-Examination by Mr. Bundy

1 Q Dallas and Bradley resign, Buchanan and Pope
2 appointed.

3 A Understood. But before that date, they were --
4 while they weren't the PR, they were the special
5 administrator, and so my understanding from what you said
6 is their obligations, their duties -- no, their rights to
7 make decisions were limited, but their obligation was to
8 oversee and report. So one would have thought that in that
9 earlier period they should have said, you know, no one's
10 minding the store. You need to go find somebody
11 appropriate.

12 Q Well, why don't we both just refer and rely on what
13 the document says signed by Judge as to what they could and
14 could not do instead of you and I speculating.

15 A Well, I asked you, but you haven't told me what the
16 duties of the special administrators were specifically, so
17 I'm -- I'm at a little bit of -- you know what they were,
18 but I'm at a little bit of a loss because I don't know how
19 they were delineated.

20 Q Right. And you were never provided that document
21 so you weren't able to make that conclusion or look at that
22 when you gave your expert opinion?

23 A My expert opinion was as to once they were
appointed as a PR.

24 Q Okay.



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Jonas E. Herbsman - Cross-Examination by Mr. Bundy

1 BY MR. BUNDY:

2 Q Okay. A total of how many experts in your opinion

3 should have been hired?

4 A I didn't add up a number. Some of the things that

5 I mentioned, the same person could have done multiple of

6 those -- of those things.

7 Q As I recall -- you finished? I'm sorry. You done?

8 A Yeah.

9 Q As I recall direct examination there were at least

10 ten to twelve topics that were discussed, I think. Things

11 that experts should have looked at, correct? That sound

12 about right?

13 A It's possible. I didn't add it up.

14 Q And of those ten to twelve, how many would it take

15 to get those ten to twelve done? One person?

16 A No, there are people who do the financial side of

17 things and there are people that do the legal side of

18 things and there are people who do the marketing and the

19 music side -- you know, this music from a -- when I say

20 music; the --

21 Q Let's do it this way then.

22 A -- exploitation.

23 Q Hypothetically they come to -- they make the right

24 decision and find their way to your office?

25 A Uh-huh.

Jonas E. Herbsman - Cross-Examination by Mr. Bundy

1 Q And since it's James Brown, you would say I'll do
2 it on a contingency, no problem. Don't need to know
3 anything else except it's James Brown?

4 A Right.

5 Q All right. Tell me what roles -- who you -- who
6 you would -- what expertise you would have provided and
7 what additional experts would have been required.

8 A Okay. So the comments about trademark, copyright
9 review, contract review, that would have been within the
10 purview of what I would do.

11 Q Okay.

12 A The issues regarding royalties, making sure that
13 royalties have been being paid and valuation, that would
14 have been an accountant.

15 Q Okay.

16 A It's possible that you need a -- two accountants
17 because the valuation expert is -- is a fairly specialized
18 area. There are people who do both.

19 But there are three. All right?

20 And then a fourth person who understands the
21 marketing of how this all works. The person who's out
22 there doing the exploitation aspect of things.

23 Q What about the memorabilia? Who handles that?

24 A Well, memorabilia, you're engaging a third party to
25 deal with. You talking about the sale that went on?

1 not do anything else. Did you understand that to be the
2 case?

3 A I actually haven't seen the piece of -- I don't
4 recall seeing the piece of paper. I understand -- when you
5 say stand down and not do anything, is that when she was
6 removed as PR?

7 Q She was told to stand down by the attorney general
8 of the State of South Carolina.

9 A And so I don't -- I'm not quite clear on what the
10 phrase stand down means. What it, don't do anything else,
11 don't manage the estate, don't take care of anything, just
12 let it all sit there and deteriorate?

13 Q Correct. Because we've reached -- we've reached a
14 settlement agreement and I'm the attorney general of the
15 State of South Carolina and now --

16 MR. NEWSOME: Your Honor, he's stating things that
17 aren't in evidence that aren't facts.

18 THE COURT: Sustained. That's -- refer to the
19 order where she was --

20 MR. BUNDY: I'm sorry, Your Honor?

21 THE COURT: -- her status was changed.

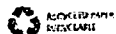
22 MR. BUNDY: I can't hear you.

23 THE COURT: Just refer to the order when her status
was changed. The attorney general didn't --

24
25 ///



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1 THE COURT: Yeah, why don't you -- as soon as
2 possible, but perhaps no later than the first week in
3 January let me know how y'all worked that out.

4 MR. NEWSOME: That will be fine.

5 THE COURT: I would like before we reconvene and
6 perhaps we're going to reconvene the week of the 29th, 10
7 days before that, I would like at minimum for either side
8 or both sides briefing the subject of the duty of a PR and
9 visa vi the duty to defend the estate plan and balancing
10 the duty to defend with responsibilities concerning the
11 cost of the defense versus settling. There's been a lot of
12 testimony about that today and I'd like to see if there's
13 any law on it and what your positions are concerning that.

14 In addition to that, under seal, the confidential
15 -- I want to know the money that the subsequent litigation
16 from the time that Mr. Bauknight was appointed, what the
17 cost of the estate has been for the subsequent litigation,
18 including attorney's fees, expert fees, litigation costs
19 and support personnel through four days of testimony
20 already. That's under seal, but obviously, I want to
21 consider that in -- if I have to balance out anything about
22 the duty to defend versus the efficiency to the estate as
23 to whether to continue litigation or to resolve it.

24 For the record, I want the record to reflect that I
25 have, once again, engaged the lawyers briefly, but still

1 engaged them to once again or to continue or whatever it
2 takes, to have meaningful discussions on trying to resolve
3 this. Obviously, I -- my task is to find whether or not
4 Ms. Pope is entitled to a fee and if so, the amount. And
5 obviously, the range of compensation is a high end from the
6 full commission on the full value of the estate or if I
7 find that she's not entitled to a commission, obviously,
8 she's been ordered some so far, but it would be a zero as
9 far as the part that's not been ruled on. So the range is
10 obviously, we've talked about the other day, and obviously
11 this case has implications on 4900 and I'm not going to go
12 over everything I talked about in chambers, but I have had
13 that conversation and I encourage you to continue to try to
14 resolve it. Thank you.

15 Everyone have a wonderful holiday season. I thank
16 you for your excellent presentation on both sides of this
17 issue, excellent legal skills, excellent -- everybody's
18 been wonderful and I appreciate it. Everybody have a
19 wonderful holiday season.

20 I will be available all through the holidays. I'll
21 be on my e-mail if you need me for anything and I will get
22 back to you as soon as possible. Let's try to find those
23 two days that week and hopefully that will -- if it's not
24 resolved, hopefully that will complete the testimony and
25 then we will be in a position, I will be in a position to

1 make a decision.

2 Thank you very much.

3 MR. NEWSOME: Thank you, Your Honor.

4 (Court was in recess until February 20, 2018.)

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Jeffrey Smith - Cross-Examination by Mr. Bundy

1 and trademark?

2 A Intellectual property.

3 Q And have you had any particular interest or have
4 you done any extensive studying with regard to termination
5 of copyrights?

6 A I've been doing almost nothing in the area of
7 intellectual properties since 2008 once I learned about,
8 you know, the importance of it, especially in this
9 particular case. So...

10 Q Have you published any articles of treatises on
11 this subject?

12 A Yes, we -- Ms. Pope and I published an article in
13 2011 about termination rights in the states.

14 Q Okay.

15 MR. BUNDY: Your Honor, at this time, I'd offer him
16 as an expert in termination of copyrights. He was listed
17 as an expert.

18 MR. WILLIAMS: Your Honor.

19 THE COURT: Yes, sir.

20 MR. WILLIAMS: We object. He is not qualified as
21 an expert. He testified during my questioning that he'd
22 never advised any client on termination rights. That he
23 has worked on, I think six copyrights his entire career and
24 I can go through --

25 THE WITNESS: Well --

Jeffrey Smith - Cross-Examination by Mr. Bundy

1 MR. WILLIAMS: I can lay a further foundation for
2 the absence of qualifications for him being an expert if
3 given the opportunity to.

4 THE COURT: I think that goes to the weight and not
5 to it's admissibility. If you want -- what do you want him
6 to give an opinion in what area?

7 MR. BUNDY: In termination of copyrights and what
8 -- and how difficult they are, how few people knew about
9 it. I mean, just -- I want him to explain to the Court
10 because I don't know that the Court has sufficient
11 knowledge and I think he would assist you in understanding
12 this.

13 Nobody has yet, I don't believe, put up a witness
14 to explain to you how complicated this is and how it really
15 works. And they put him up and he's -- and they're
16 complaining that Ms. Pope didn't run this estate properly
17 and she -- in light of the termination of the copyright
18 law, had to navigate that. And, in fact, it's because the
19 attorney general was completely unaware of it that this
20 estate's in the mess it's in now. We're going to go into
21 that later.

22 But I think it's crucial that Your Honor has some
23 understanding of the termination of copyrights and how they
24 affect this case.

25 THE COURT: Mr. Bundy, I've been hearing this case

Jeffrey Smith - Cross-Examination by Mr. Bundy

1 for I don't know how many years now. More than I, almost
2 since I've been on the bench. And I am very familiar with
3 the complexity of the termination rights and I don't need
4 an expert coming in here giving me an opinion about how
5 difficult it is.

6 MR. BUNDY: All right, sir.

7 THE COURT: Sustained. Move along.

8 MR. BUNDY: All right, sir.

9 Thank you, Your Honor.

10 THE COURT: Thank you. Anything else?

11 MR. WILLIAMS: No, Your Honor.

12 THE COURT: Thank you, you may step down.

13 MR. WILLIAMS: Your Honor, we've got a deposition
14 designation of Raymond Gonzales who was another lawyer
15 retained by the estate under the administration of
16 Ms. Adele Pope. I can hand it up if you'd like to read it.

17 THE COURT: Y'all are trying the case. You can put
18 the designations in or you can read it. I assume you've
19 given him the designations.

20 MR. WILLIAMS: I have. And this has been --

21 THE COURT: Hold on for a second.

22 Ms. Pope, Mr. Bundy, y'all finish your discussion
23 now.

24 MR. BUNDY: I think these are your designations and
25 our counter-designations.

Laura Woolley - Direct Examination by Mr. Williams

1 Brown's Christies auction?

2 A It's pretty -- but it's actually --

3 MR. BUNDY: Objection, Your Honor. I don't know
4 what that means.

5 THE COURT: I don't either.

6 MR. WILLIAMS: All right.

7 BY MR. WILLIAMS:

8 Q What -- Ms. Woolley, what was your professional
9 opinion with respect to the James Brown auction at
10 Christies?

11 A It's actually -- it's --

12 Q The catalog?

13 A Yeah, I remember the day I received it and I
14 remember being kind of blown away at how poorly presented
15 the property was. I thought it was the worse catalog I'd
16 ever seen. Mainly because there's no information with any
17 of the lots to give it any historical context.

18 Q Okay. What do you mean by that? Can you give us
19 an example?

20 A Yes. For instance, if you or I owned anything in
21 this catalog, it wouldn't be worth much. There's not
22 anything in here that's -- I don't know, incredibly
23 intrinsically valuable object. The value of all this
24 property really derives from the fact that it's owned by
25 James Brown. For instance, there's an auction we did for

Laura Woolley - Direct Examination by Mr. Williams

1 Barbara Streisand that had a piece that hung in her
2 apartment in New York that was just a painted wooden letter
3 A and it would have been a \$20 to \$30 item if I owned it.

4 We put it in originally 2- to \$300 until I -- we
5 discovered that it actually was the A that she used to tell
6 her friends she dropped from her name early on in her
7 career. And so because of that cute little story, which we
8 put in to the auction catalog, that piece ended up selling
9 for \$8,750.

10 Q Okay.

11 A So having the story behind it, obviously gives it
12 some kind of interesting context. I always say that we're
13 kind of in the business of selling stories in my field
14 because none of the stuff that we often deal with that
15 sells for the most amount of money is really that valuable
16 outside the context of it.

17 Michael Jackson's Thriller jacket that sold for
18 \$1.8 million is maybe a \$300 jacket. But without those
19 stories, you're losing all the punch behind this stuff.

20 Q Okay.

21 MR. BUNDY: If I may, Your Honor, I would object
22 and move to strike the testimony.

23 This apparently is a criticism of Christies without
24 the appropriate foundation that Ms. Pope or Judge Buchanan
25 prepared this document. I don't see whether -- there's no

Laura Woolley - Direct Examination by Mr. Williams

1 was the proposed date for the auction? And it's also on.
2 the catalog.

3 A July 17th of 2008.

4 Q Okay. So based upon the timeline of boots on the
5 ground, cataloging everything, until when it was determined
6 that the sale was going to occur, how long did Christies
7 have to create the catalog?

8 A Oh, one month.

9 Q Okay. In your professional opinion, is this enough
10 time to properly promote an auction for a deceased
11 celebrity?

12 A No.

13 MR. BUNDY: Objection.

14 THE COURT: The objection is what?

15 MR. BUNDY: Asking the witness to speculate.

16 THE COURT: Overruled.

17 MR. BUNDY: And it's irrelevant.

18 THE COURT: Overruled. She's opined based on her
19 experience and her qualification.

20 THE WITNESS: I don't think it's possible to do the
21 level of research that needed to be done, which is why I
22 think that's not here. What I saw missing from this
23 catalog makes sense when I work the timeline out and
24 realized that from the time the property arrived, there was
25 -- I mean, it's not -- it's very tedious to go through and

Laura Woolley - Direct Examination by Mr. Williams

1 THE WITNESS: Well, from all the documents that
2 I've read through, it appears as though there was some
3 pressure put on Christies to perform in a quick manner
4 because there needed to be an auction rather quickly from
5 Ms. Pope.

6 MR. BUNDY: Move to strike.

7 BY MR. WILLIAMS:

8 Q Is that your opinion to a reasonable degree --

9 MR. BUNDY: Excuse me, move to strike. Pressure
10 from whom? I --

11 THE COURT: You're going to get to cross-examine
12 her.

13 MR. BUNDY: All right, sir. I understand but I'm
14 trying to protect my record.

15 BY MR. WILLIAMS:

16 Q Is that your opinion to a reasonable degree of
17 professional certainty?

18 A Yes.

19 Q Okay. And here's the last piece of this. If the
20 auction -- have you done an analysis of what a properly
21 staged auction could have generated for the estate?

22 MR. BUNDY: Objection.

23 THE COURT: Sustained.

24 BY MR. WILLIAMS:

25 Q I'm going to hand you what's been identified --

Laura Woolley - Direct Examination by Mr. Williams

1 THE COURT: How in the world can she answer that if
2 the auction took place two months later what John Doe is
3 going to bid on an outfit.

4 MR. WILLIAMS: If you're -- if the Court will
5 indulge me, we've got a presentation from her.

6 THE COURT: The last question is sustained -- that
7 objection is sustained.

8 Try it another way.

9 MR. WILLIAMS: Yes, Your Honor.

10 BY MR. WILLIAMS:

11 Q Have you done an analysis of items that sold at the
12 Christies sale that sold at later auctions?

13 A Yes, I did. There were a number of pieces that
14 people bought from the Christies sale but then re offered
15 later where they did the research and actually identified
16 where he wore them. And they performed, like,
17 exponentially better when presented properly, with proper
18 cataloging that was more thorough.

19 Q Okay.

20 MR. BUNDY: For the record, I -- we're going to
21 move to strike as irrelevant as well, Your Honor.

22 THE COURT: Overruled on that.

23 (Defendant's Exhibit Number 66 was marked for
24 identification.)

25 ///

Laura Woolley - Direct Examination by Mr. Williams

1 BY MR. WILLIAMS:

2 Q I hand you what's been marked as Defendant's 66 for
3 identification.

4 You were describing an analysis you had done?

5 A Yeah, I pulled all of the items that I could find
6 that had been re offered and, for instance, on the very
7 first page, Lot 86 was the suit on the right. It was sold
8 -- with the large photo of him wearing it on the very next
9 page -- by Julianne's Auctions in 2011. So as presented by
10 Christies with no information, I mean the description just
11 says, Two piece, red satin suit; sold for \$1,000 and when
12 Julianne's put a picture of him wearing it and explained
13 where he actually wore it, it sold for \$6,875.

14 And that's pretty much throughout this whole
15 packet. What you'll find, Lot 113 sold for 500 at
16 Christies. Presented again with the photograph of him in
17 it sold for 3,750.

18 THE COURT: Which lot was that?

19 THE WITNESS: That was pages -- this one right
20 here. The red suit here with the little inset photo and --

21 THE COURT: I see. I see.

22 THE WITNESS: So each one is just the presented --
23 138, here's one of his suits. This the next page they
24 presented it with him with David Bowie and it sold for
25 5,000 as opposed to \$625 as it was presented at Christies.

Laura Woolley - Direct Examination by Mr. Williams

1 maltese. And they'll -- you couldn't still get that for
2 them. That was part of the frenzy of that sale. So...

3 Q Okay. And then I guess -- why do you think the
4 opposite happened in your professional --

5 MR. BUNDY: Objection.

6 BY MR. WILLIAMS:

7 Q -- in your professional -- withdrawn?

8 THE COURT: Go ahead and ask your question.

9 BY MR. WILLIAMS:

10 Q In your professional opinion, Ms. Woolley, why do
11 you believe that these items sold at a higher price later
12 on?

13 MR. BUNDY: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: I think that obviously they were
16 presented better. They were better researched. I also
17 think it -- July in New York, doing an auction is really
18 not the best time of year to schedule a sale. It's kind of
19 a ghost town. It's kind of the off-season for auctions.
20 The peak season in the New York auction rooms, you'll have
21 10, 11 auctions happening at Christies New York. In July
22 you have one, maybe two. And they're usually what we kind
23 of call the interiors or arcade sales, which are fancy
24 garage sales. It's all the stuff that's kind of
25 accumulated from different consignments over the year that

Roger Miller - Direct Examination by Mr. Williams

1 royalties I know will, you know, continue to be earned for
2 at least 15 years. But I'm going to do some sort of net
3 present value discount on those U.S. rights because I only
4 had one year with them. And, you know, let's just say the
5 net present value discount on that \$50,000 is \$45,000. So
6 your catalog isn't worth 1.5 million, which is 15 times a
7 hundred thousand, it's worth \$795,000, which is 15 times
8 50,000, plus net present value ascribing to your U.S. flow.
9 It's just -- I assume to be terminated by the creators or
10 the heirs.

11 Q Okay. So that type of exercise, does the
12 termination rights have the same effect here in the James
13 Brown catalog?

14 A Yes.

15 Q Okay. And can you explain that?

16 A Yes. It's my understanding that Mr. Brown has
17 signed his copyrights to a corporation and in exchange for
18 that assignment, he received minority shares in that
19 corporation. So the publishing rights to many of his
20 important works reside with this third party entity. He
21 receives some income or the estate, charity now, receives
22 some income as a result of those assignments. But those
23 rights are eligible for termination. And when they're
24 terminated the charity will lose that income.

25 Q Okay. So what do you -- what -- what was your task

Roger Miller - Direct Examination by Mr. Williams

1 when you were retained by the estate with respect to
2 termination rights?

3 A When I was hired, it was my understanding that
4 termination rights were important in this matter for a
5 couple of reasons. Number one, they came into play in
6 terms of how the copyrights were valued for the estate's
7 purposes. And they also came into play because there was
8 at one time an opportunity for all the parties involved,
9 the estate and the heirs to come together and combine and
10 pool their respective assets, termination rights, and other
11 assets.

12 And so what I did is I created an objective
13 valuation of those termination rights that could be used
14 for either purpose or any other purpose.

15 Q Okay. So what were some of your observations about
16 the value of these termination rights generally?

17 A Generally --

18 MR. BUNDY: Your Honor, if I may? There's no date
19 on his question, so I object about -- what valuation on
20 what date?

21 THE COURT: Well, let's do be a little more
22 specific. But these assets, what are you talking about?
23 And give us a date that he did it as of. I think that's a
24 fair objection and makes it all --

25 MR. WILLIAMS: Yes, sir, Your Honor.

Roger Miller - Direct Examination by Mr. Williams

1 THE COURT: -- understandable to all of us.

2 MR. WILLIAMS: Yes, Your Honor.

3 BY MR. WILLIAMS:

4 Q What were some of your observations about the value
5 of the termination rights that related to the -- Mr. James
6 Brown's music catalog as of the date, you can provide the
7 date for the valuation that you provided.

8 A They were quite valuable.

9 MR. BUNDY: Could we get the date?

10 THE COURT: What date did you value them as of?

11 THE WITNESS: I valued them as of the date of my
12 testimony, March 16, 2017.

13 BY MR. WILLIAMS:

14 Q Okay.

15 A I also provided an absolute value that pays no
16 regard to date,

17 Q Okay. And --

18 THE COURT: No regards to date; is that correct?

19 THE WITNESS: That's correct.

20 THE COURT: An absolute value no regards to date
21 and as of the date of his deposition, specific date.

22 MR. BUNDY: 2016, as it relates to 2016 --

23 THE WITNESS: 2017.

24 MR. BUNDY: Excuse me, I apologize, 2017.

25 THE COURT: March 16, 2017?

Roger Miller - Direct Examination by Mr. Williams

1 THE WITNESS: Yes.

2 THE COURT: 17.

3 THE WITNESS: Yes, Your Honor.

4 MR. BUNDY: I would object to that, it's
5 irrelevant. The issue here is the date of death valuation.
6 And as to the other one I object because I don't know what
7 it means. It must have a date, a value as time goes -- the
8 value has changed, but anyway that's my objection.

9 THE COURT: Thank you, overruled.

10 MR. BUNDY: Thank you.

11 THE COURT: Obviously, you can explore that on
12 cross-examination.

13 BY MR. WILLIAMS:

14 Q What impact do the termination -- who owns the
15 termination rights?

16 A The heirs is my understanding.

17 Q So what impact do they have on the value, discord
18 among the parties of death value of the --

19 THE COURT: Date of value? Or --

20 MR. WILLIAMS: Date of death value. I'm sorry,
21 Your Honor.

22 BY MR. WILLIAMS:

23 Q What effect do they have on the value of the
24 estate?

25 A But I did make the observation that they were quite

Roger Miller - Direct Examination by Mr. Williams

1 valuable and termination rights are by definition a
2 liability to the estate because they're an asset to the
3 heirs. So as these rights are taken away, then dollar for
4 dollar, that dollar is extracted from the estate.

5 Q Okay. What portion of the estate's royalties are
6 subject to termination?

7 A As I recall from my examination of the Warner Music
8 copyrights that were assigned, a little under 60 percent of
9 earnings came from the U.S.

10 Q Okay. And so if terminated, what does that mean?

11 A That means that 60 percent of the earnings for the
12 publisher's share would -- would be recaptured by the
13 heirs.

14 Q And go -- okay. The estate heirs negotiated a
15 settlement where the heirs would contribute their
16 termination rights in exchange for half the estate's
17 assets, you're aware of that, correct?

18 A Yes.

19 Q Okay. Have you analyzed whether or not that is a
20 good deal, in your professional opinion?

21 MR. BUNDY: Object. I don't know what good deal
22 means.

23 MR. WILLIAMS: I can rephrase it. Withdraw it.

24 BY MR. WILLIAMS:

25 Q Have you analyzed whether or not that was a prudent

Roger Miller - Direct Examination by Mr. Williams

1 decision in your professional opinion?

2 A In my professional opinion it seemed to be a
3 prudent decision.

4 Q Okay.

5 A It would have been beneficial to the estate.

6 Q Okay. And can you explain why?

7 A Certainly. The heirs as things are now have the
8 ability to extract earnings from what's flowing through the
9 estate into the charity. Which means that over time, the
10 ability of the charity to do its charitable work will be
11 diminished. If an agreement was reached where all the
12 assets would have been combined and those termination
13 rights would have resided with the estate, then not only
14 would there be preservation of that income, there actually
15 would have been growth.

16 Q Explain how that would work?

17 A Those termination rights would be exercised in
18 favor of the estate. For example, in the case of the
19 Warner's assignments, again, those works that were
20 contributed to Warners were contributed for a minority
21 corporation interest. Those assignments can be terminated
22 and the estate could collect the full publishers share for
23 those works.

24 MR. BUNDY: I hate to --

25 THE COURT: Hold on.

Roger Miller - Direct Examination by Mr. Williams

1 MR. WILLIAMS: Your Honor --

2 THE COURT: Wait a minute.

3 MR. BUNDY: I hate to interrupt, but the answer is
4 drifting off into an answer that apparently relates to
5 whether or not it's a good idea to settle the case among
6 the heirs. That's not what this case is about. And you
7 know, we've already learned from Wilson versus Dallas that
8 that agreement whether it might have been a good idea or
9 not, was not acceptable to the Supreme Court. And so I'm
10 not so sure that I can see any nexus or relevance to this
11 testimony as it relates to the issues in this case.
12 Ms. Pope was not involved with that agreement. And she had
13 nothing to do with it. Okay? And it may or may not have
14 been a good idea to appeal it from a financial standpoint,
15 but it was appealed and it was reversed. And so I don't --
16 I don't -- I just object on relevance, Your Honor.

17 THE COURT: Overruled.

18 MR. BUNDY: Thank you, Your Honor.

19 THE COURT: Overruled.

20 BY MR. WILLIAMS:

21 Q You were talking about the Warners, the corporation
22 where they were assigned to Warners and there's minority
23 interest in the Warners C Corp?

24 A Yes, and so as I explained, that would be very
25 important because those interests would effectively be

Roger Miller - Cross-Examination by Mr. Bundy

1 People were talking about \$100 million. Would that
2 surprise you?

3 A I don't have enough information to be surprised.

4 Q But the number \$100 million associated with the
5 James Brown estate in 2007, would it have shocked your
6 conscience?

7 A Had I seen how little it earned, yes, it would.

8 Q So the assets, Mr. Brown's, the assets in the
9 estate, would you consider them to be solid gold?

10 A I think they're great assets.

11 Q Solid gold?

12 A I have used that analogy before.

13 Q In this case --

14 A Yes.

15 Q -- regarding these assets under oath?

16 A Fantastic copyrights.

17 Q There you go. Thank you.

18 Now, prior to November 24, 2016, you had nothing to
19 do with the James Brown estate; is that correct?

20 A Prior to what?

21 Q Prior to November 24, 2016, you had nothing to do
22 with the James Brown Estate? No knowledge of it, nothing,
23 correct?

24 A Correct, yeah.

25 Q All right. And how much have you been paid since

Roger Miller - Cross-Examination by Mr. Bundy

1 then to -- up until your appearance here today, total?

2 A \$300 an hour.

3 Q Okay. How many hours?

4 A I don't know, I've billed maybe about \$15,000.

5 Q \$15,000, bucks?

6 A Most of which was for valuation work.

7 Q Okay.

8 A That's for the time really spent.

9 Q So if we do the math, we can figure the hours?

10 A Sure.

11 Q And the valuation you were asked to create was the

12 specific day of your deposition, which was March 16, 2017;

13 is that correct?

14 A I believe I chose that date and it just seemed to

15 be the most relevant --

16 Q Okay.

17 A -- date because that's --

18 Q But that's the date.

19 A -- when we were to talk about value.

20 Q That's the date. It wasn't the date of death, it

21 was that date?

22 A No.

23 Q Some 11 years later?

24 A Correct.

25 Q Okay. Now, the valuation you made, you used or

Tiffany Provence - Direct Examination by Mr. Newsome

1 A Circuit court and probate court?

2 Q Okay. And what areas have they -- have you been

3 qualified as an expert?

4 A I'm generally qualified with regards to fiduciary

5 administration, aspects of fiduciary administration,

6 probate litigation, will contests, common law marriages,

7 anything within the spectrum of serving as a fiduciary

8 and/or representation of the obligations of the fiduciary.

9 Q Okay. And when's the last time you were qualified

10 as an expert?

11 A Last December, just this past December.

12 Q Okay. Last December meaning?

13 A 2017.

14 Q Okay, a couple months ago?

15 A Yes.

16 Q Okay.

17 A Two months ago.

18 MR. NEWSOME: Your Honor, we offer Ms. Provence as

19 an expert in the areas of fiduciary administration, which

20 would include compensation and litigation.

21 THE COURT: Any cross on her qualifications?

22 MR. WILLIAMS: No, Your Honor. Other than the

23 fiduciary compensation, I think is up to you. I think it's

24 a matter of law, not subject to expert witness testimony,

25 but I think --

Tiffany Provence - Direct Examination by Mr. Newsome

1 use more than one person.

2 Q And that's -- you're talking about the difference
3 between the 1040 and a 1041?

4 A 1040, 1041, 706's, all the -- all the -- yes.

5 Q Okay. All right. Have you ever been appointed to
6 manage a complex estate assets outside of your area of
7 expertise?

8 A Regularly.

9 Q Okay. And what types of estates would those be?

10 A I've mentioned some of them. I mean I've had pizza
11 parlors, restaurants, concrete companies. I've had some
12 intellectual property, but that was more in the realm of
13 publication, publishing rights, written publishing. Just
14 all sorts of -- I mean you learn a lot on entities and
15 businesses that you never even knew existed. So I would
16 say for the most part I've never inherited a special
17 appointment or a fiduciary appointment to a law firm where
18 I knew what was going on as opposed, it's always something
19 that's pretty much outside of my realm of expertise.

20 Q And how do your PR responsibilities differ in those
21 situations?

22 A They don't.

23 Q Okay. Do they differ if the cash -- if the estate
24 has no cash?

25 A Unfortunately, there's not an exclusion on standard

Tiffany Provence - Direct Examination by Mr. Newsome

1 A Unfortunately, Ms. Pope's bills are what I
2 categorize as block billing, which is a legal term I assume
3 that most of us are familiar with, meaning that we group a
4 large amount of tasks together and then put a time on them
5 as opposed to specifically listing our tasks and
6 attributing a time value to each individual task. Because
7 of the block billing, it made it very difficult to go in
8 and review her records for reasonableness. It's a
9 challenge because if you want to say, well, should she have
10 taken this action and is it reasonable and you go in to try
11 to find all of the places where -- or the time that was
12 allotted to that specific action, it's very difficult to do
13 that.

14 Q Okay.

15 A So to the extent that -- that caused me concern.
16 Also just as a preliminary matter, if you take the number
17 of hours that she's billing for over the period of time
18 that she's billing for, including what I understood was
19 somewhat of the stand-down period, her total number of
20 hours worked is almost, I would define it as super human.
21 I mean it's extraordinary in comparison to what my billable
22 time has been on any file that I've worked.

23 Q And did -- approximately how many hours per month
24 was she billing?

25 A I think it averaged out to over 200 hours a month.

Tiffany Provence - Direct Examination by Mr. Newsome

1 Q And is that high by typical standards?

2 A That's incredibly high even by a big law firm
3 churning burn standards. No offense on big law firms.

4 Q That no longer bothers me.

5 I'm going to hand you what's labeled as Plaintiff's
6 Exhibit 8. Ask you if you -- is this the document you're
7 referring to with Ms. Pope's time description?

8 A Well, without looking page by page, it looks like
9 the -- yes, hundred page attachment of an accounting of her
10 time in this file.

11 Q Okay. And I just -- maybe flip to the second page
12 and do you see an example of what you refer to as block
13 billing?

14 A Well, I would -- I would actually site the entire
15 page as an example of block billing. So for example -- and
16 the testimony that she offered both in her deposition and I
17 believe in court as well was an acknowledgment of this,
18 that she would figure out how many days -- or how long she
19 worked on James Brown that day and then just list the
20 things that she had done. So in general as compared to
21 what I would say is an itemized bill, this entire page is
22 block billing. So if we want to look at the -- you know,
23 the second entry of 10.5 hours, it's a list of all sorts of
24 things and you cannot separate out if there's a specific
25 beneficiary that was causing those things or what required

Tiffany Provence - Direct Examination by Mr. Newsome

1 failure to act prudently. You also opine here that she
2 failed to act expeditiously and efficiently. What do you
3 mean by that?

4 A Well, it was one of the standards of care that we
5 hit through the code, the requirement that you act
6 expeditiously and efficiently. I believe one of -- and I
7 apologize, I do not recall if it was in this hearing or in
8 her deposition, she said she favored a slow fix. She
9 favored settlements and actions that were going to allow
10 her to continue to be involved in this estate and/or trust
11 for a very long period of time. And that is neither
12 expeditious, nor is it efficient.

13 Q Okay. And in your opinion, did that meet the South
14 Carolina standard of care?

15 A It did not.

16 Q Okay. What about acting in the best interest of
17 the estate?

18 A Again, the question that we struggle with at all
19 times in this position is, who is the estate. And I
20 believe that at times Ms. Pope felt she was the estate.

21 Q Okay.

22 A And did not work towards the best interest of
23 everyone that was involved. And that was again, kind of
24 the discussion of loss of neutrality and my fear that it
25 became difficult for her to look at the best interest of

Tiffany Provence - Direct Examination by Mr. Newsome

1 the estate because she became personally invested, both
2 professionally by closing her office and making this her
3 sole source of income as well as by advocating for or
4 against various parties within the estate. She lost her
5 neutrality..

6 Q Okay. And in your opinion did those actions meet
7 the standard of care in the State of South Carolina.

8 A I do not believe that they did.

9 Q Okay..

10 (Defendant's Exhibit Number 75 was marked for
11 identification.)

12 THE COURT: Mr. Newsome, how much more you got?

13 MR. NEWSOME: Not much more, Your Honor.

14 Your Honor, I'll move into evidence Exhibit,
15 Defendant's Exhibit 74.

16 MR. BUNDY: Object, it's hearsay. She's here to
17 testify to it. It's like a report.

18 MR. NEWSOME: It's a summary of her opinion in this
19 case, Your Honor.

20 MR. BUNDY: That doesn't make it admissible into
21 evidence. It's hearsay.

22 THE COURT: Sustained. She's testified to it
23 verbatim.

24 MR. NEWSOME: All right.

25 ///

Tiffany Provence - Cross-Examination by Mr. Bundy

1 appointed personal representatives of the estate of James
2 Brown and trustees of the James Brown 2000 Irrevocable
3 Trust, to serve without bond with all of the authority,
4 powers, and duties as if they had been appointed in the
5 original documents. Is that -- am I reading that
6 correctly?

7 A Minus the remainder of the sentence.

8 Q Is it -- well, we can read it: Other than
9 requirements that there be three personal representatives
10 and trustees?

11 A Correct.

12 Q Okay. So as a probate expert, what is the
13 significance, if any of a judicial order which says: You
14 are now the trustee and the PR and you have the powers and
15 duties as if you'd been appointed in the original
16 documents. Is there any significance to that language?

17 A That you then have the powers and authorities in
18 the code as well as any additional powers or authorities
19 within the documents themselves.

20 Q Okay. I understand that you take the position and
21 I think that you and I can probably agree that there is a
22 duty of neutrality, correct? I think we talked about that
23 earlier.

24 A Yes.

25 Q And that's a duty that trustees and PR's are --

Tiffany Provence - Cross-Examination by Mr. Bundy

1 PR's -- correct?

2 A I believe technically it's to be impartial, but,
3 yes.

4 Q Okay. But there's no such thing, is there, as a
5 quote, neutral trustee in the code? There's no definition
6 of a neutral trustee, like a neutral in a -- like a referee
7 in a boxing match?

8 A No, that's --

9 Q Okay. You're not talking about a particular legal
10 title like a corporation or an LLC or something like that,
11 you're just using the word neutral to describe duties,
12 there -- there's no such thing as a neutral trustee per se?
13 That's just the duty within the duties a trustee has?

14 A I'm using the word neutral to indicate someone who
15 does not have a vested interest in the outcome, is not also
16 a beneficiary or devisee or heir as opposed to the majority
17 of fiduciary's who are wearing two hats at one time.

18 Q Isn't the duty of neutrality to be neutral as it
19 relates to specific classes of people? As an example, if
20 you've got ten creditors and you're the PR, you have to
21 treat all of those creditors neutrally. You can't favor
22 one over the other.

23 A You can favor one over the other if they are in
24 different categories of creditor's claims, but per se, you
25 can't play favorites.

Tiffany Provence - Cross-Examination by Mr. Bundy

1 are bound by all the duties that are in the 700 Section of
2 the probate code, not just prudent administration, but all
3 of the duties.

4 So I believe my testimony was that -- I think I
5 listed several areas where I think she fell below the
6 standard of care.

7 Q I understand that. But I just want to talk about
8 prudent administration as defined in Section 62-7-804.
9 That's all I want to talk about. That specific
10 requirement, prudent administration. Okay? What did she
11 do that fell below the average -- the -- in exercising
12 reasonable care, skill, and caution, that violated the
13 distributional requirements of the trust or the will?

14 A She failed to hire experts. She failed to get a
15 proper valuation of the assets. In my opinion she
16 immediately set out to start litigation. You know, those
17 creditor's claims are a perfect example of what we
18 discussed. Creditor's claims may sit in a file until the
19 estate is ready to close. There is no necessity that you
20 immediately disallow them. It's not as if, if they sit
21 there for a certain amount of time they're suddenly
22 allowed.

23 So I've read a lot of correspondence where 2009 was
24 going to be a year of due diligence and in my opinion,
25 those should have been flip-flopped. The due diligence

Tiffany Provence - Cross-Examination by Mr. Bundy

1 I understand your ruling, but I'm simply protecting
2 myself on the record and I understand the written order is
3 coming and it will be whatever it will be.

4 THE COURT: It's going to be that I have -- I
5 received it, I gave it a cursory examination as I told you
6 yesterday, basically just reading the cover letter and I've
7 since decided I don't need that, should not have asked for
8 it, not going to consider it. I have shredded it and
9 that's my ruling and I will probably give a written order
10 to it.

11 MR. BUNDY: I just wanted to make it clear that we
12 have -- our purpose was different. We were going to use it
13 for cross-examination. But I've stated my position on the
14 record. Thank you very much, Your Honor.

15 THE COURT: All right. Redirect.

16 MR. NEWSOME: Thank you, Your Honor.

17 THE COURT: And for everybody's benefit, we're
18 going to go to about one o'clock and break until 2:30.

19 MR. NEWSOME: Can I have just one minute just for
20 housekeeping?

21 THE COURT: Sure.

22 (There was a pause in the proceedings.)

23 MR. NEWSOME: Thank you, Your Honor.

24 ///

25 ///

1 A It's not that I didn't know how to do it, I didn't
2 know how to do what's encompassed with each component.

3 Q Okay. As in all the components?

4 THE COURT: Well --

5 THE WITNESS: The tangible personal property, I'm
6 pretty comfortable with. I mean that's something -- real
7 estate in Beech Island --

8 BY MR. WILLIAMS:

9 Q Yeah, I withdraw that, the intellectual property
10 components?

11 A Right.

12 MR. WILLIAMS: Your Honor, if I may have some
13 argument to exclude this witness.

14 THE COURT: Well, I assume you're going to make the
15 same argument you made the other day in Barnwell. But I'll
16 listen. I'll be glad to hear from you.

17 MR. WILLIAMS: Thank you, Your Honor.

18 THE COURT: Or you want me to just ask y'all some
19 questions?

20 MR. WILLIAMS: Maybe that will be the best way.

21 THE COURT: Anything else as to his qualifications,
22 Mr. Bundy?

23 MR. BUNDY: No, Your Honor.

24 THE COURT: All right. So we've discussed last
25 week, there was a motion to exclude Mr. Alexander's

1 testimony as not complying with the applicable rules in the
2 700 area of the South Carolina Rules of Evidence as well as
3 Watson versus Ford Motor, State versus Wright. You're all
4 familiar with those.

5 Obviously, the Courts, the Supreme Court has tasked
6 our court, my court, the circuit court with the gatekeeping
7 function to either allow or not allow expert testimony.
8 And as we all know, obviously, this is an area -- and I
9 think expert testimony would assist me in resolving those
10 factual questions because I've allowed experts to testify
11 as to valuations in the case already. That's not a
12 question.

13 Then I have to go into whether or not the expert is
14 qualified in the particular area by which he wishes to
15 testify, which in this case is to give expert opinion
16 testimony on the valuation or the evaluation of certain
17 aspects of the James Brown estate and more of what we've
18 all dealt with throughout is the evaluation on the royalty
19 interest, the image, persona, publicity rights, licensees
20 and other related rights owned by Mr. Brown and his
21 business interest such as Geronimo, et cetera.

22 In making that decision, obviously, I have to look
23 at those factors that appellate courts have set out in
24 these cases. Obviously, we're all familiar with Watson
25 versus Ford. That was a cruise control case where a man

1 attempted to be qualified as an expert on cruise control,
2 had never done any tests on cruise control system. He
3 merely studied that system in preparation for the trial and
4 the Supreme Court in that case found that he was not
5 qualified.

6 With all due respect to Mr. Alexander, I admire
7 him, his business acumen, having enough sense to get out of
8 North Carolina -- for his business acumen, obviously, he's
9 been a very successful businessman in the -- particularly
10 in the women's apparel area, starting out with Catoe's as
11 an operation flunky, as he described himself; moving up to
12 the major buyer of shoes and accessories; four-and-a-half
13 years as a senior buyer. But all that was dealing with
14 retail industry, particularly women's clothing and shoes
15 and accessories. And obviously he had to do some
16 valuations in that in making decisions and making the
17 purchases.

18 From there he went to Consolidated Shoe Company
19 which was a -- designs women's shoes and imported and
20 exported and obviously he had to do evaluations on the
21 brand of shoes and a methodology and what shoes sell more
22 than others and to market those shoes.

23 He's had experience at Duck Head. And then from
24 that he advanced, opened up his own company at a young age,
25 about the same time I started practicing law, 1974. Grew

1 that company admirably. Has over 60 employees dealing as a
2 warehouse distributor, also having an international aspect
3 of it in dealing with China, Taiwan, Brazil, Italy.

4 Obviously, he had to value the brands of shoes, including
5 shoes for NASCAR, Tiny Lund and others, Reebok shoes, Bank
6 of America, worked with Pick and Pay.

7 I remember Pick and Pay as a big shoe company in
8 our area. Also Catoe's was -- had stores here in Bamberg,
9 all over the south. Mr. Cates -- his name is Cates wasn't
10 it?

11 THE WITNESS: C-A-T-O.

12 THE COURT: Mr. Catoe had a daughter that lived in
13 Aiken for a while. I can't remember her name, but they had
14 a plantation at the coast and, in fact, I went duck hunting
15 down there. A very successful business.

16 THE WITNESS: Yes, sir.

17 THE COURT: And apparently did a wonderful job with
18 them and they retained him over the years to help them in
19 their business, retail women's business.

20 And he has been most candid with the Court and has
21 admitted to us that he is not accredited to value
22 businesses. He's written no publications on business
23 evaluations, valuations. He's never valued an
24 entertainer's estate. He's never valued a musical
25 copyright, unpublished songs, never evaluated a copyright,

1 I said that. Termination rights. In fact, this is the
2 first evaluation he's ever attempted to do concerning this
3 type of an estate.

4 Well, most of us in this room have been in this
5 case since it started right here in this courtroom many,
6 many years ago after the death of James Brown. Well, I say
7 in this courtroom, it might have been in Aiken, but we've
8 been in a number of courtrooms over all of these years and
9 there's testimony even in Ms. Pope's claims for
10 commissions, it is a, notwithstanding what some people say
11 it's been a very, very long road.

12 It has been a very complicated case and obviously,
13 the methodology of the valuation has been subject to a lot
14 of discussion and expert witnesses. And it is a different
15 asset.

16 It is a different animal, as they say sometimes,
17 but it's a different, totally different asset in trying to
18 value these royalty interests, images persona, publicity
19 rights, particularly the termination rights, which is an
20 evolving federal law, licenses, and other rights.

21 And with all due respect to this witness, I find
22 that he does not meet the requisites of the rules on expert
23 witnesses, the mandate set out in Watson versus Ford Motor
24 and the cases cited in it and those have that have been
25 cited after that.

1 And with all due respect, I find that he is not
2 qualified under our particular -- under our rules to render
3 an opinion as to these particular assets. He's trying to
4 value a retail business or something of that nature, I
5 would have absolutely no hesitation in qualifying him in
6 either. So my ruling is he is not allowed to give opinion
7 testimony in this case.

8 Now, in furtherance in my ruling, or not my ruling,
9 but my discussion from the bench, last week in Barnwell,
10 notwithstanding that I have found that he is not qualified
11 to give an opinion in this case, I will allow you to do a
12 proffer as to what the opinion is so you'll be protected on
13 the record.

14 MR. BUNDY: Thank you, Your Honor. Would you like
15 me to leave it up to the witness or do you want me to do
16 it? I mean that's up to you.

17 THE COURT: I'll let you give a summation of it.

18 MR. BUNDY: I think I might be quicker and then if
19 he -- and then the witness, I guess could either say I'm
20 right or I'm wrong. Does that suit you?

21 THE COURT: Suits me.

22 MR. WILLIAMS: Yes, Your Honor, no objection on
23 that.

24 MR. BUNDY: If it please the Court.

25 THE COURT: Hold on one second.

1 MR. BUNDY: Your Honor, in full recognition of your
2 ruling, but respectfully --

3 (There was a pause in the proceedings.)

4 MR. BUNDY: Thank you. Your Honor, in complete
5 recognition of your ruling, I respectfully disagree and
6 preserve all our rights. Having said that, I will now seek
7 to summarize what I believe the opinions in summary that
8 Mr. Alexander would have given had he been allowed to give
9 an opinion.

10 One, he would have testified to a reasonable degree
11 of certainty that the methodology and valuation based on
12 his years of experience, et cetera, et cetera, would lead
13 him to believe to a reasonable degree of certainty that the
14 valuation of the \$84 million was appropriate and based upon
15 good information.

16 That the valuation provided later, which resulted
17 in a \$4.7 million valuation was, to a reasonable degree of
18 uncertainty fell below any standard of care --

19 THE COURT: With a reasonable degree of certainty.

20 MR. BUNDY: Excuse me a reasonable degree of
21 certainty, fell below any standard of care when you compare
22 one to the other.

23 Specifically, approximately \$3 million of the TIAA
24 debt was overstated, so that was a mistake. Two, if you
25 compare the 84 million to the 4.7, you're comparing apples

1 to apples because the 84 has had a reduction for the TIAA
2 debt and you're evaluating based on valuation of the
3 previous assets. The 4.7 is the other apple because it's
4 based on the TIAA reduction.

5 So what you're doing is comparing the very same
6 universe of debt, of asset. And if we want to use the
7 apples and oranges, the first valuation, the apple is the
8 size of a basketball. The second evaluation, the apple is
9 the size of a grape. The difference is a 95 percent
10 reduction across the entire evaluation of every single
11 element in there. We don't know -- we don't know what
12 those -- there's no way to tell from this -- the number
13 that was put into evidence how that 87 -- \$4.7 million is
14 divided up. So our assumption, reasonably would be is that
15 it was a pro rata reduction all the way through. Well, if
16 you just pick one item, the \$900,000 evaluation for
17 personal property, let's say, which was in the 84 million,
18 you are now saying the personal property was valued on the
19 day of James Brown's death at \$940,000 and yet on the very
20 same day a different appraiser comes up with \$50,000. Pick
21 the Rolls Royce out, some appraiser said that Rolls Royce
22 on the day of his death was worth \$100,000; 12 years later,
23 it's redone and that very same Rolls Royce on that very
24 same day is only worth \$5,000. The testimony would be to a
25 reasonable degree of certainty that you don't need to know

1 the underlying basis of that second valuation because it's
2 a trick. It's a ruse. It can't be correct. It can't --
3 it is not believable on its face based upon the discovery
4 he did, based upon the fact that \$50 million was received
5 prior to that.

6 Based upon the fact that the \$84 million is arrived
7 at from numbers from the very men who created with James
8 Brown all of these assets. It is not believable that on
9 the day of James Brown's death his publicity rights had
10 zero value. It is not believable.

11 THE COURT: Mr. Bundy, I was going to let you tell
12 me what he's going to say --

13 MR. BUNDY: That's what he's going to say all to a
14 reasonable degree of certainty. Thank you, Your Honor.

15 THE COURT: Thank you. All right. Thank you very
16 much. It's joy to have you in my court.

17 THE WITNESS: Thank you, Your Honor. I feel like
18 I've been here a long time in your courts.

19 (Off the record discussion.)

20 THE COURT: All right. In light of our in-chambers
21 discussions, it's my understanding is what we plan to do,
22 what you plan to do as far as reply, you had a number of
23 deposition excerpts that you were going to introduce into
24 the record and you told us that that would probably take us
25 to about four o'clock, a little after four. And as you're

1 TUESDAY, MAY 8, 2018

2 THE COURT: Call your next witness.

3 MR. BUNDY: Good morning, Your Honor.

4 THE COURT: You may call your next witness.

5 MR. BUNDY: Your Honor, before I call a witness I'd
6 like to enter -- we want to put in some deposition
7 designations. We've marked this book as Plaintiff's
8 Exhibit 47. What this is, Your Honor, is a tabbed
9 notebook, which has the designations that we have made as
10 planned of the named witnesses. And then at the -- at the
11 end of each designation, for instance the first one is
12 Robert Cook. On page 4, we moved to admit Exhibit Number
13 2, which is 1 through 10 premarked various documents. And
14 this goes through for all those witnesses as tabbed.

15 We wanted to do -- we wanted to take care of this
16 now because Ms. Pope will be my first live witness and I
17 wanted to have these documents in evidence when she
18 testified.

19 THE COURT: Any objection?

20 MR. NEWSOME: Yes, Your Honor. We've already moved
21 to exclude some of these depositions. We would extend that
22 motion to these additional depositions that have just been
23 presented to us. I was just shown this notebook. I don't
24 have a copy to refer to.

25 MR. BUNDY: Here you go.

1 THE COURT: Gentlemen, when we left here the other
2 day, I asked y'all to please have this resolved before we
3 started this morning.

4 MR. NEWSOME: Yes, Your Honor. And we've certainly
5 -- you know, when we were together last, that was the goal,
6 but that was not able to be accomplished. We believe that
7 the plaintiff is seeking to submit documents that are well
8 outside the scope of reply. We believe that unfortunately,
9 there's a good chance that this case may go up on appeal.
10 And another thousand pages of depositions don't need to be
11 in the record. They aren't relevant to this case.

12 MR. BUNDY: Your Honor, since we've last met, we've
13 sent --

14 THE COURT: Before you say that, I'm not fussing.
15 Y'all have been great and worked hard together. I
16 understand. I'm just trying to figure out the most
17 efficient way --

18 MR. BUNDY: Sure.

19 THE COURT: -- to handle it this morning without
20 having to read all the depositions and all the transcripts.
21 I certainly don't want to cut into our time having to do
22 that, so I may just take it subject to their objection. I
23 need to know what you object to. Have you got that written
24 out or have you had time to go through it to see what you
25 object to?

1 MR. NEWSOME: No, Your Honor. What I would ask
2 would be that you go ahead and take testimony and that if
3 you determine any of these depositions are relevant or
4 within the scope of reply then we could provide counter
5 designations at this time.

6 THE COURT: Well, I'm not going -- if you're
7 objecting to them, I'm not going to go through and read a
8 thousand pages then make a determination whether or not
9 they're relevant or not. You're objecting to the whole
10 thing or --

11 MR. NEWSOME: Yes, Your Honor.

12 THE COURT: Is there some of it that you do not
13 object to?

14 MR. NEWSOME: They're outside the scope of reply.
15 They -- which, I think prior to the objection, there was --
16 a lot of them are related to case 4900. There's nothing in
17 evidence, in the defense case about case 4900, so they're
18 outside of the scope of reply and we object to the
19 introduction of all of them.

20 THE COURT: All right. Here's what I'm going to
21 do. I'm going to allow him to offer it, but I'm not going
22 to rule on it one way or the other presently until I've had
23 a chance to see what it is.

24 MR. NEWSOME: Okay.

25 THE COURT: I don't know of any other way. If she

1 wants to -- if she, Ms. Pope -- refers to any of it today,
2 object individually as to that and tell me your specific
3 objection. Is that a fair way to move it?

4 MR. NEWSOME: Yes, sir. Do we need to have Mr.
5 Bundy make a proffer or how do we get it on the record?

6 MR. BUNDY: If I -- if I may, Your Honor --

7 THE COURT: Well, I assume if you ask Ms. Pope to
8 confirm some portion of John Doe's deposition, if you go to
9 it and you object to it, we will.

10 MR. BUNDY: If I may, it may be more efficient to
11 go ahead and make a determination what the issues are on
12 reply. That way we won't have all these individual
13 objections. In other words, let me, as an example, they
14 have entered a defense in the case of what they call block
15 billing. Block billing was not part of our case, it's a
16 defense to their case.

17 And as I understand what their defense is, is
18 basically what's referred to in law as confession of
19 avoidance. It's a confession of avoidance, when you plead
20 it's an affirmative defense under the procedures,
21 confession of avoidance means I confess, for instance that
22 I -- that you, you -- in this case, you spent these hours.
23 I confess that I have no way to say that you didn't spend
24 these hours. However, I'm going to avoid payment, even
25 though I've confessed you spent the hours by bringing up

1 the a defense of block billing. Well, that's an
2 affirmative defense.

3 It was new matter and I objected to all of that
4 because none of these things were pled. And I think that
5 if we go down the list of what we perceive to be the issues
6 on reply, which is new matter, which I objected to when
7 they brought it up because they didn't have affirmative
8 defenses; or they opened the door for these issues by going
9 into things like the other trustee's conduct.

10 Mr. Bauknight testified and Ms. Provence, I
11 believe, certainly Mr. Bauknight testified to his conduct
12 as the administrator and used that, I guess, as the
13 standard by which Ms. Pope should be judged. That would be
14 new matter. Ms. Provence testified that -- and I agreed
15 with Ms. Pope and the Supreme Court that Mr. Bauknight was
16 not even the trustee during the four years of appeal.

17 The trustee or trustees that's on tort would be,
18 probably be Mr. Buchanan, I mean Mr. Bauknight, the
19 attorney general, and Pope and Buchanan because all of that
20 was just in limbo. So --

21 THE COURT: Well, I'm going to let you put your
22 reply up.

23 MR. BUNDY: Okay.

24 THE COURT: If you go beyond what was brought up in
25 the cross or gets too far afield, you have to object, I'm

1 not going to object up here.

2 MR. BUNDY: Okay. All right. So I understand,
3 these -- you have accepted those designations --

4 THE COURT: I have not -- I have not accepted them
5 as evidence. I'm taking them -- they're given to me this
6 morning. It's a wealth of material and --

7 MR. BUNDY: Right.

8 THE COURT: -- he's objecting -- they are objecting
9 to it, so I can't rule on it unless something individually
10 comes up. I can't rule on it en masse. If something
11 individually comes up, make your objection, I'll rule on
12 it.

13 MR. NEWSOME: Your Honor, could I just be heard on
14 one thing and that was in response to Mr. Bundy's well
15 reasoned argument. We disagree with his --

16 THE COURT: Characterization --

17 MR. NEWSOME: -- characterization of the law with
18 regard to block billing. We think particularly with regard
19 to this type of case where you're reviewing the
20 reasonableness of fees it's appropriate to evaluate what
21 was done during those hours, and it's not just an
22 affirmative defense.

23 THE COURT: That's why I'm up here, fortunately or
24 unfortunately, I'm having to ultimately decide.

25 MR. NEWSOME: Thank you, Your Honor.

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1 THE COURT: And I don't think I've hindered anybody
2 about making a record. I think I've been most generous on
3 that.

4 So, good morning. And you may proceed.

5 MR. BUNDY: Thank you, Your Honor.

6 Ms. Pope.

7 THE COURT: You've been previously sworn.

8 Mr. Bundy.

9 MR. BUNDY: Thank you, Your Honor. May it please
10 the Court.

11 THE COURT: Yes, sir.

12 **DIRECT EXAMINATION**

13 **BY MR. BUNDY:**

14 Q Ms. Pope, there was testimony regarding the duty of
15 neutrality and your alleged breach thereof in the -- from
16 the previous witnesses on behalf of the defendants. Would
17 you, for the Court, please, give your opinion with regard
18 to what, in fact, the duty of neutrality is; and any other
19 similar duties such as the duty of loyalty; and advise the
20 Court as to whether or not in your opinion you breached any
21 of those duties.

22 MR. NEWSOME: All right. Your Honor, I'm going to
23 object. You've already ruled that she's not an expert and
24 can't give expert opinions in this case.

25 THE COURT: I'm not going to allow her to give an

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1 opinion as to whether what she did was within the standard
2 of care. That's obviously, as I'm trying this nonjury,
3 that's a determination I have to make.

4 MR. BUNDY: All right.

5 THE COURT: She can certainly talk about what it
6 is, but I'm not going to allow her to say here's what I did
7 and it's my opinion to a reasonable degree of legal
8 certainty it fell within that standard.

9 MR. BUNDY: All right. Thank you, Your Honor.

10 BY MR. BUNDY:

11 Q Would you explain for the Court you're
12 understanding of the duty of neutrality as it relates to
13 trustees and PR's?

14 A I will and I will remind the Court that I have been
15 qualified as an expert both in this case and in the James
16 Brown case for the approval of the settlement hearing. And
17 I am an expert and if I need to go over my qualifications
18 and all of the things I've done, I'll be glad to because
19 it's been assumed so far, but I haven't had an opportunity
20 to tell the Court not only of all of the qualifications I
21 had in 2009, but all the additional qualifications that
22 I've achieved since I became involved in the James Brown
23 case. And if I need to say those, because I'm a little set
24 back by the notion that I'm not an expert in these areas.

25 THE COURT: I've never suggested that you're not an

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1 expert. I'm saying I'm not going to allow you to give
2 expert opinion testimony as to whether or not you deviated
3 from the standard of care in this case when I'm trying to
4 decide your actions. And I will be more than happy if you
5 want to put your qualifications in the record. I don't --

6 THE WITNESS: Well, I would like to then, Your
7 Honor.

8 THE COURT: Certainly.

9 THE WITNESS: Because prior to becoming involved in
10 the James Brown case, I had a long history of representing
11 what I referred to as Chapter 11 clients. That was clients
12 with a very high net worth or an interest in a high net
13 worth asset or estate or trust. And I developed a special
14 expertise as a trust and estate expert who also had
15 expertise in corporate tax, in -- in -- in private
16 foundations, charitable giving, gift taxes, estate taxes,
17 income taxes, fiduciary income taxes and -- and in the
18 valuation of assets, particularly in instances where there
19 were not -- there was not a reason to have a professional
20 valuation. And I'll just give you an example.

21 Every single year, every --

22 MR. NEWSOME: Objection, Your Honor, now she's
23 testifying to something other than qualifications.

24 THE COURT: I agree. Please state your
25 qualifications.

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1 THE WITNESS: I'm qualified to value estates and
2 trusts without a professional appraiser but taking
3 advantage of other appraisals. I've done it routinely
4 since the 1980's for charities, for estates, particularly
5 when in the 80's, since the 80's when there's been a high
6 marital deduction and a high exemption from the State
7 taxes, it was very customary and very acceptable to the IRS
8 to value estates without a professional valuation --

9 MR. NEWSOME: Objection, Your Honor, she's doing it
10 again.

11 THE WITNESS: I value my own --

12 THE COURT: Hold on just a second.

13 What's your objection?

14 MR. NEWSOME: She's testifying about the IRS and
15 what they accept rather than her on qualifications.

16 THE COURT: Sustained.

17 THE WITNESS: I'm sorry.

18 I value my own private foundation every year. I
19 have assisted numerous clients in valuing private
20 foundations. I worked as an advisor for three years for a
21 \$50 million charitable foundation, the Graham foundation in
22 Greenville. I did not do an annual valuation for them, but
23 I'm familiar with the -- the forms by which every
24 charitable foundation trustee every year must give a
25 valuation to the IRS and I'm not aware of any charity ever

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1 having --

2 MR. NEWSOME: Objection, Your Honor.

3 THE COURT: All right. Mr. Bundy. I'm going to
4 allow her to set out her qualifications. That's education,
5 work experience, but to go through every case she's ever
6 tried -- I --

7 MR. BUNDY: I understand.

8 THE COURT: Please.

9 BY MR. BUNDY:

10 Q Your educational background, please.

11 A My resume is in the brief. I graduated from the
12 University of South Carolina. I graduated from the
13 University of Miami my with an LLM in estate planning. I
14 have written articles about copyrights. I had a blog about
15 copyrights. I have studied the intrusion of governmental
16 officials into private foundations. I've met with the
17 national association of attorneys general to say what they
18 were doing about that.

19 THE COURT: Not this case, general qualifications,
20 please.

21 BY MR. BUNDY:

22 Q Just general qualifications. All right. Are you a
23 member of any professional organizations?

24 A I am -- I am a member of the South Carolina Bar,
25 former member of ACTEC, the American College of Trusts and

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1 Estate Council. I was for many years. I -- I have been
2 officer of various trusts and estates sections of the South
3 Carolina bar.

4 Q How long have you been practicing law?

5 A Forty -- more than forty years and I'm a former
6 trust officer.

7 Q Okay. You're a former trust officer. Okay.
8 And your practice was focused on what specialty, if
9 any?

10 A My practice was both -- was -- has always been and
11 -- both litigation and planning and administration. It's a
12 very -- it's been a very cross-disciplinary problem-solving
13 practice.

14 Q All right. In the contexts of trusts, what is the
15 duty of neutrality?

16 A Well the duty of neutrality is best --
17 (Mr. Newsome stood.)

18 THE COURT: Yes, sir?

19 MR. NEWSOME: I'm not sure where we are because she
20 testified about her qualifications. Is there any voir dire
21 or --

22 MR. BUNDY: Sure.

23 THE COURT: She's not -- she's not giving any
24 opinions. She's just telling us what neutrality is.

25 MR. NEWSOME: All right. Thank you, Your Honor.

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1 THE COURT: If she starts giving opinions, I'll let
2 you voir dire her on qualifications. I've already ruled,
3 but, you know, I've known Ms. Pope since she graduated from
4 law school, known her before she graduated, we were in the
5 same class. I know what her practice is. Followed her
6 closely throughout this whole James Brown saga and I'm
7 aware of what she's practiced, the field she practiced in,
8 the area she practiced in, but I'm not going to let her
9 give opinions as to whether or not she complied with the
10 standard of care in this case.

11 MR. BUNDY: Okay.

12 THE COURT: She can tell me what she did, but I'm
13 not going to let her then give an opinion.

14 MR. NEWSOME: Thank you, Your Honor.

15 THE COURT: It's just like having a doctor.

16 MR. BUNDY: Thank you, Your Honor.

17 BY MR. BUNDY:

18 Q Duty of neutrality, please.

19 A Well, I heard in testimony about the duty of
20 neutrality and I think it was described incorrectly because
21 the duty of neutrality has to be taken in the context of
22 the duties under the probate code, which I define as sort
23 of duties of the heart and duties of the head. And -- and
24 -- and the duties of the heart are -- are not just being a
25 good person, but being a good person with respect to the

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1 particular beneficiaries you must benefit. So, for
2 example, in the James Brown trust, the primary duty of the
3 heart is the duty of loyalty and the duty of loyalty, some
4 people say the more important than everything else. I tend
5 to agree but --

6 MR. NEWSOME: Objection, now she's giving her
7 opinion about this case.

8 THE COURT: I tend to agree. Just please tell us,
9 the question was, what is the duty of neutrality. If you
10 know.

11 THE WITNESS: Well, may I finish with the duty of
12 loyalty because it's so critical to understanding the duty
13 of neutrality.

14 THE COURT: But you can't opine as to whether or
15 not you complied with it.

16 THE WITNESS: Well, I do have a professional
17 opinion to a reasonability of professional certainty --

18 THE COURT: Mr. Bundy, I've ruled that I'm not
19 allowing this witness to opine as to whether or not her
20 conduct complied or didn't comply. She can tell us what
21 she did. I will apply those facts as I find them to be to
22 everyone who has testified as to what that duty is and let
23 y'all fight to me by the law; but I'm not going to let her
24 opine as to what she complied about -- as to whether she
25 complied. I may be wrong, but that's my ruling, so move

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1 along.

2 MR. BUNDY: Just to protect my record, can I just
3 say if we had been -- that a proffer would be she would
4 testify as to all those things she met. She met the duty
5 -- you see what I'm saying, I'm just trying to take care of
6 that part of the record so that --

7 THE COURT: I assume that everybody would know
8 that's what she would testify about.

9 MR. BUNDY: Right, but I need to say it, I think
10 for the record.

11 THE COURT: Thank you.

12 MR. BUNDY: Thank you, Your Honor.

13 BY MR. BUNDY:

14 Q All right. If you would describe the duty of
15 loyalty. What is the duty of loyalty in the context of
16 trusts and estates?

17 A Well, the duty of loyalty in the context of trusts
18 and estates is, in my opinion, a duty of the heart, not
19 being good, but being specifically, you have a duty to the
20 beneficiaries of the estate -- of the trust, of the trust.
21 And with --

22 Your Honor, may I speak about James Brown? I
23 thought that's what my opinion's about.

24 THE COURT: He asked you a question. I don't think
25 he asked you anything about James Brown.

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1 THE WITNESS: With respect to the trust of the 2000
2 Trust of James Brown, the duty of the --

3 MR. NEWSOME: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. BUNDY:

6 Q Okay. To -- who does -- does the duty of loyalty
7 go as far as the trustee is concerned to anyone other than
8 the beneficiaries? Does it extend to anyone other than the
9 beneficiaries?

10 A No.

11 Q Okay.

12 A And in a case where you have either a charity or
13 minors you have even a stronger duty than otherwise.

14 Q Okay.

15 A And that is the case that I am prepared to testify
16 about and who met that duty of loyalty and who didn't.

17 Q Does a trustee or PR owe any duty of loyalty to
18 people who are not named in a will, not heirs, not
19 beneficiaries or contest the will?

20 A Absolutely not.

21 Q Okay.

22 A And the code specifically -- specifically directs
23 that among the duties of the trustee is to provide a
24 reasonable defense as to all claims. And the duty of
25 neutrality, which has been improperly, or not in my opinion

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1 correctly presented to the Court, is a duty of neutrality
2 among the beneficiaries. The code is clear. It's not a
3 duty of neutrality between the beneficiaries and outsiders.
4 The exact opposite. It is -- the code is clear. It is a
5 duty of neutrality among beneficiaries.

6 And the best example of that, and there are
7 examples here if I'm allowed to answer, but is in a case
8 where a trustee is a trustee of two trusts, maybe a marital
9 trust and a trust for perhaps the children of a prior
10 marriage, in that instance, everybody is a beneficiary of
11 the trust. And so the trustee has a duty of impartiality
12 sometimes called neutrality between and among the, the
13 beneficiaries of the trust he is administering, but the
14 duty of neutrality does not reach to the outside world, the
15 exact opposite. You have a duty to follow the terms of the
16 trust.

17 Q Okay.

18 A And as the Supreme Court has said in Wilson versus
19 Dallas, you have an even greater duty when --

20 MR. NEWSOME: Objection, Your Honor.

21 THE WITNESS: -- there's a charity.

22 THE COURT: What's the objection?

23 MR. NEWSOME: Now, she's talking about this
24 specific case instead of a general duty. I mean there's
25 already a proffer as to opinions, so I object to giving

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1 opinions in this case.

2 THE COURT: She's citing Wilson V Dallas again.
3 We're all familiar with it. But I'll let her answer it.
4 My ruling is, I'm not going to allow her to specifically
5 say handling this in my professional opinion as an estate
6 lawyer for 40 some odd years, that I complied with or
7 whatever. That's my finding to do that. That's my job.

8 THE WITNESS: In -- I'm sorry.

9 THE COURT: Go ahead.

10 THE WITNESS: In conjunction with the duty of
11 loyalty and the duty of neutrality, all of the duties that
12 I would call duties of the head rather than the heart must
13 be performed and it's virtually stated in every section of
14 the code. In accordance with the terms of the document, of
15 the trust. For example, a prudent person must manage the
16 fund prudently, but it can't just be general management.
17 It must be for the benefit of the particular beneficiaries.

18 Q Okay. In your opinion to a reasonable degree of
19 certainty, did Mr. Bauknight fall below the standard of
20 care in his administration as PR and trustee to the duty of
21 neutrality?

22 MR. NEWSOME: Objection, Your Honor. That's not
23 relevant to Ms. Pope's service or the value of her service.
24 Things that happened after she was PR are not relevant to
25 the value of services she gave.

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1 MR. BUNDY: Your Honor --

2 MR. NEWSOME: And she's giving an opinion, which
3 she's not qualified as an expert in this case.

4 MR. BUNDY: Well, we proffered her as an expert.
5 As I understand your ruling, she can't testify about her
6 own failure to meet the standard.

7 THE COURT: Well, Mr. Bauknight is not seeking fees
8 and commissions and costs, et cetera in this case. That's
9 Ms. Pope's claim and what Mr. Bauknight did is a subject
10 for another day. And it's getting way afield. This case
11 is tailored to me to make a determination, what, if any
12 commission, payment, attorney's fees, however you want to
13 deem it is she entitled to, if any. And if so, how much.
14 And what Mr. Bauknight's done and hadn't done, that's for
15 another day.

16 MR. BUNDY: Just so I can make a little short
17 record, our position is, is that the defendants -- that
18 this is new matter. Mr. Bauknight's behavior and what he
19 did was new matter. It was put up as the standard by which
20 Ms. Pope was to be judged. It also relates to the benefits
21 that Ms. Pope conferred upon the estate and the detriments
22 and the things that Mr. Bauknight did -- as I understood
23 what Ms. Provence said and also the gentleman from Atlanta,
24 you have to look at the whole tenure of what all of these
25 people did in order to determine the reasonableness of her

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1 services. And unless you understand or until we can make a
2 record so to speak of what this expert says that
3 Mr. Bauknight did or did not do, they turned it into more
4 than a fee case.

5 We brought -- we came in here and said, here are
6 her hours, this is what she did and this is what the deal
7 is. That was our very simple case. They then came in and
8 turned it into entirely something else, which is what
9 Mr. Bauknight did, all the things she did wrong, yada yada
10 but they haven't quantified any of it. They haven't come
11 and told you a single hour of hers is not valid, et cetera,
12 et cetera. That's our position. Thank you.

13 THE COURT: Thank you, move along.

14 BY MR. BUNDY:

15 Q The -- there's --

16 A Do I get to give my opinion?

17 Q I don't think so, no?

18 THE COURT: No, ma'am.

19 THE WITNESS: Do I get to proffer it?

20 BY MR. BUNDY:

21 Q I think we have.

22 THE COURT: Move along.

23 BY MR. BUNDY:

24 Q There was an allegation that you failed to amend
25 the inventory and appraisalment. What duty was there --

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1 what is the -- what is the duty to amend per the statute or
2 otherwise to amend the inventory and appraisalment and why
3 didn't you do it?

4 A We did not do it because there is no duty -- and I
5 do need to add the facts here because they're very clear
6 facts of why we did not amend it, but --

7 THE COURT: I'll let you do that. That's sort of
8 what I said. You can tell us what you did and why you did
9 it.

10 MR. BUNDY: Right. That's what we want to know
11 what you did and why you did it.

12 THE COURT: Or what you didn't do.

13 BY MR. BUNDY:

14 Q You just can't tell us that you think it was okay.
15 That's up to the judge.

16 THE COURT: Well, okay. But -- go ahead.

17 THE WITNESS: Under the probate code, you have no
18 duty to amend an inventory and appraisalment that is
19 substantially correct. To under --

20 THE COURT: What if it's not substantially correct?

21 THE WITNESS: To understand why we believed and I
22 still believe today that the inventory and appraisalment
23 filed on November 15th, 2007 was substantially correct --

24 BY MR. BUNDY:

25 Q And who filed that inventory and appraisalment?

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1 A That was filed by Stan Jackson, who is a lawyer who
2 is a valuation expert; also prepared by William Hammond, a
3 tax expert, who was familiar with the James Brown matters;
4 prepared and filed on behalf of Mr. Dallas and Mr. Bradley,
5 who certainly have their problems, but are -- I will tell
6 you that it is my personal experience that Mr. Dallas was
7 the smartest person in the room on most days. He fully
8 understood everything about the value of James Brown.

9 And let me explain. One must understand the facts
10 of what was going on to fully understand why we did not
11 file an amended inventory.

12 On November 15th of 2007, there was virtually no
13 dispute that James Brown's assets were worth \$100 million
14 or more. It was from every corner. On October 12th --

15 THE COURT: Would you please define what corners
16 you're talking about.

17 THE WITNESS: Yes, Your Honor. On October 12th of
18 2007, a group to be formed called TJBL, which I had
19 mentioned before, put in an offer. I have some documents
20 that I've pulled that I may refer to, if you don't mind.

21 MR. NEWSOME: Your Honor, I object to this
22 testimony also. She -- as she said she referred to it in
23 her case in chief. She was crossed on it. We put in
24 valuation experts in our case. They were crossed and so
25 this has already -- this was part of her case in chief.

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1 This isn't reply.

2 THE COURT: I'll allow it.

3 THE WITNESS: Okay. Beginning in the summer --

4 THE COURT: I'm going to allow it because quite
5 frankly the valuations are so different and -- and the
6 testimony's been so different in this trial, I'm trying to
7 get a grasp on what Ms. Pope was relying on to justify that
8 amount or not change it, not amend it, not modify it.

9 MR. BUNDY: Ms. Pope --

10 THE COURT: That and in relationship to what the
11 IRS finally did. Those are some of the things I think are
12 very important in determining if she's entitled to -- if
13 Ms. Pope's entitled to fees, the amount. And obviously,
14 how -- we can't -- how she came up with that figure and how
15 -- what she was relying on is important to me. So I'm
16 going to allow her once again to testify to it.

17 THE WITNESS: Your Honor, I made some copies last
18 night.

19 BY MR. BUNDY:

20 Q Ms. Pope, before you start your explanation, would
21 you give us the code section and tell us what was necessary
22 under the code for you to be required to file an amended
23 inventory and appraisalment.

24 A You -- I'll give you the code section if I can find
25 it. I'm sorry, I was looking at the trustee sections.

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1 Duty of Personal Representative to Supplement

2 Inventory, 62-4-708, which says that, If a personal
3 representative determines that the original inventory was
4 erroneous or misleading that -- that they must file --
5 must, shall -- actually, it says shall rather than must --
6 must file an amended inventory.

7 Q So you didn't file a original inventory and
8 appraisement?

9 A Did not.

10 Q Your duty to amend it comes specifically from that
11 statute?

12 A It does.

13 Q Is that correct?

14 A Yes.

15 Q Did you ever, at any time come to the conclusion
16 based on the wording of that statute that the inventory and
17 appraisement needed to be amended?

18 A No.

19 Q Okay. Why not? Why didn't you come to that
20 conclusion?

21 A Because the only substantial error -- and it wasn't
22 even a substantial error because we -- one of the experts
23 testified about this, that total approximately \$100 million
24 value of the assets was placed on two different schedules
25 because the trustees at this time were taking a position

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1 that -- that a good bit of the assets were already in the
2 2000 Trust, but the approximately \$100 million value of the
3 trust showed up on two separate schedules. And that -- and
4 -- so if I could begin so that one can understand that
5 there was virtually no question about the -- could I have
6 that document that I just gave you? Because I think it
7 could help the Court understand really how the -- the first
8 -- the first -- the whole issue of whether these assets for
9 worth less than approximately \$100 million really did not
10 come to a head until it was brought up in the Supreme Court
11 in May of 2011.

12 And I provided to the Court, and this is already
13 filed in this case, how the -- the context in which it came
14 up. And I can, if the Court will allow me, tell the Court
15 everything I've learned since then. But essentially
16 nobody, nobody anywhere suggested in a filed document
17 between November 15, 2007 and May 3rd 2011, that there was
18 anything wrong with the original inventory and
19 appraisement.

20 Q Okay.

21 A All those years. And it came up in the context --
22 and in -- in direct -- in direct line with an e-mail of
23 Ms. Tomi Rae's lawyer of 2009, which I did not get until
24 discovery in this case, after 2013, which essentially said,
25 let's discredit Bob Buchanan --

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1 MR. NEWSOME: Objection, Your Honor. Where's this
2 e-mail.

3 THE COURT: Hold on. What are you talking about?

4 MR. NEWSOME: She's quoting from an e-mail that we
5 haven't documented.

6 THE WITNESS: It's in the record in this case. I
7 didn't bring it today.

8 MR. NEWSOME: Well, I object unless -- we should
9 have that document.

10 THE WITNESS: It's one of these depositions.

11 THE COURT: Hold on, now, hold on.

12 I'm not going to allow some e-mail that you're -- I
13 mean you can -- just give us a basis -- all I'm asking is a
14 basis of why you didn't file a supplemental accounting when
15 ultimately, the one the IRS agreed to was substantial
16 different than the \$100 million so to speak, substantially
17 different.

18 THE WITNESS: May --

19 THE COURT: And you say that everybody knew it was
20 100 million, that's what I'm interested in. Who knew it
21 and how did they know it? And how did they come about
22 that? Was it just a figure pulled out of the air? Did
23 they have an appraisal done by somebody qualified to do it?
24 Or was it just their -- their thoughts that that's what it
25 was?

Adele Pope - Direct Examination by Mr. Bundy

1 But I'm not -- that's what I'm concentrating on.

2 THE WITNESS: Your Honor, the 4.7 million was
3 fabricated by counsel --

4 BY MR. BUNDY:

5 Q That's not what he wants to know right now.

6 Let's back up a minute. Let me try to -- what --

7 A May --

8 MR. NEWSOME: I move to strike that from the
9 record.

10 THE COURT: I'm not going to interject anymore.
11 You ask her the questions you would like to ask her. If it
12 gets what I want to hear, that's fine, if it don't --

13 MR. BUNDY: I got it.

14 MR. NEWSOME: Your Honor, can I move to strike her
15 last remark.

16 MR. BUNDY: Ms. Pope --

17 THE COURT: What was her last remark.

18 MR. NEWSOME: She just said the 4.7 million was
19 fabricated by counsel, is I think what she just said, which
20 wasn't responsive to the question.

21 THE COURT: That's what she said. I'm not going to
22 strike it. Leave it in there.

23 THE WITNESS: If I could tell the whole story of
24 the valuation because Your Honor may --

25 THE COURT: Ma'am, just answer the questions from

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1 Mr. Bundy. I'm not going to ask anything else.

2 BY MR. BUNDY:

3 Q Question and answer.

4 You, under the code section we previously looked
5 at, felt you had no duty to amend the inventory and
6 appraisement provided by your previous trustees?

7 A We had no duty because the figure was correct.

8 Q All right.

9 A Substantially --

10 Q Tell the Court on what basis you originally thought
11 it was a good inventory and appraisement and continued to
12 believe it was a good inventory and appraisement until
13 after you were no longer trustee and PR.

14 A Okay. I --

15 Q And had no authority to amend it after you'd been
16 taken off, right?

17 A Correct.

18 MR. NEWSOME: Objection leading question.

19 THE COURT: I'm going to allow it.

20 BY MR. BUNDY:

21 Q So tell the Court.

22 A I will tell the Court how we arrived at that time
23 in understanding that the figure was correct and how we
24 continued to believe it was correct.

25 Q Perfect. Thank you.

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1 A The first -- and I have researched by going through
2 the Dallas appeal. And the Dallas appeal began when --
3 when we were still PR's. And so that helps us understand
4 where we all were. And the Dallas appeal is about 3,000
5 pages. And Mr. Dallas began his appeal in early 2009. So
6 that helps give us a picture of what everyone knew --

7 THE COURT: Be specific. What Dallas appeal are
8 you talking about.

9 THE WITNESS: All right. The first element of the
10 Dallas appeal that is important is the 43 million.

11 THE COURT: What was he appealing, ma'am?

12 THE WITNESS: I'm sorry?

13 THE COURT: What was Dallas appealing?

14 THE WITNESS: Oh, Mr. Dallas, Your Honor, when he
15 resigned, 10ten days later he tried to undue his
16 resignation and Your Honor --

17 THE COURT: Okay. That will do. That will do.

18 THE WITNESS: Yes, and Your Honor did not allow him
19 to do that and so that order was issued on March 7th of
20 2009 -- I'm sorry March 7, 2008. And so that appeal sort
21 of -- of froze the record for the first year and a half of
22 -- after Mr. Brown's death.

23 And so I tried to look at that as the best example
24 of all of the information that was available. And if I add
25 some information that I've learned, I'll try to say that

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1 I've learned it.

2 But at the time and this is all in the record, we
3 testified to Judge Early that Joel Katz had, as early as
4 January of 2007 received unsolicited offers of 25 to 32
5 million for the TIAA music catalog alone. So that was
6 substantial evidence that there was virtually no -- I mean
7 without any solicitation a 25 to \$32 million appraise --
8 proposal had come in.

9 Then by May of 2007, a gentleman named Steve
10 Sidmans, who was a -- who was a partner at Greenberg
11 Traurig had put together a proposal to send out -- and I do
12 have some copies of those if Your Honor would like, to send
13 out proposals for purchase of the music catalog. And this
14 is the catalog to which there had been an unsolicited offer
15 of somewhere between 25 and 32 million.

16 Now, supporting all of this was the RBS
17 professional appraisal, which is the -- which is the
18 complaint -- the complaint of which is contained in the --
19 in the Dallas appeal. I can pull it out for Your Honor to
20 look at, along with a bunch of other information about the
21 royalties and lots of other nonconfidential information
22 about everything.

23 Q What's the significance of the complaint?

24 A But the complaint, I think it's paragraphs 19 and
25 23, of the complaint, of the RBS deal cite clearly --

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1 Q Who was the plaintiff in that case?

2 A I'm sorry, Mr. Brown and certain Brown entities.
3 Mr. Brown, himself, alive, not Mr. Brown's estate.

4 Q And who was he suing?

5 A He was suing the Pullman company.

6 Q And why was he suing them?

7 A He was suing them for having stopped a refinance of
8 his TIAA bond deal just three days or two days before it
9 actually happened.

10 THE COURT: And who represented Mr. Brown?

11 THE WITNESS: Greenberg Traurig.

12 THE COURT: Same people who were ultimately sued.

13 THE WITNESS: Well, lots of people have been sued,
14 Your Honor.

15 THE COURT: Well, specifically Greenberg Traurig
16 sued at your incident to start off with.

17 THE WITNESS: Your Honor, they were, but I need to
18 explain. They were not sued over that, Your Honor. They
19 were sued over a new deal which was -- was -- which was set
20 up in October of 2006 for which they were not seeking an
21 hourly fee as they had in the RBS deal, but they were
22 seeking a higher fee and a new deal. So, no, we never sued
23 them over that deal.

24 And, in fact, Your Honor, if you'll remember, in
25 May of 2007, they were still the lawyer in the New York

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1 case and Ms. Solomons was the -- Judge Solomons was the
2 judge. And we asked Your Honor -- we had concern, we being
3 Mr. Buchanan and I, as special administrators, had
4 concerns, not about the quality of the Greenberg Traurig
5 work in general, but about the fact that they had a
6 potential conflict. And I have here a copy of a -- there
7 was a motion to disqualify them.

8 So it was certainly not -- there may have been
9 things wrong with the -- the February -- the March deal.
10 I'm not saying there wasn't, but certainly nothing that
11 Greenberg Traurig did, to my knowledge.

12 BY MR. BUNDY:

13 Q Ms. Pope, let's go back. I want to stay focused on
14 just this one thing right now.

15 We're trying to confirm why it is that you think
16 that the inventory and appraisal was okay. Okay? James
17 Brown sued Mr. Pullman, correct?

18 A He did.

19 Q When he was alive?

20 A He was.

21 Q Over a loan that did not close?

22 A Yes.

23 Q What were the two preconditions for that loan to
24 close?

25 A A professional appraisal of 42 million for the

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1 approximately 800 copyrights, which had been pledged to
2 TIAA.

3 MR. NEWSOME: Objection, Your Honor, none of this
4 is in evidence.

5 THE COURT: I'm going to allow her to do it. She
6 -- I'm going to allow it.

7 Go ahead.

8 BY MR. BUNDY:

9 Q And?

10 A And a guarantee or a projection of a guarantee 3.5
11 million a year income from that particular income stream
12 for the duration of the loan.

13 Q So those were the two conditions preceding it?

14 A They were.

15 Q And why -- what is significant about the --
16 Mr. Brown's complaint against Pullman?

17 A Well, the complaint specifically says the loan was
18 approved, the -- and the term sheet was done and the loan
19 was ready to close, but for Mr. Pullman's interference.

20 Q All right. And what did you conclude regarding the
21 value of the estate based upon that? Value of the
22 inventory and appraisement?

23 A I concluded from that and many, many other things
24 that 40 to 50 million was entirely appropriate for the, the
25 copyrights because the RBS loan did not contain all the

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1 copyrights. And there had been numerous new -- new
2 recordings coming out right after James Brown died.

3 Q All right. What --

4 MR. NEWSOME: Objection, Your Honor. I want to
5 preserve my objection for the record. She's testifying
6 about all sorts of stuff that's not in the record. I
7 object to her continuing to testify about things that we
8 have no ability to look at, no ability to cross-examine her
9 on.

10 THE COURT: Well, this is stuff long after the
11 appraisalment was filed.

12 I asked Mr. Bundy to go through what she relied on
13 in testifying about --

14 MR. BUNDY: This is before the appraisalment.

15 THE WITNESS: This is just before the inventory.

16 THE COURT: Well, tell me the things after I mean
17 it's a whole --

18 MR. BUNDY: That's why I'm trying to keep her
19 focused.

20 BY MR. BUNDY:

21 Q Before the appraisalment --

22 A Uh-huh.

23 Q What we're talking about is why you didn't think it
24 was necessary to change it. What I want to know is -- this
25 was information you had that occurred before the

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1 appraisement?

2 A It did. And I had become, within days after the
3 appraisal, the personal representative of the estate and
4 substituted in that litigation; and I would not have
5 allowed it to continue if I had not believed the basis of
6 the litigation was correct.

7 Q Okay. And what else did you rely on in deciding --
8 in you and your co-trustee, deciding that there was no
9 necessity under the statute to amend the inventory and
10 appraisement as filed by the previous trustees?

11 A Well, many things. Let me back up to just before.

12 In the Summer of 2007, Mr. Cox and -- and others,
13 were trying to put together a deal to sell the James Brown
14 assets. And the problem was, from the perspective of new
15 trustees, was not to sell, but the fact that Mr. Dallas and
16 Mr. Cannon were trying to get a \$10 million commission.

17 So -- so when you look at what was a problem, the problem
18 isn't the top line, it's the bottom line. But -- so in the
19 Summer of 2007, Dr. Cox, who was not a copyright expert but
20 a branding expert, made a lot of projections about the
21 value of the James Brown assets. And he valued the brand,
22 the -- even though he said it was in fallow, he eval'd it
23 at 40 to 50 million. I had no evidence to the contrary.

24 Q Prior to your becoming trustee, had Mr. Dallas
25 applied to the Court to hire someone to value the tangible

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1 -- the --

2 A He did, but there were some things between the
3 summer and that --

4 Q Okay.

5 A -- that are significant here. Mr. Dallas -- I mean
6 Mr. Levinson took the deposition -- well, I told you on
7 October 12th was the first letter of intent of TJBL, a \$90
8 to \$100 million letter of intent plus a 5 percent legacy
9 royalties to purchase the assets. And some people call it
10 a letter of intent, some people call it an offer. But it
11 happened on October 12th. That was not made to us, it was
12 made to the original trustee.

13 Then on October 31st there were a number of
14 depositions taken. We were still special administrators,
15 we were not paying -- we were not directing depositions or
16 -- we just went to hear them. And in that deposition,
17 Mr. Levinson questioned Forlando Brown extensively about
18 what he knew about \$100 million offer. So everybody was
19 talking about the \$100 million offer, but -- long before
20 November 15th.

21 All right. Then in -- in -- on the very day of
22 November 15th, the day the original inventory was filed, a
23 lot of things were happening. One was that Mr. Levinson's
24 associate had secured from William Morris agency,
25 Mr. Brown's talent agency, documents to show that he had

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1 earned \$18 million in road shows between 2003 and 2006.

2 And, Your Honor, that's in the record, filed in the
3 record of November 15th of 2007.

4 Also, at that same time on November 15th, 2007,
5 there were income tax returns for the years 2003 to -- or
6 2002 to 2006 filed with Your Honor in your court showing
7 that Mr. Farr had understated the income for James Brown by
8 \$3 million a year --

9 MR. NEWSOME: Your Honor, I want to just preserve
10 my objection.

11 THE COURT: You're protected.

12 MR. NEWSOME: She continues to refer to documents
13 that are not in evidence that we can't cross her on.

14 THE COURT: Okay.

15 THE WITNESS: They're in the record in --

16 THE COURT: Go ahead, ma'am.

17 THE WITNESS: Okay. So that was on November 15th.
18 There was a lot going on on November 15th -- November 15th,
19 2007. All of the amended income tax returns and old income
20 tax returns for these pre death years were filed. The
21 William Morris, an \$18 million from 2003 to 2006 was filed.

22 MR. NEWSOME: Just, we renew my objection, Your
23 Honor.

24 THE WITNESS: There was lots of evidence in the
25 record just from the record that had been built up the

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1 whole year, including a lot of correspondence between
2 Mr. Hammond and Mr. -- and Senior Assistant Attorney
3 General, Sonny Jones, about the value. And, of course,
4 since we were special administrator and since August 10,
5 2007, we had access to virtually all the historical
6 financial records, from my review, I saw nothing in there
7 to suggest that the value was not correct.

8 Now, you asked the question did Mr. Dallas ask for
9 an appraisal and he did do that. And -- and he asked the
10 Court, Your Honor, to have -- to conduct an appraisal on --

11 BY MR. BUNDY:

12 Q The music or the intellectual property value?

13 A Of the IP, both the copyrights and the music. And
14 he made that request at sometime just short of November
15 15th, of 2007. And the transcript of that hearing will
16 show that Judge Early rejected his request that he
17 represent -- that he engage Mr. Herbsman's partner,
18 Mr. Shukat and that he in addition pay \$60,000 for an
19 appraisal of the IP and I think, if I can opine, that Judge
20 Early's decision was entirely correct --

21 MR. NEWSOME: Objection.

22 BY MR. BUNDY:

23 Q So anyway, this was an opportunity for the trust
24 and the estate to pay for an appraisal by Herbsman and
25 partner and that was not allowed?

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1 A Well, not Mr. Herbsman, he testified he couldn't
2 make an appraisal.

3 Q Okay.

4 A This was in addition to Mr. Herbsman.

5 Q Okay. In addition. All right.

6 A At the time -- at the time, I will say that we did
7 support an appraisal of the tangible personal property and
8 the basis for that was that there was dispute, both about
9 the value and about who would get it. So there was a
10 reason for that.

11 And there was no reason -- there was nothing in
12 dispute at that point about the -- about the value or where
13 it was going.

14 Q Okay. What else did you -- what else led you to
15 believe it was not necessary to amend the inventory and
16 appraisal, other than what you've already testified to?

17 A Well, on January -- let me see if I could -- if I
18 could have just a minute. (Looking for a document.)

19 On January 2nd, and I did make a copy of this, and
20 this is somewhere in the record because I see that it's
21 Exhibit 13, but I don't know to what. But some -- did we
22 mark that other --

23 Q I assume that most of these are parts of the
24 exhibits that are in these depositions; is that correct?

25 A I can't be sure. I can't be sure.

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1 Q Well, just answer -- if you need it --

2 THE COURT: January what?

3 THE WITNESS: I'm sorry, I gave you the Mark

4 Jacobson.

5 MR. BUNDY: Let's go ahead and mark --

6 THE WITNESS: May 23rd, 2007, seeking, discussing

7 seeking proposals to purchase.

8 MR. BUNDY: You got another copy?

9 THE WITNESS: Yes.

10 (Plaintiff's Exhibit Number 48 was marked for
11 identification.)

12 MR. BUNDY: Your Honor, I would move to introduce
13 Exhibit 48, which is an e-mail.

14 THE WITNESS: I have with me --

15 (The attorneys were conferring.)

16 BY MR. BUNDY:

17 Q Would you identify the document, please.

18 A Oh, that's just the proposal for purchase made by
19 GT in the Spring of 2007 that I discussed a little earlier.
20 I actually pulled out the wrong document. I have here also
21 and I only have one copy, is the notice, but I can give it
22 to you.

23 MR. BUNDY: Your Honor, I move to introduce into
24 evidence.

25 MR. NEWSOME: Your Honor, I object, I don't see

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1 where Ms. Pope is on this e-mail.

2 THE COURT: Well, that's a document.

3 MR. NEWSOME: Lack of foundation.

4 THE COURT: It's been throughout all the James
5 Brown litigation. I'm familiar with it. I'm going to
6 allow it.

7 (Plaintiff's Exhibit Number 48 was entered into
8 evidence.)

9 THE WITNESS: Then also here is the notice of
10 motion made in the -- in the Pullman New York case, in
11 which I -- Mr. Buchanan and I became plaintiffs. It's a
12 notice of motion by the defendant, Mr. Pullman, but it
13 contains the term sheet, if you -- if the Court would like
14 --

15 BY MR. BUNDY:

16 Q So it contains the term sheet for?

17 A For the Pullman loan.

18 Q Okay.

19 A And -- and I'm sure this is all over the record.

20 Q Hang on a second. Let me mark this, please.

21 (Plaintiff's Exhibit Number 49 was marked for
22 identification.)

23 MR. BUNDY: Exhibit 49. Plaintiff's Exhibit 49.

24 (The attorneys were conferring over the exhibit.)

25 MR. NEWSOME: Your Honor, we object. We haven't

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1 been provided this document, or notice. We asked for these
2 documents in discovery and then, you know, this is the
3 first time we've seen it.

4 MR. BUNDY: I didn't handle discovery in the case,
5 so I don't know.

6 THE WITNESS: I don't believe they ever came to
7 look at my documents, Your Honor. In 4900, they spent four
8 days in my office. And that would have been defendants.
9 That was in 2017. I don't believe they ever came to look
10 at my documents. They were always available to them, the
11 whole 130 boxes.

12 THE COURT: I'll allow it. Move along.

13 MR. BUNDY: Thank you, Your Honor.

14 (Plaintiff's Exhibit Number 49 was entered into
15 evidence.)

16 BY MR. BUNDY:

17 Q Just simply, what is Plaintiff's Exhibit 49, what
18 is significant with regard to the question on the table,
19 which is why you didn't deem it necessary or think it --
20 that you were required to amend the inventory and
21 appraisalment?

22 A Right. Well, it was just generally known then that
23 there had been the \$25.2 million loan that almost closed
24 just shortly before Mr. Brown's death and that was only on
25 800 of his 900 copyrights and none of his publicity rights.

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1 And there was, of course, the whole history of Mr. Pullman,
2 when James Brown made the original \$26 million loan in
3 1999. There broad publication of the \$100 million value of
4 his music empire at that time. And I saw nothing to see
5 that it had gone down.

6 Q All right.

7 MR. NEWSOME: Objection to hearsay.

8 MR. BUNDY: Was there a term sheet --

9 THE COURT: Hold on, hold on.

10 MR. NEWSOME: She's talking about broad general
11 knowledge and people saying stuff. I mean it's hearsay.

12 THE COURT: I understand.

13 BY MR. BUNDY:

14 Q Is this what you're talking about?

15 A It is.

16 Q All right. Can we just go to the point, you know.
17 If the term sheet that we're talking about is attached to
18 the document. That's all I want to do.

19 So anything else with regard -- well, let me ask
20 you this: Was there a formula presented to the Court
21 during this period of time for purposes of trying to
22 evaluate or for you to have some way to see if the
23 inventory and appraisalment was correct or did not need to
24 be changed?

25 A It was not the inventory and appraisalment. It was

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1 for the estate tax return.

2 Q Okay.

3 A And we presented it separately, separate and apart
4 from the proposal by Mr. Dallas for the appraisal that day
5 and we -- we presented a formula that we believed based on
6 seven months of close association with people who were
7 intimately familiar with James Brown's assets.

8 And also knowledge ourselves since August
9 approximately 15th of the, the music history and the whole
10 history of his music empire. So we made that proposal, but
11 it was -- it was not about the inventory and appraisement
12 and it was separate from it.

13 But the good news is the values were very similar.
14 But I need to say a few more things about why I think --
15 what I knew then about the inventory and appraisement.

16 Q Okay. That's fine.

17 THE COURT: Before you go to that, let me just ask
18 you one question about what Mr. Bundy just handed me which
19 was the Limited Company SPD for Soul Brother --

20 THE WITNESS: Yes, sir.

21 THE COURT: -- so forth and so on. You're familiar
22 with that. It says conditions precedent: Financial:
23 Receipt and satisfaction with the financial model prepared
24 by the borrowers advisors detailing forecast income and
25 ability to service debt. Did you ever see that model?

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1 THE WITNESS: We did not, Your Honor, but we were
2 plaintiffs in the case. And I was satisfied that that was
3 correct, that the allegations that had been made in the
4 complaint, that all of that was completed and that the only
5 thing that stopped that closing, which was the allegation
6 of the complaint, was the interference by Mr. Pullman.

7 THE COURT: My question, did you ever see the model
8 prepared by the --

9 THE WITNESS: I did not see the model prepared by
10 RBS.

11 THE COURT: Second: Receipt of and satisfaction
12 with lender constructive professional valuation report in
13 respect to the borrowers share of the copyright/cash flows.
14 The accountancy practice prepare the professional valuation
15 will also review financial model. Did you ever see that --

16 THE WITNESS: Your Honor, I --

17 THE COURT: -- valuation.

18 THE WITNESS: -- believe that they were in the
19 Greenberg Traurig file, which you're will remember, you
20 ordered Mr. Dallas to deliver on August 10th of 2007. We
21 were still trying to get it on August 12th, 2008 when the
22 attorney general announced his settlement. And there
23 again, a long history of trying to get it.

24 THE COURT: Thank you.

25 THE WITNESS: I believe that that information was

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1 contained within the Greenberg Traurig file.

2 THE COURT: Did you ever see it?

3 THE WITNESS: I did not see it.

4 THE COURT: Thank you. Move along.

5 BY MR. BUNDY:

6 Q What else did you -- you were talking about other
7 things you relied on?

8 A Well, yes, we knew the size of the TIAA debt, which
9 was a component of that inventory and appraisalment, which
10 was approximately \$15 million that had sometimes been
11 thought to be 17, but had been refined to be approximately
12 15 and that was part of that inventory and appraisalment.
13 And we never saw anything that was necessary.

14 Also then -- and I'm trying to find it -- on July
15 -- January I think 2nd, I received a letter -- I don't see
16 it --

17 THE COURT: What year, please?

18 THE WITNESS: Of 2008, just shortly after the
19 inventory.

20 I received a letter from -- Mr. Cox -- from Mr. Cox
21 withdrawing the \$100 million offer. Oh, here it is right
22 here. I think I have four copies of this. Three.

23 This is January 3rd, 2008, Dear Ms. Pope and
24 Mr. Buchanan, due to the current issues, the lack of
25 interest in our letter of intent to purchase the trust

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1 assets, we are withdrawing our offer of 100 million plus 5
2 percent legacy royalties to the beneficiaries of the trust.
3 See attached letter.

4 So we received that on January 3rd, 2008.
5 (Plaintiff's Exhibit Number 50 was marked for
6 identification.)

7 MR. BUNDY: And exhibit 50.

8 Your Honor, I move to introduce Exhibit 50.

9 THE COURT: Any objection?

10 MR. NEWSOME: Without objection, Your Honor.

11 (Plaintiff's Exhibit Number 50 was entered into
12 evidence.)

13 THE COURT: Move along.

14 THE WITNESS: So when they with drew their \$100
15 million after -- by then there had been a challenge to the
16 will, so a sale was not going to be in the cards for a
17 while.

18 THE COURT: Refresh my memory on who Terry Bradford
19 Cox was, PhD.

20 THE WITNESS: Your Honor, he was that branding
21 expert gentleman who spoke in your chambers right over
22 there the day that Mr. Dallas and Mr. Cannon resigned. And
23 he had been involved with the James Brown matters since
24 early 2007. And he had formed a group called the gray
25 Hamm, G-R-A-H-M, Windsor Group of Atlanta investors, who

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1 were seeking to purchase and perhaps -- they actually
2 projected to set up an IPO and sale, but an issue came up
3 in Your Honor's courtroom right over there, a question by
4 Mr. Levinson, with everyone under oath, that they were
5 looking to pay options or a kick back to Mr. Dallas and --
6 and Mr. Cannon.

7 And that came up --

8 THE COURT: That's the same day Mr. Dallas
9 resigned, isn't it?

10 THE WITNESS: Same day he resigned, Your Honor.
11 Exactly.

12 BY MR. BUNDY:

13 Q All right. What else do you --

14 A Well, that -- that and just having understood --
15 having had detailed contact with Buddy Dallas, knowing that
16 Buddy Dallas was being advised by Joel Katz, who was one of
17 the rock stars of the entertainment world, for better or
18 worse, but there were just thousands of pieces of
19 information, including -- and it's in the record -- an
20 e-mail Mr. Hammond to the attorney general, Senior
21 Assistant Attorney General Sonny Jones, the very day the
22 inventory was filed because it wasn't first filed under
23 sale. It came out a few months later.

24 But -- saying here's the inventory and appraisalment
25 I prepared. I mean lots of -- lots of communication with

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1 the attorney general about the \$100 million value. On
2 December 6, Sonny Jones wrote and said, what -- we're
3 afraid the \$100 million value is going to go away. Or
4 y'all are not doing what you should be doing. So, I mean
5 there was just no -- there was not even a hint that it was
6 high.

7 Q Okay. All right.

8 MR. NEWSOME: Your Honor, just, again, I want to
9 preserve the record. Objection, hearsay.

10 I think I've seen the e-mail she's talking about,
11 but I'm not sure. And I'm pretty sure it doesn't say \$100
12 million value. It talks about this letter of intent. And
13 not having those documents in front of us to be able to
14 cross Ms. Pope, it's -- I just need to --

15 THE COURT: You're protected. Thank you.

16 MR. NEWSOME: -- continue my objection.

17 THE WITNESS: He is correct. It doesn't say value.
18 It does say offer.

19 BY MR. BUNDY:

20 Q All right. Ms. Pope, did you secure any expert
21 appraisals before filing the estate tax returns?

22 A No.

23 Q Okay. And can you tell the Court why not?

24 A Because His Honor had, prior to our becoming PR's
25 said that there would not be an appraisal and approved a

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1 formula for valuing on the estate tax return and very
2 significantly, there was no estate tax due --

3 Q What's significant about that?

4 A -- on the intellectual property.

5 Q Why?

6 A Well, that's of huge significance because -- and --
7 because as I said earlier, private foundations don't just
8 value themselves one time. They value themselves every
9 single year, fair market value beginning of year, ending of
10 year. And if you're going to make a gift to a private
11 foundation during your lifetime, you must -- of a certain
12 size -- you must have an appraisal or you don't get the
13 gift tax deduction.

14 But if you -- if you make a gift to a charity at
15 death, you get 100 percent deduction for the value. And so
16 as I testified to His Honor way back, the IRS has no
17 particular incentive to -- to raise or lower, if anything
18 they may complain it's too high thinking you're trying to
19 have more basis. But -- but there was -- the formula that
20 Judge Early approved, or did not approve but gave other
21 people an opportunity to not agree with, resulted in the
22 right value for the Schedule F-2 assets. It was consistent
23 with an inventory that was done separately by different
24 people.

25 There was just no basis whatsoever for an appraisal

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1 at that -- at that stage.

2 Now, I do want to say this because it is important:
3 By January of 2009, after the attorney general proposed to
4 transfer half of the assets away and we were very concerned
5 about tax issues, shifting tax to taxable people. I mean
6 that was -- that created a whole new world. And in January
7 of 2009, we devised -- now I have to put this in context,
8 by January of 2009, the attorney general had filed a
9 lawsuit to prevent us from taking any action, so we had to
10 act prudently and there's a section in the probate code
11 that, in the trust code, that would tell us how prudently
12 we had to be, but the attorney general did not want us to
13 spend anything, even for attorneys.

14 But in January of 2009, we did propose a -- two
15 things that would have helped with determination of the
16 value. One, was we proposed a right at first offer. And I
17 think I may have mentioned it in passing, but what was
18 important about the right of first offer is it would have
19 given us a value as of two thousand -- January 2009, which
20 we needed for lots of reasons, because it was a charity and
21 you have to value charities every year, even though it
22 hadn't been funded yet. The charity had not been funded.
23 You need to know the value of the charity every single year
24 so you can do your make up funding when you -- when you
25 fund it.

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1 But -- but, we did a right -- we made to the Grahm
2 Windsor group a proposal that we asked Judge Early for
3 permission to do a right of first offer. It was stopped
4 immediately by counsel for Tomi Rae and others.

5 Q Who is the proposal to?

6 A Well, we -- we had just written just simply written
7 a letter to the Grahm Windsor group saying --

8 Q What does the Grahm Windsor group do?

9 A They purchase -- they were looking to purchase the
10 property.

11 Q Okay.

12 A They were looking to purchase the music empire.

13 THE COURT: This is one here, right?

14 THE WITNESS: It is. It is.

15 THE COURT: Exhibit 50 who -- on --

16 THE WITNESS: Right, right.

17 THE COURT: -- whatever date that is, January 3,
18 2008.

19 THE WITNESS: Right.

20 THE COURT: It's no longer an entity.

21 THE WITNESS: Well, yes, but, Your Honor, after
22 that they made two separate letters of intent. One in --
23 on February 27th and one on March 27, two separate ones --
24 and it's in the record that -- of course, we could not
25 explore those at that time because the will contest had

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1 just begun.

2 BY MR. BUNDY:

3 Q Any other thing that you need to tell the Court why
4 you failed to secure an expert appraisal before filing the
5 estate tax return?

6 A No, just nothing, nothing at all suggested that
7 there was anything wrong with the -- with the approximately
8 \$100 million less 15 million TIAA debt. We had come up
9 separately from Mr. Cannon and Mr. Dallas. Plus we had an
10 additional asset that they didn't have, which was the
11 substantial claims against them and others relating to Mr.
12 Cannon's stealing and that was a -- an asset of substantial
13 value.

14 THE COURT: Them and others. Who is them?

15 THE WITNESS: Mr. Cannon, Mr. Dallas and Mr. Farr
16 and Enterprise Bank and those. Those were claims which the
17 estate owned, Your Honor, at its death and they have to be
18 valued on the estate tax return, just like all other
19 assets.

20 BY MR. BUNDY:

21 Q Did filing this return without an appraisal violate
22 any IRS rules or regulations?

23 A You know, I heard -- the IRS has a lot of
24 regulations, but I've been practicing for 40 years, so I
25 can speak to what is customary. And I can tell you that,

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1 that including last year, I have presented --

2 MR. NEWSOME: Objection, Your Honor, she's offering
3 opinion testimony.

4 THE COURT: Just, the question was, does it have
5 any regulations or requirements.

6 THE WITNESS: It has lots of regulations.

7 BY MR. BUNDY:

8 Q Any of those regulations -- did you violate any of
9 those regulations in filing this return without an
10 appraisal?

11 A I don't believe so.

12 Q Okay.

13 A And I have a letter from Mr. Goodlet, the IRS
14 agent, where he asked for certain information and made
15 no --

16 MR. NEWSOME: Objection.

17 THE WITNESS: I haven't --

18 THE COURT: Wait just a minute.

19 What's the objection?

20 MR. NEWSOME: She's referring to another document
21 we don't have.

22 THE COURT: Show it to him.

23 THE WITNESS: I have that, Your Honor. I didn't
24 know what Your Honor needed today, so I have that under --

25 (The witness is looking for the document.)

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1 THE WITNESS: This is my only one, Your Honor. But
2 -- it may be somewhere else.

3 But on March 24th --

4 MR. BUNDY: Just identify -- let me mark it first.

5 (Plaintiff's Exhibit Number 51 was marked for
6 identification.)

7 MR. BUNDY: Your Honor, for the record it's Exhibit
8 51.

9 THE COURT: Show it to Mr. Newsome.

10 MR. BUNDY: It's a letter dated March 24th, 2009 to
11 Buchanan, Pope and Sellers.

12 (Showing the document to the defendants.)

13 THE WITNESS: I'm sorry, did I say Goodlet?

14 (There was a pause in the proceedings.)

15 MR. NEWSOME: Your Honor, I have the same
16 objection. This document has not been produced to us in
17 discovery and I don't believe it was included in the estate
18 documents delivered by Ms. Pope. This is the first time
19 I've seen this document.

20 MR. BUNDY: I'm not familiar with discovery
21 objection to evidence. Either it's -- it's a business
22 record.

23 THE COURT: Well, if you ask to produce documents
24 and they don't produce them -- you know that rule.

25 MR. NEWSOME: It would have been excluded. And

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1 that was before you were in the case, yeah.

2 THE WITNESS: Your Honor, I was never served with
3 discovery in this case until 2016 and -- and I have here
4 our final accounting reserving all rights that was filed in
5 this Court on June 29, 2009 and Box 82, delivered -- and
6 Mr. Bauknight signed that. That's already been made a part
7 of the record here. And it was filed in this Court on June
8 29th, 2009, and it was -- Box 82 is the administration box
9 with the following sub files. And it has estate tax return
10 IRS documents.

11 Today is the first time I'm ever hearing that the
12 estate didn't have that. The estate, through Mr. Wingate's
13 law firm, spent four days in my office in 2017. I don't --
14 I'm not even sure I was served with paper discovery here.
15 I know I was served with interrogatories in 2016 or 2017
16 for the first time.

17 THE COURT: I'll allow it.

18 MR. BUNDY: Thank you, Your Honor.

19 I'd move to introduce Exhibit 51.

20 THE COURT: All right. Over their objection,
21 subject to my ruling.

22 (Plaintiff's Exhibit Number 51 was entered into
23 evidence.)

24 BY MR. BUNDY:

25 Q All right. And Ms. Pope, where we were, I believe,

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1 is you were trying to explain to the Court why it was or
2 why you believe that this -- did not getting an expert
3 appraisal before filing the estate tax return did not
4 violate any applicable rules and regulations of the IRS?

5 A No, because as I said, all -- this 80 million was
6 going to a private foundation. That private foundation was
7 going to give the IRS a value every single year. And --
8 and I do not believe that with no tax due, with the
9 foundation assets having to be valued every single year at
10 fair market value in a public document, as soon as it's
11 funded. Now it hasn't been funded yet, but the -- there
12 was no basis for an appraisal under the facts at the time.

13 There was an appraisal, and I do believe that the
14 RBS documents should have been sent to the IRS. And I
15 would have certainly sent them as soon as we had gotten
16 them from Greenberg Traurig because you wouldn't want to
17 not disclose that to the IRS, but I do not believe there
18 was any basis for an appraisal.

19 Q All right. Now, you have been criticized for
20 failing to hire experts on a deferred-pay basis. Would you
21 explain to the Court why -- or did you do that? Did you
22 hire any experts on a deferred-pay basis?

23 A Yes.

24 Q Who did you hire?

25 A We not only hired experts on a deferred-pay basis,

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1 but we had experts who served during the period from 2007
2 to 2013 with no pay whatsoever.

3 Q Okay.

4 A And the -- but we did -- did not do it in a -- in
5 as much of a formal way, I guess as has been said. But
6 I'll just talk about what experts we had.

7 And, of course, the primary one was Ray Gonzales,
8 who's today the head of Warner Music Legal. And
9 Mr. Gonzales did not make a contract with us. He billed us
10 a couple of times. We paid one bill. The, the last bill
11 was rendered just after we left. He was not paid and has
12 not been paid today. I am humiliated by that because a
13 personal representative is liable for the debts of the
14 estate that they incur and to know that that this
15 gentleman, this distinguished gentleman who did such a good
16 job, was not paid was -- fell below the standard of care.

17 MR. NEWSOME: Objection, Your Honor.

18 THE COURT: That's exactly right -- overruled --
19 strike it.

20 THE WITNESS: So in the sense we obtained
21 Mr. Gonzales on a deferred basis in the sense that we
22 expected him to bill us fairly. He always did and when he
23 billed he wasn't paid.

24 All right. The next was Hogan and Hartson, who
25 were hired under a contract approved by Judge Early, but

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1 which got behind because of lack of liquidity, but we had
2 reliable lawyers who -- who continued to work and did a
3 great job. And -- and I -- we talked yesterday I mean the
4 other day about our defeating the \$31 million Pullman claim
5 here, but they defeated the \$8 million Pullman counterclaim
6 in New York. That was Mr. Ballenger and his partner. They
7 -- I found out later, were not paid their full amount that
8 Judge Early had approved.

9 I, of course, was working on a deferred-paid basis
10 and was not paid, and have still not been paid.

11 Tressa Hayes was working -- working to do her job
12 and billed about \$85,000. She was not paid the full amount
13 and by then lived in North Carolina.

14 James Bailey worked on a partially deferred basis.
15 He billed about \$186,000 for a year and a half of really
16 fine work and became too ill to come and pursue his claim
17 and was not fully paid.

18 So the answer, during the course of the appeal,
19 during the four years when we were defending the estate
20 plan, and others were seeking to dismember it, Jeff Smith
21 worked with me on copyright issues. He had been hired
22 before but he, but he worked pro bono publico on copyright
23 issues.

24 And of course lead counsel, Jim Richardson, worked
25 pro bono publico for the entire appeal.

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1 So -- but the code specifically says that personal
2 representatives, I'm sorry, trustees may only spend
3 administrative expenses that are consistent with the trust.
4 If I could read you that section, it would maybe be a
5 little more helpful. Let me just look, because -- if
6 you'll give me just a second, I think it might be helpful.

7 (There was a pause in the proceedings.)

8 THE WITNESS: Cost of administration -- I actually
9 had to look this up. I had it in my head, but not by
10 numbers. 62-7-805: In administering a trust, the trustee
11 may incur only costs that are reasonable in relation to the
12 trust property, the purposes of the trusts, and the skills
13 of the trustee.

14 So we, just so you understand, our appointment was
15 being challenged by the attorney general from November 20,
16 2007 until April 8, 2008. Then the challenge was lifted
17 for a moment or two. And then on -- on July, I'm sorry
18 June 30 the attorney general again challenged our authority
19 to act as trustees. And that lasted until July 14 of 2008.
20 And then on August 12, 2008, the attorney general
21 announced, along with others, that we were to stand down
22 and stop administering the estate.

23 And then on November 8th of 2008 the attorney
24 general filed suits to -- asked us, asked that we not be
25 able to do anything, including hiring attorneys.

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1 So in my opinion, and it's clear from the code it
2 would not have been prudent to enter into additional
3 deferred-pay contracts of any sort when the attorney
4 general was telling us we could not spend a penny.

5 BY MR. BUNDY:

6 Q All right. Let's talk a minute about block
7 billing. You've been criticized --

8 THE COURT: How about let's -- let's take a morning
9 break. We've been going about an hour and a half. We'll
10 take a bathroom break for about 10 or 15 minutes and come
11 back and go until about one o'clock.

12 Ms. Pope, obviously you cannot discuss your
13 testimony.

14 MR. BUNDY: Thank you, Your Honor.

15 (A brief recess was observed.)

16 MR. BUNDY: If it please the Court.

17 BY MR. BUNDY:

18 Q Ms. Pope, before the break I was getting into the
19 issue of block billing. And you've been criticized for
20 block billing.

21 Would you explain to the Court why you billed the
22 way you did. And secondly what objections, if any, were
23 made to the manner in which you billed prior to the trial
24 of this case?

25 A Okay. I do need to say some things about the

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1 value. I had a chance to look at my documents and a June
2 -- a June 13, 2008 letter to Attorney General McMaster
3 contains a bunch of information on which we relied and it's
4 all over the record here. And during a break, I could tell
5 Your Honor where it was filed. But it -- it -- it was
6 delivered to Mr. Bauknight and it's everywhere.

7 Q Well, do you recognize this document and --

8 A I absolutely do.

9 Q Would you describe it.

10 A Yes, it's a letter of June 13, 2008 from Mr.
11 Buchanan and me to Attorney General Henry McMaster, and it
12 deals with the \$100 million offer, and some of the earlier
13 offers.

14 Q Is it part of the books and records in the normal
15 business of the estate of James Brown?

16 A Well, it was at the time and it would have been
17 delivered -- there are multiple copies on file and it would
18 have been delivered, and I have some other documents also.

19 (Plaintiff's Exhibit Number 52 was marked for
20 identification.)

21 MR. BUNDY: Your Honor, I move to introduce Exhibit
22 52 into evidence.

23 (The Attorneys were conferring.)

24 MR. NEWSOME: Just for the record, I had a chance
25 to speak with Mr. Bauknight on the break. The receipt that

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1 Ms. Pope refers to is a general receipt. There is no
2 inventory of boxes that he received. We don't recognize
3 this letter. There are hundreds of pages of attachments,
4 some with notes on them, it's difficult to tell whether
5 these were the -- were the exact letters with the exact
6 attachments or whether these notes were included at the
7 time. So we want to preserve our objection for the record.

8 THE COURT: You're protected. I'm going to allow
9 it.

10 (Plaintiff's Exhibit Number 52 was entered into
11 evidence.)

12 MR. BUNDY: Thank you Your Honor.

13 BY MR. BUNDY:

14 Q Exhibit -- Plaintiff's Exhibit Number 52, what's
15 the purpose of writing this letter to the attorney general?
16 Just the simple purpose.

17 A It was to discuss various matters where we were not
18 getting support from the attorney general, but as relates
19 to the valuation issue, Exhibit 3 -- I'm sorry -- Exhibit 1
20 was explaining to the attorney general what the damage to
21 the "I feel good" Trust would be from a sale of 100 million
22 or 26 million that -- and how much it would get for Mr.
23 Dallas and Mr. Cannon and how little it would reap for the
24 estate. Which showed that a sale of 100 million at that
25 time would only have reaped \$24,591,341.

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1 But the letter --

2 THE COURT: Who got the rest of the 75 million?

3 THE WITNESS: That would have gone under our
4 calculation, here, Your Honor. It would have gone about 15
5 million to pay off the TIAA debt, 12 and one-half percent
6 for the still unresolved Pullman claim, which we resolved
7 through our counsel in New York. That was Pullman. No,
8 that 31 million was resolved here, but the 8 million
9 counterclaim was resolved in New York.

10 Copsidas was wanting 12 million 750; Cannon was
11 wanting 6,000,400; Mr. Bobbitt wanted 200,000; Mr. Dallas
12 wanted \$5,549,019, Greenberg Traurig wanted 4,250,000 and
13 Mr. Farr, Hammond, and certain others wanted 700,000. And
14 Mr. Bradley wanted 5 million. And then -- and then we put
15 in there, that we would lose if -- if this sale went
16 through like that, we would lose our \$13 million claim
17 against Mr. Cannon.

18 So that was the totality of it. But it also
19 discusses, it also has the amended, some of the amended tax
20 returns showing, for example, in 2000 his income at 4.5
21 million and some other discussion about what I mentioned
22 earlier about the offers from Joel Katz and then -- and
23 then Sonny Jones's inquiry about the \$100 million dollar
24 offer. It's just a recounting of some of the things I've
25 said. And then I also --

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1 THE COURT: Mr. Bundy.

2 MR. BUNDY: I'm sorry.

3 THE COURT: Thank you.

4 MR. BUNDY: Yes sir.

5 (Plaintiff's Exhibit Number 53 was marked for
6 identification.)

7 BY MR. BUNDY:

8 Q Ms. Pope, would you identify Exhibit 53, please.

9 A Yes, I'm sorry I don't have more copies and it's
10 printed on. It looks like something long ago in James
11 Brown.

12 This is.

13 THE COURT: Just identify it and let them look at
14 it, please.

15 THE WITNESS: Yes, sure. This is a -- an e-mail
16 from Terry Bradford Cox to Sonny Jones and Grace Lewis
17 dated January 21, 2008, re: Projected trust royalty.

18 MR. BUNDY: Let me show this to counsel.

19 THE WITNESS: That one has --

20 BY MR. BUNDY:

21 Q Is Exhibit 53 part of the books and business
22 records of the estate?

23 A Well it has a filed stamp. It's here in this
24 court.

25 Q So the answer is yes? It's part of the books and

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1 records?

2 A Yes.

3 Q It's part of the books and the records of the
4 estate of James Brown?

5 A It was at the time.

6 THE COURT: Any objection?

7 MR. NEWSOME: I'm sorry Your Honor. One second,
8 please.

9 THE COURT: Sure:

10 (There was a pause in the proceedings.)

11 (Plaintiff's Exhibit Number 54 was marked for
12 identification.)

13 MR. NEWSOME: Your Honor, we object. Ms. Pope
14 wasn't copied on this, nor was any other estate
15 representative. It's an e-mail from Terry Cox to Sonny
16 Jones and there's no --

17 MR. BUNDY: Business record exception.

18 THE COURT: It's also part of the record in some of
19 the James Brown cases. I'll allow it.

20 (Plaintiff's Exhibit Number 53 was entered into
21 evidence.)

22 BY MR. BUNDY:

23 Q Ms. Pope, what is the significance of Exhibit 53 as
24 it relates to the topics we were discussing?

25 A Exhibit 53 was filed on September 27, 2008, which

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1 was the day that the attorney general entered the James
2 Brown proceeding. And it was made Defendant's Exhibit 8
3 and I can't really say who the defendant was at this
4 particular hearing.

5 But it was in relation to the attorney general of
6 South Carolina and -- and the attorney general of Georgia
7 showing great interest in a quick sale of the James Brown
8 assets. Something we were trying to slow down because of
9 the October 18 letter. Not at this date.

10 Yes, at this date, we were already trying to slow
11 it down. And -- and so this was Mr. Cox's projections of
12 gross revenues from the entity that he intended to put
13 together. He's showing them at 650,000 in 2008 and --

14 Q All right. Well --

15 A And up and up and up.

16 Q All right. Well, tell me --

17 A Support --

18 Q Remind the Court what the October 8 letter is and
19 how that had anything to do with --

20 A I'm sorry, if I could -- yes, I will.

21 He, again, says, Even though we withdrew our offer,
22 we're still waiting to see if the environment is right to
23 negotiate another one. Below is our four year conservative
24 line item for the trust royalty. And so our concern was
25 not that -- about the 100 million but the net, which is

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1 discussed in the letter to the attorney general which was
2 just written four months later. So this is the same issue.

3 Q Okay. So if you would remind His Honor about this
4 October letter that you said required this quick sale and
5 you wanted it to be slowed down?

6 A The October 8th letter was one of two major
7 components of the litigation against Greenberg Traurig,
8 Cannon, and Dallas. The first part being the 17 million
9 that Mr. Cannon had taken and the second part being a -- a
10 contract -- an alleged contract dated October 10 to 20th,
11 2007 by which they were going to have another sale or
12 refinance of the book of the major music, the 800
13 copyrights that had been pledged to TIAA and they were
14 going to pay a large percentage of that to Greenberg
15 Traurig, Cannon, Dallas, Copsidas, and others.

16 Q Okay. And that later became the subject of
17 litigation?

18 A It was -- actually it was already the subject of
19 litigation in January of 2008. Just about the time that
20 letter -- I'm sorry February 2008.

21 Q All right. Would you identify plaintiff's exhibit
22 54, please.

23 A Yes, I just made a -- this is nothing more than the
24 index to the record of on appeal in the Dallas appeal.

25 Q Okay. And what is the relevance or significance of

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1 that as it relates to your testimony?

2 A Well, it's to -- so I can make sure that I remind
3 the Court of everything, I was looking -- Mr. Buchanan and
4 I were looking at when we made a decision that the \$85
5 million did not need to be amended and when we proposed the
6 formula.

7 Q Well, specifically, which documents listed in that
8 appeal would you have used?

9 A Well, I -- I can't say for sure, but I want to say
10 what the point is, I can see one just by opening this page
11 and that's the affidavit of Judge Walter Williams who had
12 valued -- whose deposition was taken in this case and who
13 valued James Brown's assets at 100 million conservatively.

14 But there may be other things as a joint affidavit
15 of Mr. Buchanan and Ms. Pope. Sitting here today, I can
16 tell you, I looked at thousands of things. But I -- I
17 think this is a good picture of what I looked at.

18 And then --

19 MR. NEWSOME: Your Honor, I'm going to object to
20 this exhibit. This is apparently a list of exhibits in an
21 appeal which was after she was already removed as a
22 personal representative. It has no relevance to her
23 valuation testimony. It shouldn't be in the record.

24 Your Honor, I just wanted to make sure -- bring to
25 your attention, Court of Appeals just issued an order

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1 striking documents that Ms. Pope has been trying to submit
2 in another James Brown case, and she's trying to include
3 documents in this record that aren't relevant to this case.

4 THE COURT: Well, I'm not familiar with the latest
5 court of appeals order. You got it?

6 MR. NEWSOME: I have a copy, Your Honor.

7 THE COURT: How long ago was that?

8 MR. NEWSOME: May I approach?

9 THE COURT: Yeah.

10 MR. NEWSOME: Last week.

11 THE COURT: When?

12 MR. NEWSOME: Last week.

13 THE COURT: Last week?

14 THE WITNESS: And, Your Honor, it allowed many,
15 many documents also if you'll read the last sentence. It
16 allowed many and it struck some.

17 THE COURT: The latest one is -- when was that.

18 THE WITNESS: Your Honor, if I -- Tressa Hayes.
19 And I have her bill here, which was --

20 THE COURT: No, ma'am --

21 THE WITNESS: -- part of our claim -- which was
22 originally part of our claim filed in 2009, prepared the
23 entire brief for this Dallas case.

24 THE COURT: Well, how is that pertinent to this
25 situation?

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1 THE WITNESS: It is pertinent to tell the Court
2 that I had thousands of documents that supported the \$100
3 million value. And -- a large number supporting the \$15
4 million value of the TIAA debt.

5 MR. NEWSOME: Your Honor, I apologize. I don't
6 have a copy of the exhibit she's trying to get into
7 evidence, so I'm not able to tell you all the.

8 (The document was handed to Mr. Newsome.)

9 MR. NEWSOME: -- I mean -- again, she's trying to
10 put lots of documents in that aren't -- I mean it says
11 order of Sue Roe, Dated February 1, 2007. There's no way
12 of knowing whether that has anything to do with the
13 valuation.

14 Supplemental Order Appointing Special
15 Administrators, that has nothing to do with her valuation
16 testimony. This -- there are tons of documents in here
17 that aren't relevant to her reply testimony here. And it
18 doesn't need to be in the record.

19 THE COURT: Specifically what in the documents are
20 you referring to, Mr. Bundy? Or your client was referring
21 to.

22 MR. BUNDY: It's just -- this is it right here.
23 Just the -- it's the index of the record on appeal.

24 THE COURT: But what part is it relevant as to what
25 she considered in arriving at the \$100 million? That's all

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1 I'm asking.

2 MR. BUNDY: Well, the -- the one she just mentioned
3 would be relevant.

4 THE COURT: Sir?

5 BY MR. BUNDY:

6 Q Which one was that, Ms. Pope?

7 A That was Walter Williams.

8 THE COURT: Walter Williams' what? Affidavit?

9 MR. BUNDY: Yes, Your Honor.

10 THE WITNESS: And -- and Your Honor, for example,
11 I'm looking here -- the purpose of this was to tell the
12 Court that there was abundance evidence. And I'm looking
13 here, for example, of the testimony of William Hammond that
14 was on February 7th, 2008. He was the lawyer who prepared
15 the inventory and appraisal. I can't say exactly, but I
16 would tell you that there was loads of evidence in the
17 record.

18 There was virtually no dispute about the 100
19 million being conservative at the time.

20 THE COURT: What I have heard so far was opinions
21 of other people as to what the value was. I haven't heard
22 anybody who actually did professional appraisals come up
23 with a value and that's -- of course, you've got my order
24 where I said what it says, but that's what I was looking
25 for.

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1 I just don't see where this record on appeal is
2 relevant when you start adding all this to the record, I
3 know what they're going to say in Columbia, but I will
4 allow.

5 THE WITNESS: And -- and --

6 MR. NEWSOME: Your Honor, just for clarification in
7 the record, the only thing that's in evidence is this list
8 of documents, not any of the documents they list.

9 THE COURT: Just the list right there.

10 (Plaintiff's Exhibit Number 54 was entered into
11 evidence.)

12 (Plaintiff's Exhibit Number 55 was marked for
13 identification.)

14 BY MR. BUNDY:

15 Q Could you identify Exhibit 55, please?

16 A Yes, it's a document filed in this case that
17 contains information about what happened to the 4.7 million
18 value -- how the 4.7 million value and the \$84 million
19 value came to be presented to the Supreme Court. And it
20 contains --

21 THE COURT: In this case, your case, for your fees?

22 THE WITNESS: In Wilson versus Dallas.

23 And including, Your Honor, a request -- -- it has
24 been filed in this case, Your Honor.

25 THE COURT: This case, being your case?

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1 THE WITNESS: My case.

2 THE COURT: Mr. Newsome, she represents it's
3 already been filed in this case.

4 MR. NEWSOME: Your Honor --

5 THE COURT: Any objection.

6 MR. NEWSOME: Your Honor, it appears to be some
7 sort of filing, but there's no foundation for it. It is a
8 hodgepodge of documents. There's no foundation for what it
9 was for. These documents also appear to be documents after
10 she was already removed for cause, which have no relevance
11 to what you're hearing on reply, which is what she relied
12 upon to come up with the valuation.

13 THE COURT: Well --

14 MR. NEWSOME: So she's trying to testify, for
15 example, about the valuation Mr. Bauknight arrived at.
16 That's different than her --

17 THE COURT: I'm going to allow it because I'm not
18 going to deny her making a record for whatever purpose may
19 be needed in the future. It may not be needed. I don't
20 know.

21 MR. BUNDY: Thank you, Your Honor.

22 BY MR. BUNDY:

23 Q All right. Ms. Pope, let's go to block billing.

24 A I'd like to talk about the IRS proceeding because
25 this document makes clear my opinion and --

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1 THE COURT: Well, let me see the document.

2 THE WITNESS: I'm sorry, Your Honor.

3 BY MR. BUNDY:

4 Q Tell us about the IRS.

5 A An IRS closing letter, Your Honor, is not a work of
6 the IRS. And that was explained to the Supreme Court in
7 these documents. An IRS closing letter simply means that
8 the IRS will not revisit your issue unless you have
9 committed fraud, they have made a mistake, or certain other
10 circumstances. A closing letter is not an audit; and a
11 closing letter is simply that we won't come back unless
12 something happens..

13 Q All right. Let's go the block billing.

14 A Okay.

15 Q All right.

16 A Yes.

17 Q I think the question I asked you when we came back
18 was -- well, first let me ask you when was the first time
19 you heard any criticism as to the manner in which you kept
20 your hours or billed your time?

21 A Some time after this case was filed in 2013.

22 Q All right. And what was the criticism about the
23 manner in which you filed your bills?

24 A Well, I heard the first time the word block
25 billing.

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1 Q Okay. And what -- tell the Court why you didn't --
2 why you billed the way you did?

3 A Well, because we had an extremely open
4 administration and my life was an open book. My James
5 Brown life was an open book and the Court, you know like
6 certain instances where fees may be being reviewed, was
7 intimately familiar with every step that Mr. Buchanan and I
8 had taken. And -- and I worked many, many, days the whole
9 day and I would -- it would never have occurred to me to
10 stop and say -- try to segregate what James Brown matter I
11 was working on. If I was working all day, which I was.
12 And if I was not lying about my time, which I wasn't, then
13 I would just put at the end of the day, as I said,
14 typically by transcribing -- I --

15 Q All right. Did you --

16 A -- I mean dictating --

17 Q -- look at the four times or days that the defense
18 witness picked out?

19 A I --

20 Q Do you have any explanation?

21 A I actually looked at, I think there were six days
22 that Ms. -- one of the experts testified that my billing
23 was inadequate and I just tried on a couple of those dates
24 to pull out the documents. I'm not going to go through
25 them, Your Honor, but just pull out the documents that were

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1 within five or ten days before that and within five or ten
2 days after that, so that -- so it -- that it would -- I
3 would -- I would be able to demonstrate, if it were
4 necessary, that the Court was intimately familiar with
5 every step I was taking and Mr. Buchanan was taking and
6 that -- that if anything my time was under-billed and that
7 the complexity and particularly of the -- the tax issues
8 that came into play starting in August of 2008, were so
9 troublesome.

10 And the Forlando litigation and everything else
11 that when we had -- the Court that was intimately familiar
12 with what we had done. I think the billing was certainly
13 adequate and nobody ever said it wasn't until after 2013.

14 Q Did you ever refuse to segregate or amend your
15 bills any way, anyone -- after somebody requested that you
16 do so?

17 A You know, I've been blessed. There are very few
18 times that I can recall I've had a bill question.

19 Q No, I'm talking about in this case. Did anybody
20 make a specific complaint to you in this case, Ms. Pope, we
21 need to know exactly how much time you're putting in for
22 copyrights; we need to know exactly how much time you're
23 spending answering interrogatories and the rest of it?

24 A I don't think so. I do think in the settlement
25 hearings, the question came up and we did bring our records

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1 to the settlement hearings. But unless the settlement
2 hearings, that's the only thing I can think of.

3 Q Okay. All right. What is a -- what is the
4 trustee's duty to defend an estate plan? What are those
5 duties as it relates to an estate plan?

6 A Well, a trustee has -- and a PR, had a duty to
7 defend, reasonably defend an estate plan. And for example,
8 if you have -- if you -- I'll find the section that we
9 want.

10 Section 62-7-811, says that a trustee will take
11 reasonable steps to enforce claims of the trust and to
12 defend claims of guests of trusts.

13 And of course, added to that is a whole overlay of
14 the defense of a will, the law that's been talked about.

15 And if I could just incorporate the brief that we
16 did on that subject after Mr. Levinson's testimony, we
17 clearly had a duty to defend as long as it was reasonable
18 and I can only say they where -- where a person who stands
19 in the shoes of a co-trustee or a -- or a -- an attempted
20 substitute trustee is attempting to shift about a million
21 five or \$3 million a year of incoming income away from the
22 beneficiaries of the trust, you must measure reasonableness
23 of the defense in the light of the potential for losing
24 1,500,000 every year for the existence of that trust.

25 Q I think you're going to need -- we're going to need

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1 to explain that a little bit more.

2 A Okay. Well --

3 Q The settlement was reached that you appealed,
4 correct?

5 A Yes.

6 Q You appealed that settlement; is that correct?

7 A We did.

8 Q All right. And was that done in the defense of the
9 estate plan?

10 A Absolutely.

11 Q All right. Now, explain to the Court how the
12 settlement was harmful to the trust and the estate, as
13 written.

14 A Okay. Well, yes. The -- the beneficiaries of the
15 trust are the seven grandchildren, not all the
16 grandchildren, but the seven identified by James Brown.
17 And the -- and the needy students. And when the attorney
18 general, on August 10th of 2008, assumed the right to
19 direct what was going to happen, not just to the charitable
20 beneficiaries, but to everybody, it was an unprecedented
21 situation and I have academically, I think the closest you
22 can come to it is Section 62-7-808, which says -- it's
23 called powers to direct.

24 And it says: A person other than a beneficiary who
25 holds the power to direct is presumptively a fiduciary, who

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1 as such, is required to act in good faith with regard to
2 the purposes of the trust and the interest of the
3 beneficiaries. The holder of the power to direct is liable
4 for any loss that results from the breach of duty. So --

5 Q What I want -- what I want you to explain though is
6 just the math, explain to the judge the math of how the --

7 A Okay.

8 Q -- settlement --

9 A Okay.

10 Q -- rose in you a duty to -- what was it about the
11 settlement that needed -- that you needed to defend as a
12 result of the settlement?

13 A Well, we needed to defend the attorney general's
14 assertion that it was beneficial to the trust to transfer
15 approximately \$1,500,000 a year to people who were not
16 beneficiaries of the trust.

17 Q And how was that -- how was that being
18 accomplished? In other words, tell the judge how that
19 worked. What the settlement said. How it worked and what
20 numbers you're dealing from?

21 A The settlement took all of the James Brown assets,
22 not simply the charitable assets, but all, and combined
23 them in a new trust created by the attorney general, known
24 as the James Brown Legacy Trust and from the James Brown
25 Legacy Trust, approximately a quarter of those assets and

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1 income would be paid to Tomi Rae and approximately a
2 quarter of those assets and income to five will/trust
3 contestants at the time it was originally created. It was
4 modified slightly. In terms of -- of shares.

5 But -- but then added to that was the attorney
6 general's claim that it benefitted the children, both the
7 needy children, and I presume the seven grandchildren to do
8 this because the settling parties had placed their
9 termination rights under Sections 203 and 304 of the
10 federal copyright act into the James Brown Legacy Trust and
11 the possession that the attorney general took was that
12 those assets were as valuable as James Brown's estate.

13 And -- and so we -- so we believed that we had the
14 duty under this section to prevent a serious breach of
15 trust.

16 Q Okay. But explain the \$1.5 million?

17 A Well, James Brown's -- James Brown was bringing --
18 James Brown's estate and trust were bringing in at least \$3
19 million a year. It was close to four by the time we left,
20 but at least \$3 million a year. And a shifting of half of
21 the assets and income would have shifted half of that to
22 the non beneficiaries. Taken it all, actually, and put it
23 in the hands of the attorney general.

24 And also not just that half, but it was to put the
25 other half into a new charity created by the attorney

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1 general of his own making and desire. So it was really
2 shifting all of the assets from the 2000 Trust.

3 Q All right. In the original -- in the trust that
4 James -- in the trust and will signed by James Brown, there
5 was what's been referred to as a fractional share. With
6 you familiar with that term?

7 A Yes.

8 Q Okay. Ms. Provence was not, so -- if you could,
9 explain to the judge what -- just -- what the fractional
10 share is and I want to get you to tell us a specific
11 example of how the value of the estate at death is --
12 affects the fractional share and how all this money would
13 have been divided if the trust had been followed. Can you
14 do that?

15 A Yes.

16 Q Okay.

17 A James Brown's will and trust read together are hard
18 to read and can't be understood until he dies because he --
19 the will -- the trust contains a formula provision for
20 funding the trust for the seven grandchildren and funding
21 the "I Feel Good" Trust. And the formula is that -- I'm
22 now not reading from the will, but reading from the will as
23 applied to the facts upon James Brown's death.

24 The -- the charity of the grandchildren was created
25 by a fraction. The numerator, top part, of which was \$2

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1 million. And the denominator, the bottom part of which was
2 the value of the trust assets. And that would be the trust
3 assets including anything that came into the trust through
4 the will, which was essentially everything except for
5 personal and household effects.

6 So --

7 Q Let me stop you there. Because this -- that has to
8 be done slowly, okay?

9 Using your valuation, okay? I want to use your
10 valuation that you used, which would have been applied had
11 it been accepted, to the formula, okay? I'm going to lead
12 you a little bit because I'm trying to move this along.

13 A Yes.

14 Q The numerator, the top number, the \$2 million.
15 That comes from the standard deduction at that time, right?
16 Because that was the -- some deduction --

17 A It's a tax related clause.

18 Q Okay. So it's 2 million, no matter what
19 denominator we're using the 2 million is always the top
20 number.

21 A It's always going to be that number because he died
22 in 2006.

23 Q All right. The number for the denominator, the
24 bottom number, based on your valuation was what? What
25 number was that?

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- 1 A Probably 84.
- 2 Q 84. 2 over 84 --
- 3 A Yes.
- 4 Q -- reduces to 1 over 42, right?
- 5 A Yes.
- 6 Q Okay.
- 7 A Approximately.
- 8 Q So 1, 42nd, is that right? 84 --
- 9 A Yes. Approximately --
- 10 Q So it's a fraction of 1, 42nd?
- 11 A Right.
- 12 Q All right. Now, let's suppose that there were --
- 13 let's try to make it easy, I guess -- \$4.2 million -- well
- 14 let's make it 84 -- we'll use the 84 million bucks. If you
- 15 said it was \$84 million that was going into the charity,
- 16 right? The charitable trust, correct? It's 84 million
- 17 bucks, right?
- 18 A That --
- 19 Q Goes into the 2000 Trust first, right?
- 20 A Not into the charitable trust. It goes into the
- 21 2000 Trust.
- 22 Q The 2000 Trust.
- 23 A Before it's divided.
- 24 Q It goes into the 2000 Trust.
- 25 A Yes, sir.

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- 1 Q One, 42nd of \$84 million would go into the
2 grandchildren's trust?
- 3 A For the education of the seven grandchildren to age
4 35.
- 5 Q Okay. 2 million bucks, roughly?
- 6 A Two million bucks.
- 7 Q All the rest of it would go to the needy children?
- 8 A Would go into the "I Feel Good" Trust --
- 9 Q The "I Feel Good" Trust?
- 10 A Yes.
- 11 Q Okay. So that \$2 million was to be exclusively
12 used for the education of seven specific people --
- 13 A That's correct.
- 14 Q -- correct?
- 15 And their right to have access to that stopped at
16 what age?
- 17 A It stop -- it stopped at 35 and, of course, it was
18 limited to education benefits.
- 19 Q Okay. Now, that trust was not a charitable trust,
20 was it?
- 21 A No, it was taxable.
- 22 Q And it had to pay and file income taxes every year,
23 correct?
- 24 A Yes.
- 25 Q Okay.

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1 A But -- but -- I need to tell you -- both -- both
2 trusts would -- I mean the whole trust would file income
3 taxes until it got separated.

4 Q Right.

5 A And then -- but all the portion that -- that got
6 shifted into the grandchildren's trust for whatever
7 reasons, would be taxable unless it was passed out to the
8 grandchildren for -- then it would be taxable to them.

9 Q Okay. All right. As money came into the estate,
10 it would be done the same way, the same fraction?

11 A And some -- some point fairly soon after the
12 death --

13 Q Okay.

14 A -- maybe 11 years, they would actually be divided.

15 Q Okay. All right.

16 Now, let's -- let's use the alternate valuation.

17 If the -- the 4. -- the 6 -- let's say 6 million?

18 A Yeah.

19 Q Four point -- what is it?

20 A Well -- the -- the -- the formula was tied to the
21 value as finally determined for estate tax purposes, which
22 is a typical method of determining. And if the valuation
23 was as it turned out to be 6 million, approximately, at
24 death, then that set the formula.

25 Q All right. So then what is the fraction?

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1 A So it's approximately a third.

2 Q Okay.

3 A A little less. So it is shifting -- a closing
4 letter of 6 million -- which results in \$6 million, will
5 shift nearly one-third of the charitable assets out of the
6 charity and into the grandchildren's trust where if it's
7 done properly, will not be needed, because you do not need
8 approximately a third or \$3 million a year to educate seven
9 grandchildren when two are close to 35.

10 And so that -- so what happens is that you have
11 trapped into a taxable trust a lot of income that is going
12 to be taxed at the highest income tax rate, where it will
13 sit there and be taxed until each child turned 35 and at
14 that point, it will go to the charity where it should have
15 been all along.

16 Q Okay. So there is a -- a tax detriment to a lower
17 valuation?

18 A A terrible tax detriment.

19 Q Okay.

20 A Hundreds of thousands each year.

21 Q And there's no tax detriment to a higher valuation
22 because it's a charitable trust?

23 A Well, I wouldn't exactly put it that way. I would
24 say a fair value that results in the fraction that was
25 intended at death, so -- is the best thing to do.

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1 Q Okay. All right. And what else did you do other
2 than file the appeal and prevail to defend the estate while
3 you were PR trustee?

4 A Well, I did something that I've been criticized
5 for. I studied and studied and studied because I have read
6 the probate code and I believe that the probate code and
7 the trust code require PR's and trustees, but particularly
8 trustees who have special skills to use them. And I had a
9 large number of special skills that really along with Bob
10 Buchanan fit nicely into this job to which we were
11 assigned.

12 And I --- I was a lawyer and -- and we had no money
13 and the attorney general didn't want us to have any money
14 and I was totally capable of becoming a copyright expert,
15 so that's what I did.

16 Q Okay.

17 A And I read and I studied and wrote and I cannot
18 imagine that it's bad for a trust for a person who is a
19 lawyer with special skills capable of becoming a copyright
20 termination rights expert, not generally a copyright exert,
21 but a termination rights expert, I think that's the right
22 thing to do.

23 Q What other special skills besides that did you
24 bring to the table?

25 A Well, again, I was able to analyze and -- let me

Adele Pope - Direct Examination by Mr. Bundy

1 say this: Talking about experts, the -- the delegation by
2 a trustee of his duty to experts is allowed, but it is not
3 without limits. You cannot delegate your ability to think.
4 You -- and -- and with James Brown, I was selected because
5 I had special skills. I was left there because I had
6 special skills and it was my duty to use them.

7 Q Okay.

8 A And -- and so -- so -- so one of the skills I could
9 bring to it was to add to sort of understanding the tax,
10 the estate planning, the funding, the litigation, together
11 with Mr. Buchanan. I could -- the need to determine heirs,
12 which is -- any lawyer should know that. But add that --
13 it was just a small -- not a small, but a critical step to
14 go ahead and learn what was necessary to refute all of
15 these false claims that were being made about the copyright
16 act.

17 Q Okay. All right. Where did the \$99 million come
18 from in your formula?

19 A I was so surprised because here it is all over the
20 accountings, in this one in particular, is the final
21 accounting, but as it turned out, we sort of began with
22 almost 100 million in our -- and our net was much higher
23 when we left but our gross was a little bit lower. We --
24 we -- we accounted for a net value of transferred assets of
25 88,372,228.

Adele Pope - Direct Examination by Mr. Bundy

1 Q Where did that come from?

2 A Well, that was a result of our reduction of the
3 TIAA debt and our other management -- our prudent
4 management. And he -- we left with very few legal fees. I
5 hope these are -- are -- that our whole claim was made an
6 exhibit, but I'm handing you Exhibit 11 and Exhibit 12,
7 which are the legal fees of Mr. -- Ms. Hayes and
8 Mr. Bailey, which are not the subject of this, but were
9 part of our claim.

10 They were filed -- they're exhibits to our claim as
11 filed with Judge Early in 2009. And they are -- they show
12 how prudently we used trustees because you must be prudent
13 in the -- I mean -- I'm sorry, experts and others. You
14 must be prudent in the selection of experts. You cannot
15 delegate them -- to them non delegable things. You must
16 oversee what they do. If they make a big mistake, like an
17 over statement by \$3 million of a debt, you can't say that
18 that was somebody else's job. That's your job.

19 Or -- and also -- and it says by accepting a
20 delegation of powers and duties, people to whom duties are
21 delegated are subject to the jurisdiction of these courts
22 in South Carolina. So -- we had carefully delegated what
23 duties we needed to delegate and done what we could with
24 our own special skills.

25 Q Okay. I want to ask you about trustee payments.

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1 Is it your experience that trustees don't get paid until
2 the end of the trust or the trust is over?

3 A Well, for one that lasted perpetuity, we would hope
4 not.

5 Q Okay.

6 A But it is -- it is customary for trustees to charge
7 fees based on the value of the asset quarterly or annually.
8 That -- there's nothing unusual about that. Trust -- PR's
9 --

10 Q Let me ask you about trustees -- you were a bank
11 trustee?

12 A I was a trust officer for a short while.

13 Q Trust officer.

14 A But, I mean I've had a lot of experience as a
15 trustee.

16 Q But is it your experience that banks will wait and
17 not collect their money --

18 A No.

19 Q Okay. All right. So at least we know that banks
20 expect to be paid.

21 A We do. We do.

22 Q All right. Now, what about PR's?

23 A Well, PR's -- my experience has been that PR's who
24 are also serving as trustees, typically do it together on
25 at least an annual basis. And there's a real strong

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1 prudent reason for that because you want to know if
2 anybody's fussing about your fees. You don't want to wait
3 until next year or the year after that. You want to know
4 right then if anybody doesn't like it. And I need to say
5 that in the -- in the James Brown 2000 Trust, when we did
6 the application for determination, which is the IRS
7 approval of -- of -- of the "I Feel Good" Trust, all of
8 which is located in the Dallas appeal at page 2731 to page,
9 something like 2763. But when we applied for the IRS
10 recognition of the James Brown "I Feel Good" Trust -- now,
11 this wouldn't be -- this wouldn't be -- the Court would not
12 be bound by that, nor would anybody, but what we put in --
13 into the amendments to James Brown's own documents, which
14 were allowed by the documents, we put in a trustee fee of
15 one-half of one percent of the value of the trust each
16 year.

17 MR. NEWSOME: Your Honor, I'm going --

18 THE WITNESS: For the trustees. That is a part of
19 the record.

20 THE COURT: Okay. Hold on.

21 MR. NEWSOME: That's not part of the record in this
22 case and there was no testimony about trustee fees. And
23 that's outside of the scope of reply. She's --

24 THE COURT: Mr. Bundy, why are we into that?

25 MR. BUNDY: All right, sir. I'm almost --

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1 THE WITNESS: It's part of my claim.

2 BY MR. BUNDY:

3 Q I'm sorry, I didn't --

4 A My claim is for both.

5 Q Well, your claim -- I thought she was talking about
6 the bylaws thing. The trust --

7 THE COURT: I just asked you why you were going
8 into this and she said the claim was for both. Move along.

9 MR. BUNDY: Yeah, very good.

10 THE COURT: That's correct.

11 BY MR. BUNDY:

12 Q Talking about claims, okay? What duty did you have
13 as the trustee/PR to resolve claims against the estate?

14 A The PR/Trustees have a duty to -- I just read it,
15 but, essentially, I'll say it, efficiently and promptly
16 resolve claims against the estate.

17 Q All right. Has -- has that recently been addressed
18 in the code regarding to a time frame within which claims
19 have to be resolved?

20 A It used to be that in estates and this would be
21 different from trusts, but in estates, you could kind of
22 wait until the end if you wanted to. You did so at your
23 peril, but you could wait until the end if you wanted to,
24 provided you treated claimants the same and you didn't --
25 you know, you didn't prejudice --

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1 Q Neutrality --

2 A -- first priority --

3 Q You had to be neutral?

4 A -- that's where the --

5 THE COURT REPORTER: Excuse me. You can't talk at
6 the same time, please.

7 MR. BUNDY: Sorry.

8 THE COURT REPORTER: Thank you.

9 BY MR. BUNDY:

10 Q Required neutrality among people in the same group,
11 category?

12 A (Witness nodded head.)

13 Q All right. All I'm asking you now is, what is the
14 status now with regard to claims when they need to be
15 resolved, if any? Is there a time frame now?

16 A Well, there's now a 14 month period where you don't
17 have to resolve it, but you have to deal with it in
18 estates. But that was not in the law when --

19 Q Okay. All right.

20 A -- we --

21 Q And how long has this claim been pending?

22 A Well, it was pending from 2009 until 2013 when it
23 was disallowed. So that was the trigger which, it could
24 have been resolved at any time.

25 Q Okay. All right. What is the -- what is your

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1 understanding of the requirement of allocation of fees or
2 trustee fees or PR fees among trustees throughout a course
3 of an estate?

4 A Well, again, I think the allocation depends on
5 reasonableness, but the payment to trustees on an annual
6 basis the fine.

7 Q Okay.

8 A The allocation, though, what is unique about the
9 allocation in this sense is that we have four years when
10 there was no PR or trustee. And you must analyze --

11 MR. NEWSOME: Objection, Your Honor. She's giving
12 professional opinions again about -- rather than talking
13 about the issue in general, she's giving professional
14 opinions in this case about what happened in her opinion
15 about the law.

16 THE COURT: I'll allow it. I'll allow it. That is
17 her -- her perception of what's going on.

18 THE WITNESS: Thank you, Your Honor.

19 This is a unique case, Your Honor, in that -- and I
20 think the depositions that we've presented will show that
21 even the attorney general has never seen cases like this
22 before.

23 The voiding of the appointment of Mr. Bauknight,
24 which was discussed in detail as a new matter, did clearly
25 set out that we have a new issue. But what -- it is my

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1 professional opinion, that when that happens and there is
2 no trustee, you must look at everyone who claims to be a
3 fiduciary during the period and you must determine --

4 MR. NEWSOME: Objection, Your Honor. She's made a
5 professional opinion. I just want to preserve my objection
6 for the record. She's attempting to --

7 THE COURT: This is different than whether or not
8 she violated the standard of care. I'm going to let her --

9 The question simply was do you look at everybody to
10 compute the fee or do you sort of break it down
11 individually and she's giving her reason as to support her
12 opinion on that.

13 Overruled.

14 MR. BUNDY: And, if I could just say, I tried to
15 think hard about this and prepared a chart, which we have
16 marked as an exhibit something because this is not simple,
17 Your Honor, it is complex. We have 18 years of a trust and
18 we have -- and the reason I use the trust is because the
19 trust was in existence for six years before James Brown
20 died. And the trust is the sole residual beneficiary of
21 the will.

22 And so, therefore, looking at the trust is really
23 more appropriate than talking about the estate. And my
24 chart talks first about the original trustees, Cannon and
25 Dallas. And it contains --

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1 THE COURT: Wait a minute. I thought the question
2 was about the apportion of fees between everyone. We've
3 already talked about this chart not coming in.

4 Didn't y'all object to this chart?

5 MR. NEWSOME: Yes, Your Honor.

6 THE WITNESS: Well, it was my chart, not Ms.
7 Provence's chart. I made it. And I have provided the
8 documentation for everybody.

9 THE COURT: Well, he hasn't offered it with you
10 testifying, so I'm not going to rule on it yet.

11 MR. BUNDY: Well, I'd -- let's go ahead and try to
12 get it in now.

13 BY MR. BUNDY:

14 Q Ms. Pope, did you prepare this chart?

15 A I did.

16 Q Is it based on documents in this case?

17 A It is based on documents in the case and from the
18 public record and I have presented to the other side --

19 Q And the other side has been provided with all of
20 the information upon which that chart is based?

21 A Yes.

22 Q Or access to it?

23 A Access to all of the information.

24 MR. BUNDY: Your Honor, we move to introduce this
25 under the rules of evidence 1006.

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1 THE COURT: Which is what?

2 MR. BUNDY: Well --

3 THE COURT: What is 1006?

4 MR. BUNDY: 1006 is when you have a great deal of
5 facts --

6 THE COURT: Compilation of --

7 MR. BUNDY: Compilation of facts, yes, Your Honor.
8 And it also requires that we provide to the defendants,
9 before we can introduce such an exhibit, all the documents
10 for it or all the documents from which she's -- this chart
11 was created, which we have done. A great deal of them are
12 -- they have been annotated and we believe it would be very
13 helpful to the Court, of course, it would be up to you
14 whether it's helpful or not, but -- to you, but we believe
15 it will be helpful to you, if nothing else to put things in
16 a chronological --

17 THE COURT: Well, I understand that, but you've got
18 something in here about Michael Jackson, Ray Charles, Roger
19 Miller -- how in the world is that --

20 MR. BUNDY: Well, the relevant --

21 THE COURT: -- relevant to --

22 MR. BUNDY: -- I was going to ask the witness about
23 the relevance of that when we get to it, but just the chart
24 itself is accurate for whatever -- for whatever it's worth,
25 the chart information is accurate.

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1 MR. NEWSOME: It -- it's -- we disagree with that
2 contention vociferously, Your Honor. I mean, it's complete
3 with hearsay. There's a lack of foundation for some of
4 this. It talks of -- I mean there's advocacy in this
5 document, I think it says, Bauknight with quote, monitoring
6 by AG, May 29, Tomi Rae -- it's hard to even read my copy
7 -- Levinson acceptance in -- admits intent to reinstate AG
8 settlement. I mean that's her trying to advocate some
9 point.

10 Bauknight served under Tomi Rae's suit over alleged
11 backroom copyright deals. Deanna, Yamma, others provide
12 additional evidence; Tomi Rae not spouse. I mean we're on
13 reply here, which is supposed to be her testifying, not
14 retrying her case in chief, but just responding to the
15 facts that came up in the defense case. And this chart is
16 just -- it's not admissible.

17 \$5 million check to nobody discovered. All these
18 things that happened before James Brown died; Ray Charles
19 dies. James B. born. I mean, there's evidence -- there's
20 a bunch of stuff outside of the case. There's no
21 foundation and it shouldn't be admitted.

22 THE COURT: Well, the question that started off
23 was, why did she think -- what's her opinion -- not her
24 opinion, but her position on all of the trustees having to
25 be paid out of the same bowl. And I don't know how we get

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1 into all this to answer that question.

2 MR. BUNDY: Well, we get into it to answer this
3 question so you can see what each of these other trustees
4 -- what they're -- what they worked on, what they did, so
5 you get --

6 THE COURT: That's all well and good. But does
7 that mean we have to take one sum and split it up all the
8 way or do we kind of look at each one individually and
9 decide it. That's the question. Not what's been done.

10 MR. BUNDY: I think it's all within your
11 discretion. And if you find it helpful in your analysis or
12 if your decision making process, we would offer it for no
13 other reason than that.

14 THE COURT: In all due respect to the -- obviously,
15 a lot of effort's gone into making this chart, but, you
16 know, I've been with this thing since day one.

17 MR. BUNDY: Right.

18 THE COURT: I appointed Ms. Pope. I upheld a
19 settlement that was overturned. I've been in it, I've
20 heard every motion in the case except for freedom of
21 information and maybe some others that I'm not aware of.
22 And I don't think I need anything to help me understand
23 what everybody's down. So I'll let you proffer it, but I'm
24 not going to use it.

25 MR. BUNDY: Thank you, Your Honor. We'll just mark

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1 it as the next exhibit.

2 THE COURT REPORTER: It's marked.

3 MR. BUNDY: -- for ID.

4 THE COURT REPORTER: It's already marked for --

5 MR. BUNDY: It's already been marked.

6 THE COURT REPORTER: It's Plaintiff's Exhibit 36,

7 Your Honor.

8 THE COURT: Which I am not allowing, but it can be
9 made part of the record in the event of an appeal that I
10 was incorrect in doing it.

11 You're protected on that.

12 MR. BUNDY: Yes, thank you, Your Honor.

13 THE WITNESS: So, do you want me to answer the
14 question?

15 BY MR. BUNDY:

16 Q Yes, please.

17 A Okay. I think your question was how do you
18 calculate a -- how do you -- what factors do you -- does
19 the Court look at or what is my opinion of what the Court
20 should look at to determine reasonable compensation for the
21 entire 18 year period, but specifically to the
22 5-and-a-half-year period during which I served.

23 Q Right.

24 A To the benefit of the trust.

25 And my opinion is this: That for each set of

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1 trustees and PR's, because there was a unified estate plan,
2 you look and you say, did those people well serve the 2000
3 Trust of James Brown. Because honestly, that's where the
4 will was going. And did they do that and if they did, are
5 they entitled to reasonable compensation? And --

6 THE COURT: And then we break that out into Cannon,
7 Dallas, Bradley; Pope, Buchanan's --

8 THE WITNESS: Well, Your Honor, I think this chart
9 does show -- and these numbers are straight from an exhibit
10 in this case, that added to all of that is another overlay,
11 which is critical to determination of compensation and that
12 is --

13 THE COURT: Which is what?

14 THE WITNESS: Well, there are two factors that I
15 think are in play. One is, if you have done a really good
16 job managing the assets, but you have committed what is
17 called in the code, a serious breach of fiduciary duty,
18 must the Court look at that. And I believe the Court must.

19 And that is the main reason for all of the pink,
20 which is Cannon and Dallas because if you will look, Cannon
21 and Dallas did a wonderful job of helping James Brown run
22 his career. Look at that. 9 million in 2001 --

23 MR. NEWSOME: Objection, Your Honor. None of that
24 is in evidence.

25 THE WITNESS: It is. It's --

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1 THE COURT: Hold on, hold on. I'm not here to --
2 sustained. It's just irrelevant to me as to what they did
3 beforehand.

4 We're looking at your commission or your fees for
5 the time you served as PR/trustee, et cetera.

6 THE WITNESS: Well --

7 THE COURT: And what they did beforehand between
8 2000 and 2007 is just -- I don't know that I need to go
9 into that.

10 THE WITNESS: Well, the sum of that is that the \$8
11 million they were paid should not be charged against me.

12 So --

13 THE COURT: Well, when were they paid the \$8
14 million?

15 THE WITNESS: Before you got into it, Your Honor.

16 THE COURT: Before he died.

17 THE WITNESS: Yes. But they were trustees.

18 THE COURT: Well, I understand that.

19 THE WITNESS: The same trust. So --

20 THE COURT: I don't think there's any question
21 about that, but I haven't approved any fee for those three
22 and I -- I'm not even sure a claim has been made by them.

23 THE WITNESS: Yes.

24 MR. NEWSOME: Well, Your Honor, just for the
25 record, there were claims by Dallas, Cannon, and Bradley

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1 and they've all been resolved except this -- they've all
2 been dropped, except for Mr. Dallas who did withdraw his PR
3 and trustee claim. The only portion of his case that's
4 still left is his claim to a 5 percent oral attorney's fee,
5 which you've granted partial summary judgment and that
6 issue is on appeal.

7 But there's no claim by Dallas, Cannon, or Bradley
8 for any PR or trustee fees.

9 THE COURT: So it ends up being Pope, Buchanan,
10 Bauknight?

11 MR. NEWSOME: Yes, Your Honor. Well, and actually,
12 Mr. Cannon's resolved his too.

13 THE COURT: Well, I understand. But those were the
14 three that you would --

15 MR. NEWSOME: -- calculate, yes, sir.

16 THE WITNESS: So in order to determine what -- the
17 point -- let's move to the same issue within the period
18 between November 20th, 2007, and May 8th 2013, which is the
19 period for which I seek compensation. And I think somebody
20 said incorrectly that I was working pro bono publico during
21 that time, I was not. I was working under what -- a
22 contract with the estate and trust, not with Your Honor as
23 stated, but with the estate and trust --

24 MR. NEWSOME: Your Honor, I do want to object, just
25 to preserve for the record, she was removed for cause May

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1 26 of 2009. She was not serving as PR after that time.

2 THE COURT: Well, she can assert what she wants to.
3 Obviously, I have to make that decision.

4 THE WITNESS: Okay.

5 THE COURT: I'm aware of all that.

6 MR. NEWSOME: Thank you.

7 THE WITNESS: So the point of this is in looking at
8 the code is -- that we've discussed earlier about trying to
9 protect an estate that is being put in peril by either a
10 co-trustee or an outsider and that is the function that
11 Mr. Buchanan and Ms. Pope served, actually from August 12,
12 2008 until May 8, 2013.

13 So we have to look at what benefit did Mr. Buchanan
14 and Ms. Pope -- and I know he -- I'm not asking for money
15 for Mr. Buchanan, he's made his peace, but --

16 THE COURT: He's settled.

17 THE WITNESS: -- but what benefit, not to anybody
18 else -- but what benefit to the beneficiaries of the 2000
19 Trust did Adele Pope and Bob Buchanan provide between
20 November 20th and -- of 2007 and May 13 -- and May 8, 2013.
21 And what is most important is, if you see the line right
22 there in the middle of 2008, that is when the attorney
23 general asserted the right to take charge and as they call
24 it here in the code, direct.

25 So our duty from that time until May 8th 2013 was

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1 to prevent the attorney general from -- or try to prevent
2 the attorney general from committing a serious breach of
3 trust. And that began that day on the 12th of August of
4 2008 and continued until May 8th 2013.

5 Now, what happened -- what benefit was provided?
6 \$1,500,000, every single year of that time period was not
7 paid to non beneficiaries. Now, somebody might think
8 that's sad for someone other than the beneficiaries of the
9 2000 Trust, but that is excellent news for the
10 beneficiaries of the 2000 Trust. Approximately 6 million
11 did not get paid.

12 Now, the basis that the attorney general was using
13 to -- to transfer those assets to people who were not
14 beneficiaries of the 2000 Trust was that these persons had
15 placed into his legacy trust, their termination rights
16 under the federal copyright act.

17 Your Honor will recall that was really a time when
18 we needed more experts because there were no copyright
19 experts and there were no tax experts in those hearings in
20 2009, except Harley Ruff and me, the tax expert -- the
21 estate planning tax expert and no experts on copyrights,
22 just a bunch of representations about what the law was
23 virtually all of which was wrong.

24 So during the course of 2008, the appeal, I
25 published Private Foundations Copyright Heirs and Musical

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1 Millionaires, why the James Brown "I Feel Good" Trust
2 doesn't. I published it for the benefit of the attorney
3 general of South Carolina to try to bring him around to
4 understand that giving away half of his charity made no
5 sense on the basis he was giving it away.

6 I -- then in 2011, when the -- when the estate was
7 devalued 4.7 -- the music empire was devalued to 4.7, in
8 addition to having given away half of the assets, it's --

9 MR. NEWSOME: Objection, Your Honor. Now she's
10 going into this what all happened later on after she was no
11 longer PR and devaluing the 4.7 million. It's going far
12 afield of reply, Your Honor.

13 THE COURT: Mr. Bundy, I can't be impatient in
14 letting the record be built.

15 MR. BUNDY: I know.

16 THE COURT: But we're getting way afield --

17 MR. BUNDY: I understand, Your Honor.

18 THE COURT: -- to where reply -- to where we are.

19 So I'm going to ask you -- I tell you what. It's
20 one o'clock. Let's take a break, our lunch break and come
21 back at 2:30 and go until five.

22 MR. BUNDY: Matter of fact, I have sort of an
23 unusual request, I know I'm not supposed to talk to my
24 witness while she's on the stand, but if I can talk to her
25 for five minutes just about issues, it might make the

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1 afternoon go faster if you don't have a -- if you've got a
2 problem with it, I get it.

3 THE COURT: I don't have any problem with it.
4 Y'all are all professionals. It's not like having the
5 construction guy up here and he's wanting to tell me he
6 needs to talk about those trees over there.

7 MR. NEWSOME: That's without objection, Your Honor.

8 MR. BUNDY: Thank you, Your Honor.

9 THE COURT: And I -- not even five minutes, as much
10 as you need.

11 All right. Let me see y'all in chambers just for
12 one second for planning purposes and we'll break until
13 2:30.

14 (A recess for lunch was observed.)

15 MR. BUNDY: Thank you, Your Honor. Before we
16 restart the testimony, I've got a little housekeeping
17 matter to take care of with regard to exhibits.
18 Plaintiff's Exhibit 5 was the protective statement and
19 notice of creditor's claim and it was filed on 9 -- it's
20 dated 17th day of July 2009. This document incorporates a
21 lot of other documents by reference and they all make up
22 the claim.

23 We need to get all those documents assembled and
24 put together. We've all agreed that needs to be done.
25 There's no objection.

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1 Sort of the issue is, how do we get it into -- it's
2 going to take us a day or two to put all of that together.

3 THE COURT: I'll leave the record open, obviously,
4 or we can do it tomorrow. If y'all don't get it done by
5 tomorrow, then you can submit it to my court reporter or
6 the clerk, however they tell you to do it.

7 MR. BUNDY: Thank you.

8 THE COURT: Send it to Anita.

9 MR. BUNDY: Thank you, Your Honor.

10 THE COURT: Any objection?

11 MR. NEWSOME: Without objection, Your Honor.

12 THE COURT: All right, sir.

13 MR. BUNDY: Your Honor, I don't want the belabor
14 the issue of Ms. Pope's being able to give an opinion on
15 the ultimate issue, but I do need to say something just for
16 the record, just so my position is understood.

17 My example is, a doctor's been sued for
18 malpractice. He's qualified as a doctor. He's put on the
19 witness stand and asked to give an opinion as to whether or
20 not he committed malpractice, I believe he would be allowed
21 to do so. It would go to the weight, credibility, and bias
22 of the witness. Otherwise, any time a professional got
23 sued, they would have to have another expert come in. They
24 wouldn't be able to -- to do it any other way.

25 THE COURT: Well, as to whether or not he deviated

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1 from the standard of care is the ultimate fact for the jury
2 to determine.

3 MR. BUNDY: Right.

4 THE COURT: He can't get up there and opine that he
5 didn't. That's just --

6 MR. BUNDY: Okay.

7 THE COURT: I'll allow her to testify as to what
8 she did, what the standard is, and what she did. And
9 obviously, from that I will determine whether or not this
10 was a --

11 MR. BUNDY: Thank you, Your Honor.

12 THE COURT: -- deviation that would preclude her
13 from getting fees or whether or not there was compliance;
14 whether she was able to get reasonable fees.

15 MR. BUNDY: Thank you, Your Honor.

16 BY MR. BUNDY:

17 Q Ms. Pope, you've been criticized about how you
18 handled the income tax returns. Would you explain to the
19 Court what you did and why you did it with regard to the
20 income tax returns?

21 A Yes. First of all, the most important thing I
22 think is that the successor PR's did not, for six years,
23 ask for the file. The Court appointed CPA, leaving us here
24 in 2013 and 2018 without adequate records. And my
25 professional opinion, that was a deviation from the

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1 standard of care.

2 MR. NEWSOME: Objection, Your Honor.

3 THE COURT: Ms. Pope, please.

4 Go ahead.

5 Strike that.

6 THE WITNESS: That has damaged me as well as the
7 estate. And Mr. Sellers's file was not requested.

8 If it had been, there would have been a lot of
9 information about how well, in fact, that we did handle the
10 income tax matters, as did Mr. Sellers and Ms. Cole.

11 For example, there was a statement that some expert
12 thought that Mr. Sellers had done nothing but payroll
13 taxes. And in -- right within the Dallas appeal, which was
14 before Your Honor, there's the full record of the
15 application for determination for the 501(c)(3) charitable
16 status of the James Brown "I Feel Good" Trust and this
17 other information within that file that I've just seen by
18 glancing through it today, that was all before Your Honor
19 back in 2008 and 2009. But specifically some of the issues
20 that were raised, I will address.

21 The first was the issue of the 2006 income tax
22 returns, where there was an allegation about conversations
23 with the IRS, which I don't know how you do that, but --
24 and the allegation that that return was never filed or
25 never properly filed or never received. And so I have

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1 looked back. And remember, I delivered my -- you know, my
2 entire file and would have only copies of documents fully
3 when we transferred all of the boxes to Mr. Bauknight in
4 July of 2009 and also agreed to meet with him once a week
5 if he'd like to discuss these matters.

6 But I'm going to just talk about the record as it
7 relates to the 2006 tax return and the 2007 and '08 and '09
8 tax returns. First, the 2006 tax return was filed in this
9 Court, in -- on November 15th of 2006. It had also been
10 filed with the IRS. The IRS kicked back the amended
11 return, which was a JBE, Inc. return and -- but the amended
12 return also was filed here with Judge Early in November of
13 2000 -- November of 2007.

14 Q Who filed that return?

15 A Carlock, Copeland, a law firm that was representing
16 Mr. Farr at the time.

17 Q Okay.

18 A And in 2008, there was an issue about it's having
19 been kicked back. And we were dealing with that along with
20 a number of other issues, including that Mr. Cannon had
21 originally said that he was personally responsible for all
22 of the income taxes that hadn't been paid because he
23 treated James Brown as his employee. Well, that didn't
24 turn out to be a good deal for anybody. But -- so in 2008,
25 Carlock Copeland, the lawyer -- I'll say his name in a

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1 minute, suggested that we just, you know, send it back.

2 But at that point it was us sending it back. So we were in
3 communication with the IRS about that and then that was
4 going on in 2008.

5 And then on August 10 of 2008, of course, the
6 attorney general made the decision to give half of the
7 assets to people who weren't a charity anymore. And that
8 is an important income tax concept because I can make \$100
9 million this year and on my income tax return, if it's paid
10 or permanently set aside to charity, it is complete --
11 subject to some limitations, I'm simplifying here -- but
12 subject to some limitations, it is not going to be taxable,
13 even if it doesn't go into the charity right now.

14 But beginning in August of 2007 -- I mean 2008,
15 which was before the 2007 return was due, the attorney
16 general had declared that about half of the income was now
17 going to be allocated to people who weren't charities. And
18 so that put us in a dilemma where it was impossible for us
19 to file under penalties of perjury a tax return which
20 claimed the charitable deduction, but we also did not want
21 to file a return that recorded a huge income tax due that
22 we didn't know would be due.

23 So that's where we were in 2007. I mean in the
24 Fall of 2008. So basically, there was nothing that we
25 could do other than try to work with the IRS and the

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1 settling part parties because I think the record will show
2 and I will tell you, that we never wanted to damage the --
3 the "I Feel Good" Trust. We just had these serious
4 problems to solve.

5 And so the first thing we did was on September 2nd,
6 before we even knew the full details of the settlement, we
7 wrote the attorney general and Louis Levinson and
8 Mr. Rosen. Of course, Mr. Bauknight wasn't then involved,
9 but the first thing we asked for on September 2nd was the
10 selection by settling parties of an accountant or a tax
11 advisor to, as we described them, help us deal with the
12 tremendous tax problems that were caused. And this was
13 before we had even seen the settlement.

14 (Plaintiff's Exhibit Number 56 was marked for
15 identification.)

16 **BY MR. BUNDY:**

17 Q And would you identify this letter, which is now
18 being marked as 56, please?

19 A Yes, the -- the attorney general announced his
20 settlement on August 12th and I think Judge Early had a
21 hearing on something like August 19th. And there was a
22 short stay that we all agreed was okay for a few months
23 while everybody tried to digest what was going on. And so
24 it was shortly after that August 19th --

25 Q Okay. So --

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1 A -- that we wrote to try to begin to resolve these
2 big problems. And in addition to this letter, we asked
3 that the settling parties prepare the estate tax return for
4 our approval because we knew that there were not only
5 income tax problems, but estate tax problems.

6 MR. BUNDY: Your Honor, I'd move to introduce
7 Plaintiff's Exhibit 56.

8 THE COURT: Any objection?

9 MR. NEWSOME: Without objection, Your Honor.

10 THE WITNESS: So -- so then -- so then -- I'm not
11 sure whether in that first one everybody was aware of the
12 2006 income tax problem, but I'm not sure it gets
13 mentioned. We just described tax problems, but there were
14 also tax problems. And also by the way, it says that we
15 are asking that the settling parties appoint a
16 representative to work with us on the enhancement of
17 royalties, image, and persona pending the final settlement.
18 Because we did not want the -- we did not want the trust to
19 suffer because of the uncertainty of this settlement.

20 Q Okay.

21 A And then -- I can't say that this is all, this is
22 just all I happened to find yesterday, but then again on
23 October 2nd, we wrote --

24 (Plaintiff's Exhibit Number 57 was marked for
25 identification.)

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1 BY MR. BUNDY:

2 Q Just identify Plaintiff's Exhibit 57, please.

3 A Oh, I'm sorry. This is a letter, I can't tell
4 whether it went by e-mail or hand delivery, but it was to
5 Attorney General McMaster, Mr. Levinson, Mr. Rosen, and
6 other members of the team of settling parties from
7 Mr. Buchanan and me that -- that says at the top it was
8 distributed in my absence, I think I might have been away.

9 Q Okay. So this is part of the books and records of
10 James Brown's -- the estate and trust of James Brown?

11 A Right.

12 Q All right.

13 MR. BUNDY: Your Honor, I move to introduce Exhibit
14 57 into evidence.

15 THE COURT: Mr. Newsome?

16 MR. NEWSOME: Without objection.

17 (Plaintiff's Exhibit Number 57 was entered into
18 evidence.)

19 BY MR. BUNDY:

20 Q So, Ms. Pope, in essence, you're asking -- you're
21 informing the attorney general of the problems you see that
22 have been created from a tax standpoint as a result of this
23 potential settlement?

24 A Yes, yes. And -- tax and other things, but we're
25 talking about tax right this minute.

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1 Q Okay.

2 A Yeah.

3 Q And your position was that you weren't able to sign
4 a return without -- honestly because you didn't know where
5 it was going?

6 A Right. And it says it's critical that we make this
7 connection immediately as there are returns or additional
8 expenses due October 15th and we want to make sure we can
9 provide the proposed new accountant all the necessary
10 information.

11 Q All right.

12 A And --

13 Q What response did you receive to these entreaties?

14 A Well, I'll keep going because we have more.

15 Essentially, nobody would talk to us. I mean they were
16 talking to us about other things, but -- Heyward Carter
17 said that it was beyond -- he thought that -- he thought
18 that when Judge Early ordered transition that he didn't
19 mean talking about taxes. I don't know how that could be;
20 but that -- that was an issue. And then we were told that
21 they didn't have an accountant, the settling parties didn't
22 have an accountant and that was put into the record the
23 following spring because they said we don't have an
24 accountant.

25 But we have some of the finest tax minds in the

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1 country thinking about these issues. But we were -- we
2 were trying to get help. And so we kept trying. You know,
3 we just kept on keeping on.

4 So next we wrote -- I mean --

5 (Plaintiff's Exhibit Number 58 was marked for
6 identification.)

7 BY MR. BUNDY:

8 Q All right. Ms. Pope, if you would, identify
9 Plaintiff's 58, please.

10 A Yes. This is a letter that Mr. Buchanan and I
11 wrote on behalf of the estate on October 20th, 2008 to the
12 attorney general, Mr. Levinson, Mr. Medlin, and Mr. Bell.
13 And this particular letter involves James Brown royalty,
14 image, persona issues.

15 Q Okay. And --

16 MR. BUNDY: Your Honor, I move to introduce 58 into
17 evidence.

18 THE COURT: Any objection?

19 MR. NEWSOME: Without objection, Your Honor. By.

20 THE WITNESS: And --

21 BY MR. BUNDY:

22 Q And -- and the substance of this letter is?

23 A Well --

24 Q Or the issue in the letter?

25 A -- it's headed royalty, image, and persona issues.

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1 But if you'll look at page 2, it really is dealing with the
2 royalty, the image, and the persona and the tax issues
3 associated with the settlement. And it says, if we could
4 get together regularly with you, we're just trying to talk
5 to people. If we could get together regularly with you
6 solely for the purpose of royalty, image, persona issues,
7 here are a few things we believe we could accomplish within
8 the next year or so:

9 One, financial analysis. Through engagement of a
10 mutually agreeable consultant of long range options to
11 include, a, whether a sale of some or all of the assets is
12 in the best interest of the estate or trust.

13 B with related help, development of a medium to
14 long range plan for management and enhancement of assets
15 not sold.

16 C structure of tax financial issues related to
17 various decisions under above scenarios. And there's notes
18 more in there, but the -- the issue is nobody wanted this
19 wonderful fund to be damaged during this period. The issue
20 was who's going to get it. And we certainly wanted it
21 enhanced either way.

22 Q What other available avenues did you have to deal
23 with these issues other than to bring them to the attention
24 of the attorney general of South Carolina and ask him for
25 his involvement?

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1 A Well, and the settling parties then because they
2 had announced that they were speaking as one. So we were
3 trying to get everybody's attention. And as it shows, this
4 is just shortly before -- the attorney general has already
5 filed suit to remove Cannon and Dallas and he's getting
6 ready to amend to remove us.

7 He asked us to help with the removal of Cannon and
8 Dallas. And we said we didn't think we could do that
9 because there was something up in Court of Appeals.
10 Although we, of course, wanted them removed. And so, this
11 is just right before he gets ready to file suit to remove
12 us. And it's saying, you know, here we are, our primary
13 focus, because we don't have any money and everybody wants
14 us to stand down, is to defend the approximately \$40
15 million worth of claims, which we proceeded to do during
16 those months.

17 Q But my question to you was --

18 A Sorry.

19 Q -- what other avenues did you have available as
20 trustee, PR to work on estate other than what you did come
21 was to write the attorney general and inform him of these
22 issues and ask for his assistance and help and involvement?

23 A None, other than to add in there the settling
24 parties.

25 Q The settling parties. I left it out again. But

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1 that's all -- this is all you could do was just write
2 letters, right?

3 A We were doing what we could.

4 Q All right. And what was the response you received
5 to these? To these entreaties?

6 A Well, sitting here today, nine-and-a-half-years
7 later, I can't say exactly, but the general response was
8 nobody was interested in helping us and Mr. Sellers had
9 said he was resigning and a new CPA was now being proposed.

10 A new person was being proposed who was a CPA,
11 Mr. Bauknight.

12 Q Mr. Bauknight, okay.

13 A Yes.

14 Q Okay. All right. Anything else that you have with
15 regard to what you did with regard to the income taxes as
16 it relates to the complaints that have been made against
17 you?

18 A Yes. And this one I, unfortunately have only one
19 copy, so I'm going to tell you what I did and then we'll
20 figure out what to do if you'd like. This is us writing
21 the IRS about the 2006 income tax return because we had
22 been in communication with them all year and it just says
23 -- it's talking about an assessment of 238,000 and it -- it
24 tells the whole story of -- of, you know -- it says it's
25 past due, but he filed the forms and -- the form 1120 and

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1 then the amended 1120 and the amended 1120 got ticked out,
2 I mean it tells the whole story of what happened to the
3 2006 income tax return and also a bunch of stuff about
4 Cannon and it includes a letter from Carlock Copeland.
5 attorney, let me see what his name was -- oh, Chip Emge,
6 who had written a long letter earlier in the year about the
7 -- the notice and the two '06 tax return and all of that.

8 So I only have my one copy of this, but --

9 Q You'd been involve in the preparation of the 2006
10 tax return were you? The original tax return?

11 A No, no, no. It was filed by Mr. Farr.

12 Q Mr. Farr. All right.

13 A Yes. So --

14 Q Hold on one second.

15 MR. BUNDY: I want to mark this as an exhibit.

16 (Plaintiff's Exhibit Number 59 was marked for
17 identification.)

18 MR. NEWSOME: Without objection.

19 MR. BUNDY: All right. Exhibit 59, Your Honor:

20 THE COURT: Thank you.

21 (Plaintiff's Exhibit Number 59 was entered into
22 evidence.)

23 BY MR. BUNDY:

24 Q All right. Ms. Pope, anything else on the income
25 taxes that you'd like to comment on?

Adele Pope - Direct Examination by Mr. Bundy

1 A Yes.

2 (Plaintiff's Exhibit Number 60 was marked for
3 identification.)

4 BY MR. BUNDY:

5 Q There are more?

6 Ms. Pope, if you would identify Exhibit 60 for the
7 record, please.

8 A Sure. The letter that we just looked at was
9 November 24th, of '08, I believe just about that day or
10 within a day or so, I'm guessing Judge Early -- well, I
11 know it happened, but I can't remember the exact date.
12 Judge Early indicated that he was going to name
13 Mr. Bauknight as the SA and I think I discussed earlier
14 that Judge Early wasn't clear about whether he was going to
15 give him full authority to do everything, which the
16 attorney general was asking for or whether he was going to
17 limit his authority in some way.

18 So on November -- this is a letter November 26,
19 2018, which was within a day or two of that announcement
20 that Mr. Buchanan and I wrote Mr. Bauknight.

21 Q And the purpose of this letter was to do what?

22 A Well, the purpose of this letter -- well, actually,
23 it seems to be signed -- although it -- there's an S slash
24 for both of us, it seems to be written by Bob because it
25 says since Adele is out of the office for a while. That

Adele Pope - Direct Examination by Mr. Bundy

1 would be my daughter's wedding.

2 Q Okay. You --

3 A The judge and I might remember that.

4 Q All right. You've identified Exhibit --

5 MR. BUNDY: Your Honor, I move to enter Plaintiff's
6 Exhibit 60.

7 MR. NEWSOME: Without objection.

8 MR. BUNDY: Thank you.

9 (Plaintiff's Exhibit Number 60 was entered into
10 evidence.)

11 BY MR. BUNDY:

12 Q All right. Now, the judge has 60 in front of him.
13 Tell me what -- why did you write Mr. Bauknight Exhibit 60?
14 What was the purpose of that?

15 A Well -- well, this is Bob writing, so it says --

16 Q Or Bob.

17 A -- Adele is in the office for a while this morning
18 -- so we did write it together. I didn't know whether he
19 had talked to me on the phone.

20 Q All right.

21 A We wanted to get to you a couple of the most
22 pressing issues, which we have been paralyzed to deal with.
23 First by the challenges of Dallas, Bradley -- Bradley and
24 Dallas and now by Mr. Cannon and the settling parties.

25 Oh, that refreshes my recollection, Judge, he had

Adele Pope - Direct Examination by Mr. Bundy

1 just moved to recuse you a second time.

2 THE COURT: Which one?

3 THE WITNESS: Cannon. Mr. Cannon did. I forgot
4 that.

5 All right. Yes, so we were -- we were paralyzed
6 because we couldn't get before Your Honor, so -- any way --
7 so there we are. Mr. Brown's 2006 income tax return.

8 And we explained in there how that all the income
9 had been reported on JBE, Inc. and we tell him we want to
10 introduce him to the notion of the problems of what was
11 JBE, Inc. and what was James Brown. And so then we said
12 there, while Mr. Forrest's counsel casually suggests that
13 all we do is do this, you know, it's a big problem and
14 you're a CPA and we want to talk to you about it.

15 And so then we went on to just tell him, you know,
16 try to bring him up to date so he would be in a position if
17 the judge appointed him any minute, to deal with the 2006
18 income tax return, and all the other income tax issues,
19 because Mr. Sellers had said he resigned.

20 BY MR. BUNDY:

21 Q At that point, if Judge Early -- you didn't know
22 whether Judge Early was going to appoint Mr. Bauknight, but
23 if he had, your assumption was, who was going to be
24 handling this issue going forward?

25 A No, we knew he was going to appoint him.

Adele Pope - Direct Examination by Mr. Bundy

1 Q Okay.

2 A We did not know the scope of the appointment.

3 Q Okay.

4 A Until the 8th or the 9th of January.

5 Q All right. Well as of the 8th or 9th of January,
6 who would have been -- whose plait would this issue have
7 been on? Yours? Or Mr. Bauknight's?

8 A Well, it would have been Mr. Bauknight's if -- if
9 Judge Early had done what the attorney general was asking.
10 And it would have been our -- you know, in limbo between us
11 and the attorney general who had, under that section, taken
12 over, to deal with it if Mr. Bauknight were not given full
13 authority.

14 Q And what was Mr. Bauknight's response to this
15 letter? Do you recall?

16 A I don't know, I mean Mr. Bauknight was never
17 unpleasant to us at any time.

18 Q I'm not suggesting he was unpleasant. I'm trying
19 to understand if he engaged --

20 A You know, I -- I --

21 Q -- and came and got --

22 A -- I know we --

23 Q -- documents.

24 A -- I know we met with him in January, but I
25 can't --

Adele Pope - Direct Examination by Mr. Bundy

1 Q Okay.

2 A I can't --

3 Q Any --

4 A -- remember meeting with him before.

5 Q Anything else on the tax issues?

6 A Yes. And I'm sorry, I don't have a lot of copies,
7 but here's the proof of claim on that -- on the 2004, '5,
8 and '6 issues that get filed in the probate court on
9 December 9th, right in the middle of this. And that is my
10 only copy. And I didn't even realize I had it, but it
11 would be in the public record. And that's the same 2006
12 issue, plus smaller issues in 2005 and 2004.

13 Q All right.

14 (Plaintiff's Exhibit Number 61 was marked for
15 identification.)

16 BY MR. BUNDY:

17 Q All right. You've identified what's now been
18 marked 61.

19 MR. BUNDY: You object?

20 MR. NEWSOME: Without objection.

21 (Plaintiff's Exhibit Number 61 was entered into
22 evidence.)

23 BY MR. BUNDY:

24 Q What is the relevance of Plaintiff's Exhibit 61 to
25 these tax of issues, proof of claim? What's the relevance

Adele Pope - Direct Examination by Mr. Bundy

1 of that position?

2 A Well, this is the IRS filing it in the probate
3 court. I guess. It says clerk of court, but either with
4 the clerk or -- so this is, they're making a public record
5 and it looks to me like it got faxed to me --

6 Q So this is a claim of the IRS against the estate?

7 A Yes.

8 Q All right.

9 A Related --

10 Q All right.

11 A -- to these same three years of income.

12 Q Okay.

13 A 2004, '5 and '6.

14 Q Okay. All right. So any other issues on the
15 taxes?

16 A Oh, it keeps going.

17 So then -- so then Mr. Bauknight got appointed --
18 limited only to the recommendations and studying of the
19 settlement, but that did not leave us -- that left us with
20 -- us and now the attorney general who said he had all the
21 authority with the problems.

22 Q Okay.

23 A And so here's another letter on February 2, 2009,
24 and -- and let me see, it looks like I might have two
25 copies of it.

Adele Pope - Direct Examination by Mr. Bundy

1 Oh, no, no, this is a single letter to Attorney
2 General McMaster, dated February 2, 2009. And it had some
3 attachments. I didn't realize that, I'm sorry.

4 Q Are these just one letter or two?

5 A It's one letter to -- Attorney General McMaster
6 with some attachments.

7 (Plaintiff's Exhibit Number 62 was marked for
8 identification.)

9 BY MR. BUNDY:

10 Q February 2nd, 2009 letter to the attorney general
11 and Mr. Jones from the Estate and Trust of James Brown,
12 February 2.

13 MR. BUNDY: Exhibit 62, Your Honor. I'd move to
14 introduce it into evidence.

15 (There was a pause in the proceedings.)

16 MR. NEWSOME: Your Honor, we don't object to the
17 admission of this into evidence, but I do want to put on
18 the record that this has been highlighted, so we'd like to
19 at least have a copy substituted in the record that
20 doesn't --

21 THE WITNESS: I'm sorry, I think we can --

22 MR. BUNDY: No problem, we'll take care of that.
23 Thank you.

24 (Plaintiff's Exhibit Number 62 was entered into
25 evidence.)

Adele Pope - Direct Examination by Mr. Bundy

1 BY MR. BUNDY:

2 Q All right. Ms. Pope, Exhibit 62, in evidence
3 without objection, what's the relevance of this letter to
4 your tax issues and why you handled the taxes the way you
5 did?

6 A Well, it's just -- again, now we know that
7 Mr. Bauknight's appointment was limited. We know we don't
8 have an accountant. We know the attorney general has taken
9 over. And so we're writing the attorney general to, you
10 know, continue to be concerned about the tax things, but
11 also to raise an issue which I thought we hadn't raised
12 until mar -- that we apparently began to raise in February.

13 And that is the fear of the devaluation since he
14 just gave Terry Brown a right of first refusal. So it
15 deals with that. And it deals with estate tax issues.

16 It says -- it talks about -- there's a procedure
17 for trustees who don't agree with what's going on to
18 decent. And so we were dealing with the issue of, Do you
19 want to -- Do you want to do something with the tax return
20 and we'll quitely decent and let you take the position
21 that's most favorable -- the most favorable legal position
22 you can take because we aren't looking to increase
23 anybody's taxes. We just didn't want to be personally
24 liable for saying under perjury X when we knew a pretty
25 good amount about why.

Adele Pope - Direct Examination by Mr. Bundy

1 So we talk about we need a procedure for notifying
2 the tax authorities, necessary modifications to the -- in
3 the estate tax proceeding. And, you know, we were just
4 dealing with this all of these income and estate tax
5 issues, which were caused by the settlement.

6 Q Okay.

7 A And -- and -- and the hearings had just started a
8 few days earlier.

9 Q Which hearings, the settlement hearings?

10 A The settlement hearings began on January 30th and
11 Judge Early had -- and Terry Brown had been added to the
12 settlement that day, on the 30th. And that had caused
13 additional issues because he was given a right of first
14 refusal to purchase the music empire and we were nervous
15 about that disqualifying the charity and a bunch of other
16 things.

17 Q All right. Anything else on the tax issues?

18 A Oh, yeah.

19 On -- I'm sorry, I've written on this, but it looks
20 like I have only one copy on March 11th and -- can you tell
21 me the date of that letter? It may be in there.

22 Q February 2nd, I think, yeah. February 2, 2009?

23 A Thank you.

24 This is a letter dated March 11, 2009 to Alan
25 Medlin, Heyward Carter and the attorney general. You want

Adele Pope - Direct Examination by Mr. Bundy

1 to mark that?

2 Q Okay.

3 (Plaintiff's Exhibit Number 63 was marked for
4 identification.)

5 BY MR. BUNDY:

6 Q This is part of the books and records of the
7 estate?

8 A It has some of my -- yes. It has some of my
9 writing on the back. I've Xed it out.

10 MR. BUNDY: 63?

11 MR. NEWSOME: Your Honor, this is without objection
12 except for the same objection we had before. Again, this
13 is a document that's got writing on the back and it's
14 marked up.

15 THE COURT: Well, I think Ms. Pope's proving to you
16 it's wasted paper to copy it. We'll get clean copies of
17 that one.

18 THE WITNESS: Thank you.

19 MR. NEWSOME: Thank you.

20 MR. BUNDY: I'd move to introduce that with no
21 objection. Without objection, it's 63. March 11, 2009.

22 BY MR. BUNDY:

23 Q What's going on in this letter that you wrote to
24 Mr. Medlin, Mr. Carter, and the Honorable Henry Dargan
25 McMaster?

Adele Pope - Direct Examination by Mr. Bundy

1 A Well, it's just our concern about not only the
2 damage to the 2000 Trust, but the troublesome income
3 charitable disqualification and estate tax issues that were
4 associated with the settlement.

5 Q Okay. And again, what -- what avenues or ability
6 did you have at this point relative to income estate
7 taxation other than to simply write letters to
8 Mr. McMaster?

9 A We wrote Mr. McMaster, we wrote the settling
10 parties, and we presented our case to Judge Early. That
11 was all we could do.

12 Q Okay. Anything else on the taxes?

13 A Let me see -- yeah, it looks like there's one March
14 12th.

15 (Plaintiff's Exhibit Number 64 was marked for
16 identification.)

17 BY MR. BUNDY:

18 Q Plaintiff's Exhibit 64, March 12 to McMaster from
19 Pope. This is part of the books and records of the estate?

20 A Yes.

21 MR. NEWSOME: Without objection.

22 MR. BUNDY: Thank you.

23 (Plaintiff's Exhibit Number 64 was entered into
24 evidence.)

25 ///

Adele Pope - Direct Examination by Mr. Bundy

1 BY MR. BUNDY:

2 Q All right. Here we are on March 12, 2009, you're
3 writing the AG to what end, Ms. Pope?

4 A Well, it says I'm writing for Bob Buchanan and
5 myself. In working with the department of Revenue and the
6 IRS about the income tax mess in the Estate and Trust of
7 James Brown found itself when we were appointed on November
8 20th, 2007, and it just -- it said I give Mr. Goodlet a
9 copy of the 2006 returns prepared by Phil Farr, but made it
10 clear that we did not participate in the gathering of that
11 information and we believed them to be inaccurate.

12 And then I talk about the 2000 -- tax returns --
13 and then I talk about Mr. Goodlet being willing to work
14 with us to gather additional transcripts. And that is an
15 IRS term that says we'll look back and get printouts of
16 stuff that's been previously filed for the various James
17 Brown entities so we could start to deal with the mess.

18 Q Anything else on the taxes?

19 A Give me just a minute. If you'll give me the
20 discord among the parties of that, I'll see what's next.

21 Q The last one's March 12.

22 A March 12. Okay. I don't know whether this is
23 already in, but May 4th.

24 (Plaintiff's Exhibit Number 65 was marked for
25 identification.)

Adele Pope - Direct Examination by Mr. Bundy

1 BY MR. BUNDY:

2 Q Plaintiff's Exhibit 65, May 4, 2009 to Mr. John
3 Goodlet, Internal Revenue Officer from Buchanan and Pope.
4 Is this part of the business records of the estate and
5 trust of James Brown?

6 A Yes. And --

7 Q Hold on a second.

8 MR. NEWSOME: Without objection.

9 MR. BUNDY: Thank you, Mr. Newsome.

10 This is 65.

11 (Plaintiff's Exhibit Number 65 was entered into
12 evidence.)

13 BY MR. BUNDY:

14 Q All right. Ms. Pope, this letter is relevant to
15 this issue regarding your handling of the taxes how?

16 A Well, this is -- it's mixed, but this is the estate
17 tax in particular. And as we said, Mr. Goodlet or the IRS
18 had not made any challenge to the lack of an appraisal.
19 They just sent the normal letter asking for additional
20 information and we were working very hard to try to provide
21 them what they needed without making any attempt to, you
22 know, say bad things about the other side. We weren't
23 going to endorse what the other side was doing, but we --
24 we really wanted them to tell their story because --

25 Q Who is the other side?

Adele Pope - Direct Examination by Mr. Bundy

1 A The other side were the people who wanted to shift
2 half of the assets and income into taxable entities.

3 Q Okay.

4 A And so that was -- it was us tiptoeing; but we were
5 under some deadlines to get stuff to the IRS and we had
6 actually -- this may mention -- I think we had gotten a
7 little extension. And as you see, we're very, very close
8 to the day that Judge Early is -- is going to replace us
9 with Mr. Bauknight. So that's close.

10 But I did also find -- and I'm sorry I've written
11 on this also, but this is -- just in terms of what was
12 going on, on March 4 and 6 of 2009, and I can't really
13 remember which day, there was a lot of discussion about the
14 \$100 million value in the -- in the hearings. And that's
15 just a part of it that I was -- that -- where I was
16 questioned about -- there was a discussion about the \$100
17 million value. And then also at this same time, I think it
18 was April 6, Harley Ruff, who is the tax expert we
19 mentioned, testified about these -- some of these same tax
20 consequences.

21 Q All right. So anything else on the taxes that
22 you --

23 A Well, I want to say --

24 Q -- that would explain why you did or didn't do or
25 weren't able to do what you did?

Adele Pope - Direct Examination by Mr. Bundy

1 A Well, all I want to explain is just about this
2 time, the IRS was excepted Harlan Howard's estate tax
3 return. Actually it had been accepted sometime before, but
4 it didn't get known. And Harlan Howard's estate is about
5 the only estate tax return before we get to Michael Jackson
6 and those who've died after 2008, which discusses what
7 suits the IRS with copyrights. And Harlan Howard did not
8 have a professional appraisal. He was never kicked out by
9 the IRS. They accepted his valuation and was based on a
10 valuing by two nonprofessionals, the PR, and the accountant
11 of the copyrights of Harlan Howard based on the number of
12 years they thought they would endure.

13 He was a songwriter. And if they thought his songs
14 were going to last six years, they took their annual return
15 and multiplied it by six. If they thought they were going
16 to last 11 years, they -- they -- they multiplied it by 11,
17 just as Mr. Miller says, if you think it's going to last 20
18 years, you multiply it by 20.

19 And so all I can say is that all of our concerns
20 were well founded. And the Harlan Howard case says
21 something else too, very important. It's a Tennessee
22 Supreme Court case, but because the issue came up later,
23 not before the IRS, but it says that when you're doing tax
24 returns, you're doing it to get it right, not to see what
25 you can get away with. And we felt that we weren't trying

Adele Pope - Direct Examination by Mr. Bundy

1 to make life hard for anybody, but we did have to get it
2 right because that was -- we believed we did.

3 Q Okay. Anything else on the taxes?

4 A I don't think so.

5 Q Okay. All right. It's been -- it was discussed in
6 the defense case that you failed to properly deal with the
7 TIAA debt for about 454 days or something to that effect;
8 is that correct?

9 A That --

10 Q That was the allegation, correct?

11 A That was the allegation.

12 Q Okay. Tell us one -- I assume you don't agree with
13 that?

14 A I don't.

15 Q Why -- what did you do and tell us why you don't
16 agree with that?

17 A Well, first of all, the judge may remember, but we
18 really had a lot of things with TIAA. When we first
19 discovered the 900,000 that Mr. Cannon had taken, we got a
20 loan from them for -- remember the -- Mr. Cannon returned a
21 certain portion of the amount he had stolen, \$350,000. And
22 it -- it, of course, had to go back to TIAA because they --
23 they -- it should have gone to them in the first place.

24 So Judge Early put it on hold for a little while.

25 This was back in 2007. And he let us ask TIAA to let -- to

Adele Pope - Direct Examination by Mr. Bundy

1 please keep \$100,000 and they allowed us to keep \$100,000,
2 but it had to be allocated -- they let us allocate 25,000
3 to administration and some, I think I'm getting the numbers
4 right, but some to pursuit of recovery from Mr. Cannon.

5 So we had been dealing with them and I had, of
6 course, read the -- all of the TIAA documents, which were
7 delivered to Mr. Bauknight, I'll show you later when we
8 talk about the transition, they were delivered to
9 Mr. Bauknight and we'd all had them. My computer shows I
10 got them in -- the first time you started putting things on
11 a computer, practically.

12 So -- so we had had some substantial and pleasant
13 dealings with TIAA because the TIAA debt was in default --
14 they'd gone into default when Mr. Cannon stole that money,
15 so -- and then in -- I see here, in February of '09 and I
16 had slightly forgotten this, but I just pulled a page -- we
17 had some communication with them about the escrows and so
18 we were looking at the TIAA.

19 We did get the loan to go after Mr. Cannon, but we
20 didn't need an income tax loan because we didn't have that
21 kind of income taxes that were going to be paid after the
22 settlement. So income tax and -- and there was going to be
23 -- and this is important -- no estate tax, no income tax
24 payable with respect to that fund. And that fund only
25 allowed loans for taxes related to that fund.

Adele Pope - Direct Examination by Mr. Bundy

1 And under Mr. Brown's estate plan, that fund was
2 going to charity. So there was no reason to ask -- to
3 learn about borrowing money to pay taxes for other people
4 at 7.95 percent. It just -- that isn't -- there wouldn't
5 be any reason to do that.

6 Now, on the matters that Mr. Bauknight says could
7 be discovered just by anybody, I don't disagree with that.
8 But we were paralyzed. And so I want to just mention the
9 554 days and tell you what you have to subtract from that
10 to figure out whether we acted promptly. And so I don't
11 know whether -- I'm -- they begin on November 20th, 10 days
12 later, our appointment was challenged by the attorney
13 general of South Carolina. Had it been other people, it
14 wouldn't have mattered, but it was the attorney general of
15 South Carolina.

16 Then Judge Early's authority to act got challenged
17 and that took a while and so we've got about 10 days in the
18 beginning and that really doesn't clear up until April 8th
19 of 2008, so -- so we've got 10 days and then we start on
20 April 8th of 2008 and we only go until -- to May 30th. So
21 we've got 10 days there and about what? 22? About 52?
22 About 62 maybe, so far, that we've been, shall we say, free
23 to act, if we had had nothing else to do.

24 And then on June 30th, the attorney general then
25 challenges our authority to act until July 14. So we've

Adele Pope - Direct Examination by Mr. Bundy

1 got about 60 days so far, but it's been intermittent. And
2 then on July 14, the Supreme Court -- I mean, I'm sorry,
3 Court of Appeals gives us authority to act, July 14th,
4 2008. So we had from July 14th, 2008 until August 12, 2008
5 when we were told to stand down. So we had 90 days but
6 with some breaks in it to try to deal not only with
7 everything that was going on in the world, but to think
8 about whether -- think about -- more TIAA debt. And we --
9 agree with Mr. Bauknight, anybody could have found it. Ray
10 Gonzales could have found it. We could have found it, but
11 the question was somebody is trying to give away a million
12 and a half dollars a year for the rest of the life of this
13 charity, where should -- and we have no money to spend,
14 where do we put our energy.

15 Q Okay. All right. There's also criticism -- there
16 was also criticism in the defense case of your failure to
17 hire experts to protect the copyrights. You recall this
18 testimony?

19 A Yes, I do --

20 Q All right. Tell me, one, did you hire any experts?
21 If you did, who were they and why did you hire them? If
22 you didn't, why not?

23 A We hired Mr. Smith. I believe he's an expert, the
24 judge doesn't.

25 Q Okay.

Adele Pope - Direct Examination by Mr. Bundy

1 A He wasn't -- he didn't serve for very long.

2 During the course of the next years -- oh, I'm
3 sorry, we hired Mr. Gonzales. We had Art Gold in Chicago,
4 who is the one -- he was working mostly on the publicity
5 rights thing, but he had been Mr. -- Mr. Brown's lawyer in
6 that field since 2002 or earlier. And, of course, we had
7 Julia Foster, who was a mere law student, but was a law
8 student who had a lot of interest in music.

9 We did a little bit of consulting, I forgot this, I
10 saw the other day, with Leon Friedman who was Mr. Brown's
11 copyright lawyer, just chatted with him from time to time.
12 But I did find a letter where I actually wrote him and
13 asked him could he help us with a termination rights
14 project. So we did do some of that.

15 And then, of course -- and I'll have to show you
16 this because what I did during the course of the appeal,
17 was to become an expert myself on the -- on the small issue
18 of how to protect a charity in termination rights matters.
19 And I wrote this article with Mr. Smith. It's still in
20 draft. The story's not over.

21 (Plaintiff's Exhibit Number 66 was marked for
22 identification.)

23 MR. NEWSOME: Objection, Your Honor. She's not
24 qualified as an expert in termination rights and now she's
25 trying to give opinion testimony.

Adele Pope - Direct Examination by Mr. Bundy

1 THE COURT: She's not giving an opinion, she's just
2 telling us what she did. Overruled.

3 (Plaintiff's Exhibit Number 66 was entered into
4 evidence.)

5 BY MR. BUNDY:

6 Q This is an article that you wrote?

7 A It is.

8 MR. BUNDY: Your Honor, I'd move to put it in.

9 THE COURT: Your objection is?

10 MR. NEWSOME: Your Honor, I'm not clear. Is it
11 published or unpublished?

12 THE WITNESS: It was circulated to peers. It was
13 circulated to a number of lawyers and to the Duke
14 Foundation and many other peeps. As I said it's not
15 complete.

16 MR. NEWSOME: I'm going to add to my objection.
17 This is not a published article so it shouldn't be cited.

18 MR. BUNDY: Is it out or in?

19 THE COURT: I've already ruled it in.

20 MR. BUNDY: I didn't hear you.

21 THE WITNESS: He's already ruled it?

22 MR. BUNDY: I won? Well, I got it in evidence
23 thank you.

24 BY MR. BUNDY:

25 Q Why did you prepare this article?

Adele Pope - Direct Examination by Mr. Bundy

1 A Because -- because I didn't have any money and I
2 had in town a copyright lawyer who was retired and was
3 willing to work on the research with me. And I was very
4 interested in the whole issue of the misunderstanding that
5 -- well --

6 Q That's all -- that's all I need to know?

7 A -- the misunderstanding about the copyrights.

8 Q All right. Other than -- had you -- when you were
9 writing these tax letters to the attorney general, were you
10 also requesting that they hire experts to help you with the
11 management of the music and the copyrights and all those
12 things?

13 A Well, I showed you that one letter where we said,
14 why don't we get together and get somebody because we all
15 knew there was going to be an appeal for a couple of years.

16 Q Right.

17 A And so this was no reason not to do that, just
18 build the fund up, no matter who gets it.

19 Q Okay.

20 A So, yes, we were doing that.

21 Q What other alternative did I have? And about this
22 time other than just doing it on your own if you -- you
23 didn't have any money to hire anybody, did you?

24 A Well, I spent a lot of my own money, doing it on my
25 own. But I didn't have -- I would not have tried to hire an

Adele Pope - Direct Examination by Mr. Bundy

1 expert. I would not have felt that prudent during the
2 appeal.

3 Q All right. You were also faulted for failing to
4 enhance the image and persona after James Brown, I believe;
5 is that correct?

6 A Yeah, and I believe that was not right.

7 Q Okay. And tell the Court the basis for your
8 belief, or what -- or tell the Court what you did, if
9 anything, to enhance or protect the --

10 A Well -- well, we -- first of all, in addition to
11 everything I've said, we had the meeting in January -- in
12 January of 2009. And I think I've set the scene for when
13 that was. And we were invited to New York for the CORBIS
14 settlement. And we've talked about it a little bit before,
15 but -- but we -- I believe that Martin Cribbs is one of the
16 most talented, as I've said, representatives of dead
17 celebrities. And -- and we all know the great potential
18 for dead celebrities because they don't misbehave. And so
19 -- so we really wanted to do the -- as I said before, we
20 really wanted to do that CORBIS Greenlight deal because it
21 was a two year deal.

22 It was clean, it was publicity rights only. It
23 accepted the music. It accepted some other things. And it
24 was just a great idea. And we got -- we made the deal. We
25 filed an action for the attorney -- we filed an action for

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1 approval by Judge Early, but because we were in the middle
2 of the settlement process, we made the attorney a defendant
3 just to make it a case with a plaintiff and the defendant.
4 And the attorney general moved first to dismiss it. And we
5 were like, okay. Dismiss it, but go ahead and approve it.

6 And then -- and then all of the settling parties
7 started moving to intervene because they said that it would
8 interfere with Terry Brown's right of first refusal. And
9 so basically, we -- I have all the suit papers here, but
10 they were all filed.

11 I'll just give you one little example of that.

12 Q That's okay.

13 A Well, I've got multiple copies.

14 Q Okay.

15 (Plaintiff's Exhibit Number 67 was marked for
16 identification.)

17 **BY MR. BUNDY:**

18 Q Would you identify Plaintiff's Exhibit 67, please.

19 A Yeah, it's just us -- it's a letter to Judge Early
20 from Tressa Hayes, who was our lawyer and it's just trying
21 to get the CORBIS deal passed in April. It -- and the only
22 other thing I --

23 MR. BUNDY: Your Honor, I move to introduce Exhibit
24 67.

25 THE COURT: Any objection?

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1 MR. NEWSOME: Without objection, Your Honor:

2 MR. BUNDY: Thank you, Your Honor.

3 (Plaintiff's Exhibit Number 67 was entered into
4 evidence.)

5 BY MR. BUNDY:

6 Q What was the -- what would the value of the CORBIS
7 settlement have been to the estate had it been approved and
8 executed?

9 A Well we -- we projected 1 to 2 million a year and I
10 think that was --

11 Q For?

12 A For just the two years.

13 Q Okay. And can you give me, or give the Court any
14 reason why someone would not want to sign -- have that
15 agreement. What detriment to the estate would there have
16 been?

17 A I can't see any. I didn't see anything that
18 happened during that period that would make it -- have been
19 better than the CORBIS deal.

20 Q But the explanation was because it would interfere
21 with Terry Brown's option?

22 A Well, that was the original explanation. I believe
23 this --

24 MR. NEWSOME: Objection, Your Honor. That's
25 hearsay.

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1 THE COURT: That is.

2 THE WITNESS: I believe Mr. Bauknight testified
3 that his lawyer told him a Chicago lawyer would get all the
4 money. But that wasn't correct.

5 BY MR. BUNDY:

6 Q Okay.

7 A But I did have one more communication about that.
8 I have only one copy. On June 24th, 2009.

9 (Plaintiff's Exhibit Number 68 was marked for
10 identification.)

11 MR. BUNDY: Your Honor this is a letter of June 24,
12 2009 to a Mr. Klett -- Klett of Nexsen Pruet.

13 THE COURT REPORTER: Spell it.

14 MR. BUNDY: K-L-E-T-T.

15 THE COURT REPORTER: Thank you.

16 MR. BUNDY: June 4 from you and Bob Buchanan.

17 MR. NEWSOME: Without objection, Your Honor.

18 (Plaintiff's Exhibit Number 68 was entered into
19 evidence.)

20 BY MR. BUNDY:

21 Q Exhibit 68. What is the nature of this letter and
22 how does it relate to the issue of persona and image?

23 A Well, it's just Mr. Buchanan and me writing the
24 Court on June 24th, which was shortly after we were writing
25 Mr. Klett on June 24th, which was shortly after we were

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1 replaced -- I'm sorry we were writing Mr. Klett on June 24,
2 2009, shortly after we were replaced urging them to go
3 ahead and accept the CORBIS -- the Greenlight deal because
4 it was just good to do during the pendency of the appeal.

5 Q Who did Mr. Klett represent?

6 A The legacy trust and the James Brown 2000 Trust.

7 Q Okay. All right. There are some allegations -- or
8 there were allegations that you failed to properly document
9 claims. You familiar with that? You remember that?

10 A Yeah, I think we might have discussed that, but in
11 -- in essence, I don't know whether the person who made
12 that complaint saw the whole plate. I just don't know.

13 Q Okay. All right.

14 A It looks like it may not have been in the records.
15 So -- and also, again, we were dealing with a judge who was
16 beyond familiar with every move we made. And this claim
17 was filed just two months after our service was ended.
18 And, of course, could have been resolved way back then
19 without interest problems.

20 Q Do you know anything else that you could have added
21 to properly document your claim in this case?

22 A Well, no. Particularly because Judge Early, just
23 before in 1647, what became Wilson versus Dallas, had said
24 that he was going to take judicial notice of the entire
25 record. So I think that was about all he needed.

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1 Q All right. Let's talk about the Christies sale.
2 The allegations against you in that regard were that the
3 Christies sale was rushed, should not have taken place in
4 July among others. Would you tell us if it was rushed;
5 why, if it wasn't; what your position is; what you did; and
6 why you did it.

7 A I think -- I think two things about that
8 observation. One, I think that it is the hand of Buddy
9 Dallas. He tried to hire Ms. Woolley back in November of
10 2007.

11 THE COURT: Ms. Who? Ms. Who?

12 THE WITNESS: Ms. Woolley, the lady who testified
13 from California.

14 And he then presented -- and it's in the deposition
15 of Sandra Matthews. He then presented an affidavit of
16 Darren Julien, her associate, who was a very competent
17 auctioneer. I'm not complaining about Mr. Julien. I
18 attribute this to Buddy Dallas, not to Mr. Julien, but he
19 presented to the Court an affidavit, presumably of
20 Mr. Julien, which contained an attachment that was dated
21 after the affidavit.

22 Then, he -- he -- then Buddy Dallas sent that to
23 Sonny Jones who sent it to Sandra Matthews, who was
24 investigating us. So to begin with, I think Ms. Woolley
25 came from a place of a relationship that was all over

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1 everything we were trying to do back then.

2 But in terms of the rushing, I heard for the first
3 time in however many years, in this case, certainly within
4 the last year, maybe before that, but certainly after 2013,
5 that somebody thought July was a bad month. I never heard
6 that until this case. If they thought it was a bad month,
7 they didn't tell me and they didn't tell Judge Early. And
8 they didn't tell Court of Appeals.

9 Now, I think one of the experts testified that she
10 saw me reading about the catalog or working on the catalog
11 just days before the sale as if we were working on the
12 catalog. Well, the catalog had been out for months. What
13 we were doing was filing the catalog with Court of Appeals
14 after Mr. Dallas had filed an action for estop it, so we
15 were not working on the catalog.

16 BY MR. BUNDY:

17 Q So you didn't prepare the Christies catalog?

18 A No, I did not. And --

19 Q You didn't work with Christies to put on the
20 auction?

21 A We did work with them. We worked hard with them.
22 And what I think happened is that it went pretty smoothly
23 until, you know, quite frankly, Mr. Levinson's clients just
24 did not want that sale to happen. So they got together and
25 sabotaged it. And Judge Early found that in the April 1

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1 order. He found that they had interfered, but it hadn't
2 caused any damage to date.

3 And so, you know, it was a hard thing. But -- but
4 again, the duty of the PR's and the trustees was to
5 Mr. Brown's estate plan. And Mr. Brown said those people
6 who are given the household goods must pay their estate
7 taxes. Nobody else can pay them. If any -- nobody else
8 could pay them. And every dollar that went to the children
9 was going to attract more than 40 cents of estate taxes
10 because the 2 million exemption was used up on the seven
11 grandchildren.

12 So this was not a punitive matter it was -- it was
13 just something that had to be done. The judge found
14 correctly that Forlando's lawsuit kept us from getting a
15 traditional mortgage. There just wasn't another source of
16 funds.

17 So it got slowed down a little bit right there.
18 before April. And that may have caused them some
19 production problems with the catalog. The letter that she
20 cited that said, I seem to have been rushing them about the
21 estate tax return -- about the estate tax appraisal, was
22 interesting because I was -- I was disgruntled because I
23 wanted the family to get that valuation as early as
24 possible so that they would have all the time they needed
25 to try to hold back items. I mean, I knew this wasn't fun.

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1 for anybody. And Bob knew it wasn't.

2 So there was a little bit of delay there; and then
3 Ms. Tomi Rae claimed the furs and the Rolex. That caused a
4 little delay. I don't think it's the production of the
5 catalog. I mean, maybe it's a bad catalog. I don't know.
6 But -- but -- and then, of course, nine days before the
7 sale was the Buddy Dallas's attempt to chill the sale. I
8 mean, the Christies sale was a hallmark of Buddy's
9 criticism.

10 Q Okay. There were also allegations that you did not
11 cooperate in delivering the files to Mr. Bauknight?

12 A Oh, I heard that.

13 Q Would you tell the Court, one, whether you did
14 cooperate; and if you did, how. And what you did.

15 A Oh, I absolutely cooperated and it -- and it began
16 on May 19, 2009. I don't -- I don't think this is an
17 exhibit already.

18 (Plaintiff's Exhibit Number 69 was marked for
19 identification.)

20 BY MR. BUNDY:

21 Q 69 is custody receipt to Russell Bauknight from
22 Buchanan, Pope, May 29, 2009. You recognize the
23 signatures?

24 A I do. That's mine and I know Mr. Bauknight signed
25 it. I'm not sure I would otherwise recognize his

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1 signature.

2 MR. BUNDY: Move to introduce Exhibit 69, Your
3 Honor.

4 THE COURT: Any objection?

5 MR. NEWSOME: Without objection, Your Honor.

6 MR. BUNDY: Thank you, Your Honor.

7 BY MR. BUNDY:

8 Q All right. So this is a listing of the information
9 that was delivered?

10 A Well, it wasn't information, it was actually boxes
11 that was -- these boxes were delivered to him on May 29th,
12 which was three days after he was appointed. We had
13 already turned over the keys and had other communication.
14 I think Mr. Bauknight said he got brought down of 80 boxes
15 and then it took him a year more. But it didn't take him a
16 year more, it took him a month more to get 145 boxes, which
17 were -- and I've just pulled one page of this because it's
18 already in evidence in the case. This is just one
19 particular page of the lengthy custody receipt that he
20 filed. And we can pull it because it was admitted as part
21 of our final accounting the other day.

22 Q You --

23 A But I've just pulled one page to talk about.

24 MR. BUNDY: Mark this, please.

25 (Plaintiff's Exhibit Number 70 was marked for

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1 identification.)

2 BY MR. BUNDY:

3 Q For the record, Exhibit 37 is page 37 out of
4 exhibits already in evidence; is that correct?

5 A Yes, that's correct.

6 THE COURT REPORTER: That's 70.

7 BY MR. BUNDY:

8 Q It's Exhibit 70, I'm sorry. It's page 37.

9 A Right.

10 Q It's page 47 out of a previous exhibit.

11 A Right. And what we did --

12 Q Hold on.

13 MR. BUNDY: Let me move to introduce it into
14 evidence. Any objection?

15 THE COURT: Any objection?

16 MR. NEWSOME: Can I see it?

17 MR. BUNDY: Sure. It's already in evidence.

18 MR. NEWSOME: All right. Without objection, Your
19 Honor.

20 (Plaintiff's Exhibit Number 70 was entered into
21 evidence.)

22 BY MR. BUNDY:

23 Q So what we're looking at is just a page out of the
24 -- another exhibit outlining the boxes that were delivered
25 to Mr. Bauknight?

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1 A Right. They were delivered. And I later saw that
2 his own office assisted by the attorney general had gone
3 through all those boxes. I got that in a SLED report. So
4 this was June 29th, 2009. I think it was, I don't know 50
5 pages or more, explaining every piece of litigation,
6 everything we had done and -- that -- you know, that we
7 were looking at. And in particular, I cut out this page
8 because Mr. Bauknight said that he had not received the
9 TIAA stuff or a catalog of the copyrights.

10 And this shows both that he was given a CD and a
11 hard copy for that June -- in June when he signed the
12 custody receipt. I forget what day it is.

13 Q This -- the first -- this custody was -- the
14 previous exhibit was May 29?

15 A Well, this is June sometime.

16 Q This is June 29.

17 A Well, it was filed June 29. I think he signed the
18 receipt about five days earlier.

19 Q Okay.

20 A But it's in the record here and it's a long, long
21 thing. And -- and then in addition, we -- we wrote
22 immediately, and it may already be in the record, to advise
23 again about the tax problems and urge him to get in touch
24 with Mr. Sellers. And we also offered to meet weekly --
25 Bob and I offered to meet weekly with Mr. Bauknight and his

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1 lawyers for anybody who wanted to talk to us. And so -- so
2 we kept -- we would get some inquiries, but they would be
3 calling and asking about a box we didn't have. And so we
4 would write and say, we're happy to meet with you once a
5 week. If it's an emergency, we're glad to talk to you
6 today, but if it's not an emergency, come once a week and
7 let us see the box you -- I mean the document you're
8 talking about so that we'll be able to help you. But --

9 Q Did you deliver all the documents in the file in
10 your possession as trustee and PR within approximately 30
11 days of Mr. Bauknight's appointment?

12 A I did. I --

13 Q Did you keep anything?

14 A I kept a lot of copies --

15 Q Did you --

16 A -- because our custody receipt provided for that.
17 But I did not keep his documents.

18 Q You didn't keep any copies of something or a copy
19 of something or original of something that was not provided
20 to Mr. Bauknight?

21 A No. And -- and -- but I want to tell you that Bob
22 had in his office additional boxes. I think -- well
23 virtually the copy of mine because we had multiple copies
24 that Mr. Bauknight did not get for a while. And he signed
25 a receipt for that at Bob's later. But -- but, no, no, we

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1 had everything I had. And I had a fair number of copies.

2 I had, just to show you, when -- when we turned everything
3 over and I left my office in Columbia -- I think I had
4 about 30 boxes. But now I have about 135, all from the
5 public record.

6 Q Okay. So to the best of your knowledge, you turned
7 it all over to Mr. Bauknight --

8 A Absolutely.

9 Q -- within 30 days?

10 A He wouldn't -- there would be nothing that -- that
11 he -- that he didn't get.

12 Now, remember we were in the Forlando litigation,
13 but he had duplicates of it because he was in it too.

14 Q All right. All right. Let me ask you now about
15 claims by and against the estate.

16 A Well, we certainly understood, as is the clear duty
17 of both the PR and a trustee to promptly and prudently
18 resolve claims both for and against the estate.

19 Q At the time you turned the duties of PR and
20 trustee, what were the claims for and against the estate,
21 to the best of your recollection? And what condition were
22 they in? Status were they in?

23 A That is all contained in the final accounting,
24 which is now a matter of record here, but we had resolved,
25 as we said before about \$34 million of claims. The -- the

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1 New York Pullman litigation, which was not -- which was a
2 counterclaim against James Brown. James Brown had brought
3 the suit, was a counterclaim for \$8 million. That, I am 90
4 percent sure we had already received a lower court ruling.
5 There was an appeal from the Supreme Court, which is the
6 lower court of New York, but it didn't go anywhere. So
7 Matt Ballinger and those were successful in that \$8 million
8 claim too. But that was not counted in the 34 million that
9 we resolved.

10 We left about -- we left Cannon, Dallas, GT, we
11 left --

12 THE COURT: When you say left, tell me --

13 THE WITNESS: Unresolved. Not finalized.

14 And GT was in wonderful shape.

15 THE COURT: That's the?

16 THE WITNESS: Greenberg Traurig.

17 THE COURT: That's the Kendall Few case.

18 THE WITNESS: Yes, yes, yes. That was in wonderful
19 shape. We had a complaint, an amended complaint. It -- it
20 was not stayed by the Wilson versus Dallas appeal. There
21 was no reason for the GT claim not to be resolved in a
22 couple of years.

23 Cannon claim? I mean I've got his stolen \$70
24 million. It should have been finished up in no time. Mr.
25 Cannon finally resolved it himself by removing his claim in

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1 2012, after being named as a witness against Mr. Buchanan
2 and me in a lawsuit.

3 So after we left, instead of resolving these
4 claims, they were sabotaged in a way by naming Mr. Dallas
5 and Mr. Cannon and Mr. Katz as witnesses against us. The
6 Dallas claim, I understand, I heard today, is still not
7 resolved. To not have resolved a claim 11 years after
8 death -- now, I understand he had a bankruptcy and that
9 took up a little time, but his claim should have been over
10 before we filed bankruptcy.

11 Then the -- the Morgan Stanley claim, I have here.
12 I'm not going to try to make it in evidence, but a copy of
13 a motion to amend the complaint, this was done May 11,
14 2009. This is what was done by Bob and Kendall Few and Jim
15 Gilreath and me. An that case settled that summer.

16 So that was our work. Money came in to somebody
17 else, but that was our work. And I will remind the Court
18 that we had huge resistance in our efforts to engage
19 Mr. Few and Mr. Gilreath, but that was where that --

20 The claim against Enterprise Bank, the Dallas and
21 Cannon claims, and the Dallas and Bradley claims were all
22 ready for summary judgment. I mean, they -- they shouldn't
23 have taken any time to finish.

24 So we had pretty much gotten everybody's claim in
25 great order. And you'll see one of those letters I passed

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1 around today that after the settlement was announced in
2 August, and we really couldn't do anything else much, we
3 proceeded on and finished all those claims cases.

4 BY MR. BUNDY:

5 Q The IRS closing letter that has a current
6 valuation, the one that's on file now with approximately \$6
7 million, is that where we are today?

8 A Yeah, I think they got a closing letter at about
9 6.5. I think they took a --

10 Q How would that affect commissions?

11 A Well, I -- my reading of -- of the code is that if
12 you're a PR and you're asking for a commission that the --
13 and my understanding too, is that the Court certainly
14 considers what you have valued the estate at. And that
15 would be more true if you filed a number of accountings and
16 none of those accountings show any change in the value.

17 They don't reveal the fair market value of the
18 assets. And I think you're stuck with the value you claim
19 to be the date of death value.

20 Q All right. What benefit did the AG provide to the
21 trust between August 10, 2018 and May of 2013, during the
22 appeal?

23 A None. He actively worked against the 2000 Trust.

24 Q Okay.

25 A In multiple ways.

Adele Pope - Direct Examination by Mr. Bundy

1 Q Okay.

2 A And if he had been successful, it would have cost
3 the charity millions and millions of unnecessary dollars.

4 Q What benefit to the trust was conferred upon the --
5 by the AG or Mr. Bauknight by bringing Richland 4900?

6 A Done. It -- it --

7 MR. NEWSOME: Objection, Your Honor. This is
8 outside the scope of reply. 4900 was filed more than a
9 year after she was released for cause as PR.

10 THE COURT: How is that relevant, Mr. Bundy? How
11 is it relevant?

12 MR. BUNDY: Well, we're talking about benefit to
13 the trust, what the various trustees did to benefit the
14 trust and what the various trustees did to hurt the trust.
15 I think that's part of you're evaluation of fees and
16 commissions are going to be the relative benefit that the
17 parties provided to the trust.

18 THE COURT: I'll allow it.

19 Are you at a stopping point? We've been going --
20 I'd like to take a little break and come back and go until
21 five.

22 MR. BUNDY: All right. Thank you.

23 THE COURT: I said are you. You don't want to wait
24 the few more minutes and answer this question -- well, if
25 she -- can she answer the question?

Adele Pope - Direct Examination by Mr. Bundy

1 Go ahead and then we'll break.

2 THE WITNESS: I think the question was what benefit
3 or damage did the 4900 cause. It caused damage to the
4 trust, of course, my personal damage, I have to deal with
5 over there. But the particular damage to the trust --
6 well, first of all was to -- to -- what was done to the
7 minor beneficiaries of the 2000 Trust. Without their
8 knowledge, and with the consent only of Louis Levinson,
9 they were made plaintiffs in that suit, putting their trust
10 interest in great jeopardy.

11 And they were suing, those seven grandchildren were
12 suing without their knowledge, the only two people who were
13 defending not only their trust, but their right to have
14 copyright termination rights after the death of their
15 parents. They did not know about those --

16 MR. NEWSOME: Your Honor, I also want to object.
17 Lack of foundation. This is -- you know, this is all
18 hearsay. It's -- again, it's -- I renew my objection.

19 THE COURT: All right. I've allowed to answer that
20 response. Let's move along from the 4900.

21 THE WITNESS: Can I talk about the damage to the
22 trust --

23 MR. BUNDY: Now would be a good time for a break.

24 THE COURT: All right. We're going to take a 10
25 minute break and come back and go to 5ish.

Adele Pope - Cross-Examination by Mr. Newsome

1 THE COURT: All right. The question is okay. The
2 answer is what?

3 THE WITNESS: Gosh, I wonder if it's going to be
4 responsive.

5 THE COURT: I don't know.

6 THE WITNESS: Okay.

7 So what we learned, it was something called MFN,
8 Most Favored Nation, which told us that this particular
9 clearance nobody's going to get a better deal than James
10 Brown. And so on a moderate size deal that was going to be
11 over in three months, I mean if somebody says we want to do
12 this for Australia from March to July, I mean you're going
13 to get that deal or you're not going to get that deal. You
14 might be able to negotiate, but we don't have any money to
15 pay Ray, so it's not going to hurt if we get it at best.

16 So we tried to take a practical approach that we
17 needed to. We asked to -- you know, we tried to ask all
18 the right questions and if there was anything that looked
19 like it had a potential long term issue, we would contact
20 Ray, but we tried on a day-to-day basis just to say, do you
21 think this is a good idea? If you do, why. And then do
22 it. Because so many of those clearances were just for
23 short term things.

24 And if I can explain that. If you get --

25 Q Let me ask the next question and then you can

Adele Pope - Cross-Examination by Mr. Newsome

1 explain.

2 Okay. So you had no music experience prior to this
3 estate, correct?

4 A I had never been involved in something like what I
5 was involved in.

6 Q There --

7 A I had music -- some music experience. I wouldn't
8 say music business experience. I had none of that.

9 Q Okay. And you've never been hired to be a music
10 manager for a worldwide empire like the estate of James
11 Brown, correct?

12 A No.

13 Q Okay. And so how would you know whether you needed
14 to involve somebody with experience --

15 A Well --

16 Q -- if you had none?

17 A -- we got our guidelines. We understood our
18 guidelines from Ray.

19 And what happened, if somebody sent you an e-mail
20 and says we want to do a three month radio commercial in
21 New Zealand that we'll pay you \$30,000 for and they say
22 we'll give you MFN -- and I did not know that term until I
23 got started, but that term did turn out to be important.
24 It means nobody is going to get paid more than James Brown.

25 So what -- so we learned from Ray and from the

Adele Pope - Cross-Examination by Mr. Newsome

1 publishers that if -- if it was a short term, you weren't
2 going to lose anything if you -- if they took it. Then --
3 and they were going to give you higher than they were going
4 to give anybody else, which was also important to James
5 Brown. Then -- that would mean if they're using two or
6 three people, nobody's going to be paid more than James
7 Brown.

8 Then you just accept it. And we regularly chatted
9 with Ray; not about each one because as I said we did about
10 200 clearances during that period and we, as you know,
11 brought in 2.1 million the first semester of 2009, showing
12 that stopping the stealing and managing -- dealing with
13 these clearances the way we did was working out.

14 Q You think that was a good result? 2.1 million?

15 A I think for one semester it was -- considering --
16 considering what else was going on, I think 2.1 -- for the
17 copyrights alone -- now, we should have been bringing in a
18 couple million a year for the publicity rights, but we were
19 stopped from doing that. But I think 2.1 on 50 million is
20 a 4 percent return. And this is not even getting started
21 yet.

22 We certainly did not want to stop there, but it was
23 a fair start considering all the problems.

24 Q But how would you --

25 THE COURT: Who stopped the copyright efforts?

Adele Pope - Cross-Examination by Mr. Newsome

1 THE WITNESS: The attorney general constantly
2 stopped -- stopped -- they didn't interfere too much with
3 the clearances until August 10, 2008. But on August 10,
4 2008, they said stop administering the estate. Stop doing
5 everything. And so we were in peril then. We -- we
6 couldn't -- but we weren't -- and then they filed a lawsuit
7 in November of '08 saying we should not be able to act at
8 all. November of '08. But they had told us to stop
9 administering the estate on August 12, 2008.

10 BY MR. NEWSOME:

11 Q So it's your testimony when you got a phone call
12 saying stop administering, you just stopped administering?

13 A No. It's -- it's been my constant testimony that
14 we did not stop the clearances, but we certainly could not
15 -- we -- it kept us from doing everything else creative.
16 That's why just a month after we were told to stop
17 administering the estate, we said, please, everybody, let's
18 get together just as the letter said yesterday, let's get
19 together and find someone -- let's mutually agree we want
20 this enterprise to grow no matter who gets it and we
21 couldn't get any response. Not from the attorney general,
22 not from the tax lawyers, not from the settling parties,
23 not from anybody.

24 Q So you never considered hiring Ray Gonzales or
25 another qualified music manager on a deferred-pay basis,

Adele Pope - Cross-Examination by Mr. Newsome

1 did you?

2 A As I've just said, Ray was on a deferred basis and
3 if you represent -- if you are a PR and -- and you in good
4 faith engage a person, you ought to be able to expect that
5 they will be paid. We knew that that was not going to be
6 the case with the attorney general and with Mr. Bauknight.
7 We knew it and they weren't paid. The people we engaged to
8 pay modestly were not paid.

9 So -- so, we did what was appropriate under these
10 very inappropriate circumstances. And the very
11 inappropriate interference of the attorney general.

12 Q You were acting as --

13 THE COURT: Before you ask the next question --

14 MR. NEWSOME: I'm sorry.

15 THE COURT: -- remind me about the November 8 suit
16 that the AG's office filed.

17 THE WITNESS: Okay. Your Honor, they announced the
18 settlement on August 12th of 2008. It was made on August
19 10, 2008 without our knowledge. Then shortly after that,
20 we were contacted and asked to join the attorney general in
21 a lawsuit to get rid of Cannon and Dallas. And we said, of
22 course, we want to get rid of Cannon and Dallas, but they
23 have appeals up in Court of Appeals, so we can't -- we
24 don't think that it would be appropriate to bring a suit in
25 the probate court now. We don't think they would have

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1 jurisdiction.

2 So the attorney general went ahead and brought a
3 suit to get rid of Cannon and Dallas and that suit was
4 filed -- I mean I may be a day or two off, but in September
5 20th or something like that, of 2008. And --

6 THE COURT: But I thought your testimony is they --

7 THE WITNESS: They did --

8 THE COURT: -- sued you --

9 THE WITNESS: -- but it takes a minute.

10 THE COURT: Okay, I'm sorry.

11 THE WITNESS: I'm sorry. It's complicated, I
12 apologize.

13 THE COURT: No, ma'am. Go ahead.

14 THE WITNESS: The suit did not ask for approval of
15 the settlement was just was -- with the attorney general
16 against Cannon and Dallas to get rid of them, but it
17 referenced the settlement. So Mr. Buchanan and I moved to
18 intervene because we were the PR's and trustees. And
19 within the 30 days of that suit being filed, which would
20 have been either October or November, I can look and tell
21 Your Honor. But there was an amended complaint, you know
22 how you can amend within the 30 days.

23 And all of a sudden, all the settling parties show
24 up as plaintiffs in addition to the attorney general and
25 we're defendants in addition to Cannon and Dallas and

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1 they're asking to enjoin us from doing anything and replace
2 us.

3 THE COURT: Okay. Thank you.

4 BY MR. NEWSOME:

5 Q Tell us -- who was Julia, the intern?

6 A That's Julia foster. She's a lawyer with White --
7 no, she's not now. I don't know exactly -- she is a
8 lawyer, but I don't know where she is. I think when I gave
9 my testimony, she was a lawyer with the White firm. And
10 she was, at the time, a law student at the College of
11 Charleston, and I believe that we found her through
12 Professor Spitz.

13 Q Okay. This was an unpaid intern?

14 A Yes. They called it extern. But she was. She was
15 a law student and she arranged with Professor Spitz to do
16 an externship to help us on termination and copyright
17 issues and she was quite good. She had -- she was very
18 interested in music and I think she had worked for
19 LiveNation. I can't say for sure, but I'm pretty sure she
20 had worked for LiveNation.

21 Q You never went through an RFP process to find a
22 qualified expert to manage the music, did you?

23 A I'm sorry?

24 Q You never went through a request for proposal
25 process to try to find a qualified music manager to manage

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1 BY MR. NEWSOME:

2 Q I hand you what's marked Defendant's 87 and ask if
3 you recognize that.

4 A I do.

5 Q Okay. What is that document?

6 A You know --

7 MR. BUNDY: Your Honor, before this is published, I
8 think this is clearly inadmissible under the rules. It's
9 an offer of settlement and I would object.

10 THE COURT: How do y'all -- what's your grounds for
11 admission of this?

12 MR. NEWSOME: Your Honor, Rule 408 of evidence,
13 rules of evidence is applicable in this case. It provides
14 this rule does not require the exclusion of any evidence
15 otherwise discoverable merely because it is presented
16 during the course of compromised negotiations. This rule
17 also does not require exclusion when the evidence is
18 offered for another purpose, such as proving bias or
19 prejudice of the witness. Negating a contention of undue
20 delay or proving an effort to obstruct a criminal
21 investigation.

22 Ms. Pope, yesterday, testified this estate should
23 have been closed a long time ago. And if -- under the
24 probate code, you can't close an estate when there's an
25 outstanding claim like a \$19 million claim against the

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1 estate. So it is admissible under Rule 408.

2 MR. BUNDY: I object, Your Honor. I don't see any
3 reason to argue it. The statute said -- the rule says what
4 it says and in my reading of the rule it doesn't apply.

5 THE COURT: I'll allow it.

6 MR. NEWSOME: Thank you, Your Honor.

7 (Defendant's Exhibit Number 87 was entered into
8 evidence.)

9 BY MR. NEWSOME:

10 Q Isn't it true you're trying to take \$19 million
11 away from this -- the charity in your actions against the
12 estate?

13 A Absolutely not. And I need to explain. If you
14 look back to when I moved for partial summary judgment, way
15 back in 2014 -- or if you even look back to the claim, if
16 anybody had been prudent in the management of this claim, I
17 know one of your experts said that the estate had no choice
18 but to disallow it. And you know, we faced that same issue
19 as PR's and we disallowed a number of claims that we knew
20 were going to be paid. And so if it was proved that back
21 in 2009 the estate and trust believed that this claim
22 needed to be disallowed, either because it wasn't proper or
23 because it was just too hot to pay without the Court's
24 determination, all they needed to do was disallow it.

25 And there was a stay, but nobody would have minded

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1 lifting the stay and to have this heard. And everybody
2 knew that, that my claim was earning \$133,000 a year in
3 interest. And so really what should have happened in 2009,
4 that should have happened. So this never should have been
5 anything more than, we'll determine what you were owed as
6 of May 26, and if we want to we'll wait until the
7 conclusion. And in fact, the record will show that's
8 exactly what Bob Buchanan and I asked the judge to do back
9 in the summer of -- of -- in the Summer of '09. Because in
10 March of '09, James B. had filed a petition to review our
11 compensation.

12 And -- and I would ask the Court to look at this
13 record because our answer was this: Judge, please either
14 look at the record and determine our fee based solely on
15 the record or let's wait until the end because we're too
16 busy saving this charity. But when the estate took over,
17 if they had determined either Bob or I was not owed any
18 portion of the claim we made, all they had to do was
19 disallow it. And it could have been heard in 2009, but let
20 me tell you what happened.

21 That didn't happen. Instead, a year later in a
22 court where they knew that the Court was wholly unfamiliar
23 with the work we had done, a suit was filed against Mr.
24 Buchanan and me, not for the benefit of the estate -- this
25 is very important -- but for the benefit of the James Brown

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1 Legacy Trust, the attorney general's new entity. And his
2 new charity, which he didn't even -- hadn't even formed
3 yet.

4 So that suit was brought in another court because
5 they knew Judge Early knew what good work we had done. And
6 they knew -- they being the James Brown Legacy Trust which
7 had a dozen Nexsen Pruet lawyers working for them starting
8 one month after the settlement. They brought it not for
9 the benefit of the estate now, but for the benefit of all
10 of Tomi Rae, the Levinson clients, Terry, and the attorney
11 general's new charity.

12 And then they waited until May 29, of 2013, the
13 very day that Mr. Levinson and Tomi Rae announced to Judge
14 Early, which he had forgotten by 2015, but did announce in
15 open court their intention to reinstate the settlement
16 which had dismembered the "I Feel Good" Charity, May 29,
17 2013, you handed me the disallowance. You once again
18 claimed that I had valued the assets wrong in the
19 disallowance, something you could have cleared up back in
20 2009, but didn't.

21 All right. Then, if -- from there, I asked for
22 summary judgment. And you remember what your summary
23 judgment response was? We can't decide what Ms. Pope is
24 owed until case 4900 is over. Now, back then you said you
25 didn't know what was going on in 4900, but you just knew

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1 that you couldn't pay me because the judgment that the
2 estate might have against me could be larger than even my
3 little \$47,000 dollars SA fee.

4 So back in 2014, you told Judge Early she's not
5 entitled to summary judgment not even on her little SA fee
6 and the judge didn't grant anybody any summary judgment.
7 2014, it could have all been resolved back then.

8 So then -- so then, we come up and my lawyer tells
9 me -- and now that -- we got to talk about it, my lawyer
10 tells me they don't want an offer just to settle this case.
11 They want -- you got to -- you got to give up your claim
12 against Tomi Rae.

13 Well, I didn't give up my claim against Tomi Rae.
14 Tomi Rae sued me. I didn't sue her. I never sued her. I
15 don't give up my claim against the James Brown Legacy
16 Trust. I never sued the legacy trust. It sued me.

17 But I was told by my lawyer that he was told that I
18 had -- that there was no use to bother to make an offer
19 unless I was willing to let everybody in this other suit
20 go. I thought that that was not very appropriate because I
21 honestly thought that Mr. Bauknight had told the Court --
22 in fact, he did tell the Court in March of 2013, I can
23 change gears. I can protect the James Brown 2000 Trust
24 now. But he hadn't done it.

25 And so -- so this offer was -- I would -- you and I

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1 could have settled my little commission claim on any day of
2 the week since 2009. But you want me to -- you want me to
3 help the attorney general with their announced intention to
4 disregard Wilson versus Dallas. So that's what I have to
5 say about that. I don't want anything in this case except
6 my fair commission and --

7 Q The \$19 million, right?

8 A Not from the estate, no, you're wrong. Huh-huh,
9 you're wrong.

10 I don't want it from the estate. I want it from
11 Tomi Rae and the James Brown Legacy Trust and the attorney
12 general of South Carolina and the other people who sued me.
13 I don't want it from the estate.

14 Q Okay.

15 A I -- if, if --

16 Q It certainly appears like you're trying to get \$19
17 million from this charity. And I don't understand --

18 A Well, it --

19 Q -- how you can save a charity by you getting \$19
20 million?

21 A Well, it may appear that way to you. It may appear
22 that way to you, but it's not. Actually look at it.

23 \$10 million to the Pope Brown Foundation. Poor
24 James Brown. They are going to take his charity again.
25 But not me. If I get some money, I'm going to put 10

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1 million in the Pope Brown Foundation and I am going the
2 give out scholarships with James Brown's name on them. And
3 it just happens to be named the Pope Brown Foundation.
4 It's a good name. That's not -- my own husband -- a
5 foundation that my own husband is involved in.

6 Q But not James Brown's foundation. It would not go
7 to James Brown's foundation, correct?

8 A Neither does that lawsuit. Not a penny of that
9 lawsuit --

10 THE COURT: All right. All right.

11 THE WITNESS: -- against me in 2010 goes to James
12 Brown's 2000 Trust. Not a penny. Not a penny.

13 BY MR. NEWSOME:

14 Q And then just a little ole 9 million to you? Is
15 that correct?

16 A That would not be enough for the plaintiffs in --
17 in that other case, which I thought we weren't talking
18 about to pay me. You know, if I was selfish, I would want
19 Tomi Rae to be the widow now because she's moved to England
20 and I have jurisdiction over her. So I didn't sue her. I
21 didn't have a fight with her. She sued me. So did the
22 James Brown Legacy Trust represented by you and eleven
23 other Nexsen Pruet lawyers and Mr. Wingate, in an illegal
24 lawsuit which the attorney general, if you'll read his
25 deposition, did not authorize.

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1 The governor says Ms. Pope, I did not sue you. The
2 record is -- is upsetting to say the least.

3 MR. NEWSOME: Your Honor, that might be a good time
4 to break for lunch, a little after one.

5 THE COURT: All right. We'll start back at 2:40.

6 What was that last exhibit number?

7 THE COURT REPORTER: 87.

8 THE COURT: Okay. All right. Let me see y'all
9 back here just a second so we can talk about the distance.

10 (A recess for lunch was observed.)

11 THE COURT: You may begin.

12 MR. NEWSOME: Thank you, Your Honor.

13 BY MR. NEWSOME:

14 Q Ms. Pope, you -- we were talking about JBE, Inc. I
15 believe you testified it was a C corporation; is that
16 correct?

17 A Yeah, that's my recollection.

18 Q And you served on the board of directors of that
19 corporation; is that correct?

20 A Well, we -- we appointed ourselves directors of
21 that, I think on November 20th of 2007, yes.

22 Q Okay. And you were -- you said you were sure that
23 Bill Sellers filed an extension in time to file that
24 return; is that correct?

25 A I am reasonable -- I am sure that Bill filed

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1 whatever he needed to file.

2 Q Okay. When would it have been due with the
3 extension?

4 A Well, I'm not sure. I don't know whether it was
5 three months or four months after it. But, you know, we
6 heard some talk about that through testimony. Bill would
7 know, I didn't. Nobody asked him that question.

8 Q So when the extension ran out, you didn't file a
9 tax return on time, did you?

10 A We didn't, but we were in communication with both
11 the IRS and the South Carolina Department of Revenue and
12 the attorney general and the settling parties and
13 Mr. Sellers had resigned. So there we were.

14 Q So if the return was due March 15th --

15 A Uh-huh.

16 Q -- of '08, when did he resign?

17 A Well, he let us know as soon as the settlement
18 happened that he would do the estate tax return and nothing
19 else. But as of August 12th 2008, the attorney general had
20 said I'm taking over and I've settled it.

21 Q So if your accountant resigns, does that alleviate
22 the personal representative of the duty to file an income
23 tax return?

24 A You know, that's an interesting question, but we
25 have the issue of the attorney general having substituted

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1 his judgment for ours.

2 Q Can you answer my question first and then explain
3 your answer?

4 A The answer is under these circumstances, I'm not
5 sure whether the obligation was the attorney general -- I'm
6 pretty sure the obligation was the attorney general's.

7 Q Okay. Can you cite to the Court any case --

8 A Right.

9 Q -- any where, where a PR no longer has a duty to
10 file income tax returns and it shifts to an attorney
11 general?

12 A Well, Wilson versus Dallas, which said he took
13 effective -- he assumed the right to take effective
14 control, not only of the charitable assets, but the non
15 charitable assets. So that's my only citation. There is
16 -- there is a Utah decision under the United Efforts Party
17 where the attorney general of Utah took over the United
18 Efforts Trust, which was a charitable trust run by the
19 Mormon -- I'm sorry, the Mormon Fundamentalists Religion,
20 the FLDS and in that case -- which by the way, ran for
21 years and years and recently was resolved in about 2017 --
22 but in that case, the attorney general of Utah had taken
23 over the FLDS and the -- I believe it was the Utah Supreme
24 Court held that he had to pay a \$5 million payment because
25 he had taken over.

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1 I think the issue -- I think it was a property tax
2 issue, but it was definitely a tax issue that the state of
3 Utah was liable. They may have gotten paid back at some
4 point. But there is some precedent, but not much because
5 it's -- I've never known this to happen nationwide except
6 in the FLDS and the attorney general of South Carolina.

7 Q But do either one of those talk specifically about
8 the PR filing tax returns?

9 A Well, the -- not exactly that way, but what they
10 said the obligation transferred to the person who usurped
11 the power of the trustees.

12 Q To file tax returns?

13 A Well, I don't know how -- again, just sitting here,
14 I think the FLDS was a property tax issue, but I'm not
15 sure. I do know that they were required to pay \$5 million
16 for something. The State of Utah. But I don't -- I
17 couldn't say that they specifically said that, but you
18 asked me did I have any precedent for it and the precedent
19 is that -- these small number of cases, Wilson versus
20 Dallas and the FLDS case that say where you -- where an
21 attorney general usurps the power of the trustees, he picks
22 up the liability.

23 And our code does also -- the probate and trust
24 code also have that same concept. If you step in and take
25 over, the executor de son tort concept. So there's some --

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1 I have some notion for it. And it's particularly when the
2 PR is saying do something, do something, get an accountant,
3 you know, so I do have some theory to that. It's a very
4 difficult issue and, you know, the attorney general just
5 messed up everything without thinking about these issues.

6 Q So you were the PR until you were removed on May
7 26th of '09, correct?

8 A At least until then.

9 Q Okay. And so the tax return was due at least nine
10 months before that, wasn't it?

11 A Well, again, we had an accountant. He said he was
12 going to resign. He was appointed by Judge Early. Nobody
13 came forward. We -- we -- the record is just chock full of
14 attempts to get the attorney general and the settling
15 parties to deal with these terrible tax issues that were
16 caused by the take over of the attorney general and he
17 wouldn't deal with them. And neither would Heywood Carter,
18 and neither would the five tax lawyers that -- that they
19 told Judge Early they didn't even need an accountant
20 because they had the finest tax minds in America.

21 Q But they weren't the PR, were they? That was you;
22 isn't that true?

23 A That is the issue. That Wilson versus Dallas said
24 no. You stepped in and you then you took over the
25 operation of both the charitable and the non charitable

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1 THE COURT: Anita get me a copy of that.

2 THE WITNESS: It's in already in the --

3 THE COURT: I don't want to take the file. I want
4 to take a copy.

5 So Anita would you make me a copy of it.

6 MR. NEWSOME: Your Honor, were you just asking
7 about the January 8th, 2008 order? I was going to ask
8 Ms. Pope about it, if that's okay.

9 THE COURT: Sure.

10 BY MR. NEWSOME:

11 Q Plaintiff's 1, Tab 13. Tab 13.

12 First of all, Ms. Pope, you said you had a contract
13 with the estate?

14 A And trust.

15 Q And trust. Okay.

16 A Both. Both.

17 Q Who did you talk with at the estate and trust to
18 negotiate this contract?

19 A Me, and I spoke -- Mr. Buchanan and I reached this
20 agreement that this was the compensation we wanted, we
21 thought was appropriate and that we -- and then we filed a
22 motion asking the Court to approve it. And the Court did.
23 And there was -- there was a hearing on December 21st. And
24 I will tell you that -- well, that's -- that happened
25 December 21st.

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1 Q So this is a contract you had with yourself; is
2 that correct?

3 A Not myself. The estate and trust. Just like any
4 -- any PR who makes an agreement with the estate and trust.
5 That's okay to do. And then especially when you go and ask
6 the Court. And, in fact, we were praised by Mr. Medlin for
7 belt and suspenders, for asking the Court to approve
8 something we could have paid to ourselves without approval.
9 If you read the December 21st, 2007 hearing transcript,
10 you'll see that.

11 Q I've read this document. I don't see any mention
12 of a contract, of the Court approving any contract.

13 A Well, we were talking about contracts earlier. A
14 contract is a meeting of the minds where you want something
15 to be accomplished and -- and there -- and that is what
16 happened here. We had a contract with the estate and trust
17 for which we served as fiduciaries and we asked that that
18 be approved by Judge Early and Judge Early approved it.

19 Q This order does reference payment on a time plus
20 cost basis, but it does not reference approval of any
21 contract, does it?

22 A Well, you know, the one thing I really didn't do
23 that well in the James Brown matter was protect myself. I
24 suspect that we were the two who drafted this order, and we
25 probably should have been a little nicer to ourselves, but

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1 A I interpreted it to mean his appointment was void.

2 I -- I know what I think the Supreme Court said. I don't
3 speak for them. They speak for themselves.

4 Q And you don't agree with Judge Early's order that
5 there was no gap in service?

6 A I was not allowed to participate in that order. So
7 I don't have an opinion about it. I was excluded from all
8 the James Brown cases before Judge Early on June 13th of
9 2013 and I have had no participation in any of the cases
10 other than my own claims case. I was not even invited to
11 say nice things about Bob Buchanan on October 8th of 2013.
12 And I would have loved that.

13 THE COURT: Well what happened on October 8, 2013?

14 THE WITNESS: Your Honor approved all of his
15 service, praised his service, said there was no need for
16 disgorgement, and left open the possibility of his reentry
17 into Case 4900 if the -- if things happened a different
18 way.

19 BY MR. NEWSOME:

20 Q The Supreme Court has also admonished you to not
21 make any further filings in any of the James Brown cases;
22 is that not true?

23 A No. That's not true. It said -- the order says
24 what it says, but again, I don't really relish bringing
25 this up, but it was based on a filing by Judge Early, which

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1 really went after me. And -- and after I had not been able
2 to participate in -- in the James Brown hearings for two
3 years. So the order says what it says. I don't want to
4 interpret it. It did not say that I could not participate
5 in any James Brown case because I was still in 4900. And
6 the order just was -- the status report was heartbreaking
7 to me after I had served so well for Judge Early to say
8 that I wanted a 2 million SA fee when I only wanted \$47,000
9 and to issue a status report that sounded like Bob Buchanan
10 had paid the Case 4900 plaintiffs rather than being paid
11 himself, it made me sad.

12 But I respect the law. I did not respond to it. I
13 just sat this and watched it happen. It was very, very sad
14 to me. But Judge Early found that all the heirs had been
15 properly determined. That was not the case. It was a sad
16 report and it was clear that Judge Early had once again
17 been misled by the settling parties.

18 And I would like -- I mean, if we need to make that
19 a record, what I'm specifically talking about is that
20 status report. Now, remember from the standpoint of this
21 case, you had had ex parte contact with the judge from the
22 13th of May until -- May of 2013 until May of 2015, not
23 specifically, but you had been involved with him in cases
24 where I was not even allowed to participate as an expert or
25 a witness and so my voice was not heard. I had to just

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1 accept that. It was a sad day for me, for someone who
2 honors -- whose career really matters to her, that was a
3 very deep blow. But it was what it was. I took it on, I
4 did it, here I am.

5 Q Well, you've already testified you're actually
6 seeking a lot more than just the 5 million in his report.
7 It was actually a lot worse than he reported; isn't that
8 true?

9 A In this case, I have already offered to settle long
10 ago for 2.1 million. You are dead wrong. You are dead
11 wrong. You know that I have and that you have spent
12 millions of dollars, millions of dollars to continue to
13 discredit me for the benefit of the plaintiffs of Case
14 4900.

15 Now, in Case 4900, I offered to settle because my
16 lawyer said you have got to make a global settlement offer.
17 And if you'll notice what I did, and I'd like to do the
18 math with you.

19 Q All right.

20 A \$10 million to charity, because I thought if I'm
21 walking away from this, I'm going to do a little something
22 for James Brown. So I'm going to put to charity -- I'm
23 going to put to charity twice what these folks say his
24 music empire was worth. And that is going to provide
25 \$500,000 of scholarships every year. And that will be

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1 enough to make me feel like I have served James Brown well.
2 I know I have already, but -- and so that had nothing to do
3 with this little claim case.

4 This little claim case could have been settled long
5 ago. You know it. You've wasted millions of dollars
6 wanting to continue to discredit me. It was not necessary.

7 Q That settlement offer you made to try to create
8 another James Brown trust, is that not really you trying to
9 continue to be trustee for James Brown?

10 A Absolutely not. It is for me to honor someone who
11 has been destroyed by the attorney general of South
12 Carolina, twelve lawyers at Nexsen Pruet, the Wingate firm,
13 and misleading one of the most able circuit judges we have.

14 Q If you would, Ms. Pope, I just want you to publish
15 this paragraph that we're talking about, please, in this
16 Supreme Court order --

17 THE COURT: What is she publishing from, please?

18 MR. NEWSOME: I'm sorry, Your Honor. This is a
19 Supreme Court order, June of 2015.

20 THE COURT: Thank you.

21 MR. NEWSOME: That she was testifying about.

22 THE WITNESS: May I put in the report from which
23 this resulted? Because the report is a problem. May I put
24 it -- may I put it into evidence, Your Honor?

25 THE COURT: I don't have any objection.

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1 sorry. I'm reading the wrong paragraph. If I could start
2 over.

3 Mr. Buchanan and Ms. Pope were sued in Richland
4 County 2010CP404900. Mr. Buchanan settled the case against
5 him for \$500,000, which resolved all claims either side had
6 against the other in case number 10CP404900 in Richland
7 County and all Aiken County matters. He does go on to
8 enclose the settlement, but that statement makes it sound
9 like Bob Buchanan paid somebody a half million dollars and
10 that was absolutely false. And the only reason
11 Mr. Buchanan accepted that was he was financially desperate
12 and -- and the discredit to that fine man was worse than to
13 discredit to me.

14 And then -- and then the judge -- the Court asked
15 Judge Early, have you heard anything about settlements.
16 That was one of the questions asked of Judge Early. And I
17 don't want to misspeak, so I want to find in here what he
18 said about that. Because there was no transcript of May
19 29th, 2013.

20 He said -- oh, he said in here, I find -- found by
21 far Mr. Bauknight was by far the most qualified, had more
22 knowledge about the estate than anyone, had led the estate
23 from the brink of insolvency to retain over 14 million on
24 the Pullman Bond debt 7 years ahead of schedule.

25 That debt, even before applying the -- the escrow

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1 was only 11 million 3 when we left office. Our accounting
2 shows that. But remember, this is -- this is May of 2015
3 and Mr. Buchanan and I have been shut out of all of the
4 hearings. So that was incorrect.

5 And then he praises Mr. Bauknight for all he's
6 doing while Mr. Bauknight is paying \$30,000 a month to
7 Peter Afterman who is helping Tomi Rae siphon off the
8 copyrights from 90 copyrights between 2015 and 2023. He's
9 -- he's working for her. He's soliciting Levinson clients
10 and he's being paid \$30,000 a month by you -- by
11 Mr. Bauknight; \$30,000 a month. But Mr. Bauknight's by far
12 the most qualified. And Mr. Bauknight is spending tens of
13 millions of dollars from a \$6.5 million trust and estate,
14 but he's by far the most qualified.

15 BY MR. NEWSOME:

16 Q Well. And so 30 --

17 A Wait, no, no, I'm not through.

18 Then he finds about Tressa Hayes and Jim Bailey
19 that their fees were reasonable, but you didn't pay them
20 what they were due. You paid them half of what they were
21 due. That little modest fee, you paid them half of it.
22 But I didn't have a voice, a say, in this. This was two
23 years after I lost my voice.

24 And then, as I said, I'm not sure of his -- the
25 judge criticizes me for filing hundreds of pages of

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1 attachments to a filing which he required me to file in
2 July of 2013, whereas Ms. -- your expert, criticizes me for
3 not giving adequate documentation to the Court. And then
4 as I said, he says, but she appears to have claimed in
5 excess of \$2 million for SA fees for service through May
6 26, 2007.

7 And then -- okay. The order requesting this status
8 report inquired whether any proposed settlement agreement
9 has been submitted to the Court. The answer is an
10 unequivocal no. No lawyer, party, or anyone else has
11 discussed, mentioned, suggested, or inquired of me anything
12 about a settlement. Neither am I aware of any rumor or
13 courthouse talk of any proposed settlement.

14 Now, this is two years after Mr. Levinson and
15 Mr. Medlin stood up in court and said we want to go
16 in-camera and redo the settlement the Supreme Court had
17 just voided.

18 Now, in light of that -- in light of that, what the
19 Court told the -- what Judge Early, by being misled, told
20 the Supreme Court about me, I'm not surprised at the order.
21 I am heartbroken about it, but I'm not surprised.

22 Q It seems like what's sad is that no scholarships
23 have been paid 9 years after this case was settled; isn't
24 that true?

25 A That's what I'm sad about. Because the day after

Adele Pope - Cross-Examination by Mr. Newsome

1 the remittitur came down, the attorney general of South
2 Carolina began working to undermine James Brown's -- James
3 Brown's estate and trust and paid that dozen Nexsen Pruet
4 lawyers to undermine James Brown's estate and trust.

5 Russell Bauknight told -- told the Supreme Court on
6 March 14 of 2009 -- I'm sorry March 14 of 2013, please give
7 me a chance to be reappointed. If you do, I can defend the
8 estate plan. He did not do it for one day.

9 That's not my business. I'm only here about me.
10 But when you ask me -- when you ask me about this decision,
11 we just got to know the truth, that -- that Mr. Bauknight
12 did not serve well. Mr. Bauknight overstated deductions by
13 -- by \$5 million. And then the attorney general of South
14 Carolina used those deductions to claim -- to claim that
15 there was a legal refund from the IRS and used that refund
16 to prove, prove -- and I put quotes around that -- that the
17 settlement saved taxes.

18 No such thing was true. The -- Judge Early was
19 misled. The Supreme Court was misled. It is a sad day for
20 our state.

21 Q Is there anybody beside you telling the truth in
22 this case?

23 A Yes. Bob Buchanan is telling is truth. And other
24 people too.

25 Q Buddy Dallas sometimes?

Adele Pope - Cross-Examination by Mr. Newsome

1 A Sometimes. I think that's a good way of putting
2 it. Buddy Dallas sometimes. Because Buddy Dallas,
3 interestingly, has been loyal to the estate plan. Almost
4 -- although he wanted a good little piece of it himself.

5 But the attorney general did more damage -- because
6 we stopped the stealing from Cannon. We stopped Buddy
7 Dallas from being paid \$10 million. But what we were --
8 were not able to stop was the attorney general's decimation
9 of what should, today, be the largest ever private
10 foundation for the education of needy students in South
11 Carolina. That's just the way it is. I can't help it.
12 Since June so, 2015, it's not my role.

13 Q Ain't it true that you single-handedly stopped
14 scholarships for the last 9 years, and if you get the 19
15 million, you're asking for -- it will be at least 10 more
16 years before funding any scholarships; is that not true?

17 A That is absolutely false. And if you see this
18 offer that you want to keep talking about, that my lawyer
19 told me that there was no use to make an offer because
20 Nexsen Pruet, the twelve lawyers at Nexsen Pruet aren't
21 speaking for James Brown's 2000 Trust, they're speaking for
22 the plaintiffs in Case 4900. And you just can't make an
23 offer without offering 4900.

24 I said, okay. Let's do it this way. Just tell
25 them 19 million. And here's how the 19 million's going to

Adele Pope - Cross-Examination by Mr. Newsome

1 go: 10 million -- 10 million -- and it doesn't need to be
2 yours. It shouldn't be the estates. It should be the
3 State of South Carolina, the -- the James Brown Legacy
4 Trust, which holds termination rights; Ms. -- the people
5 who sued me to whom I owed no duty whatsoever.

6 And then we're going to take that 10 million and
7 we're going to put it in a little ole trust and give
8 \$500,000 a year in scholarships in the name of James Brown.
9 I didn't want to have a settlement. I kept saying to my
10 lawyer, we're here about my claim. I don't want to -- he
11 said Adele, they insist that an offer be made for a global
12 settlement. I didn't want to do that. I wanted to be here
13 for my little claim. I wanted to finish the other thing.

14 I'll be glad to lift the stay and finish the other
15 thing.

16 Q Sounds like you're trying to skirt around the order
17 that told you to stay out of trying to be a trustee of
18 James Brown's trustees; isn't it?

19 A Oh, that's absurd. That's absurd.

20 Q You're trying to create a trust to administer
21 scholarships in the name of James Brown; aren't you?

22 A I create it had Pope Brown Foundation years ago.
23 And it's given twice as much as you say -- as the \$.8
24 million you say poor James Brown's charity was worth when
25 he died -- to charity.

Adele Pope - Cross-Examination by Mr. Newsome

1 No, the Pope Brown Foundation was created decade
2 ago. It's just to some charity because I don't need \$20
3 million. You don't need \$2 million. I would like my
4 reputation back. I can't -- you know, I can't -- I'm not
5 asking for it here. All I want here is fair compensation.
6 In the other case, we'll talk about everything else. And
7 if you folks would lift the stay, we could talk about it
8 next month.

9 Q You testified you saved the charity a million and a
10 half dollars a year. That's not true; is it?

11 A A year. It's absolutely true. Absolutely true.

12 Q All right.

13 A And we've saved them more since -- since instead of
14 getting 25 percent of everything, Tomi Rae now gets -- now
15 gets 35 percent of the termination rights which never apply
16 to anything but half of the copyrights and has given up her
17 whole interest in the whole estate.

18 Q So just for one example. Now, the children, we
19 really -- you know, we've done a lot of good, but
20 Mr. Buchanan and I did. You can't tell exactly how much
21 yet, but trust me. Read my article. They just copied my
22 article, but not -- they did it very poorly about how a
23 charity should protect itself.

24 Q So you're saying that there's a -- your unpublished
25 article was used to come up with a way to structure

Adele Pope - Cross-Examination by Mr. Newsome

1 THE COURT: All right.

2 THE WITNESS: Your Honor, would it be helpful to --
3 the additional documents I brought, they're rather small.

4 THE COURT: Well, let's talk about anything else
5 you've got. We're going to take one break and we'll take
6 one huge break.

7 What else do you have, please, ma'am?

8 THE WITNESS: The next document, that would be --
9 is an explanation -- this's one for you Mr. Newsome.

10 THE COURT: An explanation of the 19 million?

11 THE WITNESS: I was accused of trying to take \$19
12 million from the James Brown 2000 Trust. I didn't have a
13 chance to talk to my lawyer about what would have happened
14 to that \$19 million if it had been accepted.

15 But I will tell the Court, under oath, that I was
16 under extreme pressure to make an offer that would have
17 resolved both Richland 4900 and this case. I had offered
18 to settle -- I have offered to settle this case for \$2.1
19 million. But nobody wanted to hear what I had to say
20 unless I also offered to settle Case 4900. I did not want
21 to do that, but my lawyer said give a figure. And I gave a
22 figure.

23 And I want the court to know what I would have done
24 with that \$19 million if it had been accepted. And to show
25 the Court that if it had been accepted, it could have

Adele Pope - Cross-Examination by Mr. Newsome

1 helped save the "I Feel Good" Trust. It didn't have to.

2 I'm out of that.

3 But 10 million of that would have gone into a
4 charity that would have paid \$500,000 in scholarships in
5 honor of James Brown every year for 10 years, guaranteed.
6 And I think it's unfair for me to have them accuse of
7 trying to take \$19 million from this estate, when I would
8 have -- as you will see, I would have received only a small
9 portion of that and the James Brown "I Feel Good" Trust
10 would have substantially benefited from it. And if the
11 attorney general were paying any attention, could really
12 benefit from it.

13 And so this document is why the attorney general
14 should have accepted the \$19 million offer. I don't know
15 whether he was even told about it. But since it was
16 supposed to settle both 4900 and this case, I hope he was
17 told about it.

18 The next document I have --

19 MR. NEWSOME: All right, Your Honor, before we go
20 to the next document, I would move to strike her testimony
21 just now and this document. It's improper on reply.

22 If this document is -- I'm not sure what it is, but
23 it's replete with hearsay. It appears to be somewhat of a
24 legal argument which pulled in her version of some facts.
25 And, you know, if she wants to testify about some of these

Adele Pope - Cross-Examination by Mr. Newsome

1 that true?

2 A That's not why we didn't hire a valuation expert.
3 We didn't hire a valuation expert because the Court had
4 approved a method of valuing it. The -- the records were
5 no good and it was an unnecessary expense. It was all
6 going to charity. It's all going to charity now. Except
7 the third that was taken away from the charity by the \$4.7
8 million valuation closing letter that should have been
9 corrected by the attorney general in 2013 and was not
10 corrected.

11 But you'll see my \$19 million offer made a proposal
12 to try to undo some of the terrible income tax damage that
13 was caused by Mr. Bauknight by that devaluation.

14 Q Well, it's not all going to charity, right? I
15 mean, if you prevail in your case, some of it's coming to
16 you.

17 A Very little in relation to what I've done to keep
18 the attorney general and Tomi Rae and Mr. Bauknight from
19 decimating it.

20 But -- which I have not done, do not do, have not
21 done since June 10, 2015. You've been on your own ruining
22 the charity. I've had nothing to do with it. I understand
23 court orders.

24 Q If you hired Ray Gonzales on a deferred-pay basis,
25 why didn't you give him the general business -- management

Adele Pope - Cross-Examination by Mr. Newsome

1 of the music business of the estate?

2 A We used Mr. Gonzales in every way we deemed
3 appropriate from January of 2008 until the Summer of 2018,
4 just seven months later when we were told by the attorney
5 general of South Carolina and Tomi Rae Hynie to stand down
6 and stop administering the estate because they had settled
7 everything and they were speaking as one.

8 Q So you quit managing the most valuable asset of the
9 estate in the Summer of 2008; is that your testimony?

10 A It's absolutely not my testimony. First of all, I
11 don't believe that the copyrights are necessarily most
12 value -- valuable asset. Although I do believe that --
13 that thanks to Mr. Medlin's suggestion that the publicity
14 rights be valued at zero, you've worked against the
15 development of the publicity rights and Mr. Bauknight has
16 worked against the exploitation of the publicity rights
17 which are not subject to termination rights.

18 So I do not believe that it was the most valuable
19 asset. I believe it was an equal asset with the right of
20 publicity. And --- at the time of his death.

21 Now, it's been diminished by actions after
22 Mr. Buchanan and I were replaced, but we certainly did not
23 stop administering it. We tried to stop the attorney
24 general from giving away half. A good way to administer
25 your assets is to keep somebody from taking half of them.

Adele Pope - Redirect Examination by Mr. Bundy

1 That's an important step in administering assets.

2 Q Okay.

3 MR. NEWSOME: Nothing further for this witness,
4 Your Honor.

5 THE COURT: Mr. Bundy, redirect, on anything
6 brought up in cross?

7 **REDIRECT EXAMINATION**

8 BY MR. BUNDY:

9 Q Ms. Pope, for full recognition, His Honor has
10 simply allowed these exhibits you brought here today as an
11 offer of proof, okay.

12 THE COURT: No. 72, I told her that if you asked
13 her questions about the other ones they would probably be
14 admitted.

15 MR. BUNDY: Okay. All right.

16 THE COURT: Those were --

17 MR. BUNDY: All right, sir.

18 BY MR. BUNDY:

19 Q With regard to 72, what I'd like you to do just
20 very briefly, in a manner of not detailed testimony, but
21 just as a proffer, for purposes of the record, give us a
22 brief explanation so that whoever, if they ever decide to
23 look at this information, will understand what you were
24 trying to do. I don't want a long dissertation.

25 THE COURT: Well, she did that earlier.

Adele Pope - Redirect Examination by Mr. Bundy

1 BY MR. BUNDY:

2 Q Let me ask you this: Do you feel like you've --
3 have you done -- have you explain it to the extent you
4 think it needs to be explained for purposes of a proffer?

5 A I don't think so.

6 Q Okay.

7 MR. BUNDY: I don't know.

8 THE COURT: Okay. Once again --

9 BY MR. BUNDY:

10 Q Just very quickly.

11 A This is a document prepared by me --

12 THE COURT: 72 we're talking about.

13 BY MR. BUNDY:

14 Q Yes, sir.

15 A Plaintiff's 72 is a document prepared by me from
16 the -- from the records in this case and in 4900. It was
17 prepared in response to my being accused of committing
18 perjury in March of 2008, with Mr. Buchanan in a document
19 that is referenced in here.

20 And it lays out in a chronology of violations of
21 the South Carolina code as relates to perjury and
22 subornation of perjury, fraud and evasion under 62-1-106
23 and Section 28 U.S. Code Section 7206. And it first sets
24 out some subjects of fraud, perjury, and subornation of
25 perjury, which have been topics in this case and in case

Adele Pope - Redirect Examination by Mr. Bundy

1 4900.

2 And then it gives a chronology prepared by me from
3 the record. Many of the references are to Mr. Bauknight's
4 deposition, which two depositions, one in this case on
5 January 31, '27 (sic). And another in his testimony on
6 August 20th of 2013 in the Forlando case.

7 And then much of it is the sworn testimony, often
8 conflicting by people other than Bob Buchanan and Adele
9 Pope.

10 We all know about the Cannon and Dallas false sworn
11 testimony, but this includes testimony beginning in 2008
12 when false representations began to be made to the Court
13 about the value of James Brown's assets and all the
14 questions that I've put there under some subjects of fraud,
15 perjury, and subornation of perjury.

16 Q Thank you.

17 Let's go to the next exhibit, please, ma'am, which
18 I think is 73.

19 Would you identify 73, please.

20 A Yes. This is how I planned to use the \$19 million
21 if it had been accepted, if the proposal had been accepted.
22 73 -- if the proposal had been accepted.

23 Q All right. Tell us -- tell us what you would have
24 done with the money had the proposal been accepted?

25 A Okay. Well --

Adele Pope. - Redirect Examination by Mr. Bundy

1 Q Let me ask you first: Why did you even make an
2 offer?

3 A Because --

4 Q Of settlement?

5 A Because you sort of forced me to. And you forced
6 me to make an offer that would cover both 4900 -- I don't
7 mean that -- I don't mean that it wasn't of my free will,
8 but you forced me to give a number that would settle both
9 this case and --

10 Q You did it based on legal advice; did you not?

11 A Yes. You advised me that I needed to give a
12 number.

13 Q Okay. Did you understand and do you understand as
14 a lawyer that settlement negotiations and offers in
15 responses are supposed to be confidential under the rules
16 of evidence?

17 A Well, I do, but I don't mind saying what I did
18 because what I --

19 Q I understand that, but my point is, when you were
20 advised by counsel to make an offer of settlement, did you
21 understand that that offer of settlement was confidential
22 under the rules of evidence?

23 A I thought it was.

24 Q Okay. Now, having said that explain to the Court
25 what the rationale was for the offer and what you intended

Adele Pope - Redirect Examination by Mr. Bundy

1 to do with the money if it had been accepted?

2 A Okay. Well, the first thing I was going to do was
3 put \$10 million into either the Pope Brown Foundation or
4 another charity that would guarantee that they would make
5 \$500,000 a year in scholarships in honor of James Brown.

6 THE COURT: What is the Pope Brown Foundation,
7 please?

8 THE WITNESS: That's a foundation I actually formed
9 for a relative of my husband's and I know it's well run by
10 very respectable trustees.

11 THE COURT: Is Brown James Brown or someone else?

12 THE WITNESS: No, it's just an accident, Your Honor
13 that's Ethel and Pope --

14 BY MR. BUNDY:

15 Q It's a coincidence.

16 A That's Ethel Pope Brown, who was a client of mine
17 and a cousin of my husband's. But it's a well run small
18 foundation. And my idea was to ask -- I didn't discuss any
19 of this with my lawyer because he didn't seem to accept the
20 19 million.

21 But including the fee that I intended to pay my
22 lawyer, I didn't discuss with him, I hope he would have
23 accepted it.

24 But anyway, it was to give \$10 million immediately
25 to a foundation, either to Pope Brown Foundation, or I'm a

Adele Pope - Redirect Examination by Mr. Bundy

1 trustee of the small change foundation, or another
2 foundation that would immediately, starting in 2018, give
3 \$500,000 a year in James Brown scholarships for 10 years.
4 That would take us to 20 -- 2027. And the purpose of that
5 was twofold. One was for the attorney general to get --
6 and the governor to get some credit for having gotten it
7 right with James Brown. Take all the credit, I didn't want
8 any credit.

9 And then by additional requirement, which I didn't
10 put in here, was I was going to tell the foundation that
11 they had to agree that if at the end of the 10 years, the
12 James Brown "I Feel Good" Trust was being properly run and
13 its copyrights protected that they would give anything left
14 over from that fund back to the "I Feel Good" Trust. I
15 didn't put that in here because obviously I never talked to
16 anybody about working out the terms. But that was the
17 clear purpose of it. And that would give me some comfort,
18 that I could walk away feeling like I'd done what I could.

19 The next was to give \$1 million to Bob Buchanan
20 because he -- the way he was treated just sort of broke my
21 heart. I just don't have any other way of saying it. A
22 person who is so wonderful and such a good lawyer to have
23 been run through the ringer the way he was. And so that
24 seemed fair to me.

25 Then I wanted to give 50,000 each to Jim Bailey and

Adele Pope - Redirect Examination by Mr. Bundy

1 Tressa Hayes who had been disserved and Mr. Bailey was two
2 sick to protect himself and Ms. Hayes was too nice. So I
3 just wanted to give them each \$50,000, which was about what
4 I owed them. It wasn't with interest, it was just to do.

5 The next was an estimated cost of defense and I
6 just estimated it around a million or .9 million for 8
7 years of costs in 4900 and 4 years of costs of defending
8 the estate plan. So that's the two cases.

9 And then the next was the interest on the amount
10 due me, which was about a million dollars.

11 And the next fee was legal fees to my lawyers for 8
12 years. And I hope that they would have accepted 2.5
13 million of the 20 million. That's just barely over 10
14 percent. But I've had good lawyers who understood and I
15 hope --

16 THE COURT: What 20 million you talking about?

17 THE WITNESS: 19 million. I'm sorry. Just a
18 little over 10 percent of the 19 million. But I had hoped
19 that my lawyers would not -- would agree with me that this
20 was a right thing to do. I haven't -- don't have your
21 permission to do that and that's the thing I wanted to ask
22 you about.

23 BY MR. BUNDY:

24 Q I haven't heard my name yet in this disbursement?

25 A Well, you'd have to have a little bit of the 2.5

Adele Pope - Redirect Examination by Mr. Bundy

1 million. And the other lawyer who's been my lawyer much
2 longer, Adam, but was -- anyway, I was hoping that that
3 would happen. And I believe it would have. I know it
4 would have with Adam.

5 I believe Mr. Bundy would have done the same by me.

6 And then -- and then the rest was my fee for
7 PR/trustee fee and my lost wages for 7 years of being
8 damaged, my career, having lost my malpractice insurance,
9 unable to accept a client without telling them I have no
10 malpractice insurance because I can't get it; 7 years of
11 false felony claims. And again, there was nothing magic
12 about that allocation between my PR/trustee and 4900. But
13 that was sort of the gist of it. So you know, I would like
14 to be paid. I've never said I wouldn't like to be paid up
15 until May 8, 2013.

16 THE COURT: So what you would get out of it, number
17 4 -- is .9, number 5, that's a million. That's 1.9
18 million. Seven is 2.2 and 8 a 1.3. So that totals up to
19 5.4?

20 THE WITNESS: But judge, that would not come from
21 the estate or trust. That would come from the 17 people
22 who sued in the other suit. And that's the part that the
23 estate has tried to always put together, but there were
24 people in the other suit who sued me on baseless claims and
25 to people to whom I never owed a duty. James B, Tomi Rae,

Adele Pope - Redirect Examination by Mr. Bundy

1 Tanya and others.

2 And so this does not come from the estate and
3 trust. Every time I read what people say under oath that
4 all of this has to be paid by the estate and trust, that's
5 not true. These people are rich. Some of them have
6 termination rights. They are the people who have sued and
7 falsely accused me for all these years. I didn't ask that
8 from the estate and trust. That's why I urge my lawyer to
9 please --

10 And I made an offer of 2.1 million to settle this
11 case long ago, this year. But nobody wants to hear what I
12 want for settling this case. They want to talk about Tomi
13 Rae and James B. and the 17 people who have sued me. So to
14 suggest that I want \$5 million from the estate, Your Honor,
15 is absolutely incorrect. The estate could --

16 THE COURT: This is for the litigation --

17 THE WITNESS: Not this litigation, Your Honor --

18 THE COURT: -- and 1900. Right? And the 4900?

19 THE WITNESS: And then, I further -- I further
20 hoped that if this did happen, it would inspire -- well, it
21 would give the attorney general an opportunity to undo
22 without unnecessary hoopla, the terrible decision that was
23 made to devalue the assets to 4.7 million. And the way
24 that would be done would be to take the approximately \$31
25 million of assets that are now, if you agree on the \$100

Adele Pope - Redirect Examination by Mr. Bundy

1 million basis, put 31 million into the grandchildren's
2 trust.

3 Now, remember, this is almost with no attorney's
4 fees.

5 And then you put that 31 million in there and then
6 you pay out in cash or in kind -- and I'll show you in a
7 minute -- you pay out this settlement with assets, which we
8 have to do and cash to do. And then that leaves you with
9 12 million divided into seven shares. And Romunzo's share
10 is already gone. So that gives you more than a million and
11 a half that can already go straight to the James Brown "I
12 Feel Good" Trust. And then that would allow the "I Feel
13 Good" Trust, in addition to the scholarships we provide to
14 go ahead and start providing scholarships.

15 But, again, that wouldn't be me to do, it was just
16 a -- it was just how they could have resolved the terrible
17 income tax problem that had been caused. And I -- and --
18 and then in -- in addition what this would leave would be a
19 \$69 million in the assets. And I'll show you how I
20 allocated the assets.

21 It would leave \$49 million for the attorney general
22 maybe to get his attention and take control of that,
23 including taking control of protecting of the \$69 million
24 that was left and -- and pay off the rather small
25 settlement that he's agreed to some -- to pay to six --

Adele Pope - Redirect Examination by Mr. Bundy

1 five -- I'm sorry, five Levinson clients plus Tanya was not
2 a beneficiary. But the attorney general has made a
3 settlement with that.

4 Also, the attorney general could have, although it
5 wasn't my business, he could have said to everybody, okay.
6 Y'all stop fighting now because we've got this worked out.
7 But again, that's not my business.

8 But the -- how it would be funded is on page 2 and
9 this would have -- I did it based on \$100 million valuation
10 and I valued the cash, the Roatan Island and the claims
11 that are unresolved at 10 million.

12 The Beach Island personal property and the personal
13 and household effects and vehicles at 5 million. The
14 active copyrights at 40 million. The publicity rights at
15 20 million. And I think --

16 THE COURT: That's 50 million.

17 THE WITNESS: Well, I think -- active copyrights at
18 50 million, the publicity rights at 20 million. I'm sorry.
19 I said that wrong.

20 THE COURT: That's okay.

21 THE WITNESS: And then all other assets, including
22 unpublished works at 15 million. And my idea was that of
23 the 3 percent we'd need about, maybe, 4 or 5 million in
24 cash to make sure we could -- there would be enough for
25 those scholarships, but we would be glad to take the rest

Adele Pope - Redirect Examination by Mr. Bundy

1 in copyrights at that value. And if anybody doesn't think
2 they're worth that, give them to me and I would provide to
3 this foundation pro bono publico advice to protect their
4 rights. And that hopefully wouldn't be different from the
5 estate or trust, but it might.

6 MR. BUNDY: Your Honor, I'd move to introduce this
7 exhibit at this point.

8 THE COURT: Any objection?

9 MR. NEWSOME: One moment, Your Honor.

10 THE COURT: Y'all want to go off the record for a
11 second?

12 (There was an off-the-record conversation.)

13 MR. NEWSOME: Your Honor, could I ask what date was
14 this document created?

15 THE WITNESS: I just created it since -- my lawyer
16 has never seen this, Your Honor. That's what I said. When
17 he accused me of trying to take 19 million. I wanted to
18 ask my lawyer was it okay to do this, but I -- I've never
19 even discussed this with my lawyer because my lawyer, quite
20 frankly, thought they weren't going to accept the \$19
21 million offer. This was me. All me.

22 MR. NEWSOME: Your Honor, we're not going to
23 object, but we do want to note for the record this is
24 further evidence she's continued to try to interfere with
25 the ongoing administration of this estate.

Adele Pope - Redirect Examination by Mr. Bundy

1 THE COURT: I'll note that you have no objection.
2 I don't know what -- I'm not going to accept what it says
3 as a fact though.

4 THE WITNESS: It's not a fact, Your Honor. I am
5 not doing anything to --

6 THE COURT: I know. I didn't say -- it's admitted
7 into evidence with her explanation as to her \$19 million
8 offer.

9 (Plaintiff's Exhibit Number 73 was entered into
10 evidence.)

11 BY MR. BUNDY:

12 Q And before we move on, just to make it clear, if
13 you put aside 4900, you're willing to accept \$2.1 million
14 to settle this case?

15 A I've -- we've already sent it to them long ago.

16 Q Is it true today though? Today are you willing to
17 accept it?

18 A Absolutely today. To end this case and be paid --

19 Q Okay.

20 A -- 2.1 million.

21 Q Okay.

22 A But not after today or a short period of today.

23 Q All right. Exhibit 74. Can you identify that for
24 the record, please.

25 A Yes. I have been repeatedly accused of not filing

Adele Pope - Redirect Examination by Mr. Bundy

1 any income tax returns. And Exhibit 74, it was found
2 within my files, it is a copy --

3 Q Just identify it for the record, please.

4 THE COURT: I've got -- you have an extra one over
5 there?

6 THE WITNESS: It's a copy --

7 THE COURT REPORTER: That's the exhibit.

8 THE COURT: I'll get it back to you.

9 MR. BUNDY: 74, I believe.

10 THE WITNESS: I have a copy of mine on bad paper.

11 THE COURT: All right. That was December 11, 2007
12 letter.

13 THE WITNESS: It's a letter --

14 THE COURT: To the IRS.

15 THE WITNESS: Yes, Your Honor. It's just a letter
16 -- it's just the first of many, many, many, many, letters
17 -- actually, it's the second of many communications we had
18 with the IRS. The first was already on December 5th or 6th
19 of 2007 when we filed the application or recognition of the
20 "I Feel Good" Charity. But this is a letter in which we
21 send to the IRS the 2006 JBE, Inc. income tax return.

22 And that's the return that was the amended return
23 that showed approximately \$4.6 million of income -- of
24 James Brown's income which was represented to be all of his
25 income for that year, and was all reported through JBE,

Adele Pope - Redirect Examination by Mr. Bundy

1 Inc. And we sent that to the IRS and it was also on file
2 with your court prior to that. And we began a dialogue
3 with the IRS about what to do about this 2006.

4 BY MR. BUNDY:

5 Q And the purpose of bringing this letter to the
6 Court's attention is what?

7 A Because I've been falsely accused of never
8 communicating or filing with the IRS, I believe,
9 Mr. Bauknight's words were that the IRS told him this
10 return was never filed. I don't know who he was --

11 Q And did you keep this letter in the ordinary course
12 of business as a trustee and PR?

13 A Well, this copy would have been in my office --
14 probably in my office file copy or multiple copy.
15 Mr. Bauknight would have the original file copy.

16 MR. BUNDY: Your Honor, I move to introduce Exhibit
17 74:

18 MR. NEWSOME: Without objection, Your Honor, but we
19 would ask for the opportunity to recross her on this
20 document at the appropriate time:

21 (Plaintiff's Exhibit Number 74 was entered into
22 evidence.)

23 BY MR. BUNDY:

24 Q If you would for the record identify Exhibit 73,
25 please?

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1 A Is this 75?

2 Q Excuse me, 75, I'm sorry. We're on 75, aren't we?
3 That's the next one.

4 A This is part of the slander of Mr. Buchanan and me.
5 It was an article that began in the State newspaper in
6 which Russell Bauknight reported that the James Brown
7 mansion had been ransacked by a Christies sale. I called
8 -- it's interesting. I sent an e-mail to the State and
9 asked them that they check the facts on it and the State
10 actually changed their story to say, surprisingly, here it
11 was in pristine condition.

12 However, the State's story was already out and so I
13 just happened to find on the internet the other day -- I'm
14 sorry, I said ransacked. The word was plundered that
15 Mr. Bauknight used; plundered for Christies auction.

16 And as I said, the State changed their story to say
17 that the house was, in fact, in pristine condition. But
18 the plundering which Mr. Bauknight accused me of and Mr.
19 Buchanan of, remained in the public record and still
20 remains. And I've printed that off since my testimony.

21 MR. BUNDY: Your Honor, I'd move to introduce
22 Exhibit 76 -- 75, I'm sorry.

23 THE COURT: Mr. Newsome?

24 MR. NEWSOME: Your Honor, we object. I'd like to
25 see the complete article. This document, for the record,

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1 is a picture of James Brown's -- appears to be James
2 Brown's house, however it's a very poor copy. And then the
3 words are kind of chopped off. You can't read a complete
4 sentence. So we don't have a story. So we would object to
5 the admission of this partial picture and words that's
6 incomplete.

7 THE COURT: Mr. Bundy?

8 MR. BUNDY: Your Honor, we can substitute the full
9 document, if we can find it. If we can't, we'll leave it
10 as an ID. I think I can -- I think I can solve their
11 problem.

12 THE COURT: If you can get the full article,
13 I'll --

14 MR. NEWSOME: That's fine, Your Honor.

15 THE WITNESS: Your Honor, does he want the whole
16 gallery of pictures or just the full page?

17 THE COURT: Full article.

18 MR. BUNDY: Full article.

19 Let's just give them the full article. That's what
20 they want, let's give it to them.

21 THE COURT: Get that.

22 MR. BUNDY: Thank you, Your Honor.

23 (Plaintiff's Exhibit Number 75 admitted pursuant to
24 admission of the full article.)

25 MR. BUNDY: Thank you, Your Honor.

Adele Pope - Redirect Examination by Mr. Bundy

1 BY MR. BUNDY:

2 Q Ms. Pope, if you could identify 76, please?

3 A Well, I think 76 goes with 72. And I'd just --
4 simply is an example of --

5 Q Would you identify it for the record, please?

6 A I'm sorry. Plaintiff's 76 is a Notice of Special
7 Appearance and Motion to be Dropped as a Party by the
8 Attorney General. And it is just an example of the
9 duplicity and the false claims and statements and actions
10 of Sonny Jones, who was just the rotten apple in the --

11 THE COURT: Is this in this case or 4900?

12 THE WITNESS: This particular action is in 4900.
13 However, in 72, I have numerous examples of Sonny Jones's
14 statements where he says he relies on the record, but --
15 but has either claims to have no knowledge, claims to have
16 a common interest with Tomi Rae or, I think his sworn
17 statements show that he has repeatedly made false
18 representations to the Court including the false
19 representation that James Brown's assets, music empire was
20 worth 4.7 million without looking at the appraisal.

21 That's just one of many false representations that
22 the attorney general's office, through Mr. Jones that has
23 made to the Court over the years. And this little notice
24 of special appearance, together with the state -- the sworn
25 statements of Mary Frances Jowers and Mr. Jones, and the

Adele Pope - Redirect Examination by Mr. Bundy

1 others in the AG's office that we have designated, make
2 clear the numerous false representations made to Your Honor
3 and to other courts.

4 MR. BUNDY: Your Honor, I move to introduce Exhibit
5 76.

6 THE COURT: Hold on one second.

7 MR. NEWSOME: Your Honor, we would object. It's
8 improper reply testimony. It's outside the scope. It's
9 also not in this case. It's in 4900 as Ms. Pope opposed
10 consolidation of these cases.

11 THE COURT: I'll allow it.

12 (Plaintiff's Exhibit Number 76 was entered into
13 evidence.)

14 THE COURT: Hold on one second.

15 MR. BUNDY: I'm sorry.

16 THE COURT: Hand me that last exhibit.

17 MR. BUNDY: The last one?

18 (The document was handed to the Court.)

19 THE COURT: All right, sir. You may proceed.

20 THE WITNESS: Plaintiff's 77 is some correspondence
21 with the office of Ray Gonzales. Some of it may already be
22 in the record, but in particular it shows that Mr. Gonzales
23 tried to be paid by Mr. Bauknight and wasn't. And that
24 Mr. Bauknight, through counsel, directed Mr. Gonzales to
25 destroy the file that they had requested, including a file

Adele Pope - Redirect Examination by Mr. Bundy

1 that showed that Mr. Gonzales had sought a -- sought an
2 extension of the limitation period.

3 And one of the allegations, false allegations made
4 against Mr. Buchanan and me was that we had missed statutes
5 of limitations. And then it's in my letter saying that I'm
6 not going to destroy the evidence that this file was
7 requested because it -- litigation is pending in this case
8 4900 and I'm not going to destroy my file.

9 And a letter of Mr. Gonzales with a similar
10 indication that Bob had separately written him, essentially
11 the same thing.

12 MR. BUNDY: Okay.

13 So, Your Honor, we would move to introduce
14 Plaintiff's Exhibit 77.

15 MR. NEWSOME: Your Honor, it's the same as exhibit
16 74. We would not object to it, but ask for the opportunity
17 to cross on the file.

18 (Plaintiff's Exhibit Number 74 was entered into
19 evidence.)

20 MR. BUNDY: Thank you, Your Honor.

21 THE WITNESS: And if I could just say that my chart
22 is further evidence of everything that I have said. And
23 was fully documented within the record and they were
24 offered an opportunity to see every document.

25 ///

Adele Pope - Redirect Examination by Mr. Bundy

1 BY MR. BUNDY:

2 Q And you prepared the chart, correct?

3 A I did.

4 Q Earlier you spoke about that you were willing to
5 give confidential testimony regarding Roger Miller's
6 position. Without -- can you describe what that would be
7 without requiring the courtroom to be cleared to see if
8 it's --

9 A Yes.

10 Q -- if the judge is interested?.

11 A Yes. Mr. Sharp based his confidential testimony on
12 confidential testimony of Roger Miller and Mr. Sharp's
13 interpretation was totally wrong. And so -- in order to
14 understand, but both were confidential. And in order to
15 understand why both were wrong, you need to first look at
16 what Mr. Miller said and then look at how Mr. Sharp
17 misapplied it. So I'll be glad to tell the Court about it,
18 if they want. If -- or if you want.

19 But it would require the courtroom to be cleared.

20 MR. BUNDY: Your Honor ---

21 How long would it -- how long do you think it would
22 take? 10 minutes?

23 THE WITNESS: Not long. But I'd like to look at
24 the --

25 MR. BUNDY: If this is a good time, we're getting

Adele Pope - Redirect Examination by Mr. Bundy

1 close to a break -- I don't know what your position is, if
2 we clear the courtroom.

3 THE COURT: I'm going to finish testimony today.
4 I'm going to push it.

5 MR. NEWSOME: Your Honor, I'm going to object for
6 the record on the -- sounds like Ms. Pope -- the witnesses
7 have testified and it sounds like she's trying pit one
8 witness against another. I would like to object to her
9 doing that.

10 THE COURT: I -- I'm not going to pit the
11 witnesses. And I mean, I'll have to judge the credibility
12 of one witness against the other, but I'm not going to let
13 one witness say what the other witness is saying is a lie,
14 or not true or not correct. I can read it just as easy
15 as --

16 THE WITNESS: Would it be possible for me to have
17 those confidential documents for a minute if you're taking
18 a break? Or may I see them now? Because I can explain it,
19 it's just been a while.

20 THE COURT: All right. What -- give me some time
21 frames, ladies and gentlemen, so I can sort of advise court
22 personnel where we're going today.

23 It's 11:40, we can take a 10 minute break, 15
24 minute break, that takes us to a few minutes before 12. I
25 would like to go until about one after that and probably

1 State of South Carolina) In the Court of Common
2) Pleas
3 County of Aiken) Case No: 2013-CP-02-1337
4 Adele J. Pope,)
5 Plaintiff(s),) Deposition of
6 vs.) ROBERT COOK
7) February 8, 2017
8 The Estate of James Brown and)
9 The James Brown 2000)
10 Irrevocable Trust,)
11 Defendant(s).)
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Deposition of ROBERT COOK, taken before Frances C. Gray, Verbatim Court Reporter and Notary Public in and for the State of South Carolina, scheduled for 10:00 a.m. and commencing at the hour of 10:25 a.m., Wednesday, February 8, 2017, at the office of Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Columbia, South Carolina.

Reported by:
Frances C. Gray

1 MS. POPE: Yes. If we could, if he wants
2 to waive being instructed about the deposition,
3 also.

4 MR. SMITH: I'm not sure what you mean by
5 that.

6 MS. POPE: The deposition process.

7 MR. SMITH: I think Bob is familiar with
8 the process of the deposition being conducted
9 pursuant to the Rules of Civil Procedure.

10 THE WITNESS: Yes.

11 MR. SMITH: Under those rules, you have
12 the right to read, do an errata sheet, if
13 necessary, and sign your deposition. Do you
14 wish to do that?

15 THE WITNESS: Yes.

16 MS. POPE: My question, Bob, was do you
17 want me to explain the deposition process to
18 you?

19 THE WITNESS: That is not necessary..

20 DIRECT EXAMINATION

21 BY MS. POPE:

22 **Q. Would you state your full name.**

23 A. Robert D. Cook.

24 **Q. And you go by, "Bob"?**

25 A. I do.

1 Q. You hold what office with the Office of the
2 Attorney General?

3 A. The Solicitor General.

4 Q. And can you describe what type of office is.

5 A. Yes. The Solicitor General, under General Wilson,
6 is the legal advisor primarily to the Attorney
7 General. Also, we participate in some appeals to
8 the appellate courts, write briefs, and we deal
9 with policy in terms of the Attorney General's
10 office.

11 Q. How long have you held the position of Solicitor
12 General?

13 A. That's a tough one. It's over two years, I
14 believe. This is the first -- I hold the first
15 position in the office.

16 Q. And so you were appointed Solicitor General in
17 approximately 2015?

18 A. Yes.

19 Q. Prior to that, what position did you hold?

20 A. Deputy Attorney General and I also had a more
21 informal title of special counsel.

22 Q. And were you Deputy Attorney General and special
23 counsel at all times between -- for the Attorney
24 General at all times between 2007 and
25 approximately 2015 when you became Solicitor

1 **General?**

2 A. May not have been special counsel in the early
3 years of General McMaster, but for most of his
4 administration, yes.

5 **Q. What functions of the now Solicitor General did**
6 **you have in your other position?**

7 A. Advice to the Attorney General on legal matters,
8 primarily legal, and some appellate work writing
9 briefs.

10 **Q. Did you have authority in that position to file a**
11 **lawsuit with -- let me be clearer. Did you have**
12 **authority in that position to file a lawsuit**
13 **without the expressed consent of the Attorney**
14 **General?**

15 A. No. I would -- in any lawsuit that was filed, we
16 would advise the Attorney General of that.

17 **Q. Was a decision to file a lawsuit always the**
18 **decision only of the Attorney General?**

19 A. No. Because the Attorney General cannot always be
20 available, but it certainly would be with the
21 approval of the Chief Deputy.

22 **Q. And who would that be?**

23 A. That would've been Mr. McIntosh.

24 **Q. I want to be clear from the periods 2007 until**
25 **today. During what portion of that period was**

1 **John McIntosh the Chief Deputy?**

2 A. Until very recently, he was always -- he was the
3 Chief Deputy for that entire period.

4 **Q. Is very recently the year 2016?**

5 A. Yes, he was Chief Deputy in the year 2016, yes.

6 **Q. And what position, if any, does Mr. McIntosh now
7 hold with the Attorney General?**

8 A. Is no longer with the Attorney General's office.
9 I think he is employed by the Governor's office.

10 **Q. Do you know when Mr. McIntosh left the Attorney
11 General's office?**

12 A. Only a week or so ago maybe.

13 **Q. Did he leave --**

14 A. I gave remarks at his farewell.

15 **Q. Would it have been approximately February 1st of
16 2017 --**

17 A. Late January -- yes, yes. Around the first of
18 February. Maybe late part of January.

19 **Q. Do you, sitting here today, know approximately how
20 many lawsuits Mr. McIntosh authorized to be filed
21 that were not specifically approved by the
22 Attorney General?**

23 A. No, I don't. Sometimes the Attorney General is
24 simply unavailable. And Mr. McIntosh would have
25 that authority, but I don't know how many he had

1 **Q. Mr. Cook, is Mr. Gende the lawyer for the Attorney**
2 **General in case 2010-CP-40-4900?**

3 MR. GENDE: Object to that question.

4 Beyond the scope.

5 MR. SMITH: Object to form and scope.

6 MR. NEWSOME: Same objection.

7 A. Do you want me to just answer?

8 MR. SMITH: You may answer, yes.

9 A. I believe that Mr. Gende's law firm represents
10 represent the charitable interest, the same as the
11 Attorney General does. The law firm is not
12 employed to represent the office of the Attorney
13 General, but the same charitable interest that we
14 represent.

15 **Q. Let me ask again. The Attorney General of South**
16 **Carolina is a plaintiff in Richland County Case**
17 **4900; is that correct?**

18 MR. GENDE: Object to the form of the
19 question and the scope. Clearly, that doesn't
20 have to do with 1337.

21 MR. SMITH: Object to form and scope.

22 MR. NEWSOME: Same objection.

23 A. The Attorney General is mentioned in the caption
24 of 4900. The Attorney General represents as a
25 third-party beneficiary the charitable interest in

1 4900. The Attorney General's office is not a
2 party in that case, but the Attorney General on
3 behalf of the charitable interest is in that case.

4 **Q. Is your answer that the Attorney General, in your**
5 **belief, is not a plaintiff in the Wingate lawsuit?**

6 MR. SMITH: Object to the form and scope.

7 MR. GENDE: Yeah. Object to the form of
8 the question. Object to the scope of the
9 question. Object to the characterization of
10 the lawsuit. Move to strike that.

11 MR. NEWSOME: Object to the form and
12 scope.

13 A. I don't believe he is.

14 **Q. You do not believe he is?**

15 A. Yes.

16 **Q. When did you first learn that the Attorney General**
17 **of South Carolina was named as a plaintiff in the**
18 **Wingate lawsuit?**

19 MR. GENDE: Object to the form of the
20 question.

21 MR. SMITH: Form and scope.

22 MR. NEWSOME: Same. Form and scope.

23 MR. GENDE: Move to strike the
24 characterization of Richland County Case 4900.

25 A. I can tell you when I learned of the addition of

1 the Attorney General's name in the caption. It
2 would've been at the 11th or 12th hour prior to
3 the filing of that case.

4 **Q. You knew that the Attorney General was going to be**
5 **named as a plaintiff in that case?**

6 MR. SMITH: Form and scope.

7 MR. GENDE: Same objection, form and
8 scope.

9 MR. NEWSOME: Same objection.

10 A. I learned that he would -- his name would appear
11 in the caption of that case.

12 **Q. Do you know of any lawsuit ever where a person**
13 **appears as a plaintiff and is not a plaintiff --**

14 MR. SMITH: Object to form and scope.

15 **Q. -- other than the Wingate lawsuit?**

16 MR. GENDE: Object to form of the
17 question. Object to the scope of the question.
18 Object to the characterization of the suit.

19 MR. NEWSOME: Object to the form and
20 scope.

21 A. I would say this: That was a very unique case in
22 terms of the charitable beneficiaries. I know --
23 I know of no other where that has been done.

24 **Q. So let me be clear. In your 40 years of practice,**
25 **you've never seen a case where a person or entity**

1 **is named as a plaintiff, but claims not to be a**
2 **plaintiff?**

3 MR. SMITH: Object to form and scope.

4 MR. GENDE: Object to the form of the
5 question, scope of the question.

6 MR. NEWSOME: Object to the form and
7 scope.

8 A. In my 40 years, I have never known of a case like
9 that. So it is unique only because it is not
10 happened before, but that was a major settlement
11 and the settling parties were named as in the
12 caption of the complaint at the twelfth hour. I
13 know of no other like that. I -- I do not.

14 **Q. Did you approve of the filing of Richland County**
15 **Case 2010-CP-40-4900 --**

16 MR. GENDE: Object to the form of the
17 question, scope of the question.

18 **Q. -- with the Attorney General named as a plaintiff?**

19 MR. SMITH: Form and scope.

20 MR. GENDE: Same objection.

21 MR. NEWSOME: Object to form and scope.

22 A. No. I had no authority to approve of it. I
23 learned of it in the twelfth hour. I do believe
24 that the Chief Deputy probably approved of it.

25 **Q. Did you review the complaint and when you learned**

1 of it?

2 A. No.

3 Q. How do you know that the complaint was unique if
4 you didn't review it?

5 MR. SMITH: Object to form and scope.

6 MR. GENDE: Object to the form and scope.

7 Again, we're in 4900. I was coming to a
8 deposition in 1337 to protect some interests.

9 It seems like I'm in a deposition for 4900.

10 MR. NEWSOME: Same objection.

11 A. I read the pleadings at some point in time. Yes.

12 Q. Did you read the prior to the filing of the
13 lawsuit?

14 A. I can't say that I did. I don't remember that.

15 Q. What is unique about the James Brown settlement?

16 MR. SMITH: Object to form and scope.

17 MR. NEWSOME: Same objection.

18 MR. GENDE: Same objection.

19 A. With the caveat that I was not involved in that
20 aspect of the case, it is a very unprecedented
21 case with so many interest. And the settlement, I
22 believe, was a fair settlement having learned
23 about it after the fact in order to write the
24 petition for rehearing. That, I would say, is
25 probably like no other case -- its -- its -- in

1 its complexity.

2 **Q. What is the size of James Brown Estate, if you**
3 **know?**

4 A. I don't know.

5 **Q. What makes it complex?**

6 A. So many interests and parties involved, including
7 the charitable interest and the unique nature of
8 his bestowal upon the charity.

9 **Q. What's unique about it?**

10 A. Again, this is a major figure in the entertainment
11 world that -- who has died and left a great
12 portion of his estate to a charity. I think that
13 makes that pretty unique. Most celebrities leave
14 their estates to their relatives and heirs.

15 **Q. Do you know anything about the Ray Charles**
16 **foundation?**

17 A. No, ma'am. I'm an admirer of Ray Charles, but I
18 know I know nothing about his foundation.

19 **Q. Do you know anything whether he left his assets to**
20 **charity?**

21 A. I do not. I am not a charitable trust lawyer.

22 **Q. So your statement that most celebrities leave**
23 **their property to their family is mere**
24 **speculation?**

25 A. What I hear in the media. I don't follow what

1 their wills -- no.

2 **Q. What do you hear in the media about Harland**
3 **Howard?**

4 A. I don't know who that it is.

5 **Q. What do you hear in the media about Ray Charles?**

6 A. About his estate?

7 **Q. Anything about him.**

8 A. I just think he was a great singer.

9 **Q. What do you know about the size of his estate?**

10 A. I know nothing.

11 **Q. What do you know about the size of James Brown's**
12 **estate?**

13 A. I knew it was substantial.

14 **Q. Is that all you knew?**

15 A. You said the size, yes. I don't know the dollar
16 amount.

17 **Q. Would you think that it would be equal to or**
18 **larger than the Ray Charles estate?**

19 A. I have no idea.

20 **Q. Would you think it would be a tenth the size of**
21 **the Ray Charles estate?**

22 A. I do not know.

23 **Q. So is it fair to say you really don't know what's**
24 **unique about James Brown's estate, assets, or the**
25 **litigation?**

1 MR. SMITH: Object to the form --

2 MR. GENDE: Object to the form, scope.

3 MR. NEWSOME: Same objections.

4 A. James Brown was a famous South Carolinian. Those
5 other people you -- you mentioned are not. James
6 Brown was a benevolent person; I know that. I
7 don't know the ins and outs about his estate.

8 **Q. So your statement that the settlement was fair has**
9 **no basis?**

10 MR. SMITH: Object to the form of the
11 question. Object to the scope.

12 MR. GENDE: Object to the form. Scope.

13 MR. NEWSOME: Same objections.

14 A. I think it has a basis because I think it helped
15 save a major asset for the charity.

16 **Q. What was that major asset?**

17 A. The movie rights.

18 **Q. It's your belief that the movie rights were a**
19 **major asset of James Brown's estate?**

20 A. That's what I've been told, yes..

21 **Q. Who told you that?**

22 A. Mr. Jones, Ms. Jowers, maybe Mr. McIntosh.
23 Certainly Mr. McMaster as that case proceeded
24 along.

25 **Q. Was there a feeling that James Brown's publicity**

1 **rights were of great importance?**

2 MR. SMITH: Object to the form of the
3 question. Object to scope.

4 MR. NEWSOME: Same objection.

5 MR. GENDE: Same.

6 A. Yes.

7 **Q. And we're two lawyers, but if you'll just explain**
8 **to explain to me what you --**

9 A. You're an estate lawyer. I am not.

10 **Q. Well, Mr. Cook, neither of us is an entertainment**
11 **lawyer so we're doing our best here, right?**

12 A. No, we're not. I agree with that.

13 **Q. So what is your understanding of the movie rights**
14 **and publicity rights of James Brown? What they**
15 **are and their importance?**

16 MR. GENDE: Object to the form of the
17 question.

18 MR. SMITH: Same objection.

19 MR. NEWSOME: Same objection.

20 A. That there was a substantial part of the estate
21 that came from those movie rights, that they were
22 worth a lot, and publicity rights. I was told
23 that the documentary about Mr. Brown's life was of
24 substantial value. I believe the Rolling Stones
25 maybe -- may have been involved in all of that. I

1 cannot sit here today and honestly tell you I know
2 every line, chapter and verse about those movie
3 rights.

4 **Q. All right. If you know that his publicity rights**
5 **were important, and movie rights were a**
6 **substantial asset, can you tell me why there was a**
7 **reason to give 52 and a half percent of those --**
8 **or let's just begin with 50 percent. Was there a**
9 **reason on August 10, 2008 to give 50 percent of**
10 **those publicity rights to Tommie Rae and clients**
11 **of Louis Levenson?**

12 MR. SMITH: Object to form and scope.

13 MR. NEWSOME: Object to form and scope.

14 MR. GENDE: I also object to form and
15 scope. I want to be clear. When I say "scope"
16 I'm being shorthand for the scope exceeds 1337
17 and goes into 4900. I'm not just limiting to
18 the scope of the question in 1337.

19 MR. SMITH: When I say "scope" too, I'm
20 objecting to anything beyond the scope of
21 discovery under the Rules of Civil Procedure
22 and in Case 1337.

23 THE WITNESS: Could you repeat that? I
24 lost that.

25 (The court reporter read back previous question.)

1 A. I was not involved in that settlement, only
2 learned about it after the fact, so I cannot tell
3 you what the reason was. I'm sure if it was a
4 good settlement; there was a good reason.

5 **Q. But in order to evaluate whether it was a good**
6 **settlement, wouldn't you need to know the strength**
7 **of the claims of the various parties?**

8 MR. GENDE: Object to the form and scope.

9 MR. NEWSOME: Same objection.

10 MR. SMITH: Same.

11 A. After the fact, I was told that there was a
12 substantial claim and that the settlement was the
13 best that the charity could do.

14 **Q. Who told you that?**

15 A. Mr. Jones and Ms. Jowers.

16 **Q. Anyone else?**

17 A. Mr. McMaster always told me or told me frequently
18 that that was a good settlement.

19 **Q. Have you reviewed the deposition of Henry McMaster**
20 **given in 2016?**

21 A. I have not.

22 **Q. Do you know the substance of his testimony?**

23 A. I do not.

24 **Q. If Mr. McMaster said that he knew nothing about**
25 **the James Brown litigation other than what he**

1 **learned from his staff, would you know anything**
2 **different?**

3 MR. SMITH: Object to form and scope.

4 MR. GENDE: Same objection, to form and
5 scope.

6 MR. NEWSOME: Same objection.

7 A. No -- no Attorney General -- and I've been under
8 five -- no Attorney General knows -- they -- they
9 must rely on their staff. Mr. McMaster did that.
10 Mr. McMaster also had a very curious mind. But I
11 know he relied on Mr. Jones, Ms. Jowers,
12 Mr. Nicholson, and probably Mr. McIntosh about
13 that.

14 **Q. Would it surprise you that Mr. McMaster said he**
15 **didn't recall having read the will of James Brown?**

16 MR. SMITH: Object to form and scope.

17 MR. GENDE: Same objections.

18 MR. NEWSOME: Same objection.

19 A. The Attorney General is a very busy man. Or
20 woman. Man. He cannot read everything, so I
21 don't know what he read. I don't know what he
22 said, but again, repeating, the AG must depend on
23 his good staff to brief him on matters of like
24 that.

25 **Q. And you prepared the petition for rehearing in**

Wilson versus Dallas?

A. When you say I prepared it --

MR. SMITH: Object to the form and scope.

MR. NEWSOME: Same objection.

MR. SMITH: Go ahead.

A. When you say I prepared it, I -- I guess I did most of the writing on that.

Q. What did you do to investigate about the facts?

MR. SMITH: Object to form and scope.

MR. NEWSOME: Same objections.

A. I read some things in the file. I talked to Mr. Jones and Ms. Jowers. I read the case which was very detailed about the facts. But let me say this about the petition for rehearing, that petition for rehearing, which I did the lion's share of writing on, was done primarily to put the Attorney General's position about the settlement before the court. We understood that the court was not likely to change its mind, but it was decided by Mr. McIntosh, in consultation with myself and Mr. Jones, that it would be -- since the court -- since the decision was very critical of the Attorney General, to put the Attorney General's side of the story before the court, and that's really what the petition for rehearing did.

1 I think the court did alter parts of its
2 decision based on the petition for rehearing,
3 but that was our purpose in writing -- I'm a
4 pretty good writer, so I tried to present it to
5 the court in language that would be best
6 understood and I didn't think the court had
7 gotten all of the information, particularly
8 about the settlement. And I learned about the
9 settlement from Mr. Jones and how it proceeded
10 from Mr. Jones and -- and Ms. Jowers. I was
11 not there. They were; they told me what
12 happened.

13 **Q. Did you learn anything about Federal Copyright Act**
14 **Termination Rights in your preparation of the**
15 **petition for rehearing?**

16 MR. SMITH: Object to the form and scope
17 of the question, and I think that this is
18 treading on work-product.

19 A. With the understanding that there is a privilege
20 there of work-product, I learned the very basics
21 about that, but Ms. Jowers wrote that part of the
22 petition.

23 **Q. Did you do anything to see if Ms. Jowers'**
24 **representations were correct?**

25 MR. SMITH: Object to form, scope, and

1 again it's treading on work-product privilege.

2 A. I have tremendous confidence in Ms. Jowers
3 ability. She tells me something, she has
4 investigated it and she knows what she's talking
5 about.

6 **Q. So you believe that Ms. Jowers had some**
7 **understanding of the Federal Copyright Act**
8 **Termination Rights when she wrote that part of the**
9 **brief?**

10 A. I can't remember all of the details, but yes, I'd
11 be confident that she did.

12 **Q. Do you know sitting here today whether Federal**
13 **Copyright Act Termination Rights apply to**
14 **publicity rights?**

15 MR. SMITH: Form, scope, work-product.
16 Probing his thoughts.

17 A. No. I do not.

18 **Q. Have you ever represented to a court that Tommie**
19 **Rae Hynie Brown was the spouse of James Brown?**

20 MR. SMITH: Object to form and scope.

21 MR. GENDE: Object to form and scope,
22 also.

23 MR. NEWSOME: Same objection.

24 A. I don't recall.

25 **Q. When you have signed pleadings -- I mean, I'm**

1 A. Could you show me that?

2 Q. I could. I'm sorry, I didn't make multiple
3 copies.

4 MR. SMITH: This is not a document that's
5 been shown to the witness before so if the
6 witness would like, we can confer about it.

7 MS. POPE: Oh, absolutely. And I'm sorry
8 I didn't bring copies, but I was just going to
9 ask him about it without make it an exhibit.

10 MR. SMITH: If Bob would like to talk to
11 me about it, we can step outside.

12 MS. POPE: Oh, absolutely.

13 A. (Witness examines document.) You said my name --
14 oh, okay. I don't recall this document, but yes,
15 my name is on there. What was the question?

16 Q. I'll just start over. Do you understand that in
17 2011, you participated in asking the Supreme Court
18 to accept documents that would show that James
19 Brown's Trust and Estate at death, rather than
20 being worth about 85 million, were in fact worth
21 just over \$6 million?

22 MR. SMITH: Object to form and scope.

23 MR. NEWSOME: Same objections.

24 MR. GENDE: Same objection.

25 A. You said I participated. My name is on the

1 pleadings, but so is Attorney General Wilson's and
2 I'm sure he was not intimately involved in that.
3 I probably had the same involvement that he did.

4 **Q. Who would have been responsible for the Attorney**
5 **General of South Carolina taking a position that**
6 **James Brown's assets were worth just over \$6**
7 **million at his death?**

8 MR. SMITH: Form and scope.

9 MR. NEWSOME: Same objections.

10 MR. GENDE: Same objections.

11 A. That would have been Mr. Jones, who is answerable
12 to Mr. McIntosh.

13 **Q. And so Mr. McIntosh would have had the ability to**
14 **approve a motion filed in the Supreme Court to**
15 **change the value of James Brown's assets at death**
16 **from about 84 million -- 85 million to about six**
17 **million?**

18 MR. GENDE: Object to the form of the
19 question, scope of the question,
20 mischaracterizes the document also.

21 MR. SMITH: Object to form and scope.

22 MR. NEWSOME: Same objection.

23 A. Mr. Jones answered to Mr. McIntosh, correct.

24 **Q. But your name appeared on the document?**

25 A. It is. I cannot deny that.

1 **Q. Mr. Cook, did you and I have a discussion about**
2 **this very problem in March of 2013?**

3 MR. SMITH: Object to form the question
4 and scope.

5 MR. NEWSOME: Same objections.

6 MR. GENDE: Same.

7 A. I know we met with you and Mr. McIntosh and
8 General Wilson and I believe myself. I think you
9 had asked not to have Mr. Jones there I believe as
10 I remember. I can't remember every detail of our
11 discussion, but I'm sure you raised it.

12 **Q. Did I raise my concern that valuing James Brown's**
13 **music empire at about 4.7 million would slash**
14 **James Brown's charity to almost nothing?**

15 MR. SMITH: Object to the form and scope.

16 MR. NEWSOME: Same objection.

17 MR. GENDE: Same objection.

18 A. I believe you did.

19 **Q. Did you get the idea from that meeting that I was**
20 **there to be greedy and get myself a big fee?**

21 MR. SMITH: Object to the form and scope.

22 MR. NEWSOME: Same objection.

23 MR. GENDE: Same.

24 A. No, I did not.

25 **Q. Did I seem to sincerely want to save the James**

1 **Brown "I Feel Good" Trust?**

2 MR. SMITH: Object to the form and scope.

3 MR. NEWSOME: Same objection.

4 MR. GENDE: Same objection.

5 A. Yes, you did.

6 **Q. Did you tell me at that meeting that you were**
7 **hearing some of the things I said for the first**
8 **time?**

9 MR. SMITH: Form and scope objection.

10 MR. NEWSOME: Same objection.

11 MR. GENDE: Same objection.

12 A. I don't remember every detail in the meeting, but
13 I remember you saying some of those things and
14 both myself and General Wilson said that.

15 **Q. Do you recall my concern about Mr. Bauknight's**
16 **having filed documents with the IRS to claim that**
17 **Tommie Rae was the spouse and not changing them as**
18 **a result of the decision?**

19 MR. SMITH: Object to form and scope.

20 MR. NEWSOME: Same objections.

21 MR. GENDE: Same objections.

22 A. I can't particularly recall that, but -- you know,
23 I don't doubt what you're telling me.

24 **Q. Might I have told you that it could cause**
25 **terrible problems for the 900 copyrights James**

Brown gave the "I Feel Good" Trust?

MR. SMITH: Object to form and scope.

MR. NEWSOME: Same objection.

MR. GENDE: Object to the form and scope.

A. I believe you did. You were very concerned in that meeting. I remember that. You came to us to bring those matters to our attention and you did, generally. I can't remember each one, because as I told you, I'm not involved in all of this, but you did do that.

Q. Do you know of any reason why, since 2013, there has been a rather vitriolic claim that Bob Buchanan and Adele Pope were merely greedy?

MR. SMITH: Object to the form and scope.

MR. NEWSOME: Same objections.

MR. GENDE: Object to the form and scope.

A. No. I will tell you this, as I said in the petition for rehearing: You have a good reputation in the community and that -- and forgive me for saying this, I've never known a Pope who isn't a good lawyer. I knew Mr. Pope way back. I know Margaret; I know you; I know Gary. They're all good lawyers. I cannot comment on 4900 and its merits or not merits, but, as I said, you are a good lawyer. That's all I can say.

1 **Q. Did you consult with Henry McMaster about the**
2 **statements made about his actions in that petition**
3 **for rehearing?**

4 MR. SMITH: Object to form, scope, and
5 also assert attorney-client privilege to the
6 extent that any testimony the witness gives
7 would be privileged and ask him to -- not to
8 reveal privileged information to the extent
9 that he can answer the question without
10 revealing privilege, yes.

11 MR. NEWSOME: Object to form and scope.

12 MR. GENDE: Same.

13 **Q. I'll back up a minute to clear that up. Did you**
14 **share any attorney-client privilege with Henry**
15 **McMaster between February and March of 2013?**

16 A. I don't believe I did.

17 **Q. Do you recall talking to him about the petition**
18 **for rehearing?**

19 A. I remember talking to him after it was filed. I
20 believe I provided him a copy. He thought it was
21 very good. I don't remember discussing it with
22 him prior to filing it, but anything I shared with
23 him I think would be public information. Henry
24 and I -- Governor McMaster and I, from time to
25 time go to lunch. And he follows this case

1 generally and he would ask about it and I'm sure I
2 said I'll provide you what we wrote, and I
3 probably did that.

4 **Q. And what you would have shared with him would be,**
5 **as you said, not privileged?**

6 **A.** No, ma'am. What we filed in court, I believe.

7 **Q. Now, let me just stay with that a minute. So if**
8 **he says he didn't talk to anyone about the**
9 **petition for rehearing, your -- to your knowledge,**
10 **that's absolutely correct.**

11 **A.** Yes. We talked after the fact.

12 **Q. Who determined that the statement should be made**
13 **to the Supreme Court that the Wingate suit was**
14 **filed on the last day before the statute of**
15 **limitations?**

16 **MR. GENDE:** Object to the --

17 **MR. SMITH:** Object to the form and scope.

18 **MR. NEWSOME:** Same objections.

19 **MR. GENDE:** Object to the form and scope.

20 **A.** I put that in the petition for rehearing because I
21 was told that. We were told -- let me back up a
22 minute. We were told frequently by Mr. Jones and
23 Ms. Jowers that the statute of limitations was
24 approaching. It was difficult to get an audience
25 with the Attorney General because he -- as I said

1 in the petition for rehearing was not in favor of
2 that lawsuit. It's just a fact. He says, I don't
3 don't like to sue lawyers. And Mr. McIntosh and I
4 both shared his views about that, but we were told
5 that we would breach our fiduciary duty if we did
6 not authorize the trustee to bring that lawsuit.
7 We met with Mr. McMaster shortly before that suit
8 was brought and I think he reluctantly agreed to
9 let it go forward as reflected in his letter of
10 May 18th.

11 **Q. Did you participate in the six days of trying to**
12 **determine who was going to be on the pleadings and**
13 **on the contract to bring the Wingate suit?**

14 MR. SMITH: Object to the form and scope.

15 MR. NEWSOME: Same objection.

16 MR. GENDE: Object to the form and scope.

17 A. I don't understand the six days. What are you
18 saying?

19 **Q. Are you aware that for a number of days in May**
20 **before the filing of the suit there were**
21 **conferences to determine who was going to sign the**
22 **the complaint and who was going to sign the**
23 **contract?**

24 MR. GENDE: Object to the form and scope.

25 MR. SMITH: Object to form and scope.

1 clients is the Attorney General. You are here.
2 It's not my day to answer questions.
3

4 (Whereupon, U.S. Code 7206 was
5 marked Exhibit No. 11 for
6 identification.)

7 RESUMING EXAMINATION

8 BY MS. POPE:

9 **Q. Mr. Cook, before we leave the May 6, 2011 Motion**
10 **to Supplement the Record in the Wilson versus**
11 **Dallas appeal, I just want to talk a little bit**
12 **more about what we sometimes call the 4.7 million**
13 **valuation of James Brown's music empire. What, if**
14 **anything, today do you know about that?**

15 MR. SMITH: Object to form and scope.

16 MR. NEWSOME: Same objection.

17 MR. GENDE: Same objection.

18 A. Nothing.

19 **Q. And you don't recall anything about this motion to**
20 **supplement the record on May 6, 2011?**

21 A. No. I was not involved in the James Brown, Dallas
22 appeal. I only got involved -- and my name may be
23 on the pleadings, but I was not directly involved
24 in the appeal. I got involved in the petition for
25 rehearing to protect the interest of the Attorney

1 General.

2 **Q. But you have a pretty extensive experience with**
3 **appeals?**

4 A. Fairly.

5 **Q. So if you received in September of 2010,**
6 **information necessary to supplement a record,**
7 **would it be unusual to delay that motion to**
8 **supplement the record until May 6, 2011?**

9 MR. SMITH: Object to form and scope.

10 MR. NEWSOME: Same objection.

11 A. I can only speak generally that delay is never a
12 good idea.

13 **Q. And if a delay is substantial, such as a claim to**
14 **\$79 million difference in the value of the assets**
15 **which are the subject of the proceeding, would it**
16 **be more urgent to advise the court earlier of that**
17 **substantial change?**

18 MR. SMITH: Object to form and scope.

19 MR. NEWSOME: Same objection.

20 MR. GENDE: Same.

21 A. Only generally, I say you always want to advise
22 the court at the earliest possible moment.

23 **Q. And if someone in your office had participated**
24 **with others in a decision to delay notifying the**
25 **Supreme Court of a change in value of that**

1 **magnitude, would you consider that good policy?**

2 MR. SMITH: Object to form and scope.

3 MR. NEWSOME: Same objection.

4 MR. GENDE: Same.

5 A. I don't have any knowledge one way or the other.
6 That's a hypothetical question, but we would hope
7 everyone in our office would act expeditious --
8 expediently.

9 **Q. So if, for example, an appraisal came in in**
10 **September of 2010, you, yourself, would not have**
11 **participated in delaying notifying the court of**
12 **that until after the briefs and record were filed,**
13 **would you --**

14 MR. SMITH: Object to the form and scope.

15 MR. NEWSOME: Same objection.

16 MR. GENDE: Same.

17 A. I did not participate, no.

18 **Q. Would you think it proper to participate?**

19 MR. SMITH: Object to form and scope.

20 MR. NEWSOME: Same objection.

21 MR. GENDE: Same.

22 A. I'm not sure I understand.

23 **Q. Would you think it appropriate to participate in**
24 **that kind of delay in the James Brown matter with**
25 **a matter of that magnitude?**

1 A. Again, --

2 MR. SMITH: Object to form and scope.

3 MR. GENDE: Same.

4 MR. NEWSOME: Same objection.

5 A. Again, it would be my view as a general matter to
6 always advise the court at the earliest possible
7 moment.

8 **Q. Did you become aware at some point that the**
9 **Attorney General's office was joining in the claim**
10 **that Robert Buchanan and Adele Pope had overstated**
11 **the value of James Brown's assets by \$79 million**
12 **to get a big commission?**

13 MR. SMITH: Object to the form and scope.

14 MR. NEWSOME: Same objection.

15 MR. GENDE: Object to the form and scope
16 of the question.

17 A. I did not that I recall.

18 **Q. Do you recall that that was a subject of a**
19 **conversation you and I had in 2013?**

20 A. Yes, you --

21 MR. SMITH: Object to form and scope.

22 MR. GENDE: Same objections.

23 MR. NEWSOME: Same objection.

24 A. Yes.

25 **Q. And for a lawyer who cares about her reputation,**

1 **such a claim is fairly serious, isn't it?**

2 MR. SMITH: Object to form and scope.

3 MR. NEWSOME: Same objection.

4 MR. GENDE: Same objection.

5 A. Yes.

6 **Q. I'm going to ask you to look -- the documents are**
7 **out of order, but just look at Cook 11.**

8 MR. SMITH: This is not an exhibit that
9 you had shown to him previously, so if the
10 witness would like to discuss it with me
11 outside we have that opportunity?

12 MS. POPE: No. Please, certainly.

13 MR. GENDE: On a break, I'd like to chat
14 outside just a second. It will take ten
15 seconds.

16 (The Witness, Mr. Smith, Mr. Newsome and Mr. Gende
17 exit conference room, then reenter.)

18 MR. SMITH: You may proceed.

19 RESUMING EXAMINATION

20 BY MS. POPE:

21 **Q. And if the allegation had been made that that**
22 **overstatement was made on a federal estate tax**
23 **return filing, would that be even more serious?**

24 MR. SMITH: Object to the form and scope.

25 MR. GENDE: Object to the form of the

1 question. And scope, as well.

2 MR. NEWSOME: Same objection.

3 A. What I'm looking at is a --

4 MR. GENDE: Was there a question asked
5 while we were out of the room?

6 THE WITNESS: No, no.

7 MR. GENDE: Thank you.

8 A. What I'm looking at is a copy of 26 U.S. Code 7206
9 dealing with fraud and false statements. Any time
10 you got fraud and false statements as a general
11 matter, that's very serious.

12 **Q. And to a lawyer who does estate planning in
13 particular it's a doubly serious; would you think?**

14 MR. SMITH: Object to the form and scope.

15 MR. NEWSOME: Same objection.

16 MR. GENDE: Object to the form and scope.

17 A. Fraud and false statements are always serious.

18 **Q. Now, I want to go back to the general subject of
19 this -- of Case 1337, which is the question of
20 whether Bob Buchanan and Adele Pope properly
21 performed their duties during three periods.
22 First, as special administrators of the Estate of
23 James Brown which was from March 7, 2007 until
24 November 20, 2007. The second period will be
25 their service as personal representatives and**

1 trustees from November 20, 2007 until May 26,
2 2009. And the third phase will be the attempt to
3 reverse a settlement in which they believe
4 dismembered in the James Brown "I Feel Good"
5 foundation, which took place from May 26, 2009
6 until May 8, 2013. Can we ask you about each of
7 those three?

8 A. Sure.

9 Q. First, the service of Adele Pope and Bob Buchanan
10 for the period March 7th through November 20, 2008
11 as special administrators. Do you know anything
12 about the quality of their service during that
13 period?

14 A. No. I do not.

15 Q. Not even from others?

16 A. No. I would only go back to what I said earlier
17 about the Pope reputation, but -- but I -- I have
18 no knowledge about your service or Mr. Buchanan's.

19 Q. And if I told you that during that period, Bob
20 Buchanan and Adele Pope did two things that are
21 still active, shall we say: The discovery of
22 takings by David Cannon, and in and the hauling
23 of the Greenburg Traurig attempt to sell James
24 Brown's assets, would either those trigger any
25 memories?

1 A. No, ma'am.

2 Q. Do you know anything about the takings of James --
3 from James Brown to David Cannon?

4 MR. SMITH: Object to form.

5 MR. NEWSOME: Object to form and scope.

6 A. I know -- I know --

7 MR. GENDE: Same objection.

8 A. -- that Cannon was prosecuted, I believe, if I
9 recall it correctly, but I don't have any details
10 about that.

11 Q. Don't know how much it took, for example?

12 A. No, ma'am. I know that the original trustees -- I
13 know generally that they did not do a good job.
14 Cannon, I believe, was one of them.

15 Q. That's the extent of your knowledge about that?

16 A. Yes, ma'am. I was told that and I believe the
17 Supreme Court decision discussed that a bit.

18 Q. Now, let's move to the second period, the service
19 of Bob Buchanan and Adele Pope during the period
20 from November 20, 2007 until May 26, 2008. I'd
21 like to know everything that comes to mind about
22 that, that you know or can recall and no matter
23 where you learned it.

24 MR. SMITH: Object to form.

25 MR. NEWSOME: Same objection.

1 MR. GENDE: Yes. Object to form and
2 scope.

3 A. I don't have any independent knowledge about that
4 from either way.

5 **Q. Do you recall Sonny Jones saying that Mr. Buchanan**
6 **and Mrs. Pope did a bad job?**

7 MR. SMITH: Object to form.

8 MR. GENDE: Same. Object to form and
9 scope.

10 A. I don't recall them saying that, but they may
11 have. I don't know.

12 **Q. But sitting here today, you can't recall?**

13 A. No, ma'am. I know the 4900 case was brought
14 alleging that, but I don't have any independent
15 knowledge about their performance, no.

16 **Q. Glad you mentioned that. One of the allegations**
17 **in the 4900 complaint was that Bob Buchanan and**
18 **Adele Pope failed to accept a hundred**
19 **million-dollar offer for James Brown's assets made**
20 **in 2007. Do you know anything about either the**
21 **offer or the failure to accept it?**

22 MR. GENDE: Object to the form and scope.

23 A. No.

24 MR. NEWSOME: Object to form scope.

25 A. Let me just say, I don't know anything one way or

1 the other about Pope and Buchanan's performance in
2 any of those. I just wasn't involved in it,
3 but -- you know, I don't even recall anything
4 about -- about it, except what's in the 4900 case.

5 **Q. You say "except," you mean --**

6 A. Except the allegations -- you know, I know the
7 allegations. Again, I think that Mr. McMaster had
8 a problem with all of that, bringing that case.
9 He discussed it with us many times, me and
10 Mr. McIntosh, but I don't have any knowledge about
11 the veracity or lack thereof, of that case.

12 **Q. Did you research whether the Attorney General**
13 **would, in fact, breach his fiduciary duty if he**
14 **failed to sue Mr. Buchanan and Mrs. Pope?**

15 MR. SMITH: Object to the form of the
16 question, the scope of the question, and it
17 also treads on work-product. If the witness
18 can answer the question without revealing
19 work-product, then do so.

20 MR. GENDE: Object to form and scope.

21 MR. NEWSOME: Object to form and scope.

22 A. My role in leading up to the bringing of the suit
23 from the standpoint of the Attorney General, was
24 to -- to attempt to make the Attorney General
25 aware of -- of breach of fiduciary duty as a

1 general matter and I believe I did that. I can't
2 tell you, and wouldn't tell you what those
3 discussions were, but without -- without breaching
4 privilege, I think I did do some research on that.

5 **Q. And just one more question about that. Are you**
6 **aware of any case nationwide ever brought with an**
7 **Attorney General named as a plaintiff in which the**
8 **Attorney General is not also a lawyer?**

9 MR. SMITH: Object to the form and scope.

10 MR. NEWSOME: Same objection.

11 MR. GENDE: Same objection.

12 **A. Could you repeat that?**

13 **Q. Yes, sure. Are you aware of any case nationwide**
14 **federal and state courts ever filed in the name of**
15 **an Attorney General of the a state, that is naming**
16 **the Attorney General of a state as a plaintiff, in**
17 **which the Attorney General is not a lawyer of**
18 **record?**

19 MR. SMITH: Same objections.

20 MR. NEWSOME: Same objection.

21 MR. GENDE: Same objections. Another
22 example the question has absolutely nothing to
23 do with 1337 and only to do with 4900.

24 **A. I'm not aware of any other case. I'm not aware of**
25 any case like that to be honest with you.

1 **Q.** I'm going to just show you this. I'm not going to
2 make it an exhibit because it's all over
3 everywhere. Do you recall that on July 30, 2008,
4 Henry McMaster wrote Bob Buchanan and Adele Pope
5 approving their permanent service as trustees?

6 MR. SMITH: This is not an exhibit that
7 this witness has been shown previously --

8 MS. POPE: Oh, well, that's fine.

9 MR. SMITH: And so if the witness would
10 like to talk to me about it, if he's
11 comfortable going ahead, he may do so.

12 MS. POPE: Oh, sure. That's fine.

13 **A.** I'm not aware of this letter. I don't know that
14 I've seen this letter.

15
16 (Whereupon, 07/30/2008 Letter
17 was marked Exhibit No. 12 for
18 identification.)
19

20 MS. POPE: Well, just a minute please.

21 I'm going to go ahead and mark that as 12.

22 RESUMING EXAMINATION

23 BY MS. POPE:

24 **Q.** Were you aware of the fact that on July 30th,
25 Mr. McMaster had approved Mr. Buchanan and

1 **Ms. Pope in -- as shown by Exhibit 12 as --**

2 MR. GENDE: Excuse me. I hate to
3 interrupt, but --

4 MS. POPE: Please don't interrupt.

5 MR. GENDE: We're at Cook 12. It has to
6 do with numbering of the deposition exhibits.
7 I didn't see Cook 1 through 11.

8 MS. POPE: We'll get to them.

9 MR. GENDE: Okay. So, you're going out of
10 order?

11 MS. POPE: Yes.

12 MR. GENDE: Okay. Just wanted to
13 establish that. Thank you.

14 A. I was not aware that Mr. McMaster had approved of
15 Ms. Pope and Mr. Buchanan as -- as trustees.

16 **Q. Were you aware of any of the circumstances between**
17 **July 30th, when the Attorney General McMaster**
18 **wrote Mr. Buchanan and Ms. Pope, and the**
19 **mediation, which was held on July 10th, some 11**
20 **days later?**

21 MR. SMITH: Object to form and scope.

22 MR. GENDE: Same objection.

23 MR. NEWSOME: Same objection.

24 A. No.. If I can clarify. My role -- this is just
25 for the record, my role in this matter is

1 basically two things: One, the advice and counsel
2 to the Attorney General leading up to the filing
3 of the 4900, and the participation in the -- in
4 the petition for rehearing. I would hear things
5 about the case from Sonny, Mary Frances, even
6 Henry and John, but I -- I was not involved as a
7 lawyer in those cases if that clarifies for you.

8 **Q. And when you wrote the petition for rehearing, did**
9 **you understand that the statute of limitations you**
10 **referenced was a one-year statute of limitations?**

11 **A.** I don't remember what it was. I was told it was
12 about to expire.

13 **Q. And if, on July 30th of 2008, Mr. McMaster had**
14 **known virtually everything that was going on and**
15 **the statute of limitations were one year, when**
16 **would his time to complain about that have**
17 **expired?**

18 MR. SMITH: Object to the form and scope.

19 MR. GENDE: Same objection.

20 MR. NEWSOME: Same objection.

21 **A.** I'm assuming 2009.

22 **Q. Right. And do you know any reason -- do you,**
23 **yourself, know any reason why the Wingate suit was**
24 **delayed until 2010?**

25 MR. GENDE: Object to form the question.

1 MR. SMITH: Object to the form and scope,
2 and also assert attorney-client privilege. If
3 the witness can answer the question without
4 violating privilege, he may do so. I ask that
5 he not reveal privilege in giving his answer
6 object.

7 MR. NEWSOME: Object to form and scope.

8 MR. GENDE: Same.

9 A. I was not aware of any delay by the Wingate Firm.
10 If there was a delay, I wasn't aware of it.

11 **Q. Do you know when the Attorney General first**
12 **established contact with the Wingate Firm about**
13 **the filing of the May 19th 2010 lawsuit?**

14 MR. SMITH: Same objection, including any
15 privilege that might apply and ask the witness
16 not reveal privilege in giving his answer.

17 MR. GENDE: Object to the form and scope.
18 It's a 4900 question.

19 MR. NEWSOME: Same objections.

20 A. I was aware that the Wingate Firm represented
21 Mr. Bauknight shortly before the lawsuit was
22 brought I believe it was. Am I -- am I misstating
23 a --

24 **Q. You can't misstate what you know, Mr. Cook.**

25 A. I only heard about the Wingate Firm's involvement

1 shortly before the 4900 case was brought.

2 **Q. When you say "shortly before," if it was filed on**
3 **May 19, 2010, would it have been weeks or --**

4 A. Weeks.

5 **Q. Weeks?**

6 A. Yes. I remember a meeting with Mr. McMaster and
7 Mr. Medlin and Mr. Wingate prior to bringing that.
8 As I told you, Mr. McMaster was skeptical of the
9 lawsuit in the sense that -- for the reasons I
10 indicated, that he did not like to sue fellow
11 lawyers. So shortly before that lawsuit was
12 brought, he -- he met with those two gentlemen
13 face to face.

14 **Q. Do you know, sitting here today, who Mr. Medlin**
15 **represented?**

16 A. Good grief. All of that is so complicated it.

17 MR. SMITH: Object to form and scope.

18 MR. NEWSOME: Same objection.

19 MR. GENDE: Same.

20 A. Hynie, I believe.

21 **Q. All right. Now, let's go back for just a moment**
22 **and go through what you brought to the meeting**
23 **today.**

24 A. Okay.

25 **Q. If you'll describe first Cook Exhibit 1.**

1 MR. GENDE: Do you have copies, Ms. Pope?

2 MR. SMITH: They should be attached to --
3 no, I think I put packets out for all of you.

4 MR. GENDE: I apologize.

5 MR. SMITH: We provided this pursuant to
6 the subpoena, but I assert a scope objection to
7 the documents to the extent -- the questions
8 related to the extent they apply.

9 A. When I got the subpoena, I went through my e-mails
10 to see if any -- any -- and of course they ran a
11 search, but those searches -- you know, I always
12 like to do that manually, as well. But I found
13 this, I believe this is the April 22, 2010 letter
14 to Jim Richardson from Sonny Jones regarding
15 settlement, and I believe Sonny sent this to me
16 and probably others. And I wasn't aware of all of
17 this settlement discussions, but it was in my
18 file.

19 Same -- same with the Jim Richardson
20 response to Sonny and there is, yeah -- those
21 two documents were in my e-mail files. Sonny
22 sends me stuff and that's what happened here.
23 I'm not involved in this. You know, I don't
24 know what the settlement was even proposed, but
25 trying to be responsive to the subpoena, that's

1 what I found.

2 **Q. Thank you. I'm going to just ask you a question**
3 **or two about Cook Exhibit 1.**

4 **A. Okay.**

5 **Q. It relates to settlement discussions that take**
6 **place in the spring of 2010 prior to the filing of**
7 **the Wingate suit; is that correct?**

8 **A. Yes.**

9 **Q. Now, in one of those letters dated April 27, 2010,**
10 **and I'll hand it back to you in just a moment,**
11 **Mr. Richardson writes Mr. Jones and says, "My**
12 **clients have asked me whether Mr. McMaster has**
13 **seen their comprehensive settlement offer and if**
14 **so, what does he think?" Have you had an**
15 **opportunity to look at that comprehensive**
16 **settlement offer and see what it said?**

17 MR. SMITH: Object to form and scope.

18 MR. NEWSOME: Same objection.

19 MR. GENDE: Same objection.

20 **A. No. After I read this letter, discovering it in**
21 **my e-mail files, I looked to see if I had a copy**
22 **of that and I did not find it. I can't say with**
23 **certainty it isn't on there somewhere, but I don't**
24 **believe I know anything about that comprehensive**
25 **settlement proposal.**

1 Q. Would you want to have known if Bob Buchanan and
2 Adele Pope agreed that the Attorney General could
3 have everything he asked for in the settlement if
4 there were only two conditions met? First, that
5 there be guardians ad litem for the minor
6 children, whose education trusts were being
7 diminished. And second, that the appellate court
8 approve the authority of the Attorney General to
9 substitute his judgment for that of the trustees
10 so that those fiduciaries could not be held liable
11 for the settlement the Attorney General had
12 broken?

13 MR. SMITH: Object to form and scope.

14 MR. NEWSOME: Same objection.

15 MR. GENDE: Same objection.

16 A. Well, obviously I would want to have known that
17 because I looked for it.

18 Q. But nobody gave it to you to look at before Bob
19 Buchanan and Adele Pope were sued?

20 MR. GENDE: Object to the form of the
21 question. Form and scope.

22 MR. SMITH: Object to form and scope.

23 MR. NEWSOME: Same.

24 A. I don't know that -- they didn't give it to me.
25 They may have given it to Mr. McMaster. I don't

1 know. I can't tell you one way or the other. It
2 says -- I believe it says somewhere in here the
3 comprehensive proposal -- settlement proposal and
4 wanted to know if Mr. McMaster had seen it. I
5 don't know if he saw it. I don't know if Sonny
6 and them gave it to him. I -- I have no idea, but
7 I -- I looked for it in my file.

8 **Q. Thank you.**

9 A. 'Cause that -- that did peak my curiosity knowing
10 that Mr. McMaster was not inclined to bring -- to
11 authorize suit.

12 **Q. Did you have anything to do with the settlement**
13 **with Bob Buchanan that was reached in 2012?**

14 MR. SMITH: Object to the form and scope.

15 MR. GENDE: Object to the form and scope.

16 MR. NEWSOME: Same objection.

17 A. No.

18 **Q. Did you know of it?**

19 A. I think someone told me about it, but I don't
20 remember who.

21 **Q. Now, Mr. Cook, would you describe Exhibit 2 which**
22 **you brought to today's deposition?**

23 A. What is that one? Oh, this is a file of documents
24 that were provided to me probably by Sonny and
25 others that I may have looked at in my writing of

1 the petition for rehearing.

2 **Q. Well, aren't there a number of documents in**
3 **Exhibit 2 that are after the petition for --**

4 A. Yes, there are.

5 **Q. Tell me about those.**

6 A. I believe those are -- those are various letters,
7 copies of which I received, maybe from you.

8 **Q. And what was the gist of those letters, if you**
9 **recall?**

10 A. I don't recall. I'd have to look at them, but
11 without looking at them, it was your expression of
12 unhappiness.

13 **Q. About what?**

14 A. The general matter, same types of things you
15 expressed in that meeting with General Wilson.

16 **Q. A concern that our state was losing an opportunity**
17 **--**

18 A. Yes, ma'am.

19 MR. GENDE: Object to the form and scope
20 of the question.

21 MR. SMITH: Object to form and scope.

22 MR. NEWSOME: Same objection.

23 MR. GENDE: Are you ask questions from
24 that or may I look at that while you're --
25 thank you.

1 BY MS. POPE:

2 Q. Now, from Exhibit 2, we've taken a couple of
3 other documents that I wanted to ask you questions
4 about.

5 A. Okay.

6 Q. Can you identify Cook 3, which is from Exhibit 2?

7 A. That is a letter that you sent to general Wilson
8 asking for a meeting to air your concerns. In
9 order to bring -- get across the -- your concerns
10 about the estate and the trust.

11 MR. GENDE: What's the date of that
12 letter, please?

13 THE WITNESS: This one is February 28,
14 2013.

15 MR. GENDE: And it's from who to whom?

16 THE WITNESS: Ms. Pope to General Wilson.

17 MR. GENDE: Thank you.

18 RESUMING EXAMINATION

19 BY MS. POPE:

20 Q. And I'm going to hand you Cook 4. Is Cook 4 the
21 first now substituted decision of the South
22 Carolina Supreme Court in Wilson versus Dallas?

23 MR. SMITH: Is Cook 4 from --

24 MR. GENDE: I was going to object to the
25 form and scope of the question.

1 MR. NEWSOME: Same objections.

2 MR. SMITH: Is Cook 4 from the exhibit --

3 MS. POPE: Cook 4 is taken from Mr. Cook's
4 file which is number 2, yes.

5 MR. SMITH: All right. And could you
6 restate your question, please.

7 RESUMING EXAMINATION

8 BY MS. POPE:

9 Q. Right. Mr. Cook, I was trying to help you, but
10 maybe it would be easier to ask you. What is Cook
11 4?

12 A. It's a copy of the Wilson v. Dallas and I believe
13 it may be the revised decision.

14 Q. Well, let's look at the date.

15 A. Filed February 27, 2013.

16 Q. Was that the first decision in Wilson versus
17 Dallas?

18 A. Yes. Yes, it was because I remember our petition
19 for rehearing was due sometime in March.

20 Q. About March 14th?

21 A. Yes, ma'am.

22 Q. And Cook 3, my the letter to the Attorney General,
23 was written the day after --

24 A. Yes, it was. A day after the decision in -- the
25 initial decision in Wilson v. Dallas.

1 Q. And I want to ask you a couple of things about the
2 decision. The decision deals with the James Brown
3 Legacy Trust. What do you know about that?

4 MR. GENDE: Object to the form and scope
5 of the question.

6 MR. NEWSOME: Same objection.

7 MR. SMITH: Same objections.

8 A. Not -- not really anything. I've heard those
9 words. I don't remember precisely what that is.

10 Q. Did the Supreme Court make some findings about the
11 Legacy Trust or -- you're welcome to take a minute
12 to review it if you'd like.

13 MR. GENDE: Object to the form and scope
14 of the question.

15 MR. SMITH: Form and scope.

16 MR. NEWSOME: Same objections.

17 A. I'd have to read the whole decision, but -- but --

18 Q. Well, let me ask you this: Do you know of any
19 oversight the office of the Attorney General
20 conducted with respect to the actions of the James
21 Brown Legacy Trust from May 26, 2009, the date of
22 the approval by Judge Early of the McMaster
23 Settlement, to February 27, 2013?

24 MR. SMITH: Object to form and scope.

25 MR. NEWSOME: Same objection.

1 MR. GENDE: Same.

2 A. I don't.

3 **Q. Did anybody report to you about the actions or**
4 **transactions of Russell Bauknight as trustee of**
5 **the James Brown Legacy Trust during that period?**

6 MR. SMITH: Object to form and scope.

7 MR. NEWSOME: Same objection.

8 MR. GENDE: Same.

9 A. I don't recall that they did.

10 **Q. Do you recall that the stay as to the settlement**
11 **had been lifted in September of 2009?**

12 MR. SMITH: Object to form and scope.

13 A. I don't specifically recall that, no.

14 **Q. Do you recall any discussion whatsoever about the**
15 **James Brown Legacy Trust being a plaintiff in the**
16 **Wingate suit?**

17 MR. GENDE: Object to the form and scope.

18 MR. NEWSOME: Same objection.

19 MR. SMITH: Same objections.

20 A. No. I do not because my concern was the Attorney
21 General.

22 **Q. If the Attorney General exercised effective**
23 **control over the Legacy Trust, would you be**
24 **concerned about it?**

25 MR. GENDE: Object to the form and scope.

1 MR. SMITH: Object to form and scope.

2 MR. NEWSOME: Same objection.

3 A. Yes.

4 **Q. Were you ever told that, in fact, the Attorney**
5 **General did exercise effective control over the**
6 **Legacy Trust?**

7 MR. SMITH: Object to form and scope. And
8 also assert attorney-client privilege. Witness
9 may answer to the extent that he can do so
10 without revealing privileged information.

11 MR. GENDE: Form and scope.

12 MR. NEWSOME: Same objections.

13 A. No.

14 **Q. Would it be troublesome for the Attorney General**
15 **to have oversight over a trust from 2009 to 2013**
16 **without at least an awareness of that duty of**
17 **oversight?**

18 MR. SMITH: Object to form and scope.

19 MR. NEWSOME: Same objection.

20 MR. GENDE: Same.

21 A. Yes.

22 **Q. Now, on March 6th, I think you've described our**
23 **meeting that was Attorney General Wilson and you**
24 **and Mr. McIntosh and me?**

25 A. Correct.

1 Q. Now, just to backup, I forgot to ask you earlier.
2 There was another meeting with the Attorney
3 General on approximately May 28th of 2008 with
4 John Rainey, and there was a person there other
5 than Sonny or me. Do you recall that was whether
6 you or Mr. McIntosh?

7 A. It would not have been me. I have heard about
8 that meeting, but that would've been Mr. McIntosh.

9 Q. And if Sonny Jones said that John Rainey
10 admonished help for trying to work against the
11 James Brown "I Feel Good" Trust, you wouldn't have
12 a different recollection?

13 MR. SMITH: Object to the form -- sorry.
14 Object to form and scope.

15 MR. NEWSOME: Same objection.

16 A. No. I was not at the meeting. I heard about the
17 meeting --

18 Q. Do you recall what you heard? Sorry.

19 A. That it was with John Rainey. I knew John, but
20 for whatever reason, I wasn't at that meeting. I
21 don't know why, but that -- it really wasn't
22 unusual that I wasn't there, but I wasn't.

23 Q. And so, because they are important, the sequence
24 of events between the May 28, 2008 meeting, the
25 July 30th letter that we've discussed, and the

1 **August 10, 2008 hearing, you just don't have any**
2 **information?**

3 A. I don't because as I told you minute ago, my role
4 in this matter has been very limited. So I don't
5 have any information.

6 THE WITNESS: May I take another break?

7 MS. POPE: Oh, absolutely.

8 : (Off the record.)

9 RESUMING EXAMINATION

10 BY MS. POPE:

11 **Q. Mr. Cook, after our meeting on March 6th, were you**
12 **present or aware of a call that the Attorney**
13 **General made to me?**

14 A. I'm not aware.

15 **Q. Would it be consistent with what you put in the**
16 **petition for rehearing that Attorney General**
17 **Wilson called me to say he was seeking to be**
18 **dropped as a party in the Wingate suit?**

19 MR. GENDE: Object to the form and scope.

20 MR. SMITH: Form scope.

21 MR. NEWSOME: Form and scope.

22 A. That would be consistent. After the Supreme Court
23 ruled in Dallas, we believed that our role with
24 respect to the charity was more of a monitoring
25 role and we sought -- and I don't believe -- I'm

1 not aware, but I don't believe the courts ruled on
2 that, on the dropping of us from the suit.

3 **Q. Have you followed the progress of that suit?**

4 MR. GENDE: Object to the form and scope.

5 MR. SMITH: Form and scope.

6 MR. NEWSOME: Same objection.

7 A. Only through hearsay.

8 **Q. Who is charged with monitoring the James Brown**
9 **matters now withing the office of the Attorney**
10 **General?**

11 MR. SMITH: Object to form and scope.

12 MR. GENDE: Same.

13 MR. NEWSOME: Same.

14 A. That would be Mr. Jones and Ms. Jowers.

15 **Q. Are you aware that the Attorney General has,**
16 **within the year, moved for summary judgment as to**
17 **parts of that suit?**

18 MR. GENDE: Object to the form and scope.

19 MR. NEWSOME: Same objection.

20 MR. SMITH: Form and scope.

21 A. Yes.

22 **Q. When did you become aware of that?**

23 MR. GENDE: Same objection.

24 MR. SMITH: Same.

25 MR. NEWSOME: Same.

1 A. I believe Ms. Jowers, as is her practice, sent me
2 the memo or brief to review.

3 Q. Is that consistent with the representation to the
4 Supreme Court that the Attorney General was
5 seeking to be dropped?

6 MR. SMITH: Form and scope.

7 MR. NEWSOME: Same objection.

8 MR. GENDE: Objection to form and scope.

9 A. I believe that it is.

10 Q. Are you aware of a letter which I wrote to
11 Attorney General Wilson after learning that
12 Mr. McMaster said he did not bring the Wingate
13 suit?

14 MR. GENDE: Object to the form and scope.

15 MR. SMITH: Object to form and scope.

16 MR. NEWSOME: Same objection.

17 A. I'm not aware specifically, no.

18 Q. Are you aware that recently the Attorney General's
19 office has told me that it cannot investigate the
20 bringing of that suit against me even though
21 Mr. McMaster represented in under oath twice that
22 he did not authorize it to be brought in his name?

23 MR. SMITH: Object to form and scope.

24 MR. NEWSOME: Same objections.

25 MR. GENDE: Same objections.

1 A. I'm not aware of that. I know something about the
2 bringing of the suit, as I have told you. That
3 was probably approved by Mr. McIntosh, but I'm not
4 aware of anything about investigating, no.

5 **Q. Let me understand. Who monitors the day-to-day**
6 **action taking in this lawsuit which is being**
7 **pursued in the name of the Attorney General?**

8 MR. GENDE: Object to the form and scope.

9 MR. SMITH: Object to the form and scope.

10 MR. NEWSOME: Same objection.

11 A. Mr. Jones and Mr. Jowers.

12 **Q. And they have done so since 2013?**

13 A. Yes, ma'am. They report to me from time to time
14 as to the status of the case.

15 **Q. What is your understanding of the status of the**
16 **case?**

17 MR. GENDE: Object to the form and scope.

18 MR. SMITH: Same objection.

19 MR. NEWSOME: Same objection.

20 A. That it is before Judge Early and our efforts to
21 be dropped from the suit are pending.

22 **Q. Have you ever known a person to be dropped from a**
23 **suit where there's a counterclaim pending against**
24 **him?**

25 MR. SMITH: Object to form and scope.

1 Also intrudes on work-product privilege and the
2 witness can answer to the extent that he can do
3 so without revealing any work-product.

4 MR. GENDE: Object to the form and scope.

5 MR. NEWSOME: Same objection.

6 A. Generally, I haven't researched that, but I would
7 be of the view that the plaintiff or the party --
8 and again, we can quibble about what the status of
9 the Attorney General is in the suit -- but
10 generally speaking, the party who brings a suit
11 controls the suit, and I'm not -- I'm not
12 convinced that the counterclaim would be
13 prohibitive on that, but I have not researched it.

14 Q. From Exhibit 2, I've taken Cook 7. If you would
15 just tell me what that is, please.

16 MR. SMITH: I'm sorry. You said it came
17 from where?

18 MS. POPE: Cook 2.

19 A. This is a letter from Adam Silvernail, dated March
20 the 19, 2013, to Attorney General Wilson, John
21 McIntosh, and myself. Apparently, after our
22 petition for rehearing was filed and it appears to
23 say that the -- that Mr. Silvernail, on behalf of
24 you, is disappointed in certain things not being
25 brought up in our petition for rehearing.

1 Q. Did you, in fact, meet with Mr. McIntosh and
2 Mr. Silvernail and me a few days after I met with
3 the Attorney General and you and Mr. McIntosh?

4 A. I don't recall that meeting, but -- a few days
5 after that -- would you repeat that again?

6 Q. After you, Mr. McIntosh and the Attorney General
7 and Ms. Pope met on March 6th, did you and
8 Mr. McIntosh have a subsequent meeting with
9 Mrs. Pope and Mr. Silvernail on approximately
10 March 8th?

11 A. I just don't recall that meeting. I don't know.

12 Q. That's fine. Have you learned since 2013 that
13 there has been a sale or other disposition of
14 certain of James Brown's copyrights?

15 MR. SMITH: Object to form and scope.

16 MR. NEWSOME: Same objection.

17 MR. GENDE: Same objection.

18 A. I may have heard that from Sonny.

19 Q. Have you heard that Ms. Tommie Rae testified that
20 she had received approximately a million dollars?

21 MR. GENDE: Object to the form and scope.

22 MR. NEWSOME: Same objection.

23 MR. SMITH: Same objection.

24 A. I don't recall a million dollars, no.

25 Q. Do you know anything about the circumstances of

1 **Tommie Rae having received a million dollars**
2 **before she has been finally determined to be James**
3 **Brown's spouse?**

4 A. No, ma'am.

5 MR. SMITH: Form and scope.

6 MR. NEWSOME: Same objection.

7 MR. GENDE: Object to the form and scope.

8 A. No, I don't.

9 **Q. Do you know anything about the decision by the**
10 **office of the Attorney General not to look into**
11 **the finding that Tommie Rae was James Brown's wife**
12 **on summary judgment without the courts having the**
13 **benefit of Tommie Rae's own handwritten admissions**
14 **affirming that she knew she was not James Brown's**
15 **spouse?**

16 MR. SMITH: Object to form and scope.

17 MR. NEWSOME: Object to form and scope.

18 MR. GENDE: Object to form and scope and
19 move to strike the question as a
20 misrepresentation of evidence or the documents.

21 A. No. I don't know anything about that.

22 **Q. Are you not aware that Mr. Jones wrote me and said**
23 **this office will not consider -- asked to be**
24 **involved in the determination that she was the**
25 **spouse?**

1 A. I don't recall that. Do you have that letter? I
2 don't --

3 **Q. I'm sorry, I didn't bring it.**

4 A. I don't recall that.

5 **Q. Have you participated in any of the FOIA matters**
6 **in which the Attorney General sought to prevent**
7 **release of the Wingate contract?**

8 MR. SMITH: Object to form and scope.

9 MR. GENDE: Object to the form and scope.

10 MR. NEWSOME: Same objection.

11 A. I have participated in a number of meetings
12 involving the FOIA issues. I do not agree that
13 the Attorney General has withheld in violation of
14 FOIA, any of those documents.

15 **Q. I didn't ask you if you agreed that he had without**
16 **it. I asked you had you participated --**

17 A. Yes.

18 MR. GENDE: Object to the form and scope
19 of the follow-up.

20 **Q. Have you participated in the assertion on behalf**
21 **of the Attorney General that FOIA matters related**
22 **to James Brown should be consolidated with the**
23 **Wingate suit?**

24 MR. GENDE: Object to the form --

25 MR. SMITH: Object to the form and scope.

1 MR. GENDE: Object to the form and scope.

2 MR. NEWSOME: Same objection.

3 A. I don't recall that.

4 **Q. Are you aware of any other FOIA case in the**
5 **history of South Carolina where the Attorney**
6 **General has taken the position that FOIA must be**
7 **subordinate to discovery?**

8 MR. SMITH: Object to form and scope.

9 MR. NEWSOME: Same objection.

10 MR. GENDE: Same objections.

11 A. I believe that has -- that position has been taken
12 in other cases and I believe there is a circuit
13 court order from Judge Westbrook that supports
14 that.

15 **Q. Have you reviewed the circuit court order from**
16 **Judge Griffith which is more recent?**

17 MR. SMITH: Object to form and scope.

18 MR. GENDE: Same objections.

19 MR. NEWSOME: Same objection.

20 A. I have not.

21 **Q. Do you think that that is a good interpretation of**
22 **FOIA that it must be subject to discovery?**

23 MR. SMITH: Object to form and scope.

24 MR. NEWSOME: Same. Same objection.

25 MR. GENDE: Same objections.

1 MR. SMITH: And I object also on the basis
2 of work-product, attorney-client privilege.
3 Those cases are going on. Witness can answer
4 to the extent that he can do so without
5 revealing privilege or work-product.

6 A. I think that it is a credible position. The
7 Supreme Court has not decided that in my view, but
8 other cases in other jurisdictions have said that.

9 Q. Thank you. Let me ask you to look at Cook 6,
10 which is also from your file.

11 A. I believe this is yours.

12 Q. Tell me what that is.

13 MR. SMITH: This is from Exhibit 2?

14 MS. POPE: It is. It is from Cook 2.

15 A. This is a request by you to -- written to me, to
16 Attorney General Wilson, and to John McIntosh for
17 a meeting, and you request that John's October 1
18 statement, that it appears a meeting will serve no
19 purpose, should be revisited.

20 Q. What's at the date of that letter?

21 A. October 17, 2013.

22 Q. And are you aware that just prior to that, in
23 August of 2013, Tommie Rae had filed with the
24 federal copyright office termination notices
25 attempting to terminate more than 90 of the

1 **copyrights James Brown gave the "I Feel Good"**
2 **foundation over the next ten years?**

3 MR. SMITH: Object to the form and scope.

4 MR. GENDE: Object to form the question
5 and scope of the question.

6 MR. NEWSOME: Same objections.

7 A. I am not.

8 **Q. Is there reference in that letter to a letter of**
9 **Mr. Toberoff?**

10 A. I'm sorry, mister who?

11 **Q. Toberoff. I'll see if I can help you find it.**
12 **The reference is number two, the purpose of the**
13 **letter.**

14 A. Yes.

15 **Q. And are you aware that Mr. Toberoff had written**
16 **saying that the Tommie Rae terminations were**
17 **improper and that an estate representative was**
18 **helping her file terminations in an attempt to**
19 **secure estate royalties?**

20 MR. GENDE: Object to form and scope of
21 the question.

22 MR. SMITH: Form and scope.

23 MR. NEWSOME: Same objections.

24 A. I'm not aware of Mr. Toberoff or anything about
25 him.

1 Q. All right. Would you just identify Cook 8,
2 please.

3 MR. SMITH: Is this from box two?

4 MS. POPE: Yes. Sorry.

5 A. It is a letter from you to General Wilson, to
6 myself and to John McIntosh, dated March 21, 2013,
7 and you say in that letter, "I join others who
8 seek to restore to James Brown's "I Feel Good"
9 private foundation the \$50 million former AG Henry
10 McMaster proposed to take from it in being
11 disappointed that Attorney General Wilson failed
12 to endorse, or even acquiesce in, the return of
13 James Brown's private property to his private
14 foundation as constituted before McMaster's
15 August 10, 2008 settlement deal." I'm generally
16 not familiar with this letter. I don't recall it,
17 but --

18 Q. That's fine. But it came to you?

19 A. It did.

20 Q. And it was circulated in addition to Mr. Jones and
21 Mr. McIntosh and somebody named Kristy. Who is
22 Kristy?

23 A. Kristy -- I believe that would be Kristy
24 Quattrone.

25 Q. Tell me who she is.

1 A. She would be a -- an administrative assistant.
2 She is now in the governor's office.

3 **Q. And Cook 9 also from your file, Cook 2.**

4 A. And that is a letter dated March 21, 2013, from
5 you to Fred Kingsmore, Rick Reames of Nexsen
6 Pruet, copies going to General Wilson, McIntosh,
7 and myself, regarding the failure of Russell
8 Bauknight to file name and address of appraiser
9 and other data relied upon for less than
10 \$4.7 million appraisal of: James Brown claims
11 against David Cannon and others; James Brown
12 royalties rights to more than 800 songs; and James
13 Brown publicity rights.

14 **Q. Have you ever seen an appraisal of the James Brown**
15 **assets?**

16 MR. SMITH: Object to form and scope.

17 MR. NEWSOME: Same objection.

18 MR. GENDE: Same.

19 A. No. I don't believe I have.

20 **Q. So far as you're aware, has anyone in the Attorney**
21 **General -- seen it?**

22 MR. SMITH: Object to the form and scope.

23 MR. GENDE: Same.

24 MR. NEWSOME: Same objection.

25 A. I have heard people talking about it. I can't say

1 whether they've seen it or not.

2 **Q. Who have you heard talking about it?**

3 A. Sonny.

4 **Q. Cook 10 -- and I'll try to make the short -- Cook**
5 **10 is the respondent, James B's, return to the**
6 **petition for rehearing by Adele Pope, which was**
7 **within your file, Cook 2. Do you recall anything**
8 **about that?**

9 A. Not specifically, no.

10 **Q. Is it your position that the Attorney General**
11 **shared a common interest privilege with Tommie Rae**
12 **and her son, James B, after the first Wilson**
13 **decision?**

14 MR. SMITH: Object to the form, scope.
15 Object to the extent that it would intrude on
16 work-product privilege, attorney-client
17 privilege. If the witness can answer the
18 question without violating those privileges, he
19 may do so.

20 MR. NEWSOME: Object to form and scope.

21 MR. GENDE: Same objections. Calling for
22 a legal conclusion.

23 A. I don't have an opinion on that.

24 **Q. Have you ever thought about whether in preparing**
25 **your petition for rehearing, you -- you and Tommie**

1 **Rae or James B or Mr. Bauknight should**
2 **appropriately coordinate your responses?**

3 MR. SMITH: Same objections, including the
4 privilege ones.

5 MR. NEWSOME: Object to the form and
6 scope.

7 MR. GENDE: Same. Object to the form and
8 scope.

9 A. Well, since we didn't coordinate our responses, I
10 don't believe there was any requirement that we do
11 so.

12 **Q. You did not -- you, personally, did not coordinate**
13 **any responses?**

14 A. I did not.

15 **Q. Thank you.**

16 A. In fact, along with the technical aspects as I
17 mentioned from Mary Frances, that's my work and my
18 work only.

19 **Q. Thank you. Okay. And just quickly, if you'll**
20 **define Cook 5 for me, please.**

21 MR. SMITH: And again, that is from
22 Exhibit 2?

23 MS. POPE: Yes, it is.

24 A. This appears to be an affidavit from you. You
25 have a note on here to me. I guess that's to me.

1 Q. If you can kind of give us the date so we can put
2 it in context, please.

3 A. The date is the 3rd of July 2013. And your
4 affidavit is in support of voiding orders dated
5 June 13th, my birthday, 2013.

6 Q. And if you'll just tell me what the note to you
7 says.

8 A. "Bob, if AG Wilson allows Bauknight, Nexsen Pruet,
9 and -- I can't read that actually -- Levenson, and
10 lawyers for Tommie Rae to be paid 20 million and
11 contestants with no basis to take 30 million from
12 the "I Feel Good" Trust, our state will suffer for
13 decades. Happy fourth. Adele, July 4, 2013.

14 MS. POPE: Mr. Cook, I thank you for your
15 time.

16 MR. GENDE: Let's just chat for a second
17 and see if there's any follow up questions. I
18 do want to put on the record at this time that
19 we had a discussion, I think before the court
20 reporter started, asking Ms. Pope if it would
21 be all right for us to put a continuing
22 objection for material that went into 4900 and,
23 Ms. Pope, correct me if I'm wrong, she would
24 not consent to that, forcing us to make
25 continuing objections throughout the

1 State of South Carolina) Court of Common Pleas
2 County of Richland) Case No: 2013-CP-02-1337

3 Adele J. Pope,)
4)
5 Plaintiff(s),) Deposition
6 vs.) of
7) Henry D. McMaster
8 Estate of James Brown and The)
9 James Brown 2000 Irrevocable)
10 Trust,)
11 Defendant(s).)
12

13 Deposition of HENRY D. MCMASTER, taken before
14 Frances C. Gray, Verbatim Court Reporter and Notary
15 Public in and for the State of South Carolina,
16 scheduled for 10:00 a.m. and commencing at the hour
17 of 10:23 a.m., Wednesday, October 19, 2016, at the
18 Office of the Attorney General of South Carolina,
19 1000 Assembly Street, Columbia, South Carolina.

20 Reported by:
21 Frances C. Gray
22
23
24
25

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1 STIPULATIONS

2 This deposition is being taken pursuant to
3 the South Carolina Rules of Civil Procedure.

4 - - - - -

5 The reading and signing of this deposition
6 is reserved by the deponent and counsel for the
7 respective parties.

8 - - - - -

9 Whereupon,

10 HENRY D. MCMASTER, being duly sworn and
11 cautioned to speak the truth, the whole truth,
12 and nothing but the truth, testified and
13 deposed as follows:

14 THE COURT REPORTER: State your full name
15 for the record, please.

16 THE WITNESS: Henry Dargan McMaster.

17 - - - - -

18 MS. POPE: Mr. McMaster, before we start,
19 I think your counsel and I may want to say
20 something about the documents you brought with
21 you today on the record.

22 THE WITNESS: I didn't bring any with me.

23 MR. SMITH: The ones that you brought with
24 you yesterday. My understanding, from talking
25 to Adele, is that she is -- because of time

1 hand them over to her because you said there
2 were some writings in them, so I'm --

3 THE WITNESS: That's right.

4 MR. SMITH: -- gonna go through them and
5 prepare privilege log as to anything in there
6 that I think is privileged..

7 THE WITNESS: Okay.

8 MR. NEWSOME: Before we start, I just want
9 to get one objection on the record. We object
10 to any questioning related to Case 4900 for a
11 couple of reasons. First, we moved to
12 consolidate the discovery and Ms. Pope objected
13 to that, and now Mr. McMaster has already been
14 deposed in Case 4900 by Mr. Bundy, Ms. Pope's
15 counsel, so it would be not appropriate in Case
16 1337 to go over any of the ground that's been
17 covered in Case 4900, so I want to make the
18 general objection for the record.

19 MS. POPE: If I could just be clear,
20 you're certainly not instructing Mr. McMaster
21 not to answer any questions.

22 MR. NEWSOME: I am not.

23 MS. POPE: And you are making that
24 objection on behalf of the Estate and Trust of
25 James Brown?

1 MR. SMITH: Let me go back to our review
2 of the documents that I have. You had
3 subpoenaed some documents from Attorney
4 Governor McMaster --

5 MS. POPE: Right.

6 MR. SMITH: And if there any in here that
7 are outside the scope of that subpoena, then
8 you would not be entitled to see those. I just
9 have to look at -- compare the documents in
10 here with the subpoena, and we can go over that
11 during break or at a later time, but we're not
12 -- as I understand it, unless -- we're not
13 making those documents an exhibit to this file
14 and we're not going to be going over them with
15 this witness unless you and I have an
16 opportunity to discuss them at break.

17 THE WITNESS: I have a question. May I
18 see the subpoena, please.

19 MR. SMITH: Yes. It's hard to get it out.
20 There it is right there. That's what she asked
21 for.

22 (The Witness views document.)

23 MS. POPE: We are on the record.

24 MR. SMITH: Okay. Also, she
25 cross-references in the subpoena, the documents

1 requested in the notice of deposition and that
2 begins right here.

3 THE WITNESS: I'm going to tear this
4 staple.

5 MR. SMITH: Now, are you going to ask
6 about the deposition in 4900?

7 MS. POPE: Just a few minutes.

8 MR. SMITH: Make that an exhibit or are
9 you going to do that are the course of the --

10 MS. POPE: In just a few minutes, yeah,
11 yeah.

12 BY MS. POPE:

13 Q. Mr. McMaster, we got sort of started without the
14 usual formalities. You are a lawyer, and do you
15 need me to explain the deposition process to you?

16 A. No, ma'am.

17 Q. Okay. We'll proceed on then. You were issued a
18 subpoena in your individual capacity, although you
19 are the Lieutenant Governor, to bring certain
20 documents to this deposition; is that correct?

21 A. Yes.

22 Q. Okay. And yesterday you delivered two red rope
23 files to Mr. Smith --

24 A. I'm sorry. I delivered what?

25 Q. Two red rope files to Emory Smith, who is serving

1 **as your counsel in this deposition.**

2 A. Two -- what kind of files?

3 **Q. Red rope files. Red legal files.**

4 A. Red? I don't -- I don't --

5 MR. SMITH: Excuse me. Are you talking
6 about a red expansion binder?

7 MS. POPE: Yes, yes.

8 MR. SMITH: Excuse me, if you don't mind.

9 MS. POPE: Sure.

10 MR. SMITH: I think she's talking about
11 these documents right here that are in this
12 binder.

13 THE WITNESS: Not those.

14 MR. SMITH: No, not these. These right
15 here.

16 A. I delivered a group of papers that were not in a
17 file that we put in a expandable file holder
18 yesterday.

19 **Q. And those were the documents which you brought**
20 **pursuant to the subpoena; is that correct?**

21 A. No, ma'am. Those are the documents -- those are
22 all the documents that I have in my possession
23 that in any way relate to this case. I don't know
24 how many of them are or are not responsive to your
25 subpoena, but looking at the subpoena again, as I

1 did a moment ago, I don't think many of them are
2 responsive.

3 **Q. Did you make any attempt to comply with the**
4 **subpoena?**

5 A. I went through the -- yes. I went through the
6 documents and attempted to get them in some sort
7 of order so they could be examined.

8 **Q. And are the documents that are in the folder**
9 **beside you, the documents that you put together in**
10 **an attempt to comply with the subpoena?**

11 A. Well, again, all of those documents are not
12 responsive to the subpoena, but all of those
13 documents -- those documents represent all of the
14 documents that I have in my possession. It would
15 probably be up to someone else to determine which
16 of them are responsive to the subpoena because
17 some may be responsive in some way that I do not
18 understand.

19 **Q. Is it not your individual responsibility to**
20 **respond to a subpoena, rather than someone in the**
21 **Attorney General's office?**

22 A. I attempted to do that by bringing every document
23 that I could find that was related.

24 **Q. And do you agree that we may retain that file**
25 **until we've resolved the issues about what is or**

1 **is not responsive to the subpoena?**

2 A. I understand that my attorney will retain.
3 possession, and that he and you will examine the
4 documents in the manner prescribed by law.

5 **Q. Thanks. Thanks.**

6 MR. SMITH: Excuse me one minute. This
7 is a call about the Wi-Fi. Hello?

8 MR. NEWSOME: Let's go off the record.

9 MS. POPE: Off the record.

10 (Off the record.)

11 RESUMING EXAMINATION

12 BY MS. POPE:

13 **Q. Mr. McMaster, I have tried to pre-mark certain**
14 **exhibits so that we can go through today's**
15 **deposition a little more quickly, but first I**
16 **would like to ask your permission, which I believe**
17 **I have received from both other counsel and**
18 **perhaps your counsel, to make your deposition,**
19 **which was taken in Richland County case number**
20 **2010-CP-40-4900 on August 18, 2016, and the**
21 **Exhibits number 1 through 6 to that deposition,**
22 **along with your errata sheet, part of this**
23 **deposition. Do you object to that?**

24 A. I do not object if my attorney does not object.

25 MR. SMITH: I do not object to the use of

1 that deposition as an exhibit, except that we
2 reserve, preserve all objections that I made or
3 Ken Wingate made for the Attorney General in
4 that. I also, to the extent permitted in case
5 1337, object to any questions that deposition
6 that go beyond the scope of Case 1337, and --
7 and also, we don't have the errata sheet as an
8 exhibit yet and it would be subject to the
9 errata sheet that the Lieutenant Governor has
10 completed.

11 MS. POPE: Right. I believe --

12 MR. NEWSOME: And I have the same
13 objections.

14 MS. POPE: You're making objections for
15 Mr. McMaster or on behalf of the Estate and
16 Trust?

17 MR. NEWSOME: I represent the Estate and
18 Trust, not Mr. McMaster, but I object. Again,
19 we agreed to make that an exhibit to this
20 deposition, but I'm not waiving any objections
21 that the Estate made at that deposition, and
22 I'm also preserving the objection I've already
23 noted on the record to the extent you're trying
24 to go beyond the scope of 1337.

25 **Q. Let me just suggest I think this is consistent**

1 with what we thought that Exhibit 23 for the
2 moment will be only page 1 and 2 of the August 18,
3 2016 deposition and we will find a convenient and
4 appropriate manner to make the remainder of the
5 deposition, the exhibits and the errata sheet a
6 part of the record.

7 MR. SMITH: Correct.

8 RESUMING EXAMINATION

9 BY MS. POPE:

10 Q. Now, I'm going to hand you certain other documents
11 and I am going to, for ease and speed, identify
12 them by the way I would identify them, and see if
13 they are -- you have any familiarity with them as
14 I mention it. And if you'd like to stop and
15 discuss any one of them as I hand them to you, we
16 can, or we can actually just come back to them
17 later, okay?

18 MR. SMITH: If you would, if you show him
19 any document that I have previously been --
20 that's not been previously noticed as one that
21 will be used as an exhibit in this deposition,
22 if you would call that to my attention, please.

23 MS. POPE: There are not so far, okay?

24 MR. SMITH: Okay.
25

(Whereupon, Handwritten Notes
was marked Exhibit No. 1 for
identification.)

BY MS. POPE:

**Q. Exhibit 1 is copy of certain handwritten notes of
Tommie Rae Hynie. Are you familiar with the
handwritten notes of Tommie Rae Hynie that are
referred to by her lawyer as the "Hynie diary"?**

MR. NEWSOME: Object to the form of the
question.

**A. I think you just asked me two questions. One is
about what I have in my hands, Exhibit 1 --**

Q. Right.

A. And another is the Hynie diary.

**Q. No, no. Well, what I'm telling you is Exhibit 1
is an excerpt from those handwritten notes.**

MR. NEWSOME: Object to the form of the
question.

**Q. Do you know anything about the Tommie Rae Hynie
handwritten notes, sometimes referred to as the
Hynie diary?**

MR. NEWSOME: To object to the form of the
question.

MR. NEWSOME: Same objection.

1 A. I don't believe I do. I don't recall anything
2 like that, but I don't know what this is that
3 you've handed me in Exhibit 1. Is as a part of
4 that?

5 **Q. I will represent to you that it is a part of that**
6 **and it came from the public record.**

7 A. So, your question is am I familiar with Exhibit 1;
8 the answer is no.

9 **Q. Do you know anything about Exhibit 1, or about the**
10 **so-called Hynie diary? Very general.**

11 A. I don't believe I do, no, ma'am.

12 **Q. Did you ever authorize anyone to tell the Supreme**
13 **Court that you reviewed the Tommie Rae Hynie**
14 **handwritten notes before you reached a decision to**
15 **stipulate that she was the wife of James Brown?**

16 MR. NEWSOME: Object to the form of the
17 question.

18 MR. SMITH: Same objection.

19 A. Did I authorize someone to tell the court that I
20 had reviewed the Hynie diary?

21 **Q. Yes.**

22 A. I don't remember.

23 **Q. Do you have any recollection whatsoever of**
24 **reviewing it before August 10, 2010, when you**
25 **reached an agreement that would stipulate that she**

1 would be considered the spouse of James Brown for
2 all purposes?

3 MR. NEWSOME: Object to the form of the
4 question.

5 MR. SMITH: Same objection.

6 A. Ask the question again, please. I think there are
7 two questions in there.

8 Q. Do you recall ever looking at handwritten notes of
9 Tommie Rae Hynie before reaching your decision on
10 August 10, 2008, to declare to be James Brown's
11 spouse for all purposes?

12 MR. SMITH: Object to the form the
13 question.

14 MR. NEWSOME: Same objection.

15 A. I don't remember such a declaration. I don't
16 recall that, making that declaration.

17 Q. Do you recall the terms of the August 10, 2008
18 agreement which you reached with Tommie Rae and
19 the clients of Louis Levenson?

20 A. Do I recall the terms?

21 Q. Yes.

22 A. As I sit here today, no, I do not.

23 Q. Did you, at the time, on August 10, 2008, know
24 what the terms were?

25 A. I do not know if I did or not. I presume that I

1 was kept aware of the events in the case, but
2 today I cannot tell you that I remember what you
3 just asked me.
4

5 (Whereupon, 04/17/98 Herring
6 Letter was marked Exhibit No. 2
7 for identification.)
8

9 BY MS. POPE:

10 Q. All right. Exhibit 2 is a letter from H. Dewain
11 Herring to Mr. James Brown dated April 17, 1998.
12 Do you recognize that document?

13 A. You mean, have I seen it before?

14 Q. Right, or do you have any recollection of either
15 --

16 A. I have no recollection of this document.

17 Q. Do you know anything about Dewain Herring as it
18 relates to James Brown or James Brown Estate
19 Plan?

20 A. As I sit here today, no.

21 Q. Do you recall anything about Dewain Herring having
22 done estate planning work for James Brown?

23 A. I don't recall that.

24 Q. Does Exhibit 2, which is dated April 17, 1998,
25 refer to James Brown's estate planning documents?

1 A. Does this letter refer to estate planning
2 documents?

3 Q. Yes.

4 A. Yes.

5 Q. And, specifically, what estate planning documents
6 does it refer to?

7 A. It refers to a Will, the Will and Trust that
8 Mr. Herring says he prepared for Mr. Brown, and it
9 sets out what the documents do.

10 Q. Does it refresh your recollection that James Brown
11 actually executed two estate plans?

12 MR. NEWSOME: Object to the form of the
13 question.

14 A. I don't remember that. I remember there was -- I
15 vaguely remember there was some confusion about
16 which documents were the right -- were the
17 operative documents, but I'm really not sure. I
18 don't remember that.

19
20 (Whereupon, Pullman Article was
21 marked Exhibit No. 3 for
22 identification.)

23

24 BY MS. POPE:

25 Q. Exhibit 3 is an article about David Pullman and

1 James Brown dated June 16, 1999. Do you know
2 anything about David Bowman, James Brown, or what
3 we called the TIAA debt?

4 A. I do not believe so. I'm pretty sure I've never
5 seen this document, but I don't think I know
6 anything about that.

7 Q. Do you recall that in some years before his death,
8 about the time he was executing the first of his
9 Wills, Brown took out a \$26 million loan. Does
10 that sound familiar to you?

11 A. That has a familiar ring of a loan. Perhaps if
12 you could tell me more I can remember, but that's
13 -- it has a familiar ring that he had taken out a
14 loan -- Mr. Brown had borrowed some money, but I'm
15 not sure.

16
17 (Whereupon, 5/20/2008 Email was
18 marked Exhibit No. 4 for
19 identification.)
20

21 BY MS. POPE:

22 Q. Now I'd like you to please look at Exhibit 4 which
23 is an e-mail from Adele Pope to two members of
24 your office, and if you could just -- I want to
25 talk about that just a little bit.

1 **believe that was incorrect?**

2 A. That what was incorrect?

3 MR. SMITH: Object to the form of the
4 question.

5 MR. NEWSOME: Same objection.

6 BY MS. POPE:

7 **Q. That it was, in fact, attached.**

8 A. I would presume that whatever it says was attached
9 was attached, but I've got no idea whether it was
10 or not.

11 **Q. And if --**

12 A. Or what it was.

13 **Q. Well, what does it say was attached?**

14 A. A memo.

15 **Q. Well, let's look carefully and see what it says is**
16 **attached.**

17 A. Oh, I see. Subject, first semiannual report of PR
18 /Trustees; attachment, first report.
19 first.semi.annual.pdf.

20 **Q. Right. So you have no evidence that that was not**
21 **received when it was sent?**

22 A. No, I don't. I mean, I don't know anything about
23 it.

24 **Q. And if my records show that in addition to that,**
25 **approximately eight days later I handed you**

1 **another copy --**

2 A. You didn't hand me a copy, ma'am.

3 **Q. Are you certain about that?**

4 A. No. Eight days after --

5 **Q. Eight or nine days --**

6 A. May the 20th, 2009, you handed me a copy?

7 **Q. Eight or nine days later.**

8 MR. NEWSOME: Object to the form of the
9 question.

10 A. I don't recall that.

11 **Q. Do you recall a meeting with John Rainey?**

12 A. I recall a meeting with John Rainey.

13 **Q. With me?**

14 A. I don't remember your being there.

15 **Q. Oh, okay. Who do you remember being there?**

16 A. John Rainey. I can't say whether you were there
17 or not. You may have been, I don't know.

18 **Q. Oh, okay.**

19 A. That was a question at the last deposition.

20 **Q. So, if you can't remember where I was there, then**
21 **you wouldn't remember whether I handed you**
22 **another copy of that same document, would you?**

23 A. Well, I -- that's what I just said, I don't
24 remember you giving me a copy of a document.

25 **Q. But you don't deny that I gave it to you if I was**

1 **there?**

2 MR. SMITH: Asked and answered.

3 A. Ms. Pope, I can't confirm it. I just don't
4 remember it.

5 Q. **That's fine. That's fine. If you don't remember,**
6 **that's fine. It was long time ago, wasn't it?**

7 A. Yes, it was.

8
9 (Whereupon, List of Orders was
10 marked Exhibit No. 5 for
11 identification.)
12

13 BY MS. POPE:

14 Q. **Next, this is a list of orders -- this is Exhibit**
15 **number 5-- this is a list of orders, James Brown**
16 **orders, dated June 5, 2008. Does this document**
17 **refresh your memory at all about the number of**
18 **orders that were issued in the James Brown**
19 **matters?**

20 A. Well, I know there were a lot of orders. I don't
21 think that I have seen this list before dated
22 June 5, 2008, unless I saw it at the last
23 deposition, but I don't remember seeing this
24 document before.

25 Q. **But you don't have any reason to think that**

1 Q. I'm sorry. Did you request that SLED make an
2 investigation of David Cannon?

3 A. I don't remember.

4 Q. Do you remember anything about David Cannon?

5 A. He was one of the original people in the trust,
6 one of the original trustees or -- of the trust.

7 Q. Did you ever investigate how much of any money
8 David Cannon took from James Brown?

9 A. You mean, did SLED ever do that?

10 Q. You. Your office.

11 A. The Attorney General does not investigate, ma'am.

12 Q. The Attorney General --

13 A. The Attorney General is the lawyers; they do not
14 investigate. The investigative agency does the --

15 Q. Mr. McMaster, did you not --

16 A. -- investigation.

17 MR. NEWSOME: Excuse me. Let the witness
18 finish answering the question.

19 Q. I'm sorry. Go ahead. I apologize. Go ahead.

20 A. The Attorney General is not an investigator. The
21 lawyers are not investigators. They are --
22 they -- the SLED agents are the people who conduct
23 investigations at the request of the Attorney
24 General or other solicitors or others.

25 Q. Did you ever receive information in 2009 from SLED

1 **about David Cannon?**

2 A. We received some -- in what year?

3 **Q. 2009 when you were Attorney General.**

4 A. I know we received some information about a lot of
5 stealing going on involved with the James Brown
6 matter, but the details of when and about whom, I
7 don't know, but I -- I think Mr. Cannon was one of
8 those that we received information from SLED or
9 from somewhere.

10 **Q. Well, wasn't he indicted by -- indicted in 2010**
11 **for taking more than \$10 million and -- and**
12 **covering it up with a forgery?**

13 A. I think he was charged. I don't remember the
14 details of it, though.

15 **Q. And after he was charged, you named him as a**
16 **witness for the State of South Carolina in**
17 **Richland 4900?**

18 MR. NEWSOME: Object to the form of the
19 question.

20 A. Ma'am, I didn't name him as a witness. I mean,
21 perhaps a lawyer in this office named him as a
22 witness, but I was not involved in those kinds of
23 details.

24 **Q. You are not involved in the details of a person**
25 **who took more than \$12 million from funds James**

1 **Brown gave to charity?**

2 MR. SMITH: Object to the form of the
3 question.

4 MR. NEWSOME: Same objection.

5 A. I would have -- if I were Attorney General at the
6 time of any investigation in this office, I would
7 have been advised of the process and the progress
8 of the investigation by the investigators and what
9 the lawyers' views of those findings were, but I
10 cannot remember today what I learned and when I
11 learned it about Mr. Cannon.

12 Q. But if you were taking action related to James
13 Brown and authorizing your office to take action,
14 it was your responsibility?

15 A. No doubt about that.

16 Q. Okay. And if you sign documents as a lawyer, you
17 had the same Rule 11 obligations as everyone else;
18 is that correct?

19 A. That is correct.

20 Q. Good. Well, we'll come back to it. We'll see if
21 we can find something that'll refresh your
22 recollection.

23 A. Now, you must understand, Ms. Pope, that a lot of
24 things that an Attorney General signs are
25 presented by assistants who are more familiar with

1 the details than the Attorney General would be.
2 But the Attorney General would be given an ample
3 explanation and understanding of the nature of
4 what was happening, but he is not involved and
5 cannot possibly be involved in all the details
6 every day of every case going on in the office.

7 **Q. Mr. McMaster, how many times have you sued a South**
8 **Carolina citizen using a private attorney?**

9 A. Say it again. How many times have I sued --

10 **Q. How many times did you, as Attorney General, sue a**
11 **South Carolina citizen using a private attorney?**

12 A. We had a number of those cases, yes.

13 **Q. In which the Attorney General was not an attorney**
14 **of record?**

15 A. No. The Attorney General was an attorney of
16 record when we hired outside counsel to handle
17 cases.

18 **Q. Right. So the suit that you brought against Bob**
19 **Buchanan and me is the --**

20 A. I did not bring that suit, ma'am.

21 **Q. Mr. McMaster, how does someone who's sued by the**
22 **Attorney General of South Carolina know --**

23 MR. SMITH: Object to the -- to the
24 question and line of questions that's going
25 beyond the scope of this deposition of this

1 witness in 1337.

2 MR. NEWSOME: Same objection.

3 RESUMING EXAMINATION.

4 BY MS. POPE:

5 Q. Mr. McMaster, did you sue Adele Pope and Bob
6 Buchanan in your capacity as Attorney General in
7 2010?

8 A. No, ma'am.

9 Q. When did you first learn that your name as the
10 Attorney General had been used on a lawsuit?

11 MR. NEWSOME: I object to this whole line
12 of questioning so I just want to preserve that.
13 This is all after you were no longer PR.

14 MR. SMITH: Same question. I mean, same
15 objection, I mean.

16 RESUMING EXAMINATION.

17 BY MS. POPE:

18 Q. When did you first learn that your name had been
19 used as a plaintiff on a pleading in a lawsuit
20 that you did not bring?

21 MR. NEWSOME: Same objection.

22 MR. SMITH: Same objection.

23 A. Is that the end of your question?

24 Q. Yes.

25 A. I'm not sure, but I would -- I believe it was

1 after I had left office, although I'm not sure.

2 **Q. Did you ever take any action to correct the use of**
3 **your name as a plaintiff on a pleading when you**
4 **did not authorize the lawsuit?**

5 MR. NEWSOME: Same objection.

6 MR. SMITH: Same objection. Object to the
7 form.

8 A. I believe I commented on that or I asked some
9 questions about it, but that was the extent of my
10 inquiry.

11 A. And again, I'm not sure when when I found that
12 out.

13 **Q. Well, wasn't it pretty important that you, in your**
14 **capacity as Attorney General, you brought a suit**
15 **against South Carolina citizens --**

16 A. I did not bring a suit against South Carolina
17 citizens.

18 MR. NEWSOME: Same objection to the --

19 MR. SMITH: Same objection --

20 MR. NEWSOME: -- question as being outside
21 of the scope of Case 1337.

22 MR. SMITH: Same objection, and also
23 redundant questioning.

24 A. I didn't -- I did not bring the case against you
25 and Mr. Buchanan.

1 **Q.** But you did nothing to correct the use of the
2 Attorney General's name on that lawsuit for years
3 after you realized that your name and been
4 illegally used in the lawsuit?

5 MR. SMITH: Object to the form of the
6 question. Same objections as to beyond the
7 scope of this deposition.

8 MR. NEWSOME: Same objections.

9 **A.** There are a number of presumptions in your
10 questions, but illegally used -- I don't --

11 **Q.** Well, let me back up. Is it illegal for someone
12 to bring a lawsuit in the name of the Attorney
13 General that is not authorized?

14 **A.** Well, ma'am, the Attorney General -- there was an
15 Attorney General in the office at the time all of
16 that was done, and that would be Mr. Wilson. And
17 I raised the question with someone about the
18 caption in that case. I don't recall the
19 explanation I got, but that was -- that was my
20 response to that. It was I was no longer the
21 Attorney General.

22 **Q.** Mr. McMaster, were you Attorney General on May 19,
23 2010?

24 **A.** Yes.

25 **Q.** The date that Richland County 2010-CP-40-4900 was

1 **filed?**

2 A. I'm not sure when it was filed, but it was filed
3 before I left office.

4 **Q. Right. It was filed before you left office and it**
5 **has continued until today, six years later, and**
6 **you don't know when you learned that your name was**
7 **on that pleading as a plaintiff?**

8 MR. SMITH: Object to the going beyond the
9 scope of this deposition in 1337. The witness
10 has also been asked this question, or similar
11 ones, multiple times.

12 MR. NEWSOME: Same objections.

13 A. That is correct.

14 **Q. Did you answer interrogatories in Case 4900?**

15 MR. SMITH: Object -- same objection.

16 MR. NEWSOME: Same objections.

17 A. I don't think so. Personally, me? I don't
18 remember doing that, no.

19 **Q. Did you respond to a motion to dismiss that suit**
20 **as improper -- did you respond to a petition to**
21 **remove that to dismiss that lawsuit as improper?**

22 MR. SMITH: Object to the going beyond the
23 scope of this deposition, and object to the
24 form of the question -- the extent this applies
25 and I don't know how much longer this line of

1 questioning is going to exist, but the witness
2 is here for Case 1337 not Case 4900.

3 MR. NEWSOME: Same objection and this is
4 beyond the scope of Case 1337.

5 THE WITNESS: What was the question again,
6 please.

7 (Court reporter reads back previous question.)

8 A. Which lawsuit?

9 **Q. Richland 4900.**

10 A. I don't recall. Ms. Pope, there are lawyers in
11 the office that would be much more familiar in
12 conversing with these facts than I am, like,
13 Mr. Jones, perhaps Mr. McIntosh, or some of those
14 others that you mentioned.

15 **Q. Who makes the decision for the Attorney General of**
16 **South Carolina to sue a South Carolina citizen**
17 **using a private attorney?**

18 MR. NEWSOME: Same objection. This is
19 beyond the scope of Case 1337.

20 MR. SMITH: Same objection.

21 A. The Attorney General ultimately makes all of those
22 decisions, and it's his or her responsibility.

23 **Q. If the Attorney General has been inadvertently**
24 **named as a party to a lawsuit that he doesn't**
25 **believe he authorized, who has the responsibility**

1 **to undo that?**

2 MR. NEWSOME: Object to the form of the
3 question. Object to it going beyond the scope
4 of Case 1337.

5 MR. SMITH: Same objections. Again, this
6 is -- we're not here for Case 4900. We're here
7 for Case 1337.

8 A. Ultimately, that would be the Attorney General.

9 **Q. Mr. McMaster, do you understand that I have not**
10 **been paid for my work since 2007 because of the**
11 **lawsuit you brought?**

12 A. Ma'am, I did not bring that lawsuit.

13 **Q. So what do we need to do to make a lawsuit go**
14 **away?**

15 A. That's a question that would have to be answered
16 by the lawyers involved in the case.

17 **Q. Well, so once the Attorney General is in a case,**
18 **there's nothing he can do to straighten it out if**
19 **he wasn't there -- legally there?**

20 MR. NEWSOME: Object to the form of the
21 question.

22 A. Well, legally there, that's another
23 characterization that I suppose would have to be
24 explored, but yes, an Attorney General or any
25 lawyer involved in any case can make modifications

1 to the case according to the rules and the law at
2 the times allowed by the rules and the law.

3 **Q. And you know a lot about the due process aspects**
4 **of using special counsel, don't you?**

5 MR. SMITH: Object to the form of the
6 question. It may be -- object to the form of
7 the question.

8 MR. NEWSOME: Same objection.

9 A. I don't understand what you mean about due
10 process.

11 **Q. When the Attorney General uses a special outside**
12 **counsel, are there special rules that require**
13 **oversight by the Attorney General to comply with**
14 **due process?**

15 A. I don't think there are special rules, but there
16 are the same rules that apply to anyone handling a
17 case. The rules apply to all lawyers generally,
18 of which the Attorney General is one.

19 **Q. And certainly it would be a rule, do not bring a**
20 **lawsuit in the name of someone who hasn't**
21 **authorized the lawsuit?**

22 A. I presume that that is a well-established rule.
23

24 (Whereupon, 02/10/2009 Latham

25 Email was marked Exhibit No. 7

1 for identification.)

2
3 BY MS. POPE:

4 Q. Good. Okay. Let's just look at some other
5 documents February 10, 2009 Exhibit 7 is an email
6 to Jones and Jowers from Bill Latham dated
7 February 10, 2009. Do you know anything about
8 Mr. Latham, Mr. Copsidas, or the subject of that
9 e-mail? If you'll just take a moment to look at it

10 A. February 10, 2009, to Mary Frances and Sonny.

11 Q. Right.

12 A. To my knowledge, I have not seen this e-mail
13 before.

14 Q. Well, let me ask you now, this email is after you
15 reached your -- your settlement agreement on
16 August 10, 2008. Is that --

17 A. That is -- yes, this date is February 10, 2009.

18 Q. Right. Tell me generally what the terms of the
19 settlement agreement were.

20 A. The -- it was an agreement that I thought was an
21 excellent agreement that provided for about 46 or
22 7 percent of the assets or those that could be
23 produced by the existing assets to go to the
24 charity for the children, and about an equal about
25 46 or 7 percent would go to the various relatives

1 of James Brown. I think his wife, Ms. Hynie, and
2 children, and I don't remember who else, and then
3 there was some percent -- six percent,
4 seven percent, eight percent, that was to go
5 somewhere else. And that was -- I thought that
6 was a very good settlement because of the federal
7 law concerning royalties and residuals that
8 operates on a separate authority, that requires
9 most of those assets to go to the family members,
10 as I understand it. I thought it was a good
11 settlement.

12 **Q. Well, when you reached the settlement on**
13 **August 10, 2008, it had nothing in it about**
14 **royalties, did it?**

15 A. I thought that was the purpose of it was to
16 establish the -- either that document or one that
17 was to follow would accomplish what I just said.

18 **Q. So, but you, on August 10, 2008, had no**
19 **understanding of the federal copyright law?**

20 MR. NEWSOME: Object to the form of the
21 question.

22 MR. SMITH: Same objection.

23 A. No. I did have an understanding, that's why it
24 was -- at some point in there, that was why we --
25 we understood -- that's why I understood it was a

1 **nothing about the copyright law on August 10,**
2 **2008, would that be a problem?**

3 MR. NEWSOME: Object to the form of the
4 question.

5 MR. SMITH: Same objection.

6 A. Would that be a problem for what?

7 **Q. Would that be a problem that you had given away**
8 **half of James Brown's charity?**

9 MR. SMITH: Object to the form of the
10 question.

11 MR. NEWSOME: Object to the form of the
12 question, and object to this going beyond the
13 scope of Case 1337.

14 MR. SMITH: Same objection as beyond the
15 scope.

16 A. What I can tell you is I thought it was a good
17 settlement and the copyright angle was important.

18 **Q. Have you done anything since August 2008 to check**
19 **to see whether you were right about the copyright**
20 **angle?**

21 A. No, ma'am, other than talk to the lawyers.

22 **Q. Which lawyers have you talked -- who's told you**
23 **that the copyright angle was a good idea?**

24 A. I think Mr. Jones told me that, or perhaps it was
25 someone else in the office.

1 Q. But it would've been within the office?

2 A. Yes, ma'am.

3 MR. NEWSOME: Object to the form of the
4 question. Object to it going beyond the scope
5 of Case 1337.

6 Q. Do you know anything about the Ray Charles
7 litigation?

8 A. No, ma'am. I don't.

9 Q. Do you know anything about the Ray Charles
10 Foundation?

11 A. No, ma'am. I don't.

12 Q. Do you know anything about what a bad idea it is
13 to declare someone the wife when she's not from a
14 copyright standpoint?

15 MR. SMITH: Object to the form of the
16 question.

17 MR. NEWSOME: Object to the form of the
18 question.

19 MR. SMITH: -- (Inaudible) beyond the
20 scope.

21 MR. NEWSOME: -- (inaudible) being beyond
22 the scope.

23 A. I'm not familiar with those things. I am familiar
24 with Ray Charles.

25 Q. Are you familiar with who are James Brown's

1 **children?**

2 A. I remember there are a number of them. I can't
3 tell you the names right now.

4 **Q. Do you know that fewer than half were parties to**
5 **your August 10, 2008 agreement?**

6 MR. NEWSOME: Object to the form --

7 A. I don't recall one way --

8 MR. NEWSOME: -- of the question.

9 A. -- or the other.

10 MR. NEWSOME: Object to the question as
11 being beyond the scope --

12 MR. SMITH: Same objection.

13 MR. NEWSOME: -- of Case 1337.

14 BY MS. POPE:

15 **Q. Do you acknowledge -- do you acknowledge that**
16 **knowing about who the heirs are is critical to**
17 **Federal Copyright Act?**

18 MR. SMITH: Object to the form, object to
19 beyond the scope.

20 MR. NEWSOME: Same objections.

21 A. The question again, please.

22 **Q. Well, I'll say that a different way. Is knowledge**
23 **of who the heirs are important under the Federal**
24 **Copyright Act provisions?**

25 A. I believe so, but I am unfamiliar with the

1 copyright laws.

2
3 (Whereupon, Petition for Review
4 was marked Exhibit No. 8 for
5 identification.)
6

7 BY MS. POPE:

8 Q. Look at number eight. That is a petition by James
9 B. for a review of compensation dated February 26,
10 2009 in Aiken County.

11 A. A petition by whom?

12 Q. Well, I'll ask you to identify who did it.

13 A. Peter Shahid, attorney for Stephen --

14 Q. Slotchiver.

15 A. Can't pronounce it.

16 Q. Slotchiver.

17 A. Okay. A guardian ad litem, and James Joseph
18 Brown, II.

19 Q. And we sometimes refer to him as "James B." Who
20 is James B.?

21 A. I don't know.

22 Q. So, if you don't know who James --

23 A. I know he's -- I presume is a relative of James
24 Brown, but I don't remember that name.

25 Q. Do you know anything about whether on February 26,

1 **2009, James B. was an heir of James Brown?**

2 A. I do not. Your question was do I know?

3 **Q. Right. Do you know about whether he was or wasn't**
4 **an heir of James Brown?**

5 A. What I know -- I don't know anything about it now.
6 What I may have known back then, I can't tell you.
7 I don't remember.

8 **Q. Do you recall that your agreement stopped the DNA**
9 **testing program which was in place?**

10 MR. SMITH: Object to going beyond the
11 scope of 1337. We're here on that case, not
12 4900.

13 MR. NEWSOME: Same objection.

14 A. I don't recall.

15 **Q. Now, let's look at Exhibit No. 9, please.**

16
17 (Whereupon, 4/29/09 Email and
18 Memorandum was marked Exhibit
19 No. 9 for identification.)
20

21 BY MS. POPE:

22 **Q. I want you to take all the time you need to review**
23 **that, please. And I will identify it as an email**
24 **and a memorandum in support of approval of**
25 **settlement dated April 24, 2009, and signed by**

1 question. And object to going beyond the scope
2 of case of 1337.

3 A. Is that what this memorandum -- this memorandum
4 sets out, is the reasons?

5 Q. This memorandum signed by you on April 24, 2009,
6 is entitled, "Memorandum in Support of Approving
7 the Settlement Agreement". And you have several
8 times told me today that you thought the
9 settlement agreement was wonderful, but you can't
10 remember why.

11 A. You've used the word "wonderful," ma'am. I
12 thought it was a good settlement.

13 Q. I want to know all the reasons why, and I believe
14 that this document -- and I've tried even to
15 underline to help you understand why you -- I want
16 on the record why you thought it was a good
17 settlement.

18 A. All right. And those reasons are in writing in
19 this memorandum, correct?

20 Q. You'll have to tell me.

21 MR. SMITH: I believe the witness has
22 already answered this question to the extent of
23 his knowledge, hasn't he? On the record,
24 hasn't he already answered the question?

25 MS. POPE: I believe he said if he had

1 time to read it, it would refresh his
2 recollection. And I want him to have all the
3 time it takes.

4 A. Well, I'll do the best I can.

5 **Q. Thank you.**

6 A. Well, it looks like there were two trusts. The "I
7 Feel Good" Trust is the one that was of concern to
8 the Attorney General's office because that is
9 the -- that is the charitable trust, provides for
10 the tuition, education expenses, financial
11 assistance of and for the poor and financially
12 needy children, youth and young adults in South
13 Carolina and Georgia. Educational institutions
14 there, and I know we thought that was very good.
15 That was a good thing for Mr. Brown to have done.

16 Now, I know the probate court removed
17 everything to the Court of Common Pleas. I think
18 that's significant, but I can't remember why at
19 the moment. Maybe it'll -- I'll be refreshed when
20 we get past page four. I remember there were many
21 lawsuits, many lawyers involved. It seemed to me
22 there were -- many as six, maybe many as a dozen
23 lawsuits all challenging the trusts.

24 **Q. Well, weren't there only four challenging the**
25 **Trust; two by Tommie Rae and two by Louis**

1 scope of Case 1337.

2 MR. SMITH: Same objection.

3 BY MS. POPE:

4 **Q. Are the you aware that the Estate's current**
 5 **position, despite what Mr. -- despite**
 6 **Mr. Newsome's objections, is that Tommie Rae is**
 7 **not James Brown's spouse?**

8 A. I'm not --

9 MR. NEWSOME: Object to the form of the
 10 question.

11 MR. SMITH: Same.

12 A. I'm not involved in whatever is happening in the
 13 cases now.

14 **Q. Are you aware that she is up in the Court of**
 15 **Appeals now saying that James Brown's estate plan**
 16 **is no good?**

17 A. No, ma'am.

18 MR. SMITH: Object to the form of the
 19 question. Object to being beyond the scope of
 20 1337.

21 MR. NEWSOME: Same objection.

22 A. I'm not aware of current status of the case or
 23 cases.

24 **Q. What's the date --**

25 A. Other than they were sent back to Judge Early.

1 Q. What's the date on Exhibit 1, Ms. Hynie's
2 handwritten notes?

3 A. June 20, 1997.

4 Q. And when was her marriage to Javed Ahmed,
5 according to page four?

6 A. She had previously -- I'm quoting page four,
7 quote, she had previously been involved in a
8 putative marriage ceremony with Javed Ahmed on
9 February 17, 1997 in Texas.

10 Q. So this was a few months later, and her
11 handwritten notes show that she was living in
12 Texas and thought she was pregnant?

13 A. Ma'am, I don't know. I haven't read it.

14 Q. Well, it's been represented to the Supreme Court
15 that you reviewed that before you reached your
16 settlement.

17 A. Ma'am, I may have, but that was a long time ago.
18 I just don't remember it one way or the other.

19 Q. Well, we're trying to refresh our recollection
20 here.

21 A. Well, I'm afraid that's not going -- that's not
22 going to help me much.

23 Q. Exhibit 1 is just a few months after her marriage
24 to Ahmed and she's in Texas, where she married
25 him, and thinks she may be pregnant.

1 MR. NEWSOME: Object to the form of the
2 question. And object to questions going beyond
3 the scope of Case 1337.

4 MR. SMITH: Same objections.

5 A. That was a statement. You want me to find that in
6 the --

7 MS. POPE: Excuse me. Excuse me just one
8 minute. I'm going to make an objection to this
9 continued interruption. It may cause this
10 deposition to last much longer. Both of you
11 have, on the record, said that the discovery in
12 these two matters are a different side of the
13 same coin, and you are interrupting repeatedly
14 and damaging the flow of this deposition
15 intentionally and I intend to bring it up with
16 the Court.

17 MR. NEWSOME: Let's do that.

18 MR. SMITH: We'd be glad to do that,
19 Ms. Pope. You have gone beyond the scope of
20 1337 and took the position that the cases
21 should not be consolidated for discovery
22 purposes. This witness was brought here to
23 answer questions about Case 1337, not to reply
24 all ground over Case 4900. And we are not
25 directing him not to answer. I am simply

1 A. Well, while y'all were discussing points of
2 procedure, I was reading page four and it said
3 that she and Mr. Brown were married on December
4 the 14th. She'd been involved in a ceremony with
5 Mr. Ahmed. Mr. Brown brought an action to annul
6 her marriage, and the Charleston County Family
7 Court found the marriage to Ahmed to be void. It
8 seems to me that he had been married to someone
9 and not properly divorced. I may be mixing it up
10 with something else. Oh, well, there you go.
11 "Among other conclusions, the court found that
12 Mr. Ahmed was married at the time he entered into
13 his marriage with Ms. Brown." Okay. Well,
14 that's -- all right.

15 **Q. Mr. McMaster, --**

16 A. So it was annulled and also -- that's what I
17 thought -- I remembered that correctly. He was
18 married to someone else at the time. So that
19 would support what you'd asked me earlier about
20 the conclusion of the Attorney General's office
21 that -- well.

22 **Q. Well, Mr. McMaster -- excuse me. Go ahead.**

23 A. Wait a minute. I'm sorry.

24 **Q. No, no.. By the time you did this document, you**
25 **are speaking as one with Tommie Rae; is that**

1 **correct?**

2 MR. SMITH: Object to the form of the
3 question.

4 MR. NEWSOME: Object to the form.

5 A. I don't know what you mean.

6 **Q. Well, Mr. Medlin announced to us that he speaking**
7 **for Tommie Rae and the Attorney General were**
8 **speaking as one. Is there something unusual about**
9 **that?**

10 MR. NEWSOME: Object to the form of the
11 question.

12 MR. SMITH: Same.

13 A. I don't know what you're referring to.

14 **Q. Well, let me ask you this. If it would help James**
15 **Brown's charity for a person who may not be the**
16 **wife not to be the wife, what would be your duty**
17 **as Attorney General?**

18 MR. SMITH: Same objection.

19 MR. NEWSOME: Same objection.

20 MR. SMITH: Same form objection. Form
21 objection.

22 A. It depends on what the facts -- we have to go with
23 the facts, whatever they are.

24 **Q. Well, but you have to go with the facts that help**
25 **the charity, don't you?**

1 MR. SMITH: Form objection.

2 A. Yeah, if they're facts. If they are true facts,
3 of course.

4 Q. Okay. That's all I wanted to know. Let's look at
5 page five. There were a number of children of
6 James Brown, DNA proven children, who were not
7 parties to your settlement.

8 A. I'm sorry. You are reading from where?

9 Q. Page five. James Brown had a number of DNA proven
10 children who were not parties to your settlement.
11 Is that correct?

12 A. Are you -- I'm trying to find where you are.

13 Q. Well, "In addition to the six named children,
14 several others have appeared and claimed to be
15 children."

16 A. I see that.

17 Q. And do you know anything about how children are
18 determined under the Federal Copyright Act?

19 A. I do not.

20 Q. Would you be surprised that they are, in fact,
21 your DNA proven children and your illegitimate
22 children?

23 MR. SMITH: Form objection.

24 MR. NEWSOME: Same objection.

25 A. I would not be surprised. I presume there are

1 probably many ways to determine that. I just
2 don't know.

3 **Q. Right. And in Social Security and other things,**
4 **their federal determination of heirs is sometimes**
5 **different from the state, isn't it?**

6 **A. I mean, federal law is different from state law in**
7 **terms of social -- well, the state has to go by**
8 **what the federal law is, if there's a law on the**
9 **point involved in a federal program. I'm not --**
10 **I'm not sure I understand your question, Ms. Pope.**

11 **Q. Well, let me ask you this, you know nothing about**
12 **the determination of heirs under federal copyright**
13 **law? Is that fair to say?**

14 **A. I understand there's a process. I don't know what**
15 **it is.**

16 **Q. Okay. All right. Let's look at the bottom of**
17 **page six. It says, "The South Carolina Attorney**
18 **General continues to be -- continues to remain**
19 **involved in this case." Did you understand in**
20 **April 2009 that you had a continuing obligation to**
21 **make sure this was done right?**

22 MR. SMITH: Object to the form.

23 MR. NEWSOME: Same objection.

24 **A. This was in 2009?**

25 **Q. Uh-huh.**

1 A. Yes. I mean, we were -- we were still -- well,
2 let's see what was going on in 2009. It was after
3 the date of this? Well, if it says we were
4 involved, then we were involved.

5 Q. Okay. Well, let --

6 A. And I presume under the obligations imposed on the
7 Attorney General of South Carolina concerning
8 charities, I presume that those obligations and
9 duties would continue until the matter was
10 completely resolved.

11 Q. Well, I want to now --

12 A. Or at least until there was no problem.

13 Q. I now want to talk to you -- well, first of all,
14 do you need anything else -- I mean, do you
15 need -- do you want -- would it help to just keep
16 going through to see if you can refresh your
17 recollection at all because I want to know if you,
18 yourself, remember any good reason -- not
19 something anybody told you -- but any good reason
20 to have supported this settlement?

21 A. Everything that I knew at the time would've been
22 based on what my assistants told me. I didn't do
23 independent research or independent fact-finding.
24 It would have been in discussions with the lawyers
25 in the office. And there were a lot of them.

1 MR. NEWSOME: Same objection.

2 A. No. I don't remember anything about that. That
3 is giving Corbis two years right to use the image
4 or whatever for two years?

5 Q. No. They would be the Estate and Trust agent for
6 the exploitation of the image and persona.

7 A. They would be the agent?

8 Q. Yes. Greenlight.

9 A. I don't remember those names. I have some vague
10 recollection of something like that, but I -- I
11 can't remember today.

12 Q. Okay. Let's look at -- I want to find -- I want
13 to talk to you a little bit about The James Brown
14 Legacy Trust. Can you tell me what that is.

15 A. It's one of the trusts. That's all I know at this
16 point.

17 Q. Well, no. It was a trust you created.

18 A. Well, that's -- you mean, that we in the office
19 created.

20 Q. Well, let me just put it this way, The James Brown
21 Legacy Trust is a plaintiff in Richland 4900. Do
22 you know that?

23 A. I don't know that.

24 Q. Do you have any idea whoever controlled The James
25 Brown Legacy Trust?

1 the name of one of them, but I did not sit down
2 myself, personally, and draw up these details. It
3 sounds like, from the words of your question, is
4 that you are presuming that I was doing all of
5 that work myself. I had an office full of
6 lawyers, very good ones, who were doing the work,
7 all of which would be submitted or approved by me
8 at some point.

9 **Q. Well, Mr. McMaster, after this settlement was**
10 **approved, you asked that the stay be lifted, which**
11 **meant that you began managing -- being in charge**
12 **of the James Brown assets on May 26, 2009, and you**
13 **continued to be in charge of them until**
14 **January 11th of 2011, and you have no recollection**
15 **whatsoever of anything you did to protect the**
16 **James Brown assets --**

17 **A. I didn't say that, ma'am.**

18 **MR. SMITH:** Object to the form of the
19 question.

20 **MR. NEWSOME:** Same objection.

21 **A. I didn't say anything like that, Ms. Pope.**

22 **Q. Okay. Well, I want to hear what you did with The**
23 **James Brown Legacy Trust.**

24 **A. I'm telling you, as I've tried to explain, that I**
25 **am not familiar -- I cannot remember at this point**

1 appointed trustee for any reason was a big
2 decision, wasn't it?

3 A. Is that what this did?

4 Q. Well, it says on page 40, "As a Trustee of the
5 2000 'I Feel Good' Trust will be selected by and
6 can be removed for any reason by the South
7 Carolina Attorney General, the settling parties
8 believe there is no private inurement." And then
9 it says again on page 41, "As the Trustee of the
10 2000 'I Feel Good' Trust will be selected and can
11 be removed by any reason for the South Carolina
12 Attorney General, the parties believe there can be
13 no private inurement as to members of the Brown
14 family who participate in the James Brown Legacy
15 Trust."

16 A. What's the question?

17 Q. All of the -- is it not true that the whole saving
18 of the trust was on your shoulders, Mr. McMaster?

19 MR. SMITH: Object to the form.

20 MR. NEWSOME: Same objection.

21 A. Well, I think the whole purpose of our getting
22 into cases was to save the trust.

23 Q. I'm not talking about getting in. Everybody was
24 happy with your getting in. It's creating a
25 legacy trust that put you in absolute control of

1 **James Brown's assets.**

2 MR. SMITH: Object to the form of the
3 question. I just note that we continue the
4 running objection to questions beyond the
5 scope.

6 MR. NEWSOME: Same objections.

7 A. What was the question? You're asking was that a
8 good idea?

9 **Q. Was saving the -- according to what you told the**
10 **court, you were going to be responsible for making**
11 **sure that this trust was run right to help James**
12 **Brown, weren't you?**

13 A. That was the goal of my office. Everything --

14 **Q. Was it your goal?**

15 A. It was, yes. It was my goal and it was the goal
16 of all of us working on this case.

17 **Q. Well, you can't really speak for everyone working**
18 **on the case.**

19 A. Ms. Pope, I didn't go to court and say thing --
20 make representations to the court. Everything
21 I've done was done through the office.

22 **Q. Well, Mr. McMaster, you --**

23 A. I'm not -- I'm not saying that I'm not responsible
24 for it. It's just I was -- I was acting as the
25 Attorney General with a staff of attorneys and

1 A. If the office did anything, then I did something.
 2 I don't -- I don't remember dates of conversations
 3 and things of that nature, but I know I was
 4 involved in the matter fully with my lawyers.

5 **Q. And if people in your office made mistakes which**
 6 **damaged James Brown's trust, they should be**
 7 **corrected, shouldn't they?**

8 MR. SMITH: Object to the form.

9 MR. NEWSOME: Same objection.

10 A. Certainly. As in any matter, if something was
 11 done incorrectly, it ought to be fixed.

12 **Q. Let's look at number ten.**

13

14 (Whereupon, 05/01/09 Email was
 15 marked Exhibit No. 10 for
 16 identification.)

17

18 BY MS. POPE:

19 **Q. I will represent to you that 10 is an e-mail of**
 20 **J.C. Nicholson about the Corbis/Greenlight**
 21 **Settlement. Does that refresh your recollection?**

22 A. I don't know if I've seen this before now.

23 **Q. That's fine.**

24 MR. SMITH: May 1st '09?

25 MS. POPE: Yes.

1 Q. Does that refresh your recollection about the
2 publicity rights contract?

3 A. No, ma'am.

4 Q. And if I told you that it was projected to bring
5 in at least a million dollars a year and maybe
6 two, that wouldn't surprise you?

7 A. I don't know how much those publicity rights are
8 worth. I would think that they would be worth a
9 lot.

10 Q. Okay. Good. Now, I want you look at Exhibit 11.

11

12 (Whereupon, 08/30/09 Email was
13 marked Exhibit No. 11 for
14 identification.)
15

16 BY MS. POPE:

17 Q. And that is an e-mail of Alan Medlin to your
18 office and others dated August 30, 2009, Re: tax
19 valuation. Do you recall anything either about
20 that e-mail or about the subject?

21 A. Tax valuation is the subject?

22 Q. Uh-huh.

23 A. Does this refresh my memory of what?

24 Q. Of anything about the value of James Brown's
25 assets, the topic, the value of copyrights, the

1 Q. Right. Good. And then that was in February of
2 2008, and --

3 A. I don't remember when it was.

4 Q. And do you recall that one of the problems with
5 David Cannon was he had said that Mrs. Pope and
6 Mr. Buchanan were trying to run him off so they
7 could get the \$5 million commission payable on
8 James Brown's hundred million-dollar estate?

9 MR. NEWSOME: Object to the form of the
10 question.

11 MR. SMITH: Same objection.

12 A. Do I remember Mr. Cannon saying that?

13 Q. Making that allegation.

14 A. I don't remember that.

15 Q. Do you remember Mr. Hammond or anyone making it on
16 behalf of mister --

17 A. I don't remember one way or the other.

18 Q. Do you remember there was a lot of concern that
19 Mr. Buchanan -- that Mr. Buchanan and Mrs. Pope
20 were not reacting quickly to a hundred
21 million-dollar offer?

22 A. I remember vaguely.

23 Q. Anything in particular?

24 A. I remember criticisms of the behavior of the -- of
25 the steps that Mrs. Pope and Mr. Buchanan were

1 taking, but I don't remember specifically that,
2 that one, but that may have been.

3 Q. Do you remember Sonny writing us on December sixth
4 or fifth of 2007 saying, tell me why nobody's
5 accepting the hundred million-dollar offer? Does
6 that sound familiar?

7 A. I don't remember that.

8 Q. Do you remember that in January of 2009, you
9 amended your settlement agreement to give Terry
10 Brown a right of first refusal to buy James
11 Brown's assets?

12 A. I don't recall that.

13 Q. Do you recall that Mr. Buchanan and Ms. Pope
14 raised concern that there would be an attempt to
15 devalue the assets?

16 A. I don't recall that either.

17 Q. Written to you in about March of 2009?

18 A. I don't recall that.

19 Q. Okay. Did you --

20 A. Written to me or to Mr. Jones or others?

21 Q. To you.

22 A. I don't recall that.

23 Q. Did you understand when you gave more than half of
24 James Brown's assets to persons who were not
25 charities that it created estate tax concerns?

1 A. Did I have concerns?

2 Q. No, no. Did you understand that taking funds that
3 had been formerly given to a charity and giving
4 them to individuals would create estate tax
5 issues?

6 MR. NEWSOME: Object to the form of the
7 question.

8 MR. SMITH: Same.

9 A. I don't remember one way or the other, but I'm
10 sure that those of us in the office discuss every
11 ramification that we were aware of and, of course,
12 there were other lawyers involved outside, as
13 well.

14 Q. Were you taking advice from outside lawyers about
15 --

16 A. No. I mean, other lawyers involved in the case.
17 There was a lot of discussion going on, of course.

18 Q. But the decision to take charitable assets and
19 make them non-charitable from an estate tax
20 standpoint was yours?

21 A. I don't remember whose decision that was, but if
22 that's what the -- that's what the documents
23 accomplished, and I was supporting those
24 documents, you could say that was my decision, as
25 well as everyone else involved in the settlement.

1 Q. Now, do you know that somehow by September 2010
2 there was a representation made to the IRS that
3 James Brown's assets, his music empire at his
4 death, was worth 4.7 million dollars or less?

5 MR. NEWSOME: Object to the form of the
6 question.

7 MR. SMITH: Same.

8 A. I don't recall that, one way or the other.

9 Q. Would a valuation of his assets at -- his music
10 empire at 4.7 million be inconsistent with lots of
11 other information?

12 A. I don't know what the other information is, but I
13 really don't know. Which information?

14 Q. Well -- well, did you have the information that
15 James Brown's earned \$18 million in road revenues
16 between 2003 and 2006?

17 A. I don't recall if I had that or not.

18 Q. Well, you had it from the William Morris Agency.
19 I'll represent to you, you did.

20 MR. NEWSOME: Object to the form of the
21 question.

22 MR. SMITH: Same.

23 A. If that information had been sent to us in the
24 office, --

25 Q. Right. Right.

1 A. -- then you would be correct, but I cannot tell
2 you that I remember that specific piece of
3 information.

4 Q. Well, and you also had the information that his
5 copyrights had earned \$3 million a year for a
6 decade?

7 A. I don't know what information we had, but we had a
8 lot of information.

9 Q. Okay, right. Now, I'm just going to show you
10 Exhibit 12 and that's just to -- I know you're an
11 old prosecutor and I'm not, but it is a crime to
12 make a false statement on a Federal Estate Tax
13 return to receive a benefit. You'd agree with me
14 on that, wouldn't you?

15 A. Yes, it's a crime to file a false tax return
16 period. Right.

17 Q. Period. Good.

18 A. Whether you're getting a benefit or not, I
19 presume.

20 Q. Right. So if someone were to accuse a lawyer who
21 -- whose livelihood rest on fair dealings with the
22 IRS of overstating James Brown's assets by
23 \$79 million for the purpose of receiving a
24 \$5 million commission, that would be a very
25 serious charge wouldn't it?

1 MR. SMITH: Object to the form.

2 MR. NEWSOME: Same objection.

3 A. The question again, please.

4 Q. If someone were to accuse a lawyer whose practice
5 relied on fair dealings with the IRS of having
6 intentionally overstated James Brown's assets on
7 the Estate Tax Return, by \$79 million for the
8 purpose of achieving a \$5 million commission, that
9 would be a very serious allegation wouldn't it?

10 MR. SMITH: Object to the form.

11 MR. NEWSOME: Same objection.

12 A. Well, there are lots of parts to that question,
13 but accusing a lawyer of filing any sort of false
14 return is -- is serious.

15 Q. Very serious, isn't it?

16 A. Well, serious or very serious or maybe very, very
17 serious. It's serious.

18 Q. And in September, your office received information
19 that they were going to use to try to show that
20 James Brown's music empire was worth \$4.7 million
21 at his death. Did you know that?

22 A. In September of --

23 Q. 2010, when you were in office.

24 A. Do I recall getting that information? No, I
25 don't.

1 Q. Should you have gotten that information if it came
2 into your office in September of 2010?

3 A. Was that representation made my office? Then, if
4 the office made that representation, then I'm sure
5 that that information came to us from somewhere.

6 Q. Well, they didn't actually make that
7 representation until the following May. They
8 agreed on the information. Do you know about
9 that?

10 MR. NEWSOME: Objection. Object to the
11 form.

12 MR. SMITH: Object to the form.

13 A. No, ma'am. I don't.

14 Q. Should you have known about that?

15 MR. SMITH: Object to the form in relation
16 to prior questioning.

17 MR. NEWSOME: Same objection.

18 A. I don't know that -- I can't give you an answer to
19 that question. Anything important coming into the
20 office, the Attorney General should know about, at
21 least in -- at some point.

22 Q. Well, in James Brown, it would it matter if the
23 charitable trust were 80 million or about a
24 million wouldn't it?

25 A. Of course it would.

1 Q. That's huge, isn't it?

2 A. That's a difference of \$79 million.

3 Q. Right, right. So if something comes into the
4 office to suggest that difference, you should be
5 told, shouldn't you?

6 A. I guess it would depend on the context, but I
7 don't know how we were evaluating the estate or
8 the assets. I just -- I don't know the answer to
9 that.

10 Q. Well, you had access to how Mr. Buchanan and
11 Ms. Pope were valuing the assets, didn't you?

12 A. I presume that we did, yes.

13 Q. Right. That was presented to the Court before
14 they became PR's in November of 2007.

15 A. You're asking me to recall things that I can't
16 recall, as I've explained.

17 Q. But you don't have any reason not to think that's
18 not correct, do you?

19 MR. SMITH: Object to form.

20 MR. NEWSOME: Same objection.

21 A. That you and the gentleman had presented
22 something to the court?

23 Q. To the court as a method of valuing James Brown's
24 assets before we even became Personal
25 Representatives.

1 A. I have no reason to believe that you did or did
2 not do that.

3 Q. Okay. All right.

4 A. I mean, the record would show.

5 Q. Right. It would show. And if that was received
6 by your office, the record would show that. And
7 so, can you --

8 A. Are you asking me that?

9 Q. No, no. Sorry. Just -- if you'd like to say
10 something else, that's fine.

11 A. No.

12 Q. So, when your office received information that
13 James Brown's assets were worth nearly \$80 million
14 dollars less than that been previously represented
15 by all fiduciaries, that was big news, wasn't it?

16 A. I don't know. All fiduciaries -- I just don't
17 know. But if -- if that would certainly be a
18 difference. Now, the explanation for that
19 difference, I don't know.

20 Q. But there'd be no reason to hide that difference
21 from September to May, would there?

22 A. I don't know that it was hidden. I just don't
23 know that.

24 Q. But if it were, just take my word for it.

25 A. You're asking a hypothetical question?

1 Q. Yes, right.

2 A. That all that came in and it was hidden?

3 Q. Right. And there was a decision not to reveal it
4 to the court for months.

5 A. I just -- the question is, is there something
6 wrong with that?

7 Q. Is that troublesome? Not to tell you, and not to
8 reveal it to the court?

9 A. You're presuming again that I wasn't told and
10 there was an opportunity to present it to the
11 court. Or a reason to present it to the court at
12 that time. There are a lot of parts of your
13 question that make it difficult to answer. I
14 presume something like that would come up in due
15 course, but we'd have to go -- I'd have to go back
16 and look at the -- what the events were at the
17 time to determine if that's something that
18 should've been immediately brought to the court or
19 brought at a later time in a different procedural
20 step. I just -- I don't know the answer -- don't
21 know how to answer your question.

22 Q. So we just have to find something in the record?

23 MR. NEWSOME: Object to the form of the
24 question.

25 MR. SMITH: Object to the form.

1 A. I don't know what you mean by that, Ms. Pope. I'm
2 sorry.

3 **Q. Have you heard the estate of Harland Howard?**

4 A. I don't think so. I don't remember.

5 **Q. Do you know anything about the value of his**
6 **copyrights in relation to those of James Brown?**

7 A. I do not.

8 MR. SMITH: Object to the form.

9 MR. NEWSOME: Same objection.

10 A. At least, I do not as I am sitting here.

11 **Q. Do you think there's any chance that the publicity**
12 **rights of James Brown had a value of zero at his**
13 **death?**

14 MR. SMITH: Object to the --

15 A. That the publicity rights of James Brown had a
16 zero value at his death? Do I think that is
17 possible?

18 **Q. Uh-huh.**

19 A. No.

20 **Q. Thank you.**

21 MR. NEWSOME: Adele, can we take just a
22 quick bathroom break? I'm sorry.

23 MS. POPE: Oh, sure. Yeah.

24 (Off the record.)

25 RESUMING EXAMINATION

1 BY MS. POPE:

2 Q. Mr. McMaster, I'm going to try to go quickly
3 through these remaining exhibits.

4
5 (Whereupon, Tax Crimes Handbook
6 was marked Exhibit No. 12 for
7 identification.)

8
9 BY MS. POPE:

10 Q. We looked at Exhibit 12, which is the Tax Crimes
11 Handbook for 2009, and just wanted to make sure
12 you agree that -- and I think you've said clearly
13 that making false statements on tax returns is a
14 crime?

15 A. Yes, ma'am. I guess it has to be an intentional
16 statement.

17 Q. Right, right. Now, and to certainly to overstate
18 assets by a large amount in order to secure a big
19 commission would qualify?

20 A. Whatever reason, to intentionally overstate I
21 think would be be. Intentionally and knowingly
22 overstating, yes, I think.

23
24 (Whereupon, 04/07/10 Letter was
25 marked Exhibit No. 13 for

1 **sure that Mr. Cannon did not come back as a**
2 **trustee?**

3 MR. NEWSOME: Object to the form.

4 MR. SMITH: Object to the form.

5 A. I know there was an effort to see that he was not
6 a trustee. About coming back, I really don't
7 remember.

8 **Q. You didn't remember that Forlando brought a**
9 **lawsuit that lasted four years to try to return**
10 **Mr. Cannon?**

11 A. I don't remember that. I may have known it very
12 well at the time, but I don't remember it now.

13 **Q. Can you think of any reason why it would not have**
14 **been appropriate to ask Mr. Cannon to pay for the**
15 **cost of getting rid of him?**

16 A. Getting rid of --

17 **Q. Mr. Cannon.**

18 A. Of himself?

19 **Q. Yes. Why he should not bear the cost.**

20 A. Do I know any reason why he should not be
21 required?

22 **Q. Uh-huh.**

23 A. I don't know what the rules provide or the law,
24 but I really -- I really can't say one way or the
25 other. I presume there's support for all of this.

1 Q. Right. Well, I mean, is there support for if a
2 trustee steals and then a legal effort is taken to
3 get rid of him, is there support for seeking the
4 cost of that effort in the law, or do you know?

5 A. I don't know, but I would presume there is
6 something, some application, but I don't know.

7 Q. Good.

8
9 (Whereupon, 05/19/10 Letter was
10 marked Exhibit No. 18 for
11 identification.)

12 BY MS. POPE:

13 Q. Now, number 18 is a letter from Louis Levenson,
14 Esquire, dated May 19, 2010. And does that date
15 ring a bell with you?

16 A. No, ma'am.

17 Q. That's the day Case 4900 was brought. Does
18 that --

19 A. I think it was in -- I recall it was in May, just
20 from looking at the documents in either this
21 deposition or the other one.

22 Q. May of 2010, okay?

23 A. That's right.

24 Q. In that letter, does Mr. Levenson say that you are
25 the settling parties and you were a settling party

1 **then, weren't you?**

2 A. Yes. That is of the settlement, the earlier
3 settlement?

4 **Q. Right.**

5 A. Yes.

6 **Q. And does it say that the settling parties oppose**
7 **standing of Mr. Buchanan and Mrs. Pope to try to**
8 **seek recovery from David Cannon?**

9 A. Tell me where it is and I'll tell you that it's
10 there.

11 **Q. Let's see. Right there.**

12 A. Okay. It refers, in paragraph 1, to quote, Letter
13 brief on the issue of whether Adele Pope and
14 Robert Buchanan have standing to participate as
15 fiduciaries or in their quote, in their individual
16 capacities, end quote, in prosecuting the Cannon
17 remand on May 20, 2010. We -- and it continues --
18 quote, We believe that Mrs. Pope and Mr. Buchanan
19 do not have such standing.

20 **Q. Would there be any reason to try to prevent**
21 **recovery for the cost that Mr. Cannon had caused**
22 **to be incurred?**

23 A. Well, if the law allows it, I can think of no
24 reason unless he's judgment proof or has no money.

25 **Q. Well, he has a million-dollar home in Roatan,**

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Complaint was marked Exhibit No.
20 for identification.)

BY MS. POPE:

**Q. Now, number 20 is the complaint in Richland County
2010-CP-40-4900, just portions of the complaint.**

A. I have it. I have the document in my hand.

**Q. I'm particularly interested in a couple of the
questions. First of all, do you today know
anything about any allegations made under your
name in that complaint?**

A. Do I today know?

Q. Yes, today?

**A. Yes. What I know is the complaint alleges in some
form and maybe in numerous particulars, which I
don't know until I read it, that the trust was not
handled properly. Was not maximized, or the
various deficiencies in the performance of.
Mrs. Pope and Mr. Buchanan are alleged in the
complaint.**

**Q. Do you think there was a conflict for the same
attorney to be representing Tommie Rae Hynie and
the Attorney General of South Carolina?**

MR. SMITH: Object to the form.

MR. NEWSOME: Same objection.

1 MR. SMITH: And just note the continuing
2 objection that the question is beyond the scope
3 of 1337.

4 MR. NEWSOME: Same objection.

5 A. Is Tommie Rae Hynie a -- it says, Tommie Rae Brown
6 here. Is that the same person?

7 Q. Well, I think that's the same person. Yes.

8 A. Okay. So, do I think there's a conflict?

9 Q. For a person, a lawyer to be speaking for Tommie
10 Rae, individually, and for the Attorney General of
11 South Carolina?

12 A. That would be Mr. Wingate and Mr. Kendall.

13 Q. Yes.

14 A. I guess it depends on -- I don't know. It would
15 depend on the facts or allegation of the case, I
16 presume.

17 Q. Do you recall when you learned that Mr. Kendall
18 and Mr. Wingate were speaking for the Attorney
19 General and for Ms. Hynie at the same time?

20 A. No, I don't.

21 Q. Do you understand today they continue to speak for
22 the Attorney General and Ms. Hynie?

23 MR. NEWSOME: Object to the form.

24 MR. SMITH: Same.

25 A. I actually don't know what they are saying today,

1 worth tens of millions of dollars less.

2 **Q. Do you know anything about that allegation made on**
3 **May 19, 2010?**

4 A. Not the specific wording of the allegation, but
5 the failure of Pope and Buchanan to maximize the
6 value of the estate and trust, yes. That was the
7 point that was one of the points presented to me
8 in the dissatisfaction of the Attorney General's
9 office with Ms. Pope and Mr. Buchanan.

10 **Q. Let me be sure. You said all of the**
11 **dissatisfaction was expressed to you before you**
12 **reached the agreement on August 10, 2008?**

13 A. I don't know that all of it was. If I said that,
14 I didn't mean to say that. I know there was --
15 there was dissatisfaction expressed fairly early
16 on as I remember.

17 **Q. And you contracted on August 10, 2008 to replace**
18 **Mr. Buchanan and Ms. Pope?**

19 A. I believe so.

20 **Q. Do you know when the statute of limitations passed**
21 **for issues that you knew about on August 10, 2008?**

22 MR. NEWSOME: Object to the form of the
23 question.

24 A. No, I don't. I didn't. I don't know what I knew
25 at the time, but I don't know now.

1 A. That's correct.

2 **Q. Okay. Good.**

3 A. Now, there may have been motions filed with Judge
4 Early complaining or pointing out deficient -- I
5 just -- I'm not familiar with all those in my
6 recollection right now.

7 **Q. Right.**

8 A. But I do know there was concern about the -- about
9 the work being done by Mrs. Pope; that would be
10 you and Mr. Buchanan.

11 **Q. So, do you know anything about the November 2007**
12 **hundred million-dollar offer?**

13 A. No. I -- only vaguely, and -- but I think I have
14 read about it somewhere since -- since the time of
15 this complaint.

16 **Q. Would it surprise you that shortly thereafter,**
17 **your office told the Supreme Court there were**
18 **never any offers?**

19 A. Well, that would -- if -- I really don't -- I can
20 answer that. This is -- this is Mr. Wingate and
21 Mr. Kendall writing these things. I don't know
22 what the Attorney General said.

23

24 (Whereupon, Litigation Retention
25 Agreement was marked Exhibit No.

1 19 for identification.)

2
3 BY MS. POPE:

4 Q. Well, let's look at Exhibit 19 and see if
5 everybody didn't approve the complaint. I'm
6 sorry. Let's identify. Exhibit 19 is --

7 A. This is a -- this is a fee agreement.

8 Q. Litigation retention agreement marked Bauknight
9 confidential 129 to 144. But I'll represent to
10 you that it is not confidential.

11 A. Oh, I know it's not -- it's not. I wrote it.

12 Q. Never has been?

13 A. No, ma'am. We put on the website.

14 Q. No, you didn't.

15 A. Yes, we did.

16 Q. Okay. Well --

17 A. I mean, not -- not with the numbers filled in of
18 anyone, but the agreement itself was on our
19 website back sometime after we developed this in
20 consultation with other AGs around the country.

21 Q. So, any time an Attorney General -- the Attorney
22 General engages a lawyer in a special counsel
23 arrangement it should've gone on your website,
24 right?

25 A. No, ma'am.

1 Q. No? What not?

2 A. Because it's -- that's not public information.

3 But the form, that is, with the blanks --

4 Q. Well, aren't all the contracts now on the website
5 except this one?

6 A. I don't know that, but this is not an Attorney
7 General's -- this is the form that we developed in
8 the office when I was there. And we used it with
9 maybe minor tweaks here and there for everyone
10 that we hired during the time I was there. We did
11 not hire Mr. Wingate and Mr. Buchanan, at least
12 not while I was -- I mean, Mr. Kendall. Not while
13 I was there.

14 Q. Let's look at these documents and see if by the
15 signatures of David Bell, Louis Levenson and Alan
16 Medlin, each of them states, "The undersigned
17 further acknowledges and confirms" -- sorry, okay,
18 -- "that the undersigned has reviewed the attached
19 Complaint and that there is good ground to support
20 it. The undersigned confirms the allegations
21 contained therein, and the undersigned approves
22 the filing of same on behalf of the undersigned's
23 clients by Sweeny, Wingate and Barrow." And do
24 Alan Medlin and David Bell and Louis Levenson sign
25 those documents?

1 writing to confirm our understanding that you will
2 be retaining Mr. -- this is to Mr. Bauknight --
3 will be retaining Mr. Wingate and Mr. Kendall to
4 file this action on behalf of the beneficiaries of
5 the James Brown Estate and Trust, including the
6 charitable interests."

7 **Q. That's you, isn't it?**

8 A. Well, I don't know that.

9 **Q. Well, hadn't you just told --**

10 A. I'm not sure what --

11 **Q. -- Judge Early that you were going to be the one**
12 **to protect the charity?**

13 A. That's right. And that's what I've said at this
14 deposition and I think at the other one, as well.
15 That that's the job of the Attorney General. But
16 those are -- including the charitable interests,
17 the Attorney General gets no money out of this
18 case.

19 **Q. Well, now look, don't you get ten percent of**
20 **Mr. Wingate's legal fee? Sure you do.**

21 A. No, ma'am.

22 **Q. Well, look at it.**

23 A. I'll look at it.

24 **Q. Let's look together.**

25 A. Well, I can tell you what's in there. That is --

1 A. That is what it says.

2 Q. And doesn't it say in there that the Attorney
3 General is entitled to ten percent of
4 Mr. Wingate's fee if the charitable portion gets
5 any money?

6 A. I don't think that that is what was contemplated
7 -- let me find the fee schedule. There is a
8 provision that provides that when the Attorney
9 General hires outside counsel, that the Attorney
10 General's office would receive ten percent of the
11 attorney's fees.

12 Q. Right.

13 A. The Attorney General did not hire outside counsel.

14 Q. Well, I hear you, but that's in this document
15 right here.

16 A. It's not in this documents, Ms. Pope.

17 Q. Well, let's --

18 A. The Attorney General did not sign this contract.
19 I'm having difficulty making that clear. The
20 Attorney General did not sign this --

21 Q. You are.

22 A. Unless it was signed after I left office.

23 Q. Well, you were there on May 19th -- May 18, 2010.

24 A. Yes, ma'am. And I did not sign this office --

25 Q. Right.

1 Q. Well, let's look. Let's look at appendix page
2 eight -- no, sorry. Appendix page nine. Let's
3 look at the proposed adjustment in --

4 A. It says on page nine of Exhibit 21, the total of
5 these items \$4,697,736.

6 Q. And what is it adjusting it from?

7 A. It says shown on return. I presume that is what
8 it's adjusting it from, is 48 -- excuse me,
9 84 million.

10 Q. Right. And you received the estate tax return
11 filed by Mr. Buchanan and Mrs. Pope in October of
12 2008 that showed the 84 million?

13 A. I don't recall that. One way or the other.

14 Q. You don't have any reason to think you didn't?

15 A. Or -- that's right. No reason to, but I just
16 don't know.

17 Q. And between October of 2008 and when this lawsuit
18 -- I mean, and when this filing was made with the
19 Supreme Court, you made no objection to that
20 estate tax return other than in the complaint
21 which you said you didn't file?

22 MR. NEWSOME: Object to the form of the
23 question.

24 A. I don't know that I made any objection. I recall
25 no objection or comment one way or the other, but

1 there may have been some. I may have made some or
2 the lawyers in the office may have had concerns.

3 **Q. Well, let's see if you -- someone using your name**
4 **said, "Artificially inflating the reported value**
5 **of the estate without any substantiation and**
6 **without any consistency for the purpose of**
7 **justifying their claim for approximately**
8 **\$5 million in fees." That was made in your name**
9 **in May of 2010.**

10 **A. That is a statement from the complaint which I had**
11 **nothing to do with other than to implore the**
12 **council that was being hired -- that were being**
13 **hired by Mr. Bauknight to not charge any more than**
14 **I, or we, the AG's office, would have allowed for**
15 **outside counsel.**

16 **Q. You were Attorney General for eight years?**

17 **A. That's right.**

18 **Q. Ever, in that experience, did you know of a lawyer**
19 **who filed a lawsuit unauthorized in your name?**

20 **A. No, ma'am.**

21 **Q. Have you done anything to correct a lawsuit filed**
22 **in and under your name using your high office**
23 **against two South Carolina citizens six years ago?**

24 MR. NEWSOME: Object to the form of the
25 question.

1 MR. SMITH: Same.

2 A. Well, that is -- as I think I mentioned earlier,
3 when I learned of this, I contacted someone or
4 several people in the office to ask about it. I
5 don't remember what the explanation that was given
6 was, but other than raising the issue and
7 receiving that explanation, I did nothing further.

8 **Q. Well, Mr. McMaster, that's kinda hard on citizens,**
9 **isn't it?**

10 MR. SMITH: Object to the form.

11 MR. NEWSOME: Same objection.

12 A. The issue is one in -- with the Attorney General's
13 office. When I learned of this, as I recall, when
14 I learned of it, I had been the office for some
15 time. That is that my name was -- was listed like
16 that. And I don't know what the legal basis for
17 that is, I really don't know. And it may have
18 been explained to me when I made that call or
19 calls or inquiry.

20 **Q. So someone may have explained to you why it was**
21 **okay to use your name without your knowledge as a**
22 **plaintiff in a lawsuit and you don't remember?**

23 MR. SMITH: Object to the form.

24 MR. NEWSOME: Same objection.

25 A. I remember discussing it with at least one person,

1 may have been several, and commenting on the fact
2 that I didn't understand it, and I know I -- it
3 was explained to me, but I don't remember what the
4 explanation was.

5 **Q. Who explained to you that it was okay to use your**
6 **name in a lawsuit?**

7 MR. SMITH: Object to extent that it would
8 call for revealing privileged information and
9 would instruct the witness to -- not to reveal
10 privileged information, but he can answer to
11 the extent he should answer to the extent that
12 he can without revealing privileged
13 information.

14 **Q. Do you share a privilege with anybody who is**
15 **trying to explain why your name was used in a**
16 **lawsuit you didn't acknowledge?**

17 A. That would depend on the law. Which I -- I don't
18 know which procedural law or which law would apply
19 to something like this. That's what I thought it
20 was odd, but it would've been -- I imagine that it
21 would've been Mr. Jones, or I don't think it was
22 Mr. Wilson. It may have been Mr. Cook. It may
23 have been probably Mr. Jones or Mr. Cook or maybe
24 Mr. McIntosh. I really don't remember who -- whom
25 I spoke to or how many times.

1 Q. Was it Attorney General Wilson?

2 A. That's what I just said. I don't think it was,
3 but it may have been.

4 Q. Oh, I'm sorry. Okay. Now, if was all a big
5 accident, let me ask you if Exhibit 22 --

6 A. I'm not saying it was an accident. I mean, it
7 just was not known to me. I don't know -- I don't
8 have the explanation.

9 Q. Well, but for the Attorney General to be a
10 plaintiff is serious business, isn't it,
11 Mr. McMaster?

12 A. Well, of course, it is.

13 Q. You carry a high office and a lot of prestige,
14 don't you?

15 A. The office cares a lot of prestige. It's a very
16 good office --

17 Q. Yeah, that's you who you were carrying it.

18 A. That's right.

19 Q. And you have the ability to ruin careers with that
20 office, don't you, Mr. McMaster?

21 MR. NEWSOME: Object to the form of the
22 question.

23 MR. NEWSOME: Same objection.

24 A. Yes. Anyone any -- anyone -- any -- any lawyer
25 has the power to do that. And those that can

1 bring criminal cases, of course, have an even
2 heightened power and responsibility.

3
4 (Whereupon, Pope's Offer of
5 Judgment was marked Exhibit No.
6 22 for identification.)
7

8 BY MS. POPE:

9 Q. Now, let's look at Exhibit 22 and let's see if
10 that wasn't an attempt to fix the problem that you
11 discuss. I'll just identify it and you can see if
12 you disagree with me. This an offer of judgment
13 by Adele Pope to the South Carolina Attorney
14 General and to Russell L. Bauknight as agent for
15 the South Carolina Attorney General dated June 18,
16 2012, seeking to allow the Attorney General to get
17 out of Richland 4900.

18 A. You want me to read it.

19 Q. Yes, if you will, please. Or I'll looking at what
20 I'm asking to have a settlement with the Attorney
21 General of South Carolina on page three, it says,
22 "Attorney General Alan Wilson and Russell L.
23 Bauknight in his capacity as agent for the
24 Attorney General and for former Attorney General
25 Henry McMaster, with Adele J. Pope, shall submit a

1 A. All right. And your question, please, ma'am?

2 Q. And my question is, would that have solved the
3 problem of this suit being brought in the high
4 name of the Attorney General without his
5 knowledge?

6 MR. SMITH: Object to the form.

7 MR. NEWSOME: Same objection.

8 A. You're talking -- speaking about without my
9 knowledge?

10 Q. Right, right.

11 A. Well, that would've -- yes, that would've taken
12 Attorney General Wilson and me, and it would've
13 taken us out of the case.

14 Q. Right. And Mr. Bauknight is your purported agent,
15 right?

16 MR. NEWSOME: Object to the form.

17 A. That's what this document says.

18 Q. Right. And you never authorized Mr. Bauknight to
19 serve as an agent for the Attorney General in this
20 lawsuit, did you?

21 A. I did not, correct.

22 MR. NEWSOME: Object to the form.

23 Q. So that would've gotten all of you out of this
24 lawsuit way back in 2012, right?

25 MR. SMITH: Object to the form.

1 MR. NEWSOME: Same objection.

2 A. Well, it's an offer of judgment. I bet if it were
3 adopted by the court in the fashion it is written,
4 I would say yes, of course, it would have, but I
5 can't answer that question that way.

6 Q. Now, we'll just go quickly through the rest of
7 these documents.

8
9 (Whereupon, First Two Pages of
10 Transcript was marked Exhibit
11 No. 23 for identification.)
12

13 BY MS. POPE:

14 Q. Twenty-three is just the first two pages of the
15 deposition that we've agreed to put in as part of
16 your deposition here, and that's just to remind us
17 of that. You recognize 23 as the first two pages
18 of your deposition taken --

19 A. I do.

20 Q. -- on August 16 in 2012 -- 2016, sorry.

21 A. Yes, ma'am, I do.

22
23 (Whereupon, 05/20/08 Memorandum
24 was marked Exhibit No. 24 for
25 identification.)

1
2 BY MS. POPE:

3 Q. And then this document is one of those exhibits.
4 This Exhibit 24, which is to May 20, 2008,
5 "Memorandum to all devisees, Will of James Brown,
6 all qualified beneficiaries of The James Brown
7 2000 Irrevocable Trust, The Honorable Henry D.
8 McMaster, Attorney General of South Carolina,
9 counsel for the beneficiaries and other interested
10 parties in the Estate and Trust" dated May 20,
11 2008, first semiannual report of trustees covering
12 the period from November 20, 2007 to May 20, 2008.
13 Mr. McMaster, I'll represent to you that that was
14 the attachment to Ms. Jowers' May 20th e-mail. I
15 had not attached it before, because it was made an
16 an exhibit to the other deposition, but I thought
17 it important to put it in. Do you understand --

18 A. This was the email we referred to at the beginning
19 of this deposition --

20 Q. Right.

21 A. -- of this --

22 Q. And also the document that you discussed in detail
23 in your earlier deposition.

24 A. Well, the document that I responded to in as much
25 detail as I could with --

1 Q. You did a great job.

2 A. Thank you very much -- with several -- a number of
3 questions. So, what is your question here, ma'am?

4 Q. All I'm saying is, do you agree that that's what
5 it is so we can have it here for easy reference
6 without having to go to the other deposition?

7 A. Well, it appears to be.

8 Q. Thank you.

9 A. I'm not familiar with the document, but it appears
10 to be so labeled.

11 Q. Thank you.

12

13 (Whereupon, Forbes List was
14 marked Exhibit No. 25 for
15 identification.)

16

17 BY MS. POPE:

18 Q. And 25 is the October 25, 2008 Forbes List of 13
19 Top-Earning Dead Celebrities. Do you know that
20 Forbes does that around Halloween each year?

21 A. No, I don't know that.

22 Q. Okay. Well, that was the year after James Brown
23 died and --

24 A. I heard -- I heard something about this somewhere.

25 Q. Yeah. And I think he's maybe number 11 at about

1 **5 million a year?**

2 A. Uh-huh.

3 **Q. Any reason to --**

4 A. I'm sorry. Is there a question?

5 **Q. Yes. Is there any reason to think Forbes wasn't**
6 **close to right on that?**

7 A. I have no idea how they do these things.

8

9 (Whereupon, 04/23/14 Order was
10 marked Exhibit No. 26 for
11 identification.)

12

13 BY MS. POPE:

14 **Q. I'm going to just hand you Exhibit 26 is an Order**
15 **of The Honorable R. Knox McMahon dated April 23,**
16 **2014 granting restitution in the David Cannon case**
17 **with a cover letter that is copied to Assistant**
18 **Attorney General Creighton Waters. I know this**
19 **was after your time, but it discusses some issues**
20 **related to David Cannon.**

21 A. What's the question?

22 **Q. Does that refresh your recollection that the David**
23 **Cannon criminal proceeding was handled by your**
24 **office and not by the local solicitor?**

25 A. That's what it reflects. I really don't remember,

1 **throughout?**

2 A. Throughout what?

3 **Q. Throughout -- through -- from his death until**
 4 **today, nearly ten years later?**

5 A. Well, you have this -- I would -- yeah, there is
 6 media interest in James Brown, period. I mean,
 7 he's a celebrated entertainer.

8 **Q. Right. And if he had created what should've been**
 9 **the largest ever private foundation for the**
 10 **education of needy students, that should be even**
 11 **more news, shouldn't it? In our state?**

12 A. In our state, that's -- that is a great thing.

13 **Q. It is. It should be.**

14 A. Of course, now, I've got to say it was challenged
 15 by all sorts of people, as you know, asserting all
 16 sorts of claims.

17
 18 (Whereupon, 10/24/11 Email was
 19 marked Exhibit No. 28 for
 20 identification.)

21
 22 BY MS. POPE:

23 **Q. Twenty-eight is an e-mail from Alan Medlin to Fred**
 24 **Kingsmore preparing for the arguments in the**
 25 **Supreme Court dated October 24, 2011, just before**

1 and his -- his lawsuit and relationships after you
2 left office?

3 A. I don't believe so. I can think of nothing at
4 this time.

5 Q. And Exhibit 29 is an e-mail chain among Sonny
6 Jones, Russell Bauknight, Bill Custer, related to
7 events of November 2011. You don't know anything
8 about that?

9 A. About is this email?

10 Q. Right.

11 A. No, ma'am.

12 Q. Before you left office, in fact, just before,
13 however, you did sign an amendment to The Legacy
14 Trust. Do you recall that?

15 A. I don't.

16 Q. Do you recall that immediately after you signed it
17 and still before you left office, Terry Brown
18 signed an assignment to his son, Forlando, of his
19 interest in James Brown's Estate?

20 A. I don't recall that --

21 Q. You don't --

22 A. Not sitting are today. I can't recall that.

23 Q. You don't deny that you signed it, though?

24 A. No, ma'am.

25 Q. If you did, you did.

1 question of where those assets would end up was a
2 very open question at the time. It was never --
3 it was never certain that all of those assets or
4 even most of them would go to the charitable
5 trust. We wanted to see if we could -- we wanted
6 to get the maximum amount we could into the
7 charitable trust.

8 **Q. Well, Mr. McMaster, --**

9 A. And we -- and to finish the answer --

10 **Q. Oh, sorry.**

11 A. I believe that we did use all the power that we
12 had. In fact, I think the Supreme Court has
13 commented that we overdid it.

14 **Q. My question is for today, if there was something**
15 **you could do today?**

16 A. If I could snap my fingers and make everything
17 perfect I certainly would.

18 **Q. I'm going to ask you just a couple more questions.**
19 **Are you aware that James B's guardian ad litem has**
20 **asked and received an award of nearly \$700,000 of**
21 **legal and GAL fees?**

22 A. I'm not aware.

23 **Q. Are you aware that there was a sale of three of**
24 **James Brown's approximately 900 copyrights and a**
25 **million dollars was distributed to Tommie Rae**

1 **before she was finally determined to be James**
2 **Brown's wife?**

3 MR. SMITH: Object to the form.

4 MR. NEWSOME: Same objection.

5 A. I don't recall that, but I can't tell you what I
6 knew at the time, but for right now, I don't
7 remember such a thing happening.

8 Q. **Are you aware that another million was distributed**
9 **to some of James Brown's children?**

10 A. I don't recall one way or the other.

11 Q. **Do you think that \$3.5 million is a high amount**
12 **for legal fee -- legal and Special Administrator**
13 **fees for three years for a 5 million-dollar**
14 **estate?**

15 MR. SMITH: Object to the form.

16 MR. NEWSOME: Same objection.

17 A. Three point five in fees for a 5 million-dollar
18 estate? That sounds like a lot to me. I know
19 there are -- our Supreme Court and perhaps the
20 court rules have a list of factors to consider and
21 -- in determining whether a fee is not enough, too
22 much, or just right, which is always very
23 subjective. I would go to those factors.

24 Q. **Do you think if -- well, I'll ask you this. The**
25 **complaint alleges that Mr. Buchanan and Mrs. Pope**

1 failed to account to the Attorney General as
2 required by law. In 2010 or 2009, when they left
3 office, there was no requirement for accounting to
4 the Attorney General, was there?

5 A. I don't recall that one way or the other.

6 Q. But even if there were, even though there was
7 none, we did provide accountings?

8 A. I don't know that.

9 Q. You don't know?

10 A. I don't that, no.

11 Q. Well, if a fiduciary went from 2014 to 2016
12 without providing an accounting, that would be
13 troublesome wouldn't it?

14 MR. NEWSOME: Object to the form.

15 MR. SMITH: Same.

16 A. It all depends on the facts, I suppose, Ms. Pope.
17 I don't know.

18 Q. Good.

19 MS. POPE: I appreciate your time,

20 Mr. McMaster.

21 THE WITNESS: Happy to provide it.

22 MR. NEWSOME: No questions.

23 MR. SMITH: No questions. We're done.

24 Further deponent sayeth not.

25 (Whereupon, the taking of this deposition was